

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

In re:	)	Chapter 11
ANAGRAM HOLDINGS, LLC, <i>et al.</i> , ¹	)	Case No. 23-90901 (MI)
Debtors.	)	(Joint Administration Requested)
	)	(Emergency Hearing Requested)

DEBTORS’ EMERGENCY MOTION FOR ENTRY OF INTERIM AND FINAL ORDERS (I) AUTHORIZING THE DEBTORS TO (A) OBTAIN POST-PETITION FINANCING, (B) USE CASH COLLATERAL, AND (C) GRANT LIENS AND SUPERPRIORITY ADMINISTRATIVE EXPENSE CLAIMS, (II) GRANTING ADEQUATE PROTECTION TO CERTAIN PREPETITION SECURED PARTIES, (III) MODIFYING THE AUTOMATIC STAY, (IV) SCHEDULING A FINAL HEARING, AND (V) GRANTING RELATED RELIEF

Emergency relief has been requested. Relief is requested not later than 3:30 p.m. (prevailing Central Time) on November 9, 2023.

If you object to the relief requested or you believe that emergency consideration is not warranted, you must appear at the hearing if one is set, or file a written response prior to the date that relief is requested in the preceding paragraph. Otherwise, the Court may treat the pleading as unopposed and grant the relief requested.

A hearing will be conducted on this matter on November 9, 2023 at 3:30 p.m. (prevailing Central Time) in Courtroom 404, 4th floor, 515 Rusk Street, Houston, Texas 77002.

Participation at the hearing will only be permitted by an audio and video connection.

Audio communication will be by use of the Court’s dial-in facility. You may access the facility at 832-917-1510. Once connected, you will be asked to enter the conference room number. Judge Isgur’s conference room number is 954554. Video communication will be by use of the GoToMeeting platform. Connect via the free GoToMeeting application or click the link on Judge Isgur’s home page. The meeting code is “JudgeIsgur.” Click the settings icon in the upper right corner and enter your name under the personal information setting.

Hearing appearances must be made electronically in advance of both electronic and in-person hearings. To make your appearance, click the “Electronic Appearance” link on Judge Isgur’s home page. Select the case name, complete the required fields and click “submit” to complete your appearance

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: Anagram Holdings, LLC (8535); Anagram International, Inc. (2523) and Anagram International Holdings, Inc. (5837). The location of the Debtors’ service address for purposes of these chapter 11 cases is: 7700 Anagram Drive, Eden Prairie, MN 55344. For the avoidance of doubt, the Debtors’ chapter 11 cases are not proposed to be consolidated with Party City Holdco Inc. and its affiliate debtors (collectively, “Party City”) which emerged from chapter 11 cases in this Court on October 12, 2023. *See In re Party City Holdco Inc., et. al.*, Case No. 23-90005 (MI) (Bankr. S.D. Tex). Any reference herein to the Debtors does not include the debtor-entities that were administered in the Party City chapter 11 cases.



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

Relief Requested²

1. The Debtors seek entry of an order substantially in the form attached hereto (the “Interim Order”)³ and a final order substantially the form of the Interim Order and otherwise as agreed among the Debtors, the DIP Notes Secured Parties, the DIP ABL Secured Parties, the DIP Notes Trustee, and the DIP ABL Agent (the “Final Order” and, together with the Interim Order, the “DIP Orders”) granting the following relief:⁴

- ***DIP Notes Facility***: Authorizing Anagram Holdings, LLC, as co-issuer, and Anagram International, Inc., as co-issuer (collectively, the “DIP Issuers”) to obtain post-petition financing pursuant to a senior secured, superpriority and priming debtor-in-possession note purchase agreement, consisting of new money notes in an aggregate principal amount of \$22 million (the commitments in respect thereof, the “DIP Notes Commitment” and, such notes, the “DIP Notes”) from the DIP Noteholders (as defined herein), of which \$10 million will be available immediately upon entry of the Interim Order, and the remainder will be available subject to and upon the date of entry of the Final Order, subject to the terms and conditions set forth in (i) that certain DIP Notes Purchase Agreement in substantially the form attached thereto as **Exhibit 1** (as may be amended, restated, supplemented, waived, or otherwise modified from time to time, the “DIP Notes Purchase Agreement”) by and among the DIP Issuers, Anagram International Holdings, Inc., as guarantor (the “DIP Guarantor” and, together with the DIP Issuers, the “DIP Obligors”), and the financial institutions or other entities from time to time party thereto as “Purchasers” (the “DIP Noteholders”), and (ii) that certain Indenture attached to the Interim Order in substantially final form as **Exhibit 2** thereto (as amended from time to time, the “DIP Indenture” and the facility issued thereunder, the “DIP Notes Facility”) by and among the DIP Issuers, the DIP Guarantor, GLAS Trust Company LLC, as trustee and collateral agent (in such capacities, together with its successors and permitted assigns, the “DIP Notes Trustee” and, together with the DIP Noteholders, the “DIP Notes Secured Parties”);

² The Debtors will file the form of Final Order prior to the Final Hearing (as defined herein).

³ Capitalized terms used in this motion but not otherwise defined herein shall have the meanings ascribed to such terms in the Interim Order.

⁴ The summaries contained in this Motion are qualified in their entirety by the provisions of the documents referenced. To the extent anything in this Motion is inconsistent with such documents, the terms of the applicable documents shall control.

- ***DIP ABL Facility:*** Authorizing the DIP Issuers, as co-borrowers, to obtain post-petition financing from the Prepetition ABL Lender in its capacity as lender under the DIP ABL Facility (as defined below) (together with its successors and assigns, the “DIP ABL Lender”) in an aggregate principal amount of up to \$15 million subject to a borrowing base (the “DIP ABL Facility” and, together with the DIP Notes Facility, the “DIP Facilities”) and a gradual roll-up of up to all outstanding amounts under the Prepetition ABL Loan Documents from certain collections of ABL Priority Collateral, pursuant to the terms of the Interim Order (such terms, together with the Prepetition ABL Loan Documents (as expressly modified by the Interim Order) and all other agreements, instruments, and documents evidencing the DIP ABL Obligations from time to time that are executed or delivered in connection with the Interim Order, collectively, the “DIP ABL Agreement”), subject to the ability of the DIP Issuers to re-borrow thereunder in accordance with the terms of the DIP ABL Agreement and the Interim Order;
 - In connection with, and as a necessary inducement for, the extension of credit by the DIP ABL Lender, authorizing all proceeds of ABL Priority Collateral in the Debtors’ possession or control on or after the Petition Date (excluding, however, any ABL Priority Collateral in the Debtors’ Master Concentration Account as of the Petition Date, proceeds of Notes Priority Collateral and amounts in the Notes Proceeds Account and the DIP Notes Account) will be deposited promptly into the Debtors’ existing Collection Account to the extent required to be deposited therein under the Prepetition ABL Loan Documents and, from there, be remitted on a daily basis to Prepetition ABL Agent for application to the Prepetition ABL Obligations (the “Roll Up”) until the Prepetition ABL Obligations are paid in full and, following such repayment, remitted on a daily basis to DIP ABL Agent for application to DIP ABL Obligations outstanding from time to time and any excess, on a daily basis, remitted to the Master Concentration Account;
- ***Cash Collateral:*** Authorizing the Debtors to continue to use Prepetition Collateral, including Cash Collateral (as such term is defined in Section 363(a) of the Bankruptcy Code) of the Prepetition Secured Parties under the Prepetition Debt Documents, subject to the terms set forth in the DIP Notes Documents, the DIP ABL Agreement, the Approved Budget, and the DIP Orders;
- ***Adequate Protection:*** Authorizing the Debtors to grant adequate protection solely to the extent of any Diminution in Value to the Prepetition Secured Parties subject to the terms set forth in the DIP Notes Documents, the DIP ABL Agreement, the Approved Budget, and the DIP Orders;
- ***DIP Superpriority Claims and DIP Liens:*** Granting DIP Superpriority Claims and DIP Liens on the DIP Collateral to secure the DIP Notes Obligations and DIP ABL Obligations, as applicable, subject to the Carve-Out and with the relative rankings and priorities set forth in the DIP Orders;

- **Automatic Stay:** Vacating and modifying the automatic stay under section 362 of the Bankruptcy Code (the “Automatic Stay”) to the extent necessary to implement and effectuate the terms and conditions of the DIP Orders subject to the terms set forth in the DIP Notes Documents, the DIP ABL Agreement and the Interim Order;
- **Final Hearing:** Scheduling a final hearing (the “Final Hearing”) to consider final approval of the DIP Notes Facility, the DIP ABL Facility, the Rollup and use of Cash Collateral pursuant to a proposed Final Order, as set forth in this motion, the DIP Notes Documents and the DIP ABL Agreement; and
- **Immediate Effectiveness:** Waiving any applicable stay, including under Bankruptcy Rule 6004, to provide for immediate effectiveness of the Interim Order (including a waiver pursuant to Bankruptcy Rule 6004(h)).

2. In support of this Motion, the Debtors submit the (a) *Declaration of Adrian Frankum in Support of Debtors’ Chapter 11 Petitions and First Day Motions* (the “First Day Declaration”) and (b) the *Declaration of Ajay Bijoor in Support of Debtors’ Emergency Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to (A) Obtain Post-petition Financing, (B) Use Cash Collateral, and (C) Grant Liens and Provide Superpriority Administrative Expense Claims, (II) Granting Adequate Protection to Certain Prepetition Secured Parties, (III) Modifying the Automatic Stay, (IV) Scheduling a Final Hearing, and (V) Granting Related Relief* (the “DIP Declaration”) and, together with the First Day Declaration, the “Declarations”). Each of the Declarations is incorporated herein by reference.

Jurisdiction and Venue

3. The United States Bankruptcy Court for the Southern District of Texas (the “Court”) has jurisdiction over this matter pursuant to 28 U.S.C. § 1334 and the *Amended Standing Order of Reference from the United States District Court for the Southern District of Texas*, dated May 24, 2012 (the “Amended Standing Order”). This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b). The Debtors confirm their consent to the entry of a final order by the Court.

4. Venue is proper pursuant to 28 U.S.C. § 1408.

5. The statutory bases for the relief requested herein are sections 105, 361, 362, 363, 364, 503, 506 and 507 of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the “Bankruptcy Code”), rules 2002, 4001, 6003, 6004, and 9014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), rules 2002-1, 4001-1, 4002-1 and 9013-1 of the Bankruptcy Local Rules for the Southern District of Texas (the “Local Rules”), and the *Procedures for Complex Cases in the Southern District of Texas* (the “Complex Case Procedures” and, together with the Local Rules, the “Bankruptcy Local Rules”).

6. On the date hereof (the “Petition Date”), the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code. The Debtors are operating their businesses and managing their property as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. The Debtors have filed a motion requesting procedural consolidation and joint administration of these chapter 11 cases pursuant to Bankruptcy Rule 1015(b). No request for the appointment of a trustee or examiner has been made in these chapter 11 cases, and no committees have been appointed or designated.

Concise Statement Pursuant to Bankruptcy Rule 4001

7. In accordance with Bankruptcy Rules 4001(b), 4001(c) and 4001(d), the following is a concise statement and summary of the proposed material terms of the DIP Notes Facility and the DIP ABL Facility as provided in the DIP Notes Documents, DIP ABL Agreement and the DIP Orders:⁵

⁵ This summary is intended only to assist the Court by reference to the DIP Notes Documents, DIP ABL Agreement and the DIP Orders, and is qualified in its entirety by the terms of the DIP Notes Documents and DIP ABL Agreement, each as may be modified by the DIP Orders. Capitalized terms used in this statement but not otherwise defined herein shall have the meanings ascribed to such terms in the DIP Notes Documents, DIP ABL Agreement or Interim Order, as applicable.

<u>Bankruptcy Rule and Section Reference</u>	<u>DIP Facilities</u>
<p>DIP Facilities (Bankruptcy Rule 4001(c)(1)(B)) <i>Interim Order, Preamble, ¶ H(v)</i></p>	<p><u>DIP Notes Facility</u>: A senior secured, superpriority and priming debtor-in-possession notes facility, consisting of new money notes in an aggregate principal amount of \$22 million from the DIP Noteholders, of which \$10 million will be available immediately upon entry of the Interim Order, and the remainder will be available subject to and upon the date of entry of the Final Order, subject to the terms and conditions set forth in the DIP Notes Purchase Agreement, by and among the DIP Issuer, the DIP Guarantor, the DIP Noteholders, and the DIP Notes Trustee and the DIP Indenture, by and among the DIP Issuer, the DIP Guarantor and the DIP Notes Trustee.</p> <p><u>DIP ABL Facility</u>: A first lien, asset-based lending facility in an aggregate principal amount of up to \$15 million, subject to a borrowing base and a gradual “roll-up” of the Prepetition ABL Obligations from certain collections of ABL Priority Collateral, pursuant to the terms of the Interim Order, subject to the ability of the DIP Issuers to re-borrow thereunder in accordance with the terms of the DIP ABL Agreement and the Interim Order.</p>
<p>Co-Issuers/Co-Borrowers (Bankruptcy Rule 4001(c)(1)(B)) <i>DIP Indenture, Preamble</i> <i>DIP ABL Agreement, Preamble</i></p>	<p>Anagram Holdings, LLC and Anagram International, Inc.</p>
<p>DIP Guarantor (Bankruptcy Rule 4001(c)(1)(B)) <i>DIP Indenture, “Guarantors”;</i> <i>“Subsidiary Guarantor”</i> <i>Interim Order, Preamble</i></p>	<p>Anagram International Holdings, Inc.</p>
<p>DIP Noteholders (Bankruptcy Rule 4001(c)(1)(B)) <i>DIP Indenture, “Holders”</i></p>	<p>Those certain banks, financial institutions and other entities party to the DIP Notes Purchase Agreement from time to time as “Purchasers”.</p>
<p>DIP ABL Lender <i>DIP ABL Agreement, “Lenders”</i></p>	<p>Those certain banks, financial institutions and other entities party to the DIP ABL Agreement from time to time as “Lenders”.</p>
<p>Term Bankruptcy Rule 4001(b)(1)(B)(iii), 4001(c)(1)(B)</p>	<p><u>DIP Notes Facility</u>: The earliest of (i) the date that is six (6) months following the Initial Issue Date, (ii) the effective date and the date of the substantial consummation (as defined in Section 1102(2) of the Bankruptcy Code) of a plan of reorganization that has been confirmed by an order of the</p>

<u>Bankruptcy Rule and Section Reference</u>	<u>DIP Facilities</u>
<p><i>DIP Indenture, “Maturity Date”</i> <i>Interim Order ¶ 36(i)</i></p>	<p>Bankruptcy Court; (iii) the consummation of a sale or other disposition of all or substantially all of the assets of the Debtors under Section 363 of the Bankruptcy Code; (iv) the date the Bankruptcy Court orders the conversion of the bankruptcy case of any of the DIP Notes Parties to a Chapter 7 liquidation and (v) the acceleration of the DIP Notes in accordance with the terms of the DIP Indenture.</p> <p><u>DIP ABL Facility</u>: The earliest of: (i) April 30, 2024 and (ii) the occurrence of a DIP ABL Termination Event.</p>
<p>Material Conditions to Closing and Borrowing (Bankruptcy Rule 4001(c)(1)(B)) <i>DIP Notes Purchase Agreement, §§ 7.1 and 7.2</i> <i>DIP ABL Agreement § 3.2</i> <i>Interim Order ¶ 36(a) and (g)</i></p>	<p>The DIP Facilities include customary conditions of borrowing, the satisfaction of which are a condition precedent to the obligations of each DIP Noteholder to purchase DIP Notes and of the DIP ABL Lender to extend any additional credit under the DIP ABL Facility.</p>
<p>Fees and Expenses (Bankruptcy Rule 4001(c)(1)(B)) <i>DIP Notes Purchase Agreement, § 3.1</i> <i>Interim Order ¶ 36(d)</i></p>	<p><u>DIP Notes Commitment Premium</u>: A nonrefundable premium to each Initial Purchaser of 5.0% of such Initial Purchaser’s Total Commitments before giving effect to Section 2.1(d) of the DIP Notes Purchase Agreement, fully earned on the date of the DIP Notes Purchase Agreement and paid by the DIP Issuers, free and clear of any withholding or deduction for any applicable Taxes, on the Initial Issue Date by a deemed contribution of all of the Commitment Premium toward the purchase price payable for the Initial DIP Notes.</p> <p><u>DIP ABL Facility Commitment Premium</u>: \$200,000 payable to the DIP ABL Lender within two Business Days following entry of the Interim Order.</p>
<p>Interest Rate (Bankruptcy Rule 4001(c)(1)(B)) <i>DIP Indenture, § 2.3, “Applicable Rate”</i> <i>ABL DIP Agreement § 2.6(d), “Floor,” “Applicable Rate” and “SOFR Margin”</i> <i>Interim Order ¶ 36(d)</i></p>	<p><u>DIP Notes Facility</u>: 13.00% per annum, payable in cash monthly.</p> <p><u>DIP ABL Facility</u>: Daily simple SOFR <i>plus</i> 4.50%, accruing daily and payable monthly in cash.</p>
<p>DIP Liens (Bankruptcy Rule 4001(c)(1)(B)(i)) <i>DIP Indenture, § 11.01</i></p>	<p>The DIP Facilities will be secured by liens on substantially all property, causes of action, rights, or claims of the DIP Obligors (now or hereafter acquired and all proceeds thereof), including property or assets, if any, that do not secure the obligations under the Prepetition Debt</p>

<u>Bankruptcy Rule and Section Reference</u>	<u>DIP Facilities</u>
<p><i>DIP ABL Agreement, “Collateral”</i> <i>Interim Order ¶ 8, 9, Exhibit 3</i></p>	<p>Documents, and including, subject to entry of the Final Order, the proceeds of all claims and causes of action arising under sections 502(d), 544, 545, 547, 548, 549 and 550 of the Bankruptcy Code or any other avoidance actions under the Bankruptcy Code or applicable federal and/or state-law equivalents, subject and subordinate to the Carve-Out and in accordance with the priorities set forth in the Interim Order.</p> <p><u>DIP Notes Facility:</u> The DIP Notes shall be secured by (i) a first priority lien on and security interest in Unencumbered Property; (ii) a senior priming lien on all tangible and intangible prepetition and post-petition property of the DIP Obligors constituting Notes Priority Collateral; and (iii) a junior lien on all tangible and intangible prepetition and post-petition property of the DIP Obligors constituting ABL Priority Collateral, which junior lien shall prime the Prepetition 1L Notes Liens and the Prepetition 2L Notes Liens on the ABL Priority Collateral but shall be subject to the DIP ABL Liens, the ABL Adequate Protection Liens and the Prepetition ABL Liens on the ABL Priority Collateral, in each case, subject and subordinate to the Carve-Out and in accordance with the priorities set forth in the Interim Order.</p> <p><u>DIP ABL Facility:</u> The DIP ABL Facility shall be secured by (i) a lien on all Unencumbered Property (excluding, for the avoidance of doubt, the DIP Notes Account and the amounts on deposit therein), junior to the DIP Notes Liens and senior to the Adequate Protection Liens; (ii) a senior priming lien on all tangible and intangible prepetition and post-petition property of the DIP Obligors constituting ABL Priority Collateral; and (iii) a junior lien on all tangible and intangible prepetition and post-petition property of the DIP Obligors constituting Notes Priority Collateral, which junior lien shall prime the Prepetition ABL Liens on the Notes Priority Collateral but shall be subject and subordinate to the DIP Notes Liens, the 1L Adequate Protection Liens, the Prepetition 1L Notes Liens, the 2L Adequate Protection Liens and the Prepetition 2L Notes Liens on the Notes Priority Collateral, in each case, subject and subordinate to the Carve-Out and in accordance with the priorities set forth in the Interim Order.</p>
<p>Modification of Non-Bankruptcy Law Relating to Perfection of Liens on Estate Property (Bankruptcy Rule 4001(c)(1)(B) (vii)) <i>Interim Order ¶¶ 8, 9, 16(a), (e) and (i)</i></p>	<p>The Interim Order contains customary provisions providing that entry of the Interim Order shall be sufficient and conclusive evidence of the creation, validity, perfection, and priority of all liens granted therein, including the DIP Notes Liens, the DIP ABL Liens and the Adequate Protection</p>

<u>Bankruptcy Rule and Section Reference</u>	<u>DIP Facilities</u>
	<p>Liens, without the necessity of any filings or recordings under non-bankruptcy law.</p>
<p>Superpriority Administrative Claims (Bankruptcy Rule 4001(c)(1)(B)(i)) <i>Interim Order ¶ 6</i></p>	<p>The DIP Notes Obligations and the DIP ABL Obligations shall constitute allowed superpriority administrative claims with priority over any and all administrative expenses and unsecured claims, including, administrative expenses of the kind specified in sections 503(b) and 507(b) of the Bankruptcy Code and any and all administrative expenses or other claims arising under sections 105, 326, 327, 328, 330, 331, 365, 503(b), 506(c), 507(a), 507(b), 726, of the Bankruptcy Code (including the Adequate Protection Obligations), as provided under Section 364(c)(1) of the Bankruptcy Code.</p>
<p>Borrowing Base (Bankruptcy Rule 4001(c)(1)(B)) <i>DIP ABL Agreement §5.2, “Borrowing Base Certificate,” “Excess Availability,” “Permitted Discretion”</i> <i>Interim Order ¶ 36(b) and (c)</i></p>	<p><u>Borrowing Base</u>: The “Borrowing Base” as defined in, and determined in accordance with, the DIP ABL Agreement as modified by the Interim Order.</p> <p><u>Borrowing Base Reporting</u>: On the basis required during an Increased Reporting Period, the Debtors will deliver to the DIP ABL Agent such financial reporting, Borrowing Base Certificates and other information concerning the Debtors and the DIP Collateral as required by Sections 5.1 and 5.2 of the Prepetition ABL Credit Agreement. To the extent not otherwise contained in such reporting, the Debtors will include with the delivery of each Borrowing Base Certificate a calculation of Excess Availability on the basis set forth in paragraph 36(f) of the Interim Order. In addition, the Debtors will deliver to the DIP ABL Agent copies of all reporting regarding the DIP Collateral or otherwise required by the DIP Notes Indenture when due thereunder, and will in all events not later than the Thursday of each week (commencing with the Thursday following the Thursday that is two full weeks after the Petition Date) deliver a detailed variance report comparing the Debtors’ actual performance for the most recently ended four-week period occurring after the Petition Date to the Approved Budget for such period (or, prior to the completion of such four-week period following the Petition Date, budgeted receipts or budgeted disbursements, as applicable, on an aggregate basis, for each full fiscal week completed, and on a cumulative basis, after the Petition Date and prior to the date of such delivery); it being understood that delivery of the Variance Report (as defined in the DIP Notes Indenture in effect on the date of the Interim Order) shall satisfy the foregoing requirement.</p>

<u>Bankruptcy Rule and Section Reference</u>	<u>DIP Facilities</u>
	<p><u>Reserves</u>: The DIP ABL Agent may administer the Borrowing Base, and implement, increase, decrease and otherwise modify Reserves against the Borrowing Base (including, without limitation, in connection with field exams or appraisals conducted during the term of the DIP ABL Facility, subject to its Permitted Discretion and to the extent generally consistent with past practices permitted under the Prepetition ABL Credit Agreement; <i>provided</i> that the DIP ABL Agent shall not increase or otherwise modify Reserves or change Borrowing Base assumptions solely as a result of the commencement of these chapter 11 cases or the insolvency or financial condition of the Debtors at any time before the closing of these chapter 11 cases and (y) any Reserves (whether in effect prior to or after the Petition Date) may only reduce the Borrowing Base and not the Revolver Commitment under the DIP ABL Facility; <i>provided, further</i>, for the avoidance of doubt, the DIP ABL Agent may implement and modify Reserves, subject to its Permitted Discretion, from time to time on account of and to the extent of (i) accrued fees and expenses of Professional Persons not yet covered by amounts deposited in the Professional Fees Escrow Account (predicated on such amounts in the Approved Budget and its supporting Borrowing Base forecast) and (ii) the Post-Carve-Out Trigger Notice Cap.</p>
<p>Adequate Protection for Prepetition ABL Secured Parties (Bankruptcy Rule 4001(c)(1)(B)(ii), (b)(1)(B)(iv)) <i>Interim Order ¶¶ 16(a)-(d)</i></p>	<p><u>Adequate Protection Liens</u>: The Prepetition ABL Agent is granted, for the benefit of itself and the other Prepetition ABL Secured Parties, effective and perfected upon the date of the Interim Order and without the necessity of the execution of any mortgages, security agreements, pledge agreements, financing statements or other agreements, a valid, perfected replacement security interest and lien to the extent of any of the Prepetition ABL Secured Parties' Diminution in Value upon all of the DIP Collateral (i) in the case of the ABL Priority Collateral, senior to all other liens, but junior, subject, and subordinate solely to the Carve-Out, the DIP ABL Liens, and the Prepetition ABL Permitted Senior Liens, (ii) in the case of the Notes Priority Collateral, junior, subject, and subordinate to (A) the Carve-Out, (B) the DIP Notes Liens, (C) the 1L Adequate Protection Liens, (D) the Prepetition 1L Notes Liens, (E) the 2L Adequate Protection Liens, (F) the Prepetition 2L Notes Liens, (G) the Prepetition 1L Permitted Senior Liens and the Prepetition 2L Permitted Senior Liens, and (H) the DIP ABL Liens, and (iii) in the case of the Unencumbered Property, junior, subject, and subordinate to the Carve-Out, the DIP Notes Liens, and the DIP ABL Liens, but <i>pari passu</i> in all respects with the</p>

<u>Bankruptcy Rule and Section Reference</u>	<u>DIP Facilities</u>
	<p>1L Adequate Protection Liens, and senior and prior in all respects to the 2L Adequate Protection Liens.</p> <p><u>Adequate Protection Claims:</u> The Prepetition ABL Agent, for the benefit of itself and the other Prepetition ABL Secured Parties, is granted an allowed superpriority administrative expense claim against the DIP Obligors on a joint and several basis (without the need to file any proof of claim) to the extent of any of the Prepetition ABL Secured Parties' Diminution in Value under section 507(b) of the Bankruptcy Code, which ABL 507(b) Claim shall be payable from and have recourse to all DIP Collateral and all proceeds thereof (excluding (x) Avoidance Actions but including, without limitation, subject to entry of the Final Order, the Avoidance Proceeds and (y) the DIP Notes Account and amounts on deposit therein). With respect to the ABL Priority Collateral, the ABL 507(b) Claim shall be senior to all other claims against the DIP Obligors, except for the Carve-Out, and the ABL 507(b) Claim shall be subject and subordinate only to (i) the Carve-Out and (ii) the DIP Superpriority Claims. The ABL 507(b) Claim and the 1L 507(b) Claim shall be <i>pari passu</i> in right of payment.</p> <p><u>Fees and Expenses:</u> The DIP Obligors shall currently pay to the Prepetition ABL Agent, in cash, all reasonable and documented prepetition and post-petition fees and out-of-pocket expenses of Goldberg Kohn Ltd., and one local legal counsel to the Prepetition ABL Secured Parties to the extent permitted under the Prepetition ABL Loan Documents, subject to the review procedures set forth in paragraph 20 of the Interim Order.</p> <p><u>Post-Petition Interest:</u> The Prepetition ABL Agent, on behalf of itself and the Prepetition ABL Secured Parties, shall be entitled to current payment of post-petition interest at the non-default rate applicable under the Prepetition ABL Loan Documents on the Petition Date to the Prepetition ABL Obligations.</p>
<p>Adequate Protection for Prepetition 1L Secured Parties</p> <p>(Bankruptcy Rule 4001(c)(1)(B)(ii), (b)(1)(B)(iv))</p> <p><i>Interim Order ¶¶ 16(e)-(h)</i></p>	<p><u>Adequate Protection Liens:</u> The Prepetition 1L Trustee, for the benefit of the Prepetition 1L Secured Parties, is granted, effective and perfected upon the date of the Interim Order and without the necessity of the execution of any mortgages, security agreements, control agreements, pledge agreements, financing statements or other agreements, or possession or control, to the extent of any of the Prepetition 1L Secured Parties' Diminution in Value, a valid, perfected replacement security interest and lien upon all of the DIP Collateral, which 1L Adequate Protection Liens shall be (x)</p>

<u>Bankruptcy Rule and Section Reference</u>	<u>DIP Facilities</u>
	<p>in the case of Notes Priority Collateral, senior to all other liens, but junior, subject, and subordinate to the Carve-Out, the Prepetition 1L Permitted Senior Liens, the Prepetition 2L Permitted Senior Liens and the DIP Notes Liens, and (y) with respect to the ABL Priority Collateral, junior, subject and subordinate to the Carve-Out, the DIP ABL Liens, the DIP Notes Liens, the ABL Adequate Protection Liens, the Prepetition ABL Liens and the Prepetition ABL Permitted Senior Liens and (z) with respect to the Unencumbered Property, (i) <i>pari passu</i> in all respects with the ABL Adequate Protection Liens, (ii) junior, subject, and subordinate to the Carve-Out, the DIP Notes Liens, and the DIP ABL Liens, and (iii) senior and prior to the 2L Adequate Protection Liens.</p> <p><u>Adequate Protection Claims:</u> The Prepetition 1L Trustee, for the benefit of the Prepetition 1L Secured Parties, is granted, to the extent of any of the Prepetition 1L Secured Parties' Diminution in Value, an allowed superpriority administrative expense claim pursuant to section 507(b) of the Bankruptcy Code, which 1L 507(b) Claim shall be payable from and have recourse to all DIP Collateral and all proceeds thereof (excluding Avoidance Actions but subject to entry of the Final Order, the Avoidance Proceeds). The 1L 507(b) Claim shall be senior to all other claims against the DIP Obligors, except for the following, in respect of which the 1L 507(b) Claims shall be junior, subject and subordinated: (i) the Carve-Out and (ii) the DIP Superpriority Claims.</p> <p><u>Fees and Expenses:</u> The DIP Obligors shall currently pay, in cash, all reasonable and documented prepetition and post-petition fees and out-of-pocket expenses of the Prepetition 1L Trustee, the legal advisors to the Prepetition 1L Trustee and Milbank LLP, Houlihan Lokey Capital, Inc., and one local legal counsel to the Ad Hoc Group, subject to the review procedures set forth in paragraph 20 of the Interim Order.</p> <p><u>Prepetition 1L Post-Petition Interest.</u> The Prepetition 1L Trustee, on behalf of itself and the Prepetition 1L Secured Parties, shall be entitled to post-petition interest which shall accrue, but not be required to be paid, at the non-default contract rate applicable under the Prepetition 1L Notes Documents on the Petition Date to the Prepetition 1L Obligations. Upon receipt of any 1L Adequate Protection Payments set forth in this subparagraph, the Prepetition 1L Trustee is authorized and directed, without further order of the Court, to distribute such payments to the Prepetition 1L</p>

<u>Bankruptcy Rule and Section Reference</u>	<u>DIP Facilities</u>
	Secured Parties and, notwithstanding anything to the contrary in the Prepetition 1L Notes Indenture, the record date to establish the holders of the Prepetition 1L Notes receiving such payments shall be, with respect to each payment date, a date to be determined by the Prepetition 1L Trustee in advance of distributing such payments.
<p>Adequate Protection for Prepetition 2L Secured Parties</p> <p>(Bankruptcy Rule 4001(c)(1)(B)(ii), (b)(1)(B)(iv))</p> <p><i>Interim Order ¶¶12(i)-(k)</i></p>	<p><u>Adequate Protection Liens</u>: The Prepetition 2L Trustee, for the benefit of the Prepetition 2L Secured Parties, is granted, effective and perfected upon the date of the Interim Order and without the necessity of the execution of any mortgages, security agreements, control agreements, pledge agreements, financing statements or other agreements, or possession or control, to the extent of any of the Prepetition 1L Secured Parties Diminution in Value, a valid, perfected replacement security interest and lien upon all of the DIP Collateral, which 2L Adequate Protection Liens shall be (x) in the case of Notes Priority Collateral, senior to all other liens, but junior, subject and subordinate to the Carve-Out, the Prepetition 1L Permitted Senior Liens, the Prepetition 2L Permitted Senior Liens, the 1L Adequate Protection Liens and the DIP Notes Liens, (y) with respect to the ABL Priority Collateral, junior, subject and subordinate to the Carve-Out, the DIP ABL Liens, the DIP Notes Liens, the ABL Adequate Protection Liens, the Prepetition ABL Liens, the 1L Adequate Protection Liens, the Prepetition 1L Notes Liens, and the Prepetition ABL Permitted Senior Liens and (z) with respect to the Unencumbered Property, junior, subject and subordinate to the Carve-Out, the DIP Notes Liens, the DIP ABL Liens, the ABL Adequate Protection Liens, and the 1L Adequate Protection Liens.</p> <p><u>Adequate Protection Claims</u>: The Prepetition 2L Trustee, for the benefit of the Prepetition 2L Secured Parties, is granted, subject to the Prepetition Debt Documents and any turnover provisions contained therein, to the extent of any of the Prepetition 2L Secured Parties' Diminution in Value, an allowed superpriority administrative expense claim pursuant to section 507(b) of the Bankruptcy Code, which 2L 507(b) Claim shall be payable from and have recourse to all DIP Collateral and all proceeds thereof (excluding Avoidance Actions but including, without limitation, subject to entry of the Final Order, the Avoidance Proceeds). The 2L 507(b) Claim shall be senior to all other claims against the DIP Obligors, except for the following, in respect of which the 2L 507(b) Claims shall be junior, subject and subordinated:</p>

<u>Bankruptcy Rule and Section Reference</u>	<u>DIP Facilities</u>
	<p>(i) the Carve-Out, (ii) the DIP Superpriority Claims, (iii) the ABL 507(b) Claim and (iv) the 1L 507(b) Claim.</p> <p><u>Fees and Expenses:</u> The DIP Obligors shall currently pay, in cash, all reasonable and documented prepetition and post-petition fees and out-of-pocket expenses of the Prepetition 2L Trustee, the legal advisors to the Prepetition 2L Trustee and Milbank LLP, Houlihan Lokey Capital, Inc., and one local legal counsel to the Ad Hoc Group, subject to the review procedures set forth in paragraph 20 of the Interim Order. Any payments made pursuant to this paragraph shall be without prejudice to whether any such payments should be recharacterized or reallocated pursuant to section 506(b) of the Bankruptcy Code as payments of principal, interest or otherwise to the extent any claims arising from the Prepetition 2L Obligations are determined to be undersecured in a final non-appealable order.</p>
<p>Limitations on the Obligations of the DIP Notes Secured Parties, DIP ABL Secured Parties, and the Prepetition Secured Parties to Fund Activities of the Debtors</p> <p>(Bankruptcy Rule 4001(c)(1)(B))</p> <p><i>Interim Order ¶ 22</i></p>	<p>Notwithstanding any other provision of the Interim Order or any other order entered by the Court, without the prior written consent of (v) the Required DIP Noteholders solely with respect to the DIP Notes Secured Parties, DIP Notes Obligations and DIP Notes Liens, (w) the Required Lenders (as defined in the DIP ABL Agreement) solely with respect to the DIP ABL Secured Parties, the DIP ABL Obligations, and the DIP ABL Liens, (x) the Required Lenders (as defined in the Prepetition ABL Credit Agreement) solely with respect to the Prepetition ABL Secured Parties, the Prepetition ABL Obligations, the Prepetition ABL Liens and the related Adequate Protection granted in favor of the Prepetition ABL Secured Parties, (y) Prepetition 1L Noteholders holding at least a majority in principal amount of the Prepetition 1L Notes then outstanding solely with respect to the Prepetition 1L Secured Parties, Prepetition 1L Obligations, Prepetition 1L Notes Liens and the related Adequate Protection granted in favor of the Prepetition 1L Secured Parties, and (z) Prepetition 2L Noteholders holding at least a majority in principal amount of the Prepetition 2L Notes then outstanding solely with respect to the Prepetition 2L Secured Parties, Prepetition 2L Obligations, Prepetition 2L Notes Liens and the related Adequate Protection granted in favor of the Prepetition 2L Secured Parties, in each case, as applicable, none of the DIP Notes Facility, the DIP ABL Facility, the DIP Collateral, the Prepetition Collateral (including, without limitation, Cash Collateral), or any portion of the Carve-Out or the Professional Fees Escrow Account (and any amounts therein), nor any of the loans, financial accommodations, or proceeds of any of the</p>

<u>Bankruptcy Rule and Section Reference</u>	<u>DIP Facilities</u>
	<p>foregoing, may be used by any person or entity at any time, directly or indirectly, including, without limitation, through reimbursement of professional fees of any non-Debtor party, in connection with any: (a) investigation, threatened initiation or prosecution of any claims, causes of action, adversary proceedings, contested matters, or other litigation, including, without limitation, any Challenge, (i) against any of the DIP Notes Secured Parties, the DIP ABL Secured Parties, or the Prepetition Secured Parties, or their respective Representatives, or any action purporting to do the foregoing in respect of the DIP Notes Obligations, DIP Notes Liens, DIP Superpriority Claims, DIP ABL Obligations, DIP ABL Liens, Prepetition Secured Obligations, Adequate Protection Liens, Adequate Protection 507(b) Claims, or other Adequate Protection Obligations or (ii) challenging the amount, validity, perfection, priority, extent, or enforceability of, or asserting any defense, counterclaim or offset with respect to, any of the DIP Notes Obligations, the DIP Notes Liens, the DIP Notes Documents, the DIP ABL Obligations, the DIP ABL Liens, the DIP ABL Agreement, the Prepetition Secured Obligations, the Prepetition Liens, or the Prepetition Debt Documents, and/or any of the liens, claims, rights, or security interests securing or supporting the DIP Notes Obligations granted under the DIP Orders and the DIP Notes Documents, the DIP ABL Obligations granted under the DIP Orders and the DIP ABL Agreement, or the Prepetition Debt Documents in respect of the Prepetition Secured Obligations, including, in the case of each (i) and (ii), without limitation, for lender liability or pursuant to section 105, 510, 544, 547, 548, 549, 550 or 552 of the Bankruptcy Code, applicable non-bankruptcy law or otherwise; <i>provided that</i>, notwithstanding anything to the contrary in the Interim Order, the proceeds of the DIP Notes Facility, DIP ABL Facility and Cash Collateral may each be used by the Creditors' Committee to investigate, but not to prosecute, (A) the claims and liens of the Prepetition Secured Parties and (B) potential claims, counterclaims, causes of action or defenses against the Prepetition Secured Parties, up to an aggregate cap of no more than \$100,000; (b) attempts to prevent, hinder, or otherwise delay or interfere with any of the Prepetition Secured Parties', the DIP Notes Secured Parties' or the DIP ABL Secured Parties', as applicable, administration, enforcement, or realization on all or any portion of the Prepetition Secured Obligations, the Prepetition Collateral, the DIP Notes Obligations, the DIP ABL Obligations, or the DIP Collateral, as applicable, or any of the liens, claims and rights granted to such parties under the DIP Orders, the</p>

<u>Bankruptcy Rule and Section Reference</u>	<u>DIP Facilities</u>
	<p>Prepetition Debt Documents, the DIP Notes Documents, the DIP ABL Agreement, or applicable law; (c) attempts to seek to modify any of the rights and remedies granted to the Prepetition Secured Parties, the DIP Notes Secured Parties, or the DIP ABL Secured Parties under the Interim Order, the Prepetition Debt Documents, the DIP Notes Documents or the DIP ABL Agreement, as applicable, other than in accordance with the Interim Order; (d) attempts to apply to the Court for authority to approve superpriority claims or grant liens (other than the liens and claims permitted by the DIP Notes Documents and the DIP ABL Agreement) or security interests in the DIP Collateral or any portion thereof that are senior to, or on parity with, the DIP Notes Obligations, the DIP ABL Obligations, the DIP Notes Liens, the DIP ABL Liens, the DIP Superpriority Claims, the Adequate Protection Liens, the Adequate Protection 507(b) Claims, any other Adequate Protection Obligation, the Prepetition Liens, or any of the Prepetition Secured Obligations; or (e) attempts to pay or to seek to pay any amount on account of any claims arising prior to the Petition Date unless such payments are authorized by the Court, agreed to in writing by the Required DIP Noteholders and the DIP ABL Agent, expressly permitted under the Interim Order or under the DIP Notes Documents (including the Approved Budget, subject to any permitted variances under, and to the extent required by, the DIP Notes Documents) and the DIP ABL Agreement, in each case unless all of the DIP Notes Obligations, DIP ABL Obligations, Prepetition Secured Obligations, Adequate Protection Obligations, and claims granted to the DIP Notes Secured Parties, DIP ABL Secured Parties, and Prepetition Secured Parties under the Interim Order, have been indefeasibly paid in full in cash or otherwise agreed to in writing by the Required DIP Noteholders and the DIP ABL Agent (at the direction of the Required Lenders (as defined in the DIP ABL Agreement)). For the avoidance of doubt, this paragraph shall not limit the Debtors' right to use DIP Collateral to contest that an Event of Default has occurred under the Interim Order pursuant to and consistent with paragraph 10 of the Interim Order.</p>
<p>Events of Default and DIP ABL Termination Events (Bankruptcy Rule 4001(c)(1)(B)) <i>DIP Indenture § 6.01</i> <i>Interim Order, Exhibit 4</i></p>	<p>Usual and customary events of defaults for facilities of this type and purpose, including, among others:</p> <ul style="list-style-type: none"> • failure to comply with milestones, • nonpayment of obligations,

<u>Bankruptcy Rule and Section Reference</u>	<u>DIP Facilities</u>
	<ul style="list-style-type: none"> • defaults under covenants • failure to comply with the Approved Budget subject to permitted variances to the extent required under the DIP Notes Documents, • certain material untrue representations, warranties or certifications, • the occurrence of any number of adverse actions or consequences in any of the chapter 11 cases; • change of control; and • termination of one or both consultants retained by the Debtors.
<p>Covenants (Bankruptcy Rule 4001(c)(1)(B)) <i>DIP Indenture, Article 4</i></p>	<p><u>Affirmative Covenants</u>: Usual and customary for financings of this type, including, without limitation, (a) reporting and information requirements, (b) delivery of certain compliance certificates, notices, reports and filings, (c) maintenance of office and agency, (d) further assurances regarding collateral and guarantee requirements, (e) compliance with Court orders, (f) consultation with the DIP Noteholders regarding certain press releases or other public statements and (g) budget and variance reporting.</p> <p><u>Negative Covenants</u>: Usual and customary for financings of this type, including, without limitation, restrictions on: (a) indebtedness, (b) liens, (c) investments, (d) disposition of assets, (e) restricted payments and payments in respect of other indebtedness, (f) transactions with affiliates, (g) limitations on activities of Anagram Holdings, LLC, (h) chapter 11 modifications, (i) compliance with minimum liquidity, (j) assumption and rejection of executory contracts and unexpired leases, (k) modifications to business or organizational documents, (l) use of proceeds, and (m) Intra-Company Agreements.</p>
<p>Reporting (Bankruptcy Rule 4001(c)(1)(B)) <i>DIP ABL Agreement § 5.02</i> <i>DIP Indenture § 4.02</i> <i>Interim Order ¶ 36(b)</i></p>	<p>The DIP Facilities require compliance with certain periodic reporting covenants, including quarterly and annual financial statements, liquidity reports, variance reports, accounts payable aging reports, the Approved Budget and information regarding any events that have, or would reasonably be expected to result in a Material Adverse Effect impacting the DIP Notes Parties or their operations.</p>

<u>Bankruptcy Rule and Section Reference</u>	<u>DIP Facilities</u>
<p>Provisions Providing for the Reaffirmation of Prepetition Debt (Bankruptcy Rule 4001(c)(1) (B)(iii), (viii)) <i>Interim Order ¶¶ G and 21</i></p>	<p>The Interim Order provides stipulations by the Debtor reaffirming the Prepetition ABL Liens, the Prepetition 1L Liens and the Prepetition 2L Liens, and a waiver of any right to challenge the foregoing.</p> <p>The Debtors' stipulations are binding on the Debtors as of the entry of the Interim Order, and shall only be binding on third parties if no proceeding has been commenced by the earlier of (A)(i) as to the Creditors' Committee only, 60 calendar days after the appointment of the Creditors' Committee, (ii) as to any chapter 7 or a chapter 11 trustee only if appointed or elected prior to the end of the Challenge Period, the later of (1) 75 calendar days after entry of the Interim Order, or (2) 30 calendar days after their appointment and (iii) for all other parties in interest, 75 calendar days after entry of the Interim Order and (B) the date that is established as the deadline for filing objections to a sale of substantially all of the Debtors' assets.</p>
<p>Use of Proceeds and Cash Collateral (Bankruptcy Rule 4001(c)(1)(B), (b)(1)(B)(ii)) <i>DIP Indenture § 4.16</i></p>	<p>Subject to any additional restrictions in the Interim Order or the Final Order, the proceeds of the DIP Facilities shall be used in accordance with and as provided in the Approved Budget (subject to permitted variances to the extent required under the DIP Notes Documents or the DIP ABL Agreement, as applicable), including, without limitation: (a) to pay the administrative costs of the chapter 11 cases and (b) for general corporate purposes.</p>
<p>Entities with Interest in Cash Collateral (Bankruptcy Rule 4001(c)(1)(B), (b)(1)(B)(i)) <i>Interim Order ¶ F</i></p>	<p>The Prepetition Secured Parties, DIP Notes Secured Parties and DIP ABL Secured Parties.</p>
<p>Milestones (Bankruptcy Rule 4001(c)(1)(B)(vi)) <i>DIP Indenture § 6.01</i> <i>Interim Order, Exhibit 4</i></p>	<ul style="list-style-type: none"> • No later one Business Day after the Petition Date, the Debtors shall have filed a motion to approve the bidding procedures with respect to a sale of their assets; • No later than four Business Days after the Petition Date, the Bankruptcy Court shall have entered the Interim Order; • No later than five Business Days after entry of the Interim Order, the Initial Issue Date for the DIP Notes shall have occurred; • No later than 21 calendar days after the Petition Date, the Bankruptcy Court shall have entered an order, in

<u>Bankruptcy Rule and Section Reference</u>	<u>DIP Facilities</u>
	<p>form and substance satisfactory to the Required DIP Noteholders, approving the Debtors' bid procedures;</p> <ul style="list-style-type: none"> • No later than 35 calendar days after the Petition Date, the Bankruptcy Court shall have entered the Final Order; • No later than December 10, 2023, the Bankruptcy Court shall have entered an order reasonably acceptable to the DIP ABL Agent approving the Debtors' bid procedures; • No later than five Business Days after entry of the Final Order, the Second Issue Date for the DIP Notes shall have occurred; • No later than December 15, 2023, the Bankruptcy Court shall have entered the Final Order, substantially consistent with the Interim Order or otherwise acceptable to DIP ABL Agent; • No later than January 15, 2024, the Bankruptcy Court shall have entered an order, in form and substance satisfactory to the Required DIP Noteholders, approving the sale of the Debtors' assets; and • No later than January 28, 2024, the sale of the Debtors' assets shall have been consummated.
<p>Indemnification (Bankruptcy Rule 4001(c)(1)(B)(ix)) <i>DIP Notes Purchase Agreement § 8.1</i> <i>DIP Indenture § 7.06</i></p>	<p>The debtors shall indemnify and hold harmless the DIP Notes Secured Parties and the DIP ABL Secured Parties in accordance with the DIP Notes Documents and the DIP ABL Agreement, as applicable, subject to customary exceptions including (i) the gross negligence or willful misconduct of an indemnitee, (ii) in some cases, bad faith of an indemnitee and (iii) a material breach of the DIP ABL Agreement by the indemnitee.</p>
<p>Waiver/Modification of the Automatic Stay (Bankruptcy Rule 4001(c)(1)(B)(iv)) <i>Interim Order ¶ 31</i></p>	<p>Pursuant to the Interim Order, the automatic stay provisions of section 362 of the Bankruptcy Code are modified to the extent necessary to implement and effectuate the terms of the Interim Order, the DIP Notes Documents and the DIP ABL Agreement.</p>
<p>Section 506(c) and 552(b) Waiver (Bankruptcy Rule 4001(c)(1)(B)(x)) <i>Interim Order ¶ H(xii), 12 and 13</i></p>	<p>Subject to the entry of the Final Order, (a) the Prepetition Secured Parties are granted a waiver of any "equities of the case" exception under section 552(b) of the bankruptcy code and (b) the Debtors' waive any right to surcharge the</p>

<u>Bankruptcy Rule and Section Reference</u>	<u>DIP Facilities</u>
	Prepetition Collateral and the DIP Collateral pursuant to section 506(c) of the Bankruptcy Code.
Liens on Avoidance Proceeds (Bankruptcy Rule 4001(c)(1)(B)(xi)) <i>Interim Order ¶¶ 6, 8(a), 16(b), (f) and (j)</i>	Subject to the entry of the Final Order, the Avoidance Proceeds (but not the Avoidance Actions) shall be subject to liens in favor of the DIP Facilities, the DIP Superpriority Claims and the Adequate Protection 507(b) Claims.

Significant Provisions under the Complex Case Procedures

8. The Interim Order, and the Final Order, as applicable, contain certain of the provisions (the “**Significant Provisions**”) identified in paragraph 8 of the Complex Case Procedures as set forth below. In addition to the Debtors’ specific justifications for the Significant Procedures, provided in the table below, the Debtors believe that each Significant Procedure is justifiable because the DIP Noteholders and the DIP ABL Lender would not have provided the DIP Notes Facility or the DIP ABL Facility, as applicable without such provisions and the DIP Facilities, taken as a whole, are fair and reasonable to the Debtors (particularly in the context of these chapter 11 cases) and are the best financing option available. *See* DIP Decl. ¶¶ 25, 30.

<u>Provision</u>	<u>Status</u>
Cross-Collateralization	The Interim Order and Final Order do not contemplate cross-collateralization.
Roll-Up	Upon entry of the Interim Order, all proceeds of ABL Priority Collateral in the Debtors’ possession or control on or after the Petition Date (excluding, however, any ABL Priority Collateral in the Debtors’ Master Concentration Account as of the Petition Date, proceeds of Notes Priority Collateral and amounts in the Notes Proceeds Account and the DIP Notes Account) will be deposited promptly into the Debtors’ existing Collection Account to the extent required to be deposited therein under the Prepetition ABL Loan Documents and, from there, be remitted on a daily basis to Prepetition ABL Agent for application to the Prepetition ABL Obligations until the Prepetition ABL Obligations are paid in full, subject to such amounts being available for re-borrowing as obligations under the DIP ABL Facility, and, following such repayment, remitted on a daily basis to DIP ABL Agent for application to DIP ABL Obligations outstanding from time

<u>Provision</u>	<u>Status</u>
	<p>to time and any excess, on a daily basis, remitted to the Master Concentration Account</p> <p><u>Justification:</u></p> <p>As discussed in the DIP Declaration, the Roll Up was an important component of the DIP ABL Facility that the DIP ABL Lender (through its representatives) required as a condition to provide the Debtors with the DIP ABL Facility and to consent to the Debtors' use of Cash Collateral. DIP Decl. ¶ 25. The Debtors believe that the DIP ABL Lender would not be willing to permit continued borrowing under its facility or use of Cash Collateral absent this feature. <i>Id.</i> Notably, however, notwithstanding the Roll Up, there will be a period of time during which the claims and liens related to the Prepetition ABL Facility will be subject to review.</p>
Non-Consensual Priming Liens	The Interim Order and Final Order do not contemplate a non-consensual priming liens.
Provisions Limiting the Ability of Estate Fiduciaries to Fulfill Their Duties	The Interim Order and Final Order do not include provisions limiting the abilities of estate fiduciaries to fulfill their duties.
Sale or Plan Confirmation Milestones	<p>The Debtors are required to comply with certain milestones, including entry of an order approving the sale of the Debtors' assets no later than January 15, 2024 and consummation of the sale of the Debtors' assets no later than January 28, 2024. <i>See also</i> "Milestones" section above.</p> <p><u>Justification:</u></p> <p>The Debtors believe that these milestones are achievable and will allow them to complete a value-maximizing, going-concern sale process. Further, the Debtors believe that the milestones balance the DIP Noteholders' and the DIP ABL Lender's justifiable concerns about process costs with the time required for the Debtors to consummate the sale.</p>
Liens on Proceeds of Avoidance Actions	<p>Subject to and upon entry of the Final Order, the DIP Facilities shall be secured by DIP Notes Liens and DIP ABL Liens on the proceeds of any Avoidance Actions, but in no event shall the DIP Notes Liens or the DIP ABL Liens extend to Avoidance Actions.</p> <p><u>Justification:</u></p> <p>The Debtors believe that providing liens on proceeds of Avoidance Actions, but not the Avoidance Actions themselves, is justifiable because (a) the Debtors' will control the Avoidance Actions themselves, ensuring that the DIP Noteholders and DIP ABL Lender do not control the Avoidance Actions, (b) the Debtors had minimal</p>

<u>Provision</u>	<u>Status</u>
	unencumbered property to provide as collateral for the DIP Facilities, and (c) liens on Avoidance Actions are subject to the Final Order, allowing other parties in interest to object.

<p>Limitations on the Use of Cash Collateral to Pay Fees and Expenses of Advisors to Official Committees or Future Trustees</p>	<p>Notwithstanding any other provision of the Interim Order or any other order entered by the Court, without the prior written consent of (v) the Required DIP Noteholders solely with respect to the DIP Notes Secured Parties, DIP Notes Obligations and DIP Notes Liens, (w) the Required Lenders (as defined in the DIP ABL Agreement) solely with respect to the DIP ABL Secured Parties, the DIP ABL Obligations, and the DIP ABL Liens, (x) the Required Lenders (as defined in the Prepetition ABL Credit Agreement) solely with respect to the Prepetition ABL Secured Parties, the Prepetition ABL Obligations, the Prepetition ABL Liens and the related Adequate Protection granted in favor of the Prepetition ABL Secured Parties, (y) Prepetition 1L Noteholders holding at least a majority in principal amount of the Prepetition 1L Notes then outstanding solely with respect to the Prepetition 1L Secured Parties, Prepetition 1L Obligations, Prepetition 1L Notes Liens and the related Adequate Protection granted in favor of the Prepetition 1L Secured Parties, and (z) Prepetition 2L Noteholders holding at least a majority in principal amount of the Prepetition 2L Notes then outstanding solely with respect to the Prepetition 2L Secured Parties, Prepetition 2L Obligations, Prepetition 2L Notes Liens and the related Adequate Protection granted in favor of the Prepetition 2L Secured Parties, in each case, as applicable, none of the DIP Notes Facility, the DIP ABL Facility, the DIP Collateral, the Prepetition Collateral (including, without limitation, Cash Collateral), or any portion of the Carve-Out or the Professional Fees Escrow Account (and any amounts therein), nor any of the loans, financial accommodations, or proceeds of any of the foregoing, may be used by any person or entity at any time, directly or indirectly, including, without limitation, through reimbursement of professional fees of any non-Debtor party, in connection with any: (a) investigation, threatened initiation or prosecution of any claims, causes of action, adversary proceedings, contested matters, or other litigation, including, without limitation, any Challenge, (i) against any of the DIP Notes Secured Parties, the DIP ABL Secured Parties, or the Prepetition Secured Parties, or their respective Representatives, or any action purporting to do the foregoing in respect of the DIP Notes Obligations, DIP Notes Liens, DIP Superpriority Claims, DIP ABL Obligations, DIP ABL Liens, Prepetition Secured Obligations, Adequate Protection Liens, Adequate Protection 507(b) Claims, or other Adequate Protection Obligations or (ii) challenging the amount, validity, perfection, priority, extent, or enforceability of, or asserting any defense, counterclaim or offset with respect to, any of the DIP Notes Obligations, the DIP Notes Liens, the DIP Notes Documents, the DIP ABL Obligations, the DIP ABL Liens, the DIP ABL Agreement, the Prepetition Secured Obligations, the Prepetition Liens, or the Prepetition Debt Documents, and/or any of the liens, claims, rights, or security interests securing or supporting the DIP Notes Obligations granted under the DIP Orders and the DIP Notes Documents, the DIP ABL Obligations granted under the DIP Orders and the DIP ABL Agreement, or the Prepetition Debt Documents in respect of the Prepetition Secured Obligations, including, in the case of each (i) and (ii), without limitation, for lender liability or pursuant to section 105, 510, 544, 547, 548, 549, 550 or 552 of the Bankruptcy Code, applicable</p>
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non-bankruptcy law or otherwise; provided that, notwithstanding anything to the contrary in the Interim Order, the proceeds of the DIP Notes Facility, DIP ABL Facility and Cash Collateral may each be used by the Creditors' Committee to investigate, but not to prosecute, (A) the claims and liens of the Prepetition Secured Parties and (B) potential claims, counterclaims, causes of action or defenses against the Prepetition Secured Parties, up to an aggregate cap of no more than \$100,000; (b) attempts to prevent, hinder, or otherwise delay or interfere with any of the Prepetition Secured Parties', the DIP Notes Secured Parties' or the DIP ABL Secured Parties', as applicable, administration, enforcement, or realization on all or any portion of the Prepetition Secured Obligations, the Prepetition Collateral, the DIP Notes Obligations, the DIP ABL Obligations, or the DIP Collateral, as applicable, or any of the liens, claims and rights granted to such parties under the DIP Orders, the Prepetition Debt Documents, the DIP Notes Documents, the DIP ABL Agreement, or applicable law; (c) attempts to seek to modify any of the rights and remedies granted to the Prepetition Secured Parties, the DIP Notes Secured Parties, or the DIP ABL Secured Parties under the Interim Order, the Prepetition Debt Documents, the DIP Notes Documents or the DIP ABL Agreement, as applicable, other than in accordance with the Interim Order; (d) attempts to apply to the Court for authority to approve superpriority claims or grant liens (other than the liens and claims permitted by the DIP Notes Documents and the DIP ABL Agreement) or security interests in the DIP Collateral or any portion thereof that are senior to, or on parity with, the DIP Notes Obligations, the DIP ABL Obligations, the DIP Notes Liens, the DIP ABL Liens, the DIP Superpriority Claims, the Adequate Protection Liens, the Adequate Protection 507(b) Claims, any other Adequate Protection Obligation, the Prepetition Liens, or any of the Prepetition Secured Obligations; or (e) attempts to pay or to seek to pay any amount on account of any claims arising prior to the Petition Date unless such payments are authorized by the Court, agreed to in writing by the Required DIP Noteholders and the DIP ABL Agent, expressly permitted under the Interim Order or under the DIP Notes Documents (including the Approved Budget, subject to any permitted variances under, and to the extent required by, the DIP Notes Documents) and the DIP ABL Agreement, in each case unless all of the DIP Notes Obligations, DIP ABL Obligations, Prepetition Secured Obligations, Adequate Protection Obligations, and claims granted to the DIP Notes Secured Parties, DIP ABL Secured Parties, and Prepetition Secured Parties under the Interim Order, have been indefeasibly paid in full in cash or otherwise agreed to in writing by the Required DIP Noteholders and the DIP ABL Agent (at the direction of the Required Lenders (as defined in the DIP ABL Agreement)). For the avoidance of doubt, this paragraph shall not limit the Debtors' right to use DIP Collateral to contest that an Event of Default has occurred under the Interim Order pursuant to and consistent with paragraph 10 of the Interim Order.

Justification:

<u>Provision</u>	<u>Status</u>
	<p>The Debtors believe that it is reasonable for the DIP Noteholders and the DIP ABL Lender to limit the amount of the new money that they provide that is being used to fund litigation against them. Limits on investigation fees and costs are common practice, and the limit in the Interim Order is consistent with similar cases in this district.</p>
<p>Default Provisions Potentially Terminating the Automatic Stay Without Further Order</p>	<p><u>Provisions:</u></p> <p><i>Interim Order ¶ 11</i></p> <p>Upon the occurrence and during the continuation of an Event of Default that has not been waived by the requisite DIP Noteholders under the DIP Notes Documents and following delivery of written notice at the direction of the requisite DIP Noteholders under the DIP Notes Documents on not less than five (5) business days' notice to DIP Notes Remedies Notice Parties, the DIP Notes Trustee may (and any automatic stay otherwise applicable to the DIP Notes Secured Parties, whether arising under sections 105 or 362 of the Bankruptcy Code or otherwise, but subject to the terms of the Interim Order (including this paragraph) is modified), without further notice to, hearing of, or order from the Court, to the extent necessary to permit the DIP Notes Trustee to, unless the Court orders otherwise (<i>provided</i> that during the DIP Notes Trustee Remedies Notice Period, the Debtors, the Creditors' Committee (if appointed) and/or any party in interest shall be entitled to seek an emergency hearing (with the DIP Notes Trustee and the requisite DIP Noteholders under the DIP Notes Documents consenting to such emergency hearing) with the Court for the purpose of contesting whether, in fact, an Event of Default has occurred and is continuing, or to obtain non-consensual use of Cash Collateral, and provided further that if a request for such hearing is made prior to the end of the DIP Notes Trustee Remedies Notice Period, then the DIP Notes Trustee Remedies Notice Period shall be continued until the Court hears and rules with respect thereto): (i) immediately terminate and/or revoke the Debtors' right under the Interim Order and any other DIP Notes Documents to use any Cash Collateral (subject to the Carve-Out and related provisions); (ii) terminate the DIP Notes Facility and any DIP Notes Document as to any future liability or obligation of the DIP Notes Secured Parties but without affecting any of the DIP Notes Obligations or the DIP Notes Liens securing such DIP Notes Obligations; (iii) declare all DIP Notes Obligations to be immediately due and payable; and (iv) invoke the right to charge interest at the default rate under the DIP Notes Documents. Upon delivery of such DIP Notes Termination Notice by the DIP Notes Trustee at the direction of the requisite DIP Noteholders under the DIP Notes Documents, without further notice or order of the Court, the DIP Notes Secured Parties' and the Prepetition Secured Parties' consent to use Cash Collateral and the Debtors' ability to incur additional DIP Notes Obligations hereunder will, subject to the expiration of the DIP Notes Trustee Remedies Notice Period and unless the Court orders otherwise, automatically terminate and the DIP Notes</p>

<u>Provision</u>	<u>Status</u>
	<p>Secured Parties will have no obligation to provide any DIP Notes or other financial accommodations; <i>provided, however</i>, that during the DIP Notes Trustee Remedies Notice Period, the Debtors shall have the right to use Cash Collateral to fund the Carve-Out, meet payroll obligations and to pay necessary expenses to avoid immediate and irreparable harm to the Debtors' estates set forth in the Approved Budget in accordance with the DIP Notes Documents. As soon as reasonably practicable following receipt of a DIP Notes Termination Notice, the Debtors shall file a copy of same on the docket.</p> <p>Following an Event of Default and the delivery of the DIP Notes Termination Notice, but prior to exercising the remedies set forth in this sentence below or any other remedies (other than those set forth in the paragraph above), the DIP Notes Secured Parties shall be required to file a motion with the Court seeking emergency relief on not less than five (5) business days' notice to the DIP Notes Remedies Notice Parties (which may run concurrently with the DIP Notes Trustee Remedies Notice Period) for a further order of the Court modifying the automatic stay in these Chapter 11 Cases to permit the DIP Notes Secured Parties to, subject to the Intercreditor Agreements and the Carve-Out and related provisions: (i) freeze monies or balances in the Debtors' accounts (unless such monies constitute ABL Priority Collateral or are used to fund the Carve-Out Reserves); (ii) immediately set-off any and all amounts in accounts maintained by the Debtors with the DIP Notes Trustee or the DIP Notes Secured Parties against the DIP Notes Obligations (unless such amounts constitute ABL Priority Collateral), (iii) enforce any and all rights against the DIP Collateral (other than ABL Priority Collateral), including, without limitation, foreclosure on all or any portion of the DIP Collateral (other than ABL Priority Collateral), occupying the Debtors' premises, sale or disposition of the DIP Collateral (other than ABL Priority Collateral); and (iv) take any other actions or exercise any other rights or remedies permitted under the Interim Order, the DIP Notes Documents or applicable law (other than with respect to ABL Priority Collateral). If the DIP Notes Secured Parties are permitted by the Court to take any enforcement action with respect to the DIP Collateral (other than ABL Priority Collateral) following the hearing on the Stay Relief Motion, the Debtors shall cooperate with the DIP Notes Secured Parties in their efforts to enforce their security interest in the DIP Collateral (other than ABL Priority Collateral), and shall not take or direct any entity to take any action designed or intended to hinder or restrict in any respect such DIP Notes Secured Parties from enforcing their security interests in the DIP Collateral. Until such time that the Stay Relief Motion has been adjudicated by the Court, and subject to the other terms of the Interim Order, the Debtors may use Cash Collateral and the proceeds of the DIP Notes Facility to the extent drawn prior to the occurrence of Event of Default to fund the Carve-Out, meet payroll obligations, and pay necessary expenses to avoid immediate and irreparable harm to the</p>

<u>Provision</u>	<u>Status</u>
	<p>Debtors' estates in accordance with the Approved Budget and the terms of the DIP Notes Documents and the DIP ABL Agreement.</p> <p>Upon the occurrence and during the continuation of a DIP ABL Termination Event that has not been waived in writing by the DIP ABL Agent and following delivery of written notice on not less than five (5) business days' notice to the DIP ABL Remedies Notice Parties, the DIP ABL Agent may (and any automatic stay otherwise applicable to the DIP ABL Secured Parties, whether arising under sections 105 or 362 of the Bankruptcy Code or otherwise, but subject to the terms of the Interim Order (including this paragraph) shall be modified), without further notice to, hearing of, or order from the Court, to the extent necessary to permit the DIP ABL Agent to, unless the Court orders otherwise (<i>provided</i> that during the DIP ABL Agent Remedies Notice Period, the Debtors, the Creditors' Committee (if appointed) and/or any party in interest shall be entitled to seek an emergency hearing (with the DIP ABL Agent consenting to such emergency hearing) with the Court for the purpose of contesting whether, in fact, a DIP ABL Termination Event has occurred and is continuing, or to obtain non-consensual use of Cash Collateral, and provided further that if a request for such hearing is made prior to the end of the DIP ABL Agent Remedies Notice Period, then the DIP ABL Agent Remedies Notice Period shall be continued until the Court hears and rules with respect thereto): (i) immediately terminate and/or revoke the Debtors' right under the Interim Order and the DIP ABL Agreement to use any Cash Collateral (subject to the Carve-Out and related provisions); (ii) terminate the DIP ABL Facility and the DIP ABL Agreement as to any future liability or obligation of the DIP ABL Secured Parties but without affecting any of the DIP ABL Obligations or the DIP ABL Liens securing such DIP ABL Obligations; (iii) implement the default rate of interest (an additional 2% per annum) on the DIP ABL Obligations under the DIP ABL Facility and (iv) declare all DIP ABL Obligations to be immediately due and payable. Upon delivery of such DIP ABL Termination Notice by the DIP ABL Agent, without further notice or order of the Court, the DIP ABL Secured Parties' and the Prepetition Secured Parties' consent to use Cash Collateral and the Debtors' ability to incur additional DIP ABL Obligations hereunder will, subject to the expiration of the DIP ABL Agent Remedies Notice Period and unless the Court orders otherwise, automatically terminate and the DIP ABL Secured Parties will have no obligation to provide any loans or other financial accommodations under the DIP ABL Agreement; <i>provided, however,</i> that during the DIP ABL Agent Remedies Notice Period, the Debtors shall have the right to use Cash Collateral to fund the Carve-Out, meet payroll obligations, pay necessary expenses to avoid immediate and irreparable harm to the Debtors estates set forth in the Approved Budget in accordance with the DIP ABL Agreement and the other Prepetition ABL Loan Documents. As soon as reasonably</p>

<u>Provision</u>	<u>Status</u>
	<p>practicable following receipt of a DIP ABL Termination Notice, the Debtors shall file a copy of same on the docket.</p> <p>Following a DIP ABL Termination Event and the delivery of the DIP ABL Termination Notice, but prior to exercising the remedies set forth in this sentence below or any other remedies (other than those set forth in the paragraph above), the DIP ABL Secured Parties shall be required to file a Stay Relief Motion with the Court seeking emergency relief on not less than five (5) business days' notice to the DIP ABL Remedies Notice Parties (which may run concurrently with the DIP ABL Agent Remedies Notice Period) for a further order of the Court modifying the automatic stay in these Chapter 11 Cases to permit the DIP ABL Secured Parties to, subject to the Intercreditor Agreements and the Carve-Out and related provisions: (i) freeze monies or balances in the Debtors' accounts (unless such monies constitute Notes Priority Collateral or are used to fund the Carve-Out Reserves); (ii) immediately set-off any and all amounts in accounts maintained by the Debtors with the DIP ABL Agent or the DIP ABL Secured Parties against the DIP ABL Obligations (other than any proceeds of the DIP Notes Indenture or amounts constituting Notes Priority Collateral), (iii) enforce any and all rights against the ABL Priority Collateral, including, without limitation, foreclosure on all or any portion of the ABL Priority Collateral, occupying the Debtors' premises, sale or disposition of the ABL Priority Collateral; and (iv) take any other actions or exercise any other rights or remedies permitted under the Interim Order, the DIP ABL Agreement, the Prepetition ABL Loan Documents or applicable law (other than with respect to Notes Priority Collateral). If the DIP ABL Secured Parties are permitted by the Court to take any enforcement action with respect to the ABL Priority Collateral following the hearing on the Stay Relief Motion, the Debtors shall cooperate with the DIP ABL Secured Parties in their efforts to enforce their security interest in the ABL Priority Collateral, and shall not take or direct any entity to take any action designed or intended to hinder or restrict in any respect such DIP ABL Secured Parties from enforcing their security interests in the ABL Priority Collateral. Until such time that the Stay Relief Motion has been adjudicated by the Court, and subject to the other terms of the Interim Order, the Debtors may use Cash Collateral and the proceeds of the DIP ABL Facility to the extent drawn prior to the occurrence of a DIP ABL Termination Event to fund the Carve-Out, meet payroll obligations, and pay necessary expenses to avoid immediate and irreparable harm to the Debtors' estates in accordance with the Approved Budget and the terms of the DIP Notes Documents and the DIP ABL Agreement. For the avoidance of doubt, continuation of the daily application to the DIP ABL Obligations of amounts received in the Collection Account pursuant to the DIP ABL Agreement and the Roll-Up pursuant to the terms of the Interim Order will not be deemed to be an enforcement action by the DIP ABL Secured Parties.</p>

<u>Provision</u>	<u>Status</u>
	<p><u>Justification:</u></p> <p>The Debtors believe that the provisions limiting the automatic stay in the Interim Order are justifiable because in no case can the stay be lifted without a hearing before this Court, should the Debtors or another party in interest timely seek such hearing.</p>
<p>Releases of Claims</p>	<p><u>Provision</u></p> <p><i>Interim Order ¶ G(xvi)</i></p> <p>Each of the Debtors and each of their estates, on its own behalf and on behalf of its and their respective predecessors, successors, heirs, subsidiaries, assigns and Representatives (in each case, solely in their capacities as such), absolutely, unconditionally and irrevocably releases and forever discharges and acquits (A) the Prepetition Secured Parties, and each of their respective Representatives (in each case, solely in their capacity as such) and (B) the DIP Notes Secured Parties, the DIP ABL Secured Parties, and each of their respective Representatives (in each case, solely in their capacity as such), from any and all liability to the Releasing Parties (and their successors and assigns) and from any and all claims, counterclaims, demands, defenses, offsets, debts, accounts, contracts, liabilities, actions and causes of action of any kind nature and description, whether matured or unmatured, known or unknown, asserted or unasserted, foreseen or unforeseen, accrued or unaccrued, suspected or unsuspected, liquidated or unliquidated, pending or threatened, arising in law or equity, in contract or tort, in each case, of any kind or nature whatsoever that the Releasing Parties (or any of them) at any time had, now have or hereafter may have, or that their predecessors, successors or assigns at any time had, now have or hereafter may have, against any of the Released Parties for or by reason of any act, omission, matter, or cause arising at any time on or prior to the date of the Interim Order, arising out of or related to the Prepetition Debt Documents, the DIP Notes Facility, the DIP Notes Documents, the DIP ABL Facility, the DIP ABL Agreement, or the negotiation thereof and the transactions and agreements reflected thereby; <i>provided</i> that the release set forth in this paragraph shall not release (1) any claims against or liabilities of a Released Party that a court of competent jurisdiction determines has resulted from such Released Party's actual fraud or willful tortious misconduct or (2) any rights or obligations under the Interim Order or under the DIP Notes Documents or the DIP ABL Agreement.</p> <p><u>Justification:</u></p> <p>The Debtors believe that the releases of claims in the Interim Order are appropriate, because (among other reasons), they comply with the Complex Case Procedures because they are subject to a Challenge Period with a length consistent with the Complex Case procedures.</p>

<u>Provision</u>	<u>Status</u>
	Additionally, the Debtors have been provided significant consideration in the form of the DIP Facilities and use of their Cash Collateral by the DIP Noteholders, the DIP ABL Lender and the Prepetition Secured Parties, respectively, such that the releases of claims are a fair exchange.

9. The DIP Facilities are critical to the Debtors' continuing operations during these chapter 11 cases and essential to facilitating a value-maximizing going concern sale transaction. In light of the foregoing, the Significant Provisions are appropriate under the facts and circumstances of these chapter 11 cases, and the Significant Provisions in the DIP Orders should be approved.

The Debtors' Prepetition Capital Structure

10. As of the Petition Date, the Debtors long-term debt obligations totaled \$240.4 million. The outstanding amounts and priorities of each debt obligation are as follows:

<i>Funded Debt</i>	<i>Maturity</i>	<i>Approx. Principal Amount Outstanding (in millions)</i>
Prepetition ABL Facility	May 2024	\$6.2
Prepetition 1L Notes	August 2025	\$125.3
Prepetition 2L Notes	August 2026	\$108.9
<i>Total Funded Debt Obligations</i>		\$240.4

A. Prepetition ABL Facility

11. On May 7, 2021, the DIP Issuers, as borrowers, entered into a credit agreement (as amended as of the Petition Date, the "Prepetition ABL Credit Agreement") with a certain lender (the "Prepetition ABL Lender") and Wells Fargo Bank, National Association, as agent (the "Prepetition ABL Agent"), establishing a \$15 million asset-based revolving credit facility (the "Prepetition ABL Facility"). The Prepetition ABL Facility is guaranteed by the DIP Guarantor pursuant to that certain Guaranty and Security Agreement, dated as of May 7, 2021 (as amended

as of the Petition Date, the “Prepetition ABL Security Agreement”), by and among the DIP Obligors and the Prepetition ABL Agent. The Prepetition ABL Facility provides for revolving loans, subject to a borrowing base comprised of eligible receivables and inventory. As of the Petition Date, approximately \$6.2 million is outstanding under the Prepetition ABL Facility. The Prepetition ABL Facility has a stated maturity of May 7, 2024.

12. Pursuant to the Prepetition ABL Security Agreement, and in accordance with the ABL/Notes Intercreditor Agreement (as defined below), the Prepetition ABL Facility is secured by a lien on substantially all of the Debtors’ assets and property (the “Prepetition Collateral”), including: (i) a first priority lien on ABL Priority Collateral (as defined below), including, (with certain exceptions) inventory and accounts and (ii) a junior lien on Notes Priority Collateral (as defined below), including the Debtors’ real property, intellectual property, equipment, and fixtures. Anagram’s equity interest in Convergram de Mexico S. de R.L. and Convergram’s assets are excluded from the Prepetition Collateral.

B. Prepetition 1L Notes

13. On July 30, 2020, the DIP Issuers issued \$110 million in aggregate principal amount of 15.00% PIK/Cash Senior Secured First Lien Notes due 2025 (the “Prepetition 1L Notes”). The Prepetition 1L Notes were issued pursuant to an indenture, dated as of July 30, 2020 (as amended, the “Prepetition 1L Notes Indenture”), among the Anagram Issuers, as co-issuers, the DIP Guarantor, as a guarantor, and Ankura Trust Company, LLC, as predecessor trustee and collateral trustee (together with its successor, Computershare Trust Company, National Association, the “Prepetition 1L Notes Trustee”). The Prepetition 1L Notes accrue interest at (i) a rate of 10.00% per annum, payable in cash and (ii) a rate of 5.00% payable in kind by capitalizing such interest payment and increasing the aggregate principal amount of the Prepetition 1L Notes by the amount thereof (“PIK Interest”). As of the Petition Date, approximately \$125.3 million in

aggregate principal amount of Prepetition 1L Notes remains outstanding. The Prepetition 1L Notes have a stated maturity of August 15, 2025.

14. Pursuant to that certain First Lien Pledge and Security Agreement, dated as of July 30, 2020, among the Debtors and the Prepetition 1L Notes Trustee, and in accordance with the Intercreditor Agreements (as defined below), the Prepetition 1L Notes are secured by a lien on the Prepetition Collateral, including (i) a first priority lien on the Notes Priority Collateral and (ii) a junior lien on the ABL Priority Collateral.

C. Prepetition 2L Notes

15. On July 30, 2020, the DIP Issuers also issued \$85 million in aggregate principal amount of 10.00% PIK/Cash Senior Secured Second Lien Notes due 2026 (the “Prepetition 2L Notes”). The Prepetition 2L Notes were issued pursuant to an indenture, dated as of July 30, 2020 (as amended, the “Prepetition 2L Notes Indenture” and, together with the Prepetition 1L Notes Indenture, the “Prepetition Indentures”), among the DIP Issuers, as co-issuers, the DIP Guarantor, as guarantor, and Ankura Trust Company, LLC, as predecessor trustee and collateral trustee (together with its successor, Wilmington Savings Fund Society, FSB, the “Prepetition 2L Trustee” and, together with the Prepetition 1L Trustee and Prepetition ABL Agent, the “Prepetition Agents”). Interest on the Prepetition 2L Notes accrues at (i) a rate of 5.00% per annum, payable, at the DIP Issuers’ option, entirely in cash or entirely as PIK Interest; and (ii) a rate of 5.00% per annum of PIK Interest, in each case, payable semi-annually in arrears on February 15 and August 15 of each year; *provided*, that on August 15, 2025, interest is required to be PIK Interest. As of the Petition Date, approximately \$108.9 million in aggregate principal amount of Prepetition 2L Notes was outstanding. The Prepetition 2L Notes mature on August 15, 2026.

16. Pursuant to that certain Second Lien Pledge and Security Agreement, dated as of July 30, 2020, among the Debtors and the Prepetition 2L Notes Trustee, and in accordance with

the Intercreditor Agreements, the Prepetition 2L Notes are secured by a lien on the Prepetition Collateral, including (i) a second priority lien on the Notes Priority Collateral and (ii) a second priority lien on the ABL Priority Collateral, which lien is junior to the lien of the Prepetition ABL Lender and the holders of the Prepetition 1L Notes on the Prepetition collateral.

D. Intercreditor Agreements

a. ABL/Notes Intercreditor Agreement

17. The relative rights and priorities of the Prepetition ABL Lender, holders of the Prepetition 1L Notes (the “Prepetition 1L Noteholders”) and holders of the Prepetition 2L Notes (the “Prepetition 2L Noteholders” and, together with the Prepetition 1L Noteholders, the “Prepetition Noteholders”) are governed by that certain Intercreditor Agreement (as amended, the “ABL/Notes Intercreditor Agreement”), dated as of May 7, 2021, among the Debtors and the Prepetition Agents. Pursuant to the ABL/Notes Intercreditor Agreement, (i) the Prepetition ABL Lender’s lien on ABL Facility Priority Lien Collateral (as defined in the ABL/Notes Intercreditor Agreement, which, for the avoidance of doubt, includes certain Cash Collateral, any other assets or property of a type that would otherwise constitute ABL Facility Priority Lien Collateral but for the commencement of these Chapter 11 Cases and all proceeds, products, accessions, rents, and profits thereof, in each case, whether then owned or existing or thereafter acquired or arising, collectively, the “ABL Priority Collateral”⁶), ranks senior to the lien of the Prepetition Noteholders on such collateral and (ii) the Prepetition Noteholders’ lien on Notes Priority Lien Collateral (as defined in the ABL/Notes Intercreditor Agreement, which, for the avoidance of doubt, includes certain Cash Collateral, any other assets or property of a type that would otherwise constitute Notes

⁶ For the avoidance of doubt, ABL Priority Collateral does not include proceeds of any Notes Priority Collateral or any Notes Proceeds Account (as defined in the Prepetition ABL Intercreditor Agreement) and neither the Prepetition ABL Obligations nor the obligations under the DIP ABL Facility shall be secured by the proceeds of the DIP Notes deposited in the Wells Fargo Account ending in 2759 (the “DIP Notes Account”).

Priority Lien Collateral but for the commencement of these Chapter 11 Cases and all proceeds, products, accessions, rents, and profits thereof, in each case whether then owned or existing or thereafter acquired or arising, collectively, the “Notes Priority Collateral”) ranks senior to the lien of the Prepetition ABL Lender on such collateral. Additionally, pursuant to the ABL/Notes Intercreditor Agreement, the Prepetition Noteholders are deemed to have consented to any debtor-in-possession (“DIP”) financing consented to by the Prepetition ABL Lender which is secured by ABL Priority Collateral.

b. 1L/2L Notes Intercreditor Agreement

18. The relative rights and priorities of the Prepetition 1L Noteholders and the Prepetition 2L Noteholders are governed by the First Lien/Second Lien Intercreditor Agreement (as amended, the “1L/2L Notes Intercreditor Agreement” and, together with the ABL/Notes Intercreditor Agreement, the “Intercreditor Agreements”), dated as of July 30, 2020, among the Prepetition 1L Notes Trustee and the Prepetition 2L Notes Trustee. The 1L/2L Notes Intercreditor Agreement provides that, with respect to the Prepetition Collateral, the Prepetition 1L Noteholders’ lien ranks senior to that of the Prepetition 2L Noteholders. The 1L/2L Notes Intercreditor Agreement further provides that Prepetition 2L Noteholders are deemed to have consented to any DIP financing consented to by the Prepetition 1L Noteholders which is secured by the Prepetition Collateral. The 1L/2L Notes Intercreditor Agreement also provides that the Prepetition 1L Noteholders and Prepetition 2L Noteholders may credit bid in connection with the sale of the Prepetition Collateral, subject to the terms and limitations set forth in the 1L/2L Intercreditor Agreement.

19. In sum, the relative priorities of liens with respect to the Prepetition Collateral as of the Petition Date is summarized in the following table:

ABL Priority Collateral	Notes Priority Collateral
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1. Prepetition ABL Agent and Lenders	1. Prepetition 1L Noteholders
2. Prepetition 1L Noteholders	2. Prepetition 2L Noteholders
3. Prepetition 2L Noteholders	3. Prepetition ABL Agent and Lenders

The Debtors' Need for the DIP Facilities and Development of the DIP Budget

20. To continue operating in the ordinary course, supplement their liquidity needs, preserve the value of their estates, and increase the prospect of executing a successful going-concern sale, the Debtors need immediate access to liquidity. The Debtors, with the assistance of their advisors, evaluated their cash flow and liquidity needs to operate their businesses and pay the expenses of a chapter 11 process while effectuating a going concern sale. DIP Decl. ¶ 12. The Debtors also assessed whether they had any material unencumbered property to secure any new financing, but the Debtors' existing Prepetition Noteholders and the Prepetition ABL Lender have liens on substantially all material assets. *Id.*

21. As part of the Debtors' financial review and analysis, the Debtors, with the assistance of their financial advisor, Ankura Consulting Group, LLC ("Ankura"), developed an initial 13-week budget, a copy of which is attached as **Schedule 1** to the Interim Order (the "Initial DIP Budget"). The Initial DIP Budget incorporates a number of factors and reasonable assumptions, including the Company's substantial working capital requirements, the effect of filing for chapter 11 on the Debtors' operations, material cash disbursements, vendor relationships and required payments, cash flows from the Debtors' ongoing operations, and the cost of necessary goods and materials. Furthermore, the Initial DIP Budget includes all of the expenditures that the Debtors seek authority to pay under various "first day" pleadings, if approved by the Court.

22. Access to the DIP Facilities and Cash Collateral is essential for the following reasons: *First*, the Debtors require access to the DIP Facilities to preserve their assets and maintain operations during a sale of substantially all of the Debtors' assets pursuant to section 363 of the

Bankruptcy Code (the “Sale Process”) in order to maximize recovery to their stakeholders (including the Debtors’ creditors). DIP Decl. ¶ 9. According to the Initial DIP Budget, the Debtors commenced these chapter 11 cases with insufficient cash on their balance sheets to pay ongoing business expenses and the cost of administering the Sale Process. *Id.* Accordingly, without access to the DIP Facilities and Cash Collateral, the Debtors would likely have to curtail operations, which would be value destructive and could trigger a default under the Debtors’ stalking horse asset purchase agreement (the “Stalking Horse APA”).⁷ *Id.*

23. *Second*, access to the proposed DIP Facilities and use of Cash Collateral will signal to the market, including the Debtors’ customers and vendors, as well as the Debtors’ employees, that the Debtors’ can and will continue operating during these chapter 11 cases. DIP Decl. ¶ 10. Stabilizing the Debtors’ business is critical to a successful Sale Process. *Id.* Potential purchasers are more likely to bid, and bid at a higher price, if the Debtors are operating in the ordinary course without a loss of vendors, employees or customers. *Id.* It is therefore important to show those constituents that the Debtors have sufficient liquidity through the DIP Facilities and use of Cash Collateral. *Id.*

24. Absent access to the funds available under the DIP Facilities and access to Cash Collateral, the Debtors will promptly lack sufficient liquidity to continue their operations in the ordinary course to the material detriment of the Debtors’ customers, creditors, employees, and other parties in interest. Therefore, the Debtors have an immediate need to access the DIP Facilities on an interim basis and throughout the pendency of these chapter 11 cases.

⁷ The Stalking Horse APA is annexed to the *Emergency Motion of Debtors for Entry of an Order (I)(A) Approving the Bidding Procedures for Sale of Debtors’ Assets, (B) Approving Stalking Horse Bid Protections, (C) Scheduling Certain Dates With Respect Thereto, (D) Approving Form And Manner of Notices Thereof and (E) Approving Contract Assumption and Assignment Procedures, (II)(A) Approving Sale of Debtors’ Assets Free and Clear of Liens, Claims, Interests, and Encumbrances and (B) Authorizing Assumption And Assignment Of Executory Contracts and Unexpired Leases and (III) Granting Related Relief*, filed contemporaneously herewith.

Alternative Sources of Financing Are Not Available on Better Terms

25. As explained in the DIP Declaration, despite the efforts by the Debtors' investment banker, Robert W. Baird & CO. Incorporated ("Baird") and the Debtors to identify post-petition financing over the past several months, none of the alternative DIP proposals that the Debtors received provided for better terms, taken as a whole, than the DIP Facilities.

26. Because of the existing secured creditors' liens, the Debtors concluded that post-petition financing likely would have to be provided on a priming basis because the Debtors have insufficient unencumbered assets to obtain sufficient post-petition financing to responsibly administer these chapter 11 cases and a potential sale process on a junior secured or unsecured financing basis. DIP Decl. ¶ 13. Under the Prepetition Indentures and the Intercreditor Agreements, the ad hoc group of Prepetition Noteholders who collectively hold approximately 60% in principal amount of Prepetition 1L Notes (the "Ad Hoc Group") can consent to priming liens on the Notes Priority Collateral, and the Prepetition ABL Lender can consent to priming liens on the ABL Priority Collateral. *Id.* And because both the Ad Hoc Group and the Prepetition ABL Lender informed the Debtors that they will not consent to any priming liens over their collateral to secure DIP Financing other than the DIP Facilities, the Debtors determined that seeking non-consensual priming liens on the Notes Priority Collateral or the ABL Priority Collateral would risk destabilizing the Debtors' operations and the Sale Process at the outset of these chapter 11 cases with no assurance the Debtors would ultimately succeed in such a "priming fight." *Id.* As a result, the Debtors determined that any financing proposals predicated on non-consensual priming liens were not a viable and, instead, the Debtors, with the assistance of Baird and their other advisors, focused their efforts on obtaining DIP financing from the Ad Hoc Group and the Prepetition ABL Lender on the best possible terms. DIP Decl. ¶ 14.

27. However, notwithstanding that the Debtors received the DIP financing proposals from the Ad Hoc Group and the Prepetition ABL Lender, the Debtors, with the assistance of Baird, engaged in a comprehensive marketing process with potential alternative DIP financing providers. DIP Decl. ¶ 16. In particular, the Debtors focused on an asset-based lending financing facility that would be sufficient to refinance the Prepetition ABL Facility in full, thereby avoiding a priming fight, *and* provide the Debtors with additional liquidity. *Id.* In all, 39 potential DIP financing providers, consisting of traditional asset-based lenders and credit funds, were contacted to explore viable alternatives. *Id.*

28. As discussed in more detail in the DIP Declaration, of the potential DIP financing providers contacted, 19 signed non-disclosure agreements and were provided access to a data room with additional materials to guide their decision-making processes, including a detailed request for proposal, and seven submitted indications of interest. DIP Decl. ¶ 17. The Debtors, with the assistance of Baird and their other advisors, engaged in multiple rounds of negotiations with such potential third-party DIP financing providers and suggested alternative terms that may make such DIP financing proposals more competitive. *Id.* During this process, the Debtors continued to negotiate improved terms from their existing secured creditors. *Id.*

29. After reviewing all alternatives available to them and evaluating those proposals based on, among other things, access to liquidity, cost of capital, covenants, conditions, certainty of execution, and risk of challenge, the Debtors determined that the DIP Notes Facility and DIP ABL Facility together provided the most favorable economic terms and allowed for most certainty in the Sale Process. DIP Decl. ¶ 18.

Use of Cash Collateral

30. The DIP Facilities contemplate that the Debtors will have immediate access to Cash Collateral on a consensual basis, subject to the terms and conditions of the Approved Budget, DIP

Notes Documents, DIP ABL Agreement and the DIP Orders. Coupled with the liquidity provided under the DIP Facilities, immediate access to the Cash Collateral will (a) ensure that the Debtors have sufficient working capital to, among other things, continue their business operations in the ordinary course by paying their employees, vendors, landlords, and service providers, (b) enable the Debtors to honor their prepetition obligations under and in accordance with the proposed “first-day” relief if approved by the Court, (c) satisfy administrative expenses of these chapter 11 cases and (d) fund a value-maximizing sale process for the Debtors’ assets. By providing the Debtors with the immediate ability to use Cash Collateral, the DIP Facilities also ensure that the Debtors avoid unnecessary business disruptions that would otherwise be costly and potentially damaging to their businesses.

Forms of Adequate Protection

31. After arms’ length, and good faith negotiations, the Prepetition Secured Parties have agreed to consent to the use of the Prepetition Collateral, including Cash Collateral, subject to the provision by the Debtors of adequate protection. Among other things, the adequate protection contemplated by the DIP Orders is designed to protect the Prepetition Secured Parties’ interests in the Debtors’ property from any diminution in value caused by, among other reasons, imposition of the automatic stay, the Debtors’ use of the Prepetition Collateral, including Cash Collateral, during the pendency of these chapter 11 cases and the priming of their liens by the DIP Notes Liens and the DIP ABL Liens. Specifically, the Debtors have agreed to provide the following forms of adequate protection:

- **Adequate Protection Liens:** As further set forth in the Interim Order, the Debtors will grant each Prepetition Agent, for the benefit of the applicable Prepetition Secured Parties, a security interest in and lien on the DIP Collateral, with the priorities and subject to the limitations set forth in the Interim Order.

- **Adequate Protection 507(b) Claims**: As further described in the Interim Order, each of the Prepetition Agents, on behalf of the applicable Prepetition Secured Parties, will be granted adequate protection super-priority claims as provided in sections 503(b) and 507(b) of the Bankruptcy Code, with the priorities and subject to the limitations set forth in the Interim Order.
- **Adequate Protection Fees and Expenses**: The Debtors will pay certain reasonable fees and expenses of the Prepetition Secured Parties.
- **Post-Petition Interest Payments**: As (a) adequate protection and (b) consideration for their agreement to consent to the Debtors use of their Cash Collateral, (i) the Prepetition ABL Agent, on behalf of the Prepetition ABL Secured Parties, will receive current payment of post-petition interest at the non-default rate applicable under the Prepetition ABL Loan Documents on the Petition Date, and (ii) the Prepetition 1L Trustee, on behalf of the Prepetition 1L Secured Parties, will be entitled to post-petition interest which shall accrue, but not be required to be paid, at the non-default contract rate applicable under the Prepetition 1L Notes Documents on the Petition Date to the Prepetition 1L Obligations.

32. The Adequate Protection Liens, Adequate Protection 507(b) Claims, Adequate Protection Fees and Expenses and Post-Petition Interest Payments described above are each conferred separately to the applicable Prepetition Agents for the benefit of the applicable Prepetition Secured Parties.

The DIP Facilities Are Necessary to Preserve the Debtors' Estates

33. Given the Debtors' current projections and the absence of sufficient unencumbered assets, immediate access to the DIP Facilities and use of Cash Collateral is necessary to run a

value-maximizing sale process and for continued operations, including to fund wages, salaries, and benefits of the Debtors' employees, procure necessary goods and services, maintain trade terms with the Debtors' vendors, pay the Debtors' landlords, finance the costs of these chapter 11 cases, and meet other working capital needs of the Debtors. *See* DIP Decl. ¶¶ 9-10; 31. Without immediate access to the DIP Facilities on the terms requested in the DIP Motion, the Debtors will suffer immediate and irreparable harm. DIP Decl. ¶¶ 31-32. Consequently, the DIP Facilities are necessary to preserve the value of the Debtors' estates.

Basis for Relief

I. The Debtors Should Be Authorized To Obtain Post-Petition Financing on a Senior Secured and Superpriority Basis

34. The Debtors meet the requirements for relief under section 364 of the Bankruptcy Code, which permits a debtor to obtain post-petition financing and, in return, to grant superpriority administrative status and liens on its property. Specifically, section 364(c) of the Bankruptcy Code provides that the court may approve financing, "with priority over any or all administrative expenses." 11 U.S.C. § 364(c). Further, section 364(d) of the Bankruptcy Code provides that priming liens may be incurred to support post-petition financing if the debtor is "unable to obtain such credit otherwise" and the primed lienholders are adequately protected. 11 U.S.C. § 364(d).

35. Provided that an agreement to obtain secured credit is consistent with the provisions of, and policies underlying, the Bankruptcy Code, courts grant considerable deference to a debtor's exercise of its business judgment when evaluating their requests to incur post-petition credit. *See, e.g., In re N Bay Gen. Hosp., Inc.*, No. 08-20368 (Bankr. S.D. Tex. July 11, 2008) (order approving post-petition financing on an interim basis as exercise of debtors' business judgment); *In re Latam Airlines Grp. S.A.*, 2020 WL 5506407 at *27 (Bankr. S.D.N.Y. Sept. 10, 2020) ("Generally, in evaluating the merits of proposed post-petition financing, courts will defer to a debtor's business

judgment provided that the financing does not unduly benefit a party in interest at the expense of the estate.”); *In re Ames Dep’t Stores, Inc.*, 115 B.R. 34, 40 (Bankr. S.D.N.Y. 1990) (deferring to a debtor’s “reasonable business judgment so long as the financing agreement does not contain terms that leverage the bankruptcy process and powers or its purpose is not so much to benefit the estate as it is to benefit a party-in interest”).

36. In determining whether the Debtors have exercised sound business judgment in deciding to enter into the DIP Facilities, this Court may appropriately take into consideration non-economic benefits to the Debtors offered by a proposed post-petition facility. For example, in *In re ION Media Networks, Inc.*, 2009 WL 2902568, at *4 (Bankr. S.D.N.Y. July 6, 2009), the Bankruptcy Court for the Southern District of New York explained that “noneconomic elements such as the timing and certainty of closing, the impact on creditor constituencies and the likelihood of a successful reorganization” may be properly considered by debtors when selecting post-petition financing, because the “business decision to obtain credit from a particular lender is almost never based purely on economic terms” due to the importance of those terms. *Id.*

37. Here, given all the facts and circumstances present in these chapter 11 cases, the Debtors have amply satisfied the necessary conditions under sections 364(c) and (d) of the Bankruptcy Code for authority to enter into the DIP Facilities. The Debtors exercised proper business judgment in securing the DIP Facilities on terms that are fair and reasonable and the best available to them under the circumstances and in the current market. Moreover, given the circumstances described above, the Debtors could not obtain credit on junior secured or unsecured basis or without the priming contemplated by the Interim Order. *See* DIP Decl. ¶¶ 12-14. For all the reasons discussed further below, the Debtors respectfully submit that the Court should grant the

Debtors' request to enter into the DIP Facilities pursuant to sections 364(c) and (d) of the Bankruptcy Code.

A. The Debtors Exercised Sound and Reasonable Business Judgment in Deciding to Enter the DIP Facilities

38. Based on the facts and circumstances of these chapter 11 cases, the DIP Facilities represent a proper exercise of the Debtors' business judgment. As noted above, bankruptcy courts routinely defer to a debtor's business judgment on most business decisions, including decisions about whether and how to borrow money. *See, e.g., In re Integrated Res., Inc.*, 147 B.R. 650, 656 (S.D.N.Y. 1992) ("Parties opposing the proposed exercise of a debtor's business judgment have the burden of rebutting the presumption of validity") (citing *Aronson v. Lewis*, 473 A.2d 805, 812 (Del. 1984)); *In re Garrett Motion Inc.*, No. 20-12212 (Bankr. S.D.N.Y. October 23, 2020) (approving post-petition financing as "a sound and prudent exercise of the Debtors' business judgment"); *In re Metaldyne Corp.*, 409 B.R. 661, 667–68 (Bankr. S.D.N.Y. 2009) (noting "decisions in [the Southern District of New York] emphasizing that [bankruptcy courts] should not substitute [their] business judgment for that of the Debtors'") (citations omitted), *aff'd* 421 B.R. 620 (S.D.N.Y. 2009); *In re Ames Dep't Stores, Inc.*, 115 B.R. at 40 ("More exacting scrutiny would slow the administration of the debtor's estate and increase its cost, interfere with the Bankruptcy Code's provision for private control of administration of the estate, and threaten the court's ability to control a case impartially."); *Richmond Leasing Co. v. Capital Bank N.A.*, 762 F.2d 1303, 1311 (5th Cir. 1985).

39. Specifically, when evaluating whether a debtor's decision to obtain post-petition financing was an exercise of sound business judgment, courts need only "examine whether a reasonable business person would make a similar decision under similar circumstances." *In re Dura Auto. Sys., Inc.*, 2007 WL 7728109, at *97 (Bankr. D. Del. Aug. 15, 2007) (quoting *In re*

Exide Techs., 340 B.R. 222, 239 (Bankr. D. Del. 2006)). When evaluating whether a debtor's decision to enter into post-petition financing was an exercise of sound business judgment, bankruptcy courts consider the terms of the financing in light of the debtor's circumstances and the market for financing more generally. *See In re Farmland Indus., Inc.*, 294 B.R. 855, 886 (Bankr. W.D. Mo. 2003); *see also Unsecured Creditors' Comm. Mobil Oil Corp. v. First Nat'l Bank & Trust Co. (In re Ellingsen McLean Oil Co., Inc.)*, 65 B.R. 358, 365 n.7 (W.D. Mich. 1986) (recognizing a debtor may have to enter into "hard bargains" to acquire funds for its reorganization).

40. Prevailing market conditions are also highly relevant to a court's evaluation of a debtor's business judgment regarding their DIP financing. *See Hr'g Tr. at 734 35:24, In re Lyondell Chem. Co.*, Case No. 09-10023 (Bankr. S.D.N.Y. March 5, 2009) (recognizing "the terms that are now available for DIP Financing in the current economic environment aren't as desirable" as in the past). Accordingly, the Debtors submit that the proposed DIP Facilities should be approved as a sound exercise of their business judgment.

41. As set forth in the DIP Declaration, the principal economic terms proposed under the DIP Facilities (such as the contemplated pricing, fees, interest rate, and default rate) are customary and usual for DIP financings of this type, were negotiated at arm's length and in good faith and are, in the aggregate, the best terms available to the Debtors and generally consistent with the terms of DIP financings in comparable circumstances. *See* DIP Decl. ¶¶ 24-25; 30. Crucially, the DIP Notes Facility is coupled with the Stalking Horse APA, which provides the Debtors a comprehensive path forward. On this record, the relief requested here is a sound exercise of the Debtors' business judgment and should be approved.

B. The Debtors Meet the Conditions Necessary Under Section 364(c) and (d) to Obtain Post-petition Financing on a Senior Secured and Superpriority Basis

42. The Debtors propose to obtain financing under the DIP Facilities by providing superpriority claims and liens pursuant to sections 364(c) and 364(d)(1) of the Bankruptcy Code. The Debtors propose to provide the DIP Notes Secured Parties and the DIP ABL Secured Parties with liens on and security interests in all of the DIP Collateral, including priming liens. The DIP Collateral includes the Prepetition Collateral, any other assets of the Debtors that were not subject to any validly perfected liens or security interest as of the Petition Date, and, subject to entry of the Final Order to the extent granted therein, the proceeds of avoidance actions (in each case subject to the Carve-Out).

43. In evaluating proposed post-petition financing under sections 364(c) and 364(d)(1) of the Bankruptcy Code, courts act in their “informed discretion.” *In re Ames Dep’t Stores*, 115 B.R. at 37. Courts perform a qualitative analysis and consider factors including whether (a) the debtor made a reasonable effort to find financing with better terms, (b) the financing is necessary to preserve assets of the estate, and (c) the terms of the credit agreement are fair, reasonable, and adequate. *In re Republic Airways Holdings Inc.*, 2016 WL 2616717, at *11 (Bankr. S.D.N.Y. May 4, 2016).

44. Additionally, section 364(d)(1)(B) of the Bankruptcy Code requires that lenders primed by superpriority DIP liens must be provided adequate protection. The lenders and noteholders primed by the DIP Facilities are the Prepetition Secured Parties. As discussed below, the adequate protection package provided to the Prepetition Secured Parties provides sufficient adequate protection to allow the DIP Facilities. In addition, the Prepetition Secured Parties have consented to the DIP Facilities, rendering such an analysis unnecessary and establishing that the DIP Facilities can be authorized pursuant to section 364(d)(1)(B).

C. The DIP Facilities Provide the Debtors Financing on Favorable Terms

45. Debtors need to demonstrate that they made a reasonable effort to find alternative financing before a bankruptcy court will order superpriority liens. *In re Latam Airlines Grp. S.A.*, 2020 WL 5506407, at *26 (Bankr. S.D.N.Y. Sept. 10, 2020). But, the Bankruptcy Code “imposes no duty [on a debtor] to seek credit from every possible lender before concluding that such credit is unavailable.” *Id.* (citing *Bray v. Shenandoah Fed. Savs. & Loan Ass’n (In re Snowshoe Co.)*, 789 F.2d 1085, 1088 (4th Cir. 1986)); *In re Pearl-Phil GMT (Far East) Ltd. v. Caldor Corp.*, 266 B.R. 575, 584–85 (S.D.N.Y. 2001) (superpriority administrative expenses authorized where debtor could not obtain credit as an administrative expense); *In re Ames Dep’t Stores, Inc.*, 115 B.R. at 40 (approving financing facility and holding that debtor made reasonable efforts to satisfy the standards of section 364(c) to obtain superior terms after discussing possible post-petition financing with four lenders); *In re Mosello*, 195 B.R. 277, 289 (Bankr. S.D.N.Y. 1996).

46. Here, as discussed above, the Debtors conducted an extensive search for DIP financing and, in parallel, conducted arm’s-length negotiations with the Debtors’ existing stakeholders regarding the terms of the DIP Facilities. DIP Decl. ¶¶ 16-20. Through these negotiations, the Debtors secured a comprehensive financing that is the best option presently available to the Debtors under the circumstances, in particularly because the DIP Notes Facility has been coupled with the Stalking Horse APA, pursuant to which the DIP Noteholders will credit bid the DIP Notes Obligations and Prepetition 1L Notes, saving the Debtors the need to repay those obligations. DIP Decl. ¶¶ 15.

D. The DIP Facilities Are Necessary to Preserve the Value of the Debtors’ Estates

47. The Debtors have a fiduciary duty to protect and maximize their estates’ assets. *See In re Mushroom Transp. Co.*, 382 F.3d 325, 339 (3d Cir. 2004). The Debtors seek access to the DIP Facilities consistent with that duty. Without access to the DIP Facilities, the Debtors would

be unable to fund critical payments that are essential to the Debtors' operational viability. DIP Decl. ¶¶ 9-10.

E. The Terms of the DIP Facilities Are Fair, Reasonable, and Adequate under the Circumstances

48. In considering whether the terms of post-petition financing are fair and reasonable, courts consider the terms in light of the relative circumstances of both the debtor and the potential lender. *See In re Farmland Indus., Inc.*, 294 B.R. at 886; *see also In re Ellingsen MacLean Oil Co.*, 65 B.R. at 365. The appropriateness of a proposed financing facility should also be considered in light of current market conditions. *See In re Lyondell Chem. Co.*, No. 09-10023 (REG) (Bankr. S.D.N.Y. Feb. 27, 2009), Hr'g Tr. 740:4-6 (“[B]y reason of present market conditions, as disappointing as the [DIP] pricing terms are, I find the provisions [of the DIP] reasonable here and now.”). Here, the terms of the DIP Facilities are fair, appropriate, reasonable, adequate under the circumstances, and in the best interests of the Debtors, their estates, and their creditors.

49. As noted above, the terms of the DIP Facilities were actively negotiated by the Debtors' advisors. The principal economic terms proposed under the DIP Facilities (such as the contemplated pricing, fees, interest rate, and default rate) are customary and usual for DIP financings of this type, were negotiated at arm's length and in good faith and are, in the aggregate, the best terms available to the Debtors and generally consistent with the terms of DIP financings in comparable circumstances. *See* DIP Decl. ¶ 30. The DIP Noteholders and DIP ABL Lender also negotiated for milestones that provide the Debtors with adequate time to negotiate and implement a value-maximizing sale transaction such that agreeing to include these milestones as a condition to entering into the DIP Notes Facility and DIP ABL Facility, as applicable, was reasonable and in the Debtors' best interests.

F. The DIP Noteholders and DIP ABL Lender Should Be Deemed Good Faith Lenders under Section 364(e)

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

The reversal or modification on appeal of an authorization under this section [364 of the Bankruptcy Code] to obtain credit or incur debt, or of a grant under this section of a priority or a lien, does not affect the validity of any debt so incurred, or any priority or lien so granted, to an entity that extended such credit in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and the incurring of such debt, or the granting of such priority or lien, were stayed pending appeal. 11 U.S.C. § 364(e).

51. Here, the Debtors believe the DIP Facilities embody the most favorable terms on which the Debtors could obtain post-petition financing. As described in the DIP Declaration, the negotiations of the terms of the DIP Facilities with the DIP Noteholders and DIP ABL Lender were conducted at arms' length. *See* DIP Decl. ¶ 19-20. Under the circumstances, the terms and conditions of the DIP Notes Documents and DIP ABL Agreement are reasonable, and the proceeds of the DIP Facilities will be used only for purposes that are permissible under the Bankruptcy Code, in accordance with the DIP Orders, the Approved Budget, the DIP ABL Agreement and the DIP Notes Documents. Accordingly, the Court should find that the DIP Noteholders and the DIP ABL Lender are "good faith" lenders within the meaning of section 364(e) of the Bankruptcy Code and that the DIP Noteholders and DIP ABL Lender thus are entitled to all of the protections afforded by that section.

II. The Prepetition Secured Parties Are Adequately Protected

52. Section 363(c)(2) of the Bankruptcy Code provides that, absent consent, a debtor may use cash collateral where "the court, after notice and a hearing, authorizes such use, sale, or

lease in accordance with the provisions of this section.” 11 U.S.C. § 363(c)(2)(A)–(B). Absent consent, section 363(e) of the Bankruptcy Code further conditions the use of collateral upon the debtor providing “adequate protection” of a secured creditor’s interest in the property proposed to be used. 11 U.S.C. § 363(e); 3-363 Collier on Bankruptcy ¶ 363.05 (16th ed. 2010).

53. Further, section 362(d)(1) of the Bankruptcy Code provides for adequate protection of interests in property due to the imposition of the automatic stay. *See In re Cont’l Airlines*, 91 F.3d 553, 556 (3d Cir. 1996) (en banc). While section 361 of the Bankruptcy Code provides examples of forms of adequate protection, such as granting replacement liens and administrative claims, courts decide what constitutes sufficient adequate protection on a case-by-case basis. *See, e.g., In re Mosello*, 195 B.R. at 289 (“The determination of adequate protection is a fact-specific inquiry . . . left to the vagaries of each case.”); *In re Martin*, 761 F.2d 472, 474 (8th Cir. 1985); *In re Beker Indus. Corp.*, 58 B.R. 725, 736 (Bankr. S.D.N.Y. Mar. 4, 1986) (the application of adequate protection “is left to the vagaries of each case, but its focus is protection of the secured creditor from diminution in the value of its collateral during the reorganization process”) (citation omitted).

54. After extensive arm’s length and good faith negotiations, the Prepetition Secured Parties have agreed to consent to the use of their Prepetition Collateral, including Cash Collateral, subject to the provision by the Debtors of adequate protection as set forth in the Interim Order. Among other things, the Adequate Protection Liens contemplated by the DIP Facilities are designed to protect the Prepetition Secured Parties’ interests in the Debtors’ property from any diminution in value caused by the Debtors’ use of the Prepetition Collateral, including Cash Collateral, during the pendency of these chapter 11 cases. The proposed DIP Facilities, which are consensually priming the Prepetition Secured Parties, provide adequate protection for all parties

by allowing the Debtors to continue operating their businesses as a going concern and to fund a value-maximizing sale process. Bankruptcy courts have found lenders are adequately protected when priming debt is used to improve the value of their collateral or the Debtors' estates. *See, e.g., In re 495 Cent. Park Ave. Corp.*, 136 B.R. 626, 631 (Bankr. S.D.N.Y. 1992); *see also In re Hubbard Power and Light*, 202, B.R. 680, 685 (Bankr. E.D.N.Y. 1996). For a court to find that a secured creditor is adequately protected under similar facts, it looks to see if "projections grounded on a firm evidentiary basis" support the claim that non-consensually priming debt improves the primed creditors' position. *In re Mosello*, 195 B.R. at 292. Accordingly, the value created by virtue of allowing the Debtors to continue to operate and conduct a value-maximizing sale transaction is enough to adequately protect the Prepetition Secured Parties.

55. In addition, the Debtors will continue to pay cash interest on the amount outstanding under the Prepetition ABL Facility at the non-default rate applicable under the Prepetition ABL Loan Documents on the Petition Date. Further, the Debtors will currently pay to the Prepetition Agents, in cash, reasonable and documented fees and out-of-pocket expenses of the advisors to the Prepetition Agents to the extent permitted under the Prepetition Debt Documents. The considerable adequate protection provided to the Prepetition Secured Parties in the Interim Order protects the Prepetition Secured Parties from potential diminution of the value of their collateral to the extent required by the Bankruptcy Code.

III. The Use of Cash Collateral Is Warranted and Should Be Approved

56. The Debtors' use of property of their estates, including the Cash Collateral, is governed by section 363 of the Bankruptcy Code, which provides in relevant part that if the debtor is authorized to continuing operating its business during its chapter 11 case, the debtor "may use property of the estate in the ordinary course of business without notice or a hearing." 11 U.S.C. § 363(c)(1).

57. Pursuant to section 363(c)(2) of the Bankruptcy Code, a debtor may not use cash collateral unless “(A) each entity that has an interest in such cash collateral consents; or (B) the court, after notice and a hearing, authorizes such use, sale, or lease in accordance with the provisions of this section.” 11 U.S.C. § 363(c)(2). Section 363(e) of the Bankruptcy Code provides for adequate protection of interests in property when a debtor uses Cash Collateral. Further, section 362(d)(1) of the Bankruptcy Code provides for adequate protection of interests in property due to the imposition of the automatic stay. *See In re Cont’l Airlines*, 91 F.3d 553, 556 (3d Cir. 1996) (en banc). While section 361 of the Bankruptcy Code provides examples of forms of adequate protection, such as granting replacement liens and administrative claims, courts decide what constitutes sufficient adequate protection on a case-by-case basis. *See, e.g., In re Swedeland Dev. Grp., Inc.*, 16 F.3d 552, 564 (3d Cir. 1994) (explaining that the “determination of whether there is adequate protection is made on a case by case basis”).

58. Here, the DIP Notes Secured Parties, the DIP ABL Secured Parties and the Prepetition Secured Parties consent to the Debtors’ use of the Cash Collateral, subject to the terms and limitations set forth in the Interim Order. Further, as set forth above, the proposed adequate protection is appropriate, fair, and customary for DIP financings of this type.

IV. The Scope of the Carve-Out is Appropriate

59. The Interim Order subjects the security interests and administrative expense claims of the DIP Noteholders and the DIP ABL Lender to the Carve-Out. Such Carve-Outs for professional fees have been found to be reasonable and necessary to ensure that a debtor’s estate and any statutory committee appointed can reimburse their professionals in certain circumstances following an event of default under the terms of the debtor’s post-petition financing. *See Ames Dep’t Stores*, 115 B.R. at 40. Neither the Interim Order nor the DIP Facilities directly or indirectly deprive the Debtors’ estates or other parties in interest of possible rights and powers by restricting

the services for which professionals may be paid in these cases. *See id.* at 38 (observing that courts insist on carve-outs for professionals representing parties in interest because “[a]bsent such protection, the collective rights and expectations of all parties-in-interest are sorely prejudiced”). Additionally, the Carve-Out protects against administrative insolvency during the course of the chapter 11 cases by ensuring that assets remain for the payment of the U.S. Trustee’s fees and professional fees of the Debtors and any statutory committee notwithstanding the grant of priming liens, superpriority claims, and adequate protection liens and claims.

V. The Debtors Should Be Authorized to Pay the Fees and Premiums Required by the DIP Notes Secured Parties Under the DIP Notes Documents and Required by the DIP ABL Secured Parties under the DIP ABL Agreement

60. In consideration for their commitment to provide the DIP Notes Facility, the Debtors have agreed, subject to Court approval, to pay a commitment premium to each DIP Noteholder party to the DIP Notes Purchase Agreement of 5.0% of their total commitments. In addition, in consideration for its commitment to provide the DIP ABL Facility, the Debtors have agreed, subject to Court approval, to pay a commitment premium to the DIP ABL Lender of \$200,000. In light of the substantial amount of new money capital that the DIP Noteholders and the DIP ABL Lender have committed to provide to the Debtors’ estates, the Debtors, in consultation with their advisors, believe that the consideration being provided to the DIP Noteholders and DIP ABL Lender, taken as a whole, in exchange for providing such commitments and accommodations, is reasonable under the circumstances and necessary to obtain the DIP Facilities. Accordingly, the Court should authorize the Debtors to pay the fees and premiums provided under the DIP Notes Documents, DIP ABL Agreement and DIP Orders in connection with entering into the DIP Facilities.

VI. The Automatic Stay Should Be Modified on a Limited Basis

61. The Interim Order contemplates modification of the automatic stay to (a) permit the Debtors and their affiliates, the DIP Notes Secured Parties, the DIP ABL Secured Parties and the Prepetition Secured Parties to implement and effectuate the terms and provisions of the Interim Order, the DIP Notes Documents and the DIP ABL Agreement and (b) permit the DIP Notes Secured Parties and the DIP ABL Secured Parties to exercise rights and remedies under certain circumstances. The Debtors believe that these provisions were required for the Debtors' to obtain the DIP Facilities and use Cash Collateral as provided in the Interim Order. Notably, the exercise of remedies is subject to five (5) business days' notice to allow the Debtors to cure or seek other relief. Moreover, following the delivery of such notice, the DIP Notes Trustee or the DIP ABL Agent may file a Stay Relief Motion seeking emergency relief from the automatic stay and, until such time as the Stay Relief Motion has been adjudicated by the Court, the Debtors may use the proceeds of the DIP Facilities (to the extent drawn prior to the occurrence of Event of Default or a DIP ABL Termination Event, as applicable) or Cash Collateral to fund the Carve-Out, meet payroll obligations, and to pay necessary expenses to avoid immediate and irreparable harm to the Debtors' estates set forth in the Approved Budget in accordance with the DIP Notes Documents, DIP ABL Agreement and the other Prepetition ABL Loan Documents, as applicable.

62. In the Debtors' business judgment, the stay modifications are reasonable and fair under the circumstances of these chapter 11 cases.

VII. Failure to Obtain Immediate Interim Access to the DIP Facilities and Cash Collateral Would Cause Immediate and Irreparable Harm

63. Bankruptcy Rules 4001(b) and 4001(c) provide that a final hearing on a motion to obtain credit pursuant to section 364 of the Bankruptcy Code or to use cash collateral pursuant to section 363 of the Bankruptcy Code may not be commenced earlier than 14 days after the service

of such motion. Upon request, however, the Court may conduct a preliminary, expedited hearing on the motion and authorize the obtaining of credit and use of cash collateral to the extent necessary to avoid immediate and irreparable harm to a debtor's estate. *See* Bankruptcy Rules 4001(b)(2) and 4001(c)(2) & Complex Case Procedures ¶ 5. Furthermore, section 363(c)(3) of the Bankruptcy Code authorizes the Court to conduct a preliminary hearing and to authorize the use of cash collateral "if there is a reasonable likelihood that the [debtor] will prevail at the final hearing under [section 363(e) of the Bankruptcy Code]." 11 U.S.C. § 363(c)(3).

64. As set forth in the DIP Declaration, the Debtors and their stakeholders would be immediately and irreparably harmed if they do not obtain approval of the DIP Facilities and access to Cash Collateral because the value of their estates would be dramatically diminished. *See* DIP Decl. ¶ 31-32. Furthermore, the Debtors require access to additional liquidity provided under the DIP Facilities to stabilize their operations, meet working capital and business operating needs, fund the administration of these chapter 11 cases and a going-concern sale process, and implement the relief requested in the Debtors' other "first day" motions. *See Id.* ¶ 9-10, 31.

65. Accordingly, pursuant to section 363(c)(3) of the Bankruptcy Code, Bankruptcy Rule 4001(b), and paragraph 5 of the Complex Case Procedures, the Debtors request that the Court conduct an expedited hearing on this DIP Motion, and enter the Interim Order authorizing the Debtors to obtain credit under the DIP Facilities, including the use Cash Collateral, all on an interim basis, pending approval on a final basis after the Final Hearing (if necessary).

Emergency Consideration

66. Pursuant to Bankruptcy Rule 6003, which empowers a court to grant relief within the first 21 days after the commencement of a chapter 11 case "to the extent that relief is necessary to avoid immediate and irreparable harm," and Bankruptcy Local Rule 9013-1(i), the Debtors respectfully request emergency consideration of this motion. An immediate and orderly transition

into chapter 11 is critical to the viability of the Debtors' operations. Failure to obtain the requested relief during the first 21 days of these chapter 11 cases would imperil the Debtors' restructuring. The Debtors have satisfied the "immediate and irreparable harm" standard of Bankruptcy Rule 6003 and, therefore, respectfully request that the Court approve the relief requested in this motion on an emergency basis.

Waiver of Bankruptcy Rules 6004(a) and 6004(h)

67. The Debtors request that the Court enter an order providing that notice of the relief requested herein satisfies Bankruptcy Rule 6004(a) and that the Debtors have established cause to exclude such relief from the 14-day stay period under Bankruptcy Rule 6004(h).

Reservation of Rights

68. Nothing contained herein is intended to be or should be construed as: (a) an admission as to the amount of, basis for, or validity of any claim against a Debtor entity under the Bankruptcy Code or other applicable non-bankruptcy law; (b) a waiver of the Debtors' or any other party in interest's right to dispute any claim on any grounds; (c) a promise or requirement to pay any claim; (d) an implication or admission that any particular claim is of a type specified or defined in this motion or any order granting the relief requested by this motion or a finding that any particular claim is an administrative expense claim or other priority claim; (e) a request or authorization to assume, adopt, or reject any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (f) an admission as to the validity, priority, enforceability, or perfection of any lien on, security interest in, or other encumbrance on property of the Debtors' estates; (g) a waiver or limitation of the Debtors', or any other party in interest's, rights under the Bankruptcy Code or any other applicable law; or (h) a concession by the Debtors that any liens (contractual, common law, statutory, or otherwise) that may be satisfied pursuant to the relief requested in this motion are valid, and the rights of all parties in interest are expressly reserved to contest the extent,

validity, or perfection or seek avoidance of all such liens. If the Court grants the relief sought herein, any payment made pursuant to the Court's order is not intended and should not be construed as an admission as to the validity of any particular claim or a waiver of the Debtors' or any other party in interest's rights to subsequently dispute such claim.

Notice

69. The Debtors will provide notice of this motion to the following parties or their respective counsel: (a) the Office of the United States Trustee for the Southern District of Texas; (b) the holders of the 30 largest unsecured claims against the Debtors (on a consolidated basis); (c) counsel to the Prepetition ABL Agent and the DIP ABL Agent; (d) counsel to the Ad Hoc Group; (e) counsel to the Prepetition 1L Notes Trustee; (f) counsel to the Prepetition 2L Notes Trustee; (g) counsel to the PC Noteholder Group; (h) counsel to the DIP Notes Trustee; (i) counsel to Party City; (j) the United States Attorney's Office for the Southern District of Texas; (k) the Internal Revenue Service; (l) the United States Securities and Exchange Commission; (m) the state attorneys general for states in which the Debtors conduct business; (n) other regulatory agencies having a regulatory or statutory interest in these cases; (o) counsel to Barings, LLC, Arnold & Porter Kaye Scholer LLP, 70 West Madison Street Suite 4200, Chicago, IL 60602-4231, Attn: Tyler Nurnberg (Tyler.Nurnberg@arnoldporter.com) and Alex Hevia (alexander.hevia@arnoldporter.com); and (p) any party that has requested notice pursuant to Bankruptcy Rule 2002. The Debtors submit that, in light of the nature of the relief requested, no other or further notice need be given.

[Remainder of page intentionally left blank]

WHEREFORE, the Debtors respectfully request that the Court enter an order granting the relief requested herein and such other relief as the Court deems appropriate under the circumstances.

November 8, 2023

Respectfully submitted,

By: /s/ Tom A. Howley

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*Proposed Counsel to the Debtors and the Debtors
in Possession*

Certificate of Accuracy

I certify that the facts and circumstances described in the above pleading giving rise to the emergency request for relief are true and correct to the best of my knowledge, information, and belief. This statement is made pursuant to Bankruptcy Local Rule 9013-1(i).

/s/ Tom A. Howley

Tom A. Howley

Certificate of Service

I certify that on November 8, 2023, I caused a copy of the foregoing document to be served by the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of Texas.

/s/ Tom A. Howley

Tom A. Howley

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

)	
In re:	)	Chapter 11
)	
ANAGRAM HOLDINGS, LLC, <i>et al.</i> , ¹	)	Case No. 23-90901 (MI)
)	
Debtors.	)	(Joint Administration Requested)
	)	(Emergency Hearing Requested)

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

Upon the motion (the “DIP Motion”)² of Anagram Holdings, LLC and each of its above-captioned affiliates (collectively, the “Debtors”), pursuant to sections 105, 361, 362, 363(b), 363(c)(2), 363(m), 364(c)(1), 364(c)(2), 364(c)(3), 364(d)(1), 364(e), 503, 506(c) and 507 of title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq.* (as amended, the “Bankruptcy Code”), rules 2002, 4001, 6003, 6004 and 9014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), rules 2002-1, 4001-1(b), 4002-1(i), and 9013-1 of the Bankruptcy Local Rules of the United States Bankruptcy Court for the Southern District of Texas (the “Local Rules”), and the Procedures for Complex Chapter 11 Bankruptcy Cases (the “Complex Case Rules” and,

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: Anagram Holdings, LLC (8535); Anagram International, Inc. (2523) and Anagram International Holdings, Inc. (5837). The location of the Debtors’ service address for purposes of these chapter 11 cases is: 7700 Anagram Drive, Eden Prairie, MN 55344. For the avoidance of doubt, the Debtors’ chapter 11 cases are not proposed to be consolidated with Party City Holdco Inc. and its affiliate debtors (collectively, “Party City”) which emerged from chapter 11 cases in this Court on October 12, 2023. *See In re Party City Holdco Inc., et al.*, Case No. 23-90005 (DRJ) (Bankr. S.D. Tex). Any reference herein to the Debtors does not include the debtor-entities that were administered in the Party City chapter 11 cases.

² Capitalized terms used but not defined herein are given the meanings ascribed to such terms in the DIP Motion or DIP Notes Indenture (as defined herein).

together with the Local Rules, the “Bankruptcy Local Rules”), seeking entry of this interim order (this “Interim Order”) and the Final Order (as defined herein and, together with this Interim Order, the “DIP Orders”) among other things:

- authorizing Anagram Holdings, LLC, as co-issuer, and Anagram International, Inc., as co-issuer (collectively, the “DIP Issuers”) to obtain postpetition financing pursuant to a senior secured, superpriority and priming debtor-in-possession note purchase agreement, consisting of new money notes in an aggregate principal amount of \$22 million (the commitments in respect thereof, the “DIP Notes Commitment” and, such notes, the “DIP Notes”) from the DIP Noteholders (as defined herein), of which \$10 million will be available immediately upon entry of this Interim Order, and the remainder will be available subject to and upon the date of entry of the Final Order, subject to the terms and conditions set forth in the DIP Notes Purchase Agreement (as defined below) and that certain Indenture attached hereto in substantially final form as **Exhibit 2** (as amended, restated, amended and restated, supplemented, or otherwise modified from time to time, the “DIP Notes Indenture” and the facility issued thereunder, the “DIP Notes Facility”) by and among the DIP Issuers, the DIP Guarantor (as defined below), GLAS Trust Company LLC, as trustee and collateral agent (in such capacities, together with their successors and permitted assigns, the “DIP Notes Trustee” and, together with the DIP Noteholders, the “DIP Notes Secured Parties”);
- authorizing the DIP Issuers to incur, and the other Debtor to guarantee (such Debtor, the “DIP Guarantor” and, together with the DIP Issuers, the “DIP Obligors”) the DIP Notes and all extensions of credit, financial accommodations, reimbursement obligations, fees and premiums (including, without limitation, commitment fees or premiums and trustee fees), costs, expenses and other liabilities and obligations (including indemnities and similar obligations, whether contingent or absolute) due or payable under the DIP Notes Documents (as defined below) (collectively, the “DIP Notes Obligations”), and to perform such other and further acts as may be necessary, desirable or appropriate in connection therewith;
- authorizing the DIP Obligors to execute, deliver and perform under the DIP Notes Indenture, the DIP Notes Purchase Agreement attached hereto in substantially final form as **Exhibit 1** (as may be amended, restated, supplemented, waived, or otherwise modified from time to time, the “DIP Notes Purchase Agreement”) by and among the DIP Issuers, the DIP Guarantor, and the financial institutions or other entities from time to time party thereto as “Purchasers” (the “DIP Noteholders”), and all other documents and instruments related to the DIP Notes Purchase Agreement or the DIP Notes Indenture or that may be reasonably requested by the DIP Notes Secured Parties in connection with the DIP Notes Facility (in each case, as amended, restated, supplemented, waived or otherwise modified from time to time in accordance with the terms thereof and hereof, together with the DIP Notes Indenture and DIP Notes Purchase Agreement, the “DIP Notes Documents”);

- authorizing the DIP Issuers, as co-borrowers, to obtain postpetition financing pursuant to the DIP ABL Agreement (as defined below) from the DIP ABL Lender (as defined below), including, without limitation, through the gradual roll-up of up to all outstanding amounts under the Prepetition ABL Loan Documents (defined below) (the “DIP ABL Facility”);
- authorizing the DIP Guarantor to guarantee the DIP ABL Facility (as defined below) and all extensions of credit, financial accommodations, reimbursement obligations, fees and premiums (including, without limitation, commitment fees or premiums and agent fees), costs, expenses and other liabilities, obligations (including indemnities and similar obligations, whether contingent or absolute) and other DIP ABL Obligations (as defined below) due or payable under the DIP ABL Agreement and the other Prepetition ABL Loan Documents, and to perform such other and further acts as may be necessary, desirable or appropriate in connection therewith;
- authorizing the DIP Obligors to execute, deliver and perform under the DIP ABL Agreement and the other applicable documents and instruments related to the DIP ABL Agreement (including to continue to perform under Prepetition ABL Loan Documents (as defined below) as modified and incorporated herein) or that may be reasonably requested by the DIP ABL Secured Parties in connection with the DIP ABL Facility;
- in connection with, and as a necessary inducement for, the extension of the DIP ABL Facility by the DIP ABL Secured Parties (as defined below), authorizing the Roll Up (as defined below) of all of the outstanding Prepetition ABL Obligations into the DIP ABL Facility, upon the entry of this Interim Order;
- subject to the Carve-Out (as defined below), and otherwise solely to the extent set forth herein, granting to (x) the DIP Notes Trustee, for the benefit of the DIP Notes Secured Parties, in respect of all DIP Notes Obligations of the DIP Obligors and (y) the Prepetition ABL Agent (as defined below) in its capacity as the administrative agent and collateral agent under the DIP ABL Facility (in such capacity, together with its successors and assigns, the “DIP ABL Agent”; and together with the Prepetition ABL Lender (as defined herein, and in its capacity as a lender under the DIP ABL Facility, together with its successors and assigns, the “DIP ABL Lender”), together with the Issuing Banks (as defined in the Prepetition ABL Credit Agreement), any agent, lender, or any affiliate of the foregoing that provides Cash Management Services, including any Bank Product Provider (as such terms are defined in the Prepetition ABL Credit Agreement), and any parties to any Hedge Agreement, including any Hedge Provider (as such terms are defined in the Prepetition ABL Credit Agreement), collectively, together with their respective successors and assigns, the “DIP ABL Secured Parties”), for the benefit of itself and the other DIP ABL Secured Parties, in respect of all of the DIP ABL Obligations of the DIP Obligors, allowed superpriority administrative expense claims pursuant to section 364(c)(1) of the Bankruptcy Code;
- granting to (x) the DIP Notes Trustee, for the benefit of the DIP Notes Secured Parties, on the DIP Collateral (as defined below), and (y) the DIP ABL Agent, for the benefit of itself and the other DIP ABL Secured Parties, on the DIP Collateral, valid,

enforceable, non-avoidable and automatically perfected security interests and liens pursuant to sections 364(c)(2), 364(c)(3), and 364(d) of the Bankruptcy Code, which security interests and liens shall be subject to the Carve-Out and the relative rankings and priorities set forth in this Interim Order, and as further set forth on **Exhibit 3** attached hereto;

- authorizing the DIP Notes Trustee, acting at the direction of the requisite DIP Noteholders under the DIP Notes Documents, and the DIP ABL Agent, acting at the direction of the Required Lenders (as defined in the DIP ABL Agreement), to take all commercially reasonable actions to implement and effectuate the terms of this Interim Order;
- waiving (a) the Debtors' right to surcharge the Prepetition Collateral (as defined below) and the DIP Collateral (the Prepetition Collateral and the DIP Collateral, collectively, the "Collateral") pursuant to section 506(c) of the Bankruptcy Code and (b) any "equities of the case" exception under section 552(b) of the Bankruptcy Code; *provided* that the foregoing waiver shall be without prejudice to any provisions of the Final Order with respect to costs or expenses incurred following the entry of such Final Order;
- waiving the equitable doctrine of "marshaling" and other similar doctrines (a) with respect to the DIP Collateral for the benefit of any party other than the DIP Notes Secured Parties and the DIP ABL Secured Parties and (b) with respect to the Prepetition Collateral for the benefit of any party other than the Prepetition Secured Parties (as defined below); *provided* that the foregoing waiver shall be without prejudice to any provisions of the Final Order;
- authorizing the Debtors to use proceeds of the DIP Notes Facility, the DIP ABL Facility, and Cash Collateral (as defined below) solely in accordance with the DIP Orders, the DIP Notes Documents, the DIP ABL Agreement, and the Approved Budget;
- authorizing the Debtors to pay the DIP Notes Obligations and the DIP ABL Obligations as they become due and payable in accordance with the DIP Notes Documents and the DIP ABL Agreement, respectively;
- subject to the restrictions set forth in the DIP Notes Documents, the DIP ABL Agreement, the Approved Budget, and the DIP Orders, authorizing the Debtors to use Prepetition Collateral (as defined below) and provide automatically perfected security interests and liens, superpriority claims and other adequate protection to the Prepetition Secured Parties solely to the extent of any diminution in value of their respective interests in the applicable Prepetition Collateral (including Cash Collateral), for any reason provided for in the Bankruptcy Code (collectively, the "Diminution in Value"), which liens shall have the relative priorities set forth in this Interim Order, and as further set forth on **Exhibit 3** attached hereto;
- vacating and modifying the automatic stay to the extent necessary to permit the Debtors, the DIP Notes Secured Parties, the DIP ABL Secured Parties, and the

Prepetition Secured Parties to implement and effectuate the terms and provisions of the DIP Orders, the DIP Notes Documents, and the DIP ABL Agreement;

- waiving any applicable stay (including under Bankruptcy Rule 6004) and providing for immediate effectiveness of this Interim Order and, upon entry, the Final Order; and
- scheduling a final hearing (the “Final Hearing”) to consider final approval of the DIP Notes Facility, the DIP ABL Facility, and use of Cash Collateral pursuant to the terms of a proposed order in substantially the form of this Interim Order and otherwise as agreed among the Debtors, the DIP Notes Secured Parties, the DIP ABL Secured Parties, the DIP Notes Trustee, and the DIP ABL Agent (the “Final Order”) to be posted to the docket prior to the Final Hearing.

The Court having considered the interim relief requested in the DIP Motion, the exhibits attached thereto, the *Declaration of Ajay Bijoor in Support of Debtors’ Emergency Motion for Entry of Interim and Final Orders (I) Authorizing Debtors to (A) Obtain Postpetition Financing; (B) Use Cash Collateral; and (C) Grant Liens and Superpriority Administrative Expense Claims; (II) Granting Adequate Protection to Certain Prepetition Secured Parties, (III) Modifying the Automatic Stay, (IV) Scheduling a Final Hearing, and (V) Granting Related Relief* (the “Bijoor Declaration”), and the *Declaration of Adrian Frankum in Support of Debtors’ Chapter 11 Petitions and First Day Motions* (the “First Day Declaration”), the available DIP Notes Documents and the DIP ABL Agreement (as defined below), and the evidence submitted and arguments made at the interim hearing held on November 9, 2023 (the “Interim Hearing”); and due and sufficient notice of the Interim Hearing having been given in accordance with Bankruptcy Rules 2002, 4001(b), (c) and (d), and all applicable Bankruptcy Local Rules; and the Interim Hearing having been held and concluded; and all objections, if any, to the interim relief requested in the DIP Motion having been withdrawn, resolved or overruled by the Court; and it appearing that approval of the interim relief requested in the DIP Motion is necessary to avoid immediate and irreparable harm to the Debtors and their estates pending the Final Hearing, otherwise is fair and reasonable, in the best interests of the Debtors and their estates, and essential for the continued operation of the Debtors’ businesses

and the preservation of the value of the Debtors' assets; and it appearing that the Debtors' entry into the DIP Notes Documents and the DIP ABL Agreement is a sound and prudent exercise of the Debtors' business judgment; and after due deliberation and consideration, and good and sufficient cause appearing therefor.

BASED UPON THE RECORD ESTABLISHED AT THE INTERIM HEARING, THE COURT MAKES THE FOLLOWING FINDINGS OF FACT AND CONCLUSIONS OF LAW:³

A. *Petition Date.* On November 8, 2023 (the "Petition Date"), each of the Debtors filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Southern District of Texas, Houston Division (the "Court").

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

C. *Jurisdiction and Venue.* The Court has core jurisdiction over these chapter 11 cases, the DIP Motion, and the parties and property affected hereby pursuant to 28 U.S.C. §§ 157(a)–(b) and the *Amended Standing Order of Reference from the United States District Court for the Southern District of Texas*, dated May 24, 2012. Consideration of the DIP Motion constitutes a core proceeding pursuant to 28 U.S.C. § 157(b)(2). The Court may enter a final order approving the relief sought in the DIP Motion consistent with Article III of the United States Constitution. Venue for these chapter 11 cases and proceedings on the DIP Motion is proper before the Court pursuant to 28 U.S.C. § 1408. The predicates for the relief sought herein are sections

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

105, 361, 362, 363(b), 363(c), 363(e), 363(m), 364(c), 364(d)(1), 364(e), 503 and 507 of the Bankruptcy Code, Bankruptcy Rules 2002, 4001, 6003, 6004 and 9014, and Bankruptcy Local Rules 2002-1, 4001-1(b), 4002-1(i), and 9013-1.

D. *Committee Formation.* As of the date hereof, the United States Trustee for the Southern District of Texas (the “U.S. Trustee”) has not appointed an official committee of unsecured creditors in these chapter 11 cases (a “Creditors’ Committee”).

E. *Notice.* The Interim Hearing was held pursuant to Bankruptcy Rule 4001(b)(2) and (c)(2). Proper, timely, adequate and sufficient notice of the DIP Motion and the Interim Hearing has been provided in accordance with the Bankruptcy Code, Bankruptcy Rules and Bankruptcy Local Rules, and no other or further notice was required under the circumstances. The interim relief granted herein is necessary to avoid immediate and irreparable harm to the Debtors and their estates pending the Final Hearing.

F. *Cash Collateral.* As used herein, the term “Cash Collateral” shall mean all of the Debtors’ cash, wherever located and held, including cash in deposit accounts, that constitutes or will constitute “cash collateral” of any of the Prepetition Secured Parties, DIP Notes Secured Parties, or DIP ABL Secured Parties within the meaning of section 363(a) of the Bankruptcy Code.

G. *Debtors’ Stipulations.* Subject to the provisions and limitations contained in paragraph 21 hereof, and after consultation with their attorneys and financial advisors, the Debtors hereby admit, stipulate and agree that:

(i) *Prepetition 1L Notes.* Pursuant to (i) that certain Indenture for 15.00% PIK/Cash Senior Secured First Lien Notes due 2025 (the “Prepetition 1L Notes”), dated as of July 30, 2020 (as amended, supplemented, restated or otherwise modified prior to the Petition Date, the “Prepetition 1L Notes Indenture” and, collectively with the Prepetition 1L Notes Security

Agreement (as defined below) and the other “Debt Documents” (as defined in the Prepetition 1L Notes Indenture) and any other agreements and documents executed or delivered in connection therewith, each as may be amended, restated, amended and restated, supplemented, waived, or otherwise modified prior to the Petition Date, the “Prepetition 1L Notes Documents”) by and among (a) Anagram Holdings, LLC (“Holdings”) and Anagram International, Inc. (together with Holdings, the “Prepetition Issuers”), as issuers, (b) Anagram International Holdings, Inc., as guarantor (the “Prepetition Guarantor” and, together with the Prepetition Issuers, the “Prepetition Obligors”), and (c) Computershare Trust Company, National Association, as successor to Ankura Trust Company, LLC, as trustee and collateral trustee (together with its successors and permitted assigns, the “Prepetition 1L Trustee”), and (ii) that certain First Lien Pledge and Security Agreement, dated as of July 30, 2020, by and among the Prepetition Issuers, the Prepetition Guarantor, and the Prepetition 1L Trustee (as amended, supplemented, restated or otherwise modified prior to the Petition Date, the “Prepetition 1L Notes Security Agreement”), the Prepetition Issuers issued, and the Prepetition Guarantor guaranteed, the Prepetition 1L Notes to certain noteholders (the “Prepetition 1L Noteholders” and, together with the Prepetition 1L Trustee, the “Prepetition 1L Secured Parties”) (the Prepetition 1L Notes and the guarantees thereof, together with all accrued but unpaid interest, fees, expenses and disbursements (including any attorneys’ fees, accountants’ fees, appraisers’ fees, auditors’ fees, consultants’ fees, financial advisors’, and other professionals’ fees and expenses), costs, charges, indemnities, premiums, reimbursement obligations, guarantee obligations, other contingent obligations, and other charges of whatever nature, whether or not contingent, whenever arising, due, or owing in accordance with the terms of the Prepetition 1L Notes Indenture and Prepetition 1L Notes Documents, the “Prepetition 1L Obligations”);

(ii) *Prepetition 2L Notes*. Pursuant to that (i) certain Indenture for 10.00% PIK/Cash Senior Secured Second Lien Notes due 2026 (the “Prepetition 2L Notes”), dated as of July 30, 2020 (as amended, supplemented, restated or otherwise modified prior to the Petition Date, the “Prepetition 2L Notes Indenture” and, collectively with the Prepetition 2L Notes Security Agreement (as defined below) and the other “Debt Documents” (as defined in the Prepetition 2L Notes Indenture) and any other agreements and documents executed or delivered in connection therewith, each as may be amended, restated, amended and restated, supplemented, waived, or otherwise modified prior to the Petition Date, the “Prepetition 2L Notes Documents”) by and among (a) the Prepetition Issuers, as issuers, (b) the Prepetition Guarantor, as guarantor, and (c) Wilmington Savings Fund Society, FSB, as successor to Ankura Trust Company, LLC, as trustee, collateral trustee securities custodian, registrar, and paying agent (together with its successors and permitted assigns, the “Prepetition 2L Trustee”), and (ii) that certain Second Lien Pledge and Security Agreement, dated as of July 30, 2020, by and among the Prepetition Issuers, the Prepetition Guarantor, and the Prepetition 2L Trustee (as amended, supplemented, restated or otherwise modified prior to the Petition Date, the “Prepetition 2L Notes Security Agreement”), the Prepetition Issuers issued, and the Prepetition Guarantor guaranteed, the Prepetition 2L Notes to certain noteholders (the “Prepetition 2L Noteholders” and, together with the Prepetition 2L Trustee, the “Prepetition 2L Secured Parties”) (the Prepetition 2L Notes and the guarantees thereof, together with all accrued but unpaid interest, fees, expenses and disbursements (including any attorneys’ fees, accountants’ fees, appraisers’ fees, auditors’ fees, consultants’ fees, financial advisors’, and other professionals’ fees and expenses), costs, charges, indemnities, premiums, reimbursement obligations, guarantee obligations, other contingent obligations, and other charges of whatever nature, whether or not contingent, whenever arising, due, or owing in accordance with

the terms of the Prepetition 2L Notes Indenture and Prepetition 2L Notes Documents, the “Prepetition 2L Obligations”, and together with the Prepetition 1L Obligations, the “Prepetition Notes Obligations”);

(iii) *Notes Intercreditor Agreement.* Pursuant to (and to the extent set forth in) that certain First/Second Lien Intercreditor Agreement, dated as of July 30, 2020 (as amended, supplemented, restated or otherwise modified prior to the Petition Date, the “Prepetition Notes Intercreditor Agreement”), by and among the Prepetition 1L Trustee and Prepetition 2L Trustee, the parties thereto agreed, among other things, to: (a) consent to, or not oppose, certain actions taken, or rights asserted, by the Prepetition 1L Secured Parties or Prepetition 2L Secured Parties, as applicable, and (b) refrain from taking certain actions with respect to the Collateral (as defined therein);

(iv) *Prepetition ABL Facility.* Pursuant to (x) that certain Credit Agreement dated as of May 7, 2021 (as amended, supplemented, restated or otherwise modified from time to time prior to the Petition Date, the “Prepetition ABL Credit Agreement”; and, collectively with the Prepetition ABL Guaranty and Security Agreement (as defined below) and the other “Loan Documents” (as defined in the Prepetition ABL Credit Agreement) and any other agreements, instruments, and documents executed or delivered in connection therewith from time to time, including, without limitation, all Bank Product Agreements, Hedge Agreements, and Letters of Credit (as such terms are defined in the Prepetition ABL Credit Agreement), each as may be amended, restated, amended and restated, supplemented, waived or otherwise modified from time to time prior to the Petition Date, the “Prepetition ABL Loan Documents”; and the credit facility evidenced thereby, collectively, the “Prepetition ABL Facility”), by and among (a) the Prepetition Issuers, as borrowers, (b) Wells Fargo Bank, National Association, as agent (in such capacity,

together with its successors and assigns, the “Prepetition ABL Agent”; and, together with the Prepetition 1L Trustee and Prepetition 2L Trustee, the “Prepetition Representatives”), and (c) the lender from time to time party thereto (together with its successors and assigns, the “Prepetition ABL Lender”; (i) the Prepetition ABL Lender, together with the Prepetition ABL Agent and all other holders of Prepetition ABL Obligations (as defined below) (including, without limitation, all Issuing Banks, Bank Product Providers, and Hedge Providers (as such terms are defined in the Prepetition ABL Credit Agreement)), together with their respective successors and assigns, collectively, the “Prepetition ABL Secured Parties”; and (ii) the Prepetition ABL Secured Parties, together with the Prepetition 1L Secured Parties and the Prepetition 2L Secured Parties, collectively, the “Prepetition Secured Parties”), and (y) that certain Guaranty and Security Agreement, dated as of May 7, 2021 (as amended, supplemented, restated, or otherwise modified from time to time prior to the Petition Date, the “Prepetition ABL Guaranty and Security Agreement”), by and among (a) the Prepetition Issuers, (b) the Prepetition Guarantor, as guarantor and (c) the Prepetition ABL Agent, the Prepetition Issuers and the Prepetition Guarantor, as guarantor, incurred “Obligations” (as defined in the Prepetition ABL Credit Agreement, and including, without limitation, all Letter of Credit obligations, Bank Product Obligations, Hedge Obligations, and Swap Obligations (as such terms are defined in the Prepetition ABL Credit Agreement) and all Secured Obligations (as defined in the Prepetition ABL Guaranty and Security Agreement), (collectively, the “Prepetition ABL Obligations”; and, together with the Prepetition 1L Obligations and Prepetition 2L Obligations, collectively, the “Prepetition Secured Obligations”) to the Prepetition ABL Secured Parties on a joint and several basis;

(v) *ABL Intercreditor Agreement.* Pursuant to (and as and to the extent set forth in) that certain Intercreditor Agreement, dated as of May 7, 2021 (as amended, restated, amended

and restated, supplemented, waived or otherwise modified from time to time, the “Prepetition ABL Intercreditor Agreement” and, together with the Prepetition 1L Notes Documents, the Prepetition 2L Notes Documents, the Prepetition Notes Intercreditor Agreement, and the Prepetition ABL Loan Documents, the “Prepetition Debt Documents”) by and among the Prepetition Obligors, the Prepetition ABL Agent, the Prepetition 1L Trustee, and the Prepetition 2L Trustee, the parties thereto agreed, among other things: (a) that the Prepetition ABL Liens (as defined below) on the ABL Priority Collateral (as defined below) are senior to the Prepetition 1L Notes Liens and Prepetition 2L Notes Liens (as defined below) on such collateral; and (b) that the Prepetition 1L Notes Liens and Prepetition 2L Notes Liens on the Notes Priority Collateral (as defined below) are senior to the Prepetition ABL Liens on such collateral;

(vi) *Prepetition 1L Obligations.* As of the Petition Date, the Prepetition Obligors were justly and lawfully indebted and liable to the Prepetition 1L Secured Parties without defense, challenge, objection, claim, counterclaim, or offset of any kind, for the Prepetition 1L Notes in the aggregate principal amount of not less than \$125,331,399.84, plus accrued and unpaid interest (including PIK interest) thereon and any fees, expenses and disbursements (including attorneys’ fees, accountants’ fees, appraisers’ fees, auditors’ fees, consultants’ fees, financial advisors’ fees, and other professionals’ fees and expenses, in each case, that are chargeable or reimbursable under the Prepetition 1L Notes Documents), costs, charges, indemnities, premiums, reimbursement obligations, guarantee obligations, other contingent obligations, and other charges incurred in accordance with the Prepetition 1L Notes Documents;

(vii) *Prepetition 2L Obligations.* As of the Petition Date, the Prepetition Obligors were justly and lawfully indebted and liable to the Prepetition 2L Secured Parties without defense, challenge, objection, claim, counterclaim, or offset of any kind, for the Prepetition 2L

Notes in the aggregate principal amount of not less than \$108,900,584.61, plus accrued and unpaid interest (including PIK interest) thereon and any fees, expenses and disbursements (including attorneys' fees, accountants' fees, appraisers' fees, auditors' fees, consultants' fees, financial advisors' fees, and other professionals' fees and expenses, in each case, that are chargeable or reimbursable under the Prepetition 2L Notes Documents), costs, charges, indemnities, premiums, reimbursement obligations, guarantee obligations, other contingent obligations, and other charges incurred in accordance with the Prepetition 2L Notes Documents;

(viii) *Prepetition ABL Obligations.* As of the Petition Date, the Prepetition Obligors were justly and lawfully indebted and liable to the Prepetition ABL Secured Parties without defense, challenge, objection, claim, counterclaim, or offset of any kind, for not less than \$6,206,692.20 (excluding, for the avoidance of doubt, any prepayment premium to the extent not due and payable by its terms) in outstanding principal amount of Loans (as defined in the Prepetition ABL Credit Agreement) plus any accrued but unpaid interest thereon, fees, expenses (including attorneys', accountants', appraisers', and financial advisors' fees and expenses, in each case, that are chargeable or reimbursable under the Prepetition ABL Loan Documents), costs, charges, indemnities, and other Prepetition ABL Obligations incurred under the Prepetition ABL Loan Documents;

(ix) *Validity of Prepetition Secured Obligations.* The Prepetition Secured Obligations constitute legal, valid, binding, and non-avoidable obligations of the Prepetition Obligors, as applicable, enforceable in accordance with the respective terms of the relevant Prepetition Debt Documents, and no portion of the Prepetition Secured Obligations or any payment made to the Prepetition Secured Parties or applied to or paid on account of the Prepetition Secured Obligations prior to the Petition Date is subject to any contest, attack, rejection, recovery,

reduction, defense, counterclaim, offset, subordination, recharacterization, avoidance or other claim (as such term is defined in the Bankruptcy Code), cause of action (including any avoidance actions under Chapter 5 of the Bankruptcy Code), choses in action or other challenge of any nature under the Bankruptcy Code or any applicable non-bankruptcy law;

(x) *Validity, Perfection and Priority of Prepetition 1L Notes Liens.* As of the Petition Date, pursuant to the Prepetition 1L Notes Documents, the Prepetition Obligors granted to the Prepetition 1L Trustee, for the benefit of the Prepetition 1L Secured Parties, a security interest in and continuing lien (the “Prepetition 1L Notes Liens”) on substantially all of their respective assets and property, including (i) a valid, binding, properly perfected, enforceable, non-avoidable first priority security interest in and continuing lien on the Notes Priority Lien Collateral (as defined in the Prepetition ABL Intercreditor Agreement), which, for the avoidance of doubt, includes certain Cash Collateral, any other assets or property of a type that would otherwise constitute Notes Priority Lien Collateral but for the commencement of these chapter 11 cases and all proceeds, products, accessions, rents, and profits thereof, in each case whether then owned or existing or thereafter acquired or arising, (collectively, the “Notes Priority Collateral”), and (ii) a valid, binding, properly perfected, enforceable, non-avoidable security interest in and continuing lien on the ABL Facility Priority Lien Collateral (as defined in the Prepetition ABL Intercreditor Agreement), which, for the avoidance of doubt, includes certain Cash Collateral, any other assets or property of a type that would otherwise constitute ABL Facility Priority Lien Collateral but for the commencement of these chapter 11 cases and all proceeds, products, accessions, rents, and profits thereof, in each case, whether then owned or existing or thereafter acquired or arising (collectively, the “ABL Priority Collateral” and, together with the Notes Priority Collateral, the “Prepetition Collateral”), junior, subject and subordinate only to the liens of the Prepetition ABL

Agent on the ABL Priority Collateral and the liens permitted by the Prepetition 1L Notes Documents, solely to the extent such permitted liens are (a) valid, perfected and non-avoidable on the Petition Date, or (b) valid liens in existence on the Petition Date that are perfected subsequent to the Petition Date in accordance with section 546(b) of the Bankruptcy Code (collectively, the “Prepetition 1L Permitted Senior Liens”). For the avoidance of doubt, ABL Priority Collateral does not include proceeds of any Notes Priority Collateral or any Notes Proceeds Account (as defined in the Prepetition ABL Intercreditor Agreement) and neither the Prepetition ABL Obligations nor the obligations under the DIP ABL Facility shall be secured by the proceeds of the DIP Notes deposited in the Wells Fargo Account ending in 2759 (the “DIP Notes Account”). The Prepetition ABL Secured Parties and the DIP ABL Secured Parties hereby waive any security interest in, or right of setoff or recoupment, and agree that they will not exercise any rights or remedies or control, against the DIP Notes Account or the amounts on deposit therein;

(xi) *Validity, Perfection and Priority of Prepetition 2L Notes Liens.* As of the Petition Date, pursuant to the Prepetition 2L Notes Documents, the Prepetition Obligors granted to the Prepetition 2L Trustee, for the benefit of the Prepetition 2L Secured Parties, a security interest in and continuing lien (the “Prepetition 2L Notes Liens”) on substantially all of their respective assets and property, including (i) a valid, binding, properly perfected, enforceable, non-avoidable second priority security interest in and continuing lien on the Notes Priority Lien Collateral, and (ii) a valid, binding, properly perfected, enforceable, non-avoidable priority security interest in and continuing lien on the ABL Priority Collateral, junior, subject and subordinate only to (x) the liens of Prepetition ABL Agent and Prepetition 1L Trustee on the ABL Priority Collateral, (y) the liens of the Prepetition 1L Trustee on the Notes Priority Collateral, and (z) the liens permitted by the Prepetition 2L Notes Documents, solely to the extent such permitted

liens are (a) valid, perfected and non-avoidable on the Petition Date, or (b) valid liens in existence on the Petition Date that are perfected subsequent to the Petition Date in accordance with section 546(b) of the Bankruptcy Code (the “Prepetition 2L Permitted Senior Liens”);

(xii) *Validity, Perfection and Priority of Prepetition ABL Liens.* As of the Petition Date, pursuant to the Prepetition ABL Loan Documents, the Prepetition Obligors granted to the Prepetition ABL Agent, for the benefit of itself and the other Prepetition ABL Secured Parties, a security interest in and continuing lien (the “Prepetition ABL Liens” and, together with the Prepetition 1L Notes Liens and Prepetition 2L Notes Liens, the “Prepetition Liens”) on substantially all of their respective assets and property, including (i) a valid, binding, properly perfected, enforceable, first priority security interest in and continuing lien on the ABL Priority Collateral, and (ii) a valid, binding, properly perfected, enforceable, junior priority security interest in and continuing lien on the Notes Priority Collateral, junior, subject and subordinate only to the Prepetition 1L Notes Lien and Prepetition 2L Notes Lien on the Notes Priority Collateral and liens permitted by the Prepetition ABL Loan Documents, solely to the extent any such permitted liens are (a) valid, perfected and non-avoidable on the Petition Date, or (b) valid liens in existence on the Petition Date that are perfected subsequent to the Petition Date in accordance with section 546(b) of the Bankruptcy Code (the “Prepetition ABL Permitted Senior Liens” and, together with the Prepetition 1L Permitted Senior Liens and Prepetition 2L Permitted Senior Liens, the “Prepetition Permitted Senior Liens”);

(xiii) *Waiver of Challenge.* None of the Prepetition Liens, the Prepetition Debt Documents, or the Prepetition Secured Obligations are subject to any contest, attack, rejection, recovery, reduction, defense, counterclaim, subordination, recharacterization, avoidance or other claim (as defined in the Bankruptcy Code), cause of action (including any avoidance actions under

Chapter 5 of the Bankruptcy Code or applicable state law equivalents), chooses in action or other challenge of any nature under the Bankruptcy Code or any applicable non-bankruptcy law;

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

(xv) *No Claims or Causes of Action.* No claims or causes of action held by the Debtors or their estates exist against, or with respect to, the Prepetition Secured Parties and each of their respective Representatives (as defined below), in each case, in their capacity as such, under or relating to any agreements by and among the Debtors and any Prepetition Secured Party that is in existence as of the Petition Date; and

(xvi) *Release.* Each of the Debtors and each of their estates, on its own behalf and on behalf of its and their respective predecessors, successors, heirs, subsidiaries, assigns and Representatives (as defined below) (in each case, solely in their capacities as such) (collectively, the "Releasing Parties"), hereby absolutely, unconditionally and irrevocably releases and forever discharges and acquits (A) the Prepetition Secured Parties, and each of their respective Representatives (in each case, solely in their capacity as such), and (B) the DIP Notes Secured Parties, the DIP ABL Secured Parties, and each of their respective Representatives (in each case, solely in their capacity as such) (collectively, the "Released Parties"), from any and all liability to the Releasing Parties (and their successors and assigns) and from any and all claims, counterclaims, demands, defenses, offsets, debts, accounts, contracts, liabilities, actions and causes of action of any kind nature and description, whether matured or unmatured, known or unknown,

asserted or unasserted, foreseen or unforeseen, accrued or unaccrued, suspected or unsuspected, liquidated or unliquidated, pending or threatened, arising in law or equity, in contract or tort, in each case, of any kind or nature whatsoever that the Releasing Parties (or any of them) at any time had, now have or hereafter may have, or that their predecessors, successors or assigns at any time had, now have or hereafter may have, against any of the Released Parties for or by reason of any act, omission, matter, or cause arising at any time on or prior to the date of this Interim Order, arising out of or related to the Prepetition Debt Documents, the DIP Notes Facility, the DIP Notes Documents, the DIP ABL Facility, the DIP ABL Agreement, or the negotiation thereof and the transactions and agreements reflected thereby; *provided* that the release set forth in this paragraph shall not release (1) any claims against or liabilities of a Released Party that a court of competent jurisdiction determines has resulted from such Released Party's actual fraud or willful tortious misconduct or (2) any rights or obligations under this Interim Order or under the DIP Notes Documents or the DIP ABL Agreement.

H. *Findings Regarding the DIP Notes Facility, the DIP ABL Facility, Roll Up, and Use of Cash Collateral.*

(i) Good and sufficient cause has been shown for the entry of this Interim Order and for authorization of the DIP Obligors to obtain financing pursuant to the DIP Notes Documents and the DIP ABL Agreement.

(ii) The Debtors have demonstrated an immediate and critical need to obtain the DIP Notes Facility and the DIP ABL Facility and to use Prepetition Collateral (including Cash Collateral) in order to permit, among other things, the orderly continuation of the operation of their businesses, to maintain business relationships with vendors, suppliers and customers, to make payroll, to satisfy other working capital and operational needs and to fund administrative expenses

of these chapter 11 cases. Access to sufficient working capital and liquidity under the DIP Notes Documents and the DIP ABL Agreement, and other financial accommodations provided under the DIP Notes Documents and the DIP ABL Agreement, as well as through the use of Cash Collateral in accordance with the terms thereof, the Approved Budget (as defined below), and the terms of this Interim Order, is necessary for the avoidance of immediate irreparable harm to the Debtors' estates and for the preservation and maintenance of their going concern value.

(iii) The Debtors are unable to obtain adequate unsecured credit allowable under section 503(b)(1) of the Bankruptcy Code as an administrative expense or secured financing on more favorable terms from sources other than the DIP Noteholders under the DIP Notes Documents and the DIP ABL Secured Parties under the DIP ABL Agreement. The Debtors are also unable to obtain secured credit without granting to the DIP Notes Secured Parties the DIP Notes Liens and the DIP Superpriority Claims (each as defined below), and to the DIP ABL Secured Parties the DIP ABL Liens and the DIP Superpriority Claims (each as defined below), and incurring the Adequate Protection Obligations (as defined herein) on the terms and subject to the conditions set forth in this Interim Order and in the DIP Notes Documents and the DIP ABL Agreement.

(iv) The Debtors continue to collect cash, rents, income, offspring, products, proceeds, and profits generated by the Prepetition Collateral and acquire equipment, inventory and other personal property, all of which constitutes the Prepetition Secured Parties' Cash Collateral under section 363(a) of the Bankruptcy Code. The Debtors desire and need to use the Prepetition Secured Parties' Cash Collateral to fund ongoing operations and for other general corporate purposes, subject to the terms of this Interim Order, the DIP Notes Documents, the DIP ABL Agreement, and the Approved Budget.

(v) Upon the entry of this Interim Order, all proceeds of ABL Priority Collateral in the Debtors' possession or control on or after the Petition Date (excluding, however, any ABL Priority Collateral in the Debtors' master concentration account held at Wells Fargo Bank, National Association ("Wells Fargo") ending in 2734 (the "Master Concentration Account") as of the Petition Date, proceeds of Notes Priority Collateral and amounts in the Notes Proceeds Account and the DIP Notes Account (as defined below)) will be deposited promptly into the existing "Collection Account" as defined in and established under and to the extent required to be deposited therein under the Prepetition ABL Loan Documents (and, for the avoidance of doubt, is an account at Wells Fargo ending in 2726, the "Collection Account") and, from there, be remitted on a daily basis to Prepetition ABL Agent for application to the Prepetition ABL Obligations (the "Roll Up") until the Prepetition ABL Obligations are paid in full and, following such repayment, remitted on a daily basis to DIP ABL Agent for application to DIP ABL Obligations outstanding from time to time and any excess, on a daily basis, remitted to the Master Concentration Account. This gradual Roll-Up of the Prepetition ABL Obligations under the Prepetition ABL Facility, subject to such amounts being available for re-borrowing as DIP ABL Obligations under the DIP ABL Facility in accordance with the terms of this Interim Order, will be authorized in consideration, and as a necessary inducement, for the Prepetition ABL Secured Parties and the DIP ABL Secured Parties to consent to the use of Cash Collateral (including to fund the Carve-Out on the terms set forth herein), provide the DIP ABL Facility, and subordinate the DIP ABL Liens (as defined below) to the Carve-Out and the DIP Notes Liens, as and to the extent set forth herein and as summarized on Exhibit 3 hereto.

(vi) Based on the DIP Motion, the First Day Declaration, the Bijoor Declaration and the record and argument presented to the Court at the Interim Hearing, the terms of the DIP

Notes Facility, the terms of the DIP ABL Facility, the terms of the adequate protection granted to the Prepetition Secured Parties as provided in paragraph 16 of this Interim Order (collectively, the “Adequate Protection”), and the terms on which the Debtors may continue to use Prepetition Collateral (including Cash Collateral) pursuant to this Interim Order, the DIP Notes Documents, the DIP ABL Agreement and the Approved Budget are consistent with the Bankruptcy Code, including section 506(b) thereof, are fair and reasonable, and reflect the DIP Obligors’ exercise of prudent business judgment consistent with their fiduciary duties under the circumstances.

(vii) This Interim Order, the DIP Notes Facility, the DIP ABL Agreement, the Adequate Protection, and the use of the Prepetition Collateral (including Cash Collateral) have been negotiated in good faith and at arm’s length among the Debtors, the DIP Notes Secured Parties, the DIP ABL Secured Parties, and the Prepetition Secured Parties (each of whom acted in good faith in negotiating such documents), and all of the loans and other financial accommodations extended by the DIP Notes Secured Parties to the DIP Obligors, and by the DIP ABL Secured Parties to the Debtors, under, in respect of, or in connection with, the DIP Notes Facility and the DIP Notes Documents, and the DIP ABL Facility and the DIP ABL Agreement (in each such case, including the granting of adequate protection provided herein and the Roll Up), respectively, are, and will be deemed to have been, extended by the DIP Notes Secured Parties and DIP ABL Secured Parties, respectively, in good faith, as that term is used in section 364(e) of the Bankruptcy Code and in express reliance upon the protections offered by section 364(e) of the Bankruptcy Code, and the DIP Notes Secured Parties (and their respective successors and assigns), the DIP ABL Secured Parties (and their respective successors and assigns), the DIP Notes Facility, the DIP ABL Facility, the DIP Notes Liens, the DIP ABL Liens, the DIP Notes Obligations, the DIP ABL Obligations, the DIP Superpriority Claims, the Adequate Protection Liens (as defined below), the

Adequate Protection 507(b) Claims (as defined below), and the Adequate Protection Obligations (as defined below) shall be entitled to the full protection of section 364(e) of the Bankruptcy Code in the event that this Interim Order or any provision hereof is vacated, reversed or modified, on appeal or otherwise.

(viii) The Prepetition Secured Parties have acted in good faith regarding the DIP Notes Facility and the DIP ABL Agreement and the Debtors' continued use of the Prepetition Collateral (including Cash Collateral), including the granting of the Adequate Protection Liens (as defined below) and other Adequate Protection Obligations (as defined below), and the Prepetition Secured Parties (and their respective successors and assigns) shall be entitled to the full protection of sections 363(m) and 364(e) of the Bankruptcy Code in the event that this Interim Order or any provision hereof is vacated, reversed or modified, on appeal or otherwise.

(ix) The Prepetition Secured Parties are entitled to the Adequate Protection as and to the extent set forth herein pursuant to sections 105, 361, 362, 363 and 364 of the Bankruptcy Code. Based on the DIP Motion and on the record presented to the Court, the terms of the proposed Adequate Protection are fair and reasonable, reflect the Debtors' prudent exercise of business judgment and constitute reasonably equivalent value and fair consideration for the use of Prepetition Collateral, including Cash Collateral.

(x) To the extent their consent is required, the requisite Prepetition Secured Parties have consented or are deemed to have consented to the use of Prepetition Collateral, including Cash Collateral, and the (i) priming of the Prepetition 1L Notes Liens, Prepetition 2L Notes Liens, and Prepetition ABL Liens on the Notes Priority Collateral by the DIP Notes Liens, and (ii) priming of the Prepetition 1L Notes Liens and Prepetition 2L Notes Liens on the ABL Priority Collateral by the DIP ABL Liens, in each case on the terms set forth in this Interim Order,

the DIP Notes Documents, and the DIP ABL Agreement; *provided* that nothing in this Interim Order, the DIP Notes Documents, or the DIP ABL Agreement shall (x) be construed as the affirmative consent by any of the Prepetition Secured Parties for the use of Cash Collateral other than on the terms set forth in this Interim Order and in accordance with the DIP Notes Facility, the DIP ABL Agreement, and the Approved Budget authorized by this Interim Order, (y) be construed as a consent by any party to the terms of any other financing or any other lien encumbering Prepetition Collateral (whether senior or junior) other than as contemplated by this Interim Order, or (z) prejudice, limit or otherwise impair the rights of any Prepetition Secured Party to seek new, different or additional adequate protection or assert any other right, and the rights of any other party in interest, including the DIP Obligors, to object to such relief are hereby preserved subject to the Intercreditor Agreements (as defined herein).

(xi) The Debtors have prepared and delivered to the advisors to the DIP Notes Secured Parties and the DIP ABL Secured Parties an initial budget (the “Initial DIP Budget”), attached hereto as **Schedule 1**. The Initial DIP Budget reflects, among other things, the Debtors’ anticipated operating receipts, operating disbursements, non-operating disbursements, net operating cash flow, and liquidity for each calendar week covered thereby. The Initial DIP Budget may be modified, amended, extended, and updated from time to time in accordance with the DIP Notes Indenture. Each subsequent budget, once approved by the Required DIP Noteholders in accordance with the DIP Notes Indenture, shall modify, replace, supplement or supersede, as applicable, the Initial DIP Budget for the periods covered thereby (the Initial DIP Budget or the latest subsequently approved budget, the “Approved Budget”).⁴ The Debtors believe that the

⁴ For the avoidance of doubt, the Approved Budget shall not be deemed to limit the Debtors’ professional fees, the DIP Notes Professional Fees or the DIP ABL Professional Fees.

Initial DIP Budget is reasonable under the circumstances. In determining to extend postpetition financing under the DIP Notes Documents, the DIP ABL Agreement and this Interim Order, the DIP Notes Secured Parties and the DIP ABL Secured Parties are relying, in part, upon the DIP Obligors' agreement to comply with the Approved Budget (subject to any permitted variances under, and to the extent required by, the DIP Notes Documents).

(xii) Each of the Prepetition Secured Parties shall be entitled to all of the rights and benefits of section 552(b) of the Bankruptcy Code and the "equities of the case" exception under section 552(b) of the Bankruptcy Code shall not apply to the Prepetition Secured Parties with respect to proceeds, product, offspring, or profits of any of the Prepetition Collateral; *provided* that the foregoing shall be without prejudice to the terms of the Final Order with respect to the period from and after the entry of the Final Order.

I. *Immediate Entry.* Sufficient cause exists for immediate entry of this Interim Order pursuant to Bankruptcy Rules 4001(b)(2) and (c)(2) and Bankruptcy Local Rule 4001-1(b). Absent the relief granted in this Interim Order, the Debtors' estates will be immediately and irreparably harmed. Consummation of the DIP Notes Facility and the DIP ABL Agreement and continued use of Prepetition Collateral (including Cash Collateral), in accordance with this Interim Order, the DIP Notes Documents, and the DIP ABL Agreement, are therefore in the best interests of the Debtors' estates and consistent with the Debtors' exercise of their fiduciary duties. The DIP Motion and this Interim Order comply with the requirements of Bankruptcy Local Rule 4001-1(b).

J. *Prepetition Permitted Senior Liens; Continuation of Prepetition Liens.* Nothing herein constitutes a finding or ruling by the Court that any alleged Prepetition Permitted Senior Lien is valid, senior, enforceable, prior, perfected, or non-avoidable. Moreover, nothing herein shall prejudice the rights of any party-in-interest, including, but not limited to, the Debtors, the

DIP Notes Secured Parties, the DIP ABL Secured Parties, or the Prepetition Secured Parties to challenge the validity, priority, enforceability, seniority, avoidability, perfection, or extent of any alleged Prepetition Permitted Senior Lien. For the avoidance of doubt, the right of a seller of goods to reclaim goods under section 546(c) of the Bankruptcy Code does not constitute a Prepetition Permitted Senior Lien, and such right is expressly subject to the DIP Notes Liens (as defined herein), the DIP ABL Liens (as defined herein), the Adequate Protection Liens, and the Prepetition Liens. The Prepetition Liens on the Prepetition Collateral, and the DIP Notes Liens and the DIP ABL Liens on the DIP Collateral, are in each case valid and continuing liens and the Prepetition Collateral and the DIP Collateral are and will continue to be encumbered by such liens, respectively.

K. *Compliance with Prepetition Debt Documents.* The DIP Notes Documents, the DIP ABL Agreement, and the transactions contemplated thereunder and approved herein, as well as the agreements and ancillary documents memorializing and effectuating the DIP Notes Facility and DIP ABL Facility and subject to this Interim Order, and the relief granted under this Interim DIP Order, including but not limited to the Adequate Protection, are consistent with, and in compliance with, the Prepetition Debt Documents.

Based upon the DIP Motion, the foregoing findings and conclusions, and the overall record before the Court, and after due consideration, and good and sufficient cause appearing therefor,

IT IS HEREBY ORDERED THAT:

1. *Motion Granted.* The DIP Motion is granted on an interim basis on the terms and conditions set forth in this Interim Order. All objections to this Interim Order to the extent not withdrawn, waived, settled, or resolved are hereby overruled on the merits.

2. *Authorization of the DIP Notes Facility and the DIP Notes Documents.*

(a) The DIP Obligors are hereby authorized to execute, deliver, enter into and perform all of their obligations under the DIP Notes Documents, including the granting of the DIP Notes Liens and the DIP Superpriority Claims and perfection of the DIP Notes Liens as permitted herein and under the DIP Notes Documents, and perform such other acts as may be necessary, appropriate or desirable in connection therewith. The DIP Issuers are hereby authorized to issue up to \$22 million in DIP Notes pursuant to the DIP Notes Indenture and the DIP Notes Purchase Agreement, and the DIP Guarantor is hereby authorized to guarantee the DIP Issuer's obligations under the DIP Notes Indenture, subject to any limitations set forth in the DIP Notes Documents. The proceeds of the DIP Notes shall be used for all purposes permitted under the DIP Notes Documents and this Interim Order, subject to and in accordance with the Approved Budget (subject to any permitted variances under, and to the extent required by, the DIP Notes Documents).

(b) In furtherance of the foregoing and without further approval of the Court, each DIP Obligor is authorized and directed to perform all acts, to make, execute and deliver all instruments, certificates, agreements, charges, deeds and documents, execute or record pledge and security agreements, mortgages, financing statements and other similar documents, if any, and to pay all fees, expenses and indemnities in connection with or that may be reasonably required, necessary, or desirable in connection with for the DIP Notes Facility, including, without limitation:

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

(ii) the execution and delivery of, and performance under, one or more amendments, waivers, consents or other modifications to and under the DIP Notes Documents, in each case, in such form as the DIP Notes Secured Parties may agree (it being understood that no further approval of the Court shall be required for any such amendments, waivers, consents or

other modifications or the payment of any fees, including attorneys', accountants', appraisers' and financial advisors' fees, and other expenses, charges, costs, indemnities and other like obligations in connection therewith) that do not shorten the maturity of the DIP Notes Facility, increase the aggregate amount of the DIP Notes Facility, increase the rate of interest or fees payable thereunder, or release any DIP Notes Liens other than in accordance with the DIP Notes Documents, except as otherwise permitted under the DIP Notes Documents. Updates, modifications, and supplements to the Approved Budget shall not require any further approval of the Court;

(iii) the non-refundable payment to any of the DIP Notes Secured Parties of any fees in connection with the DIP Notes Facility (including any amendment fees, premiums, servicing fees, audit fees, liquidator fees, structuring fees, administrative agent's, collateral agent's or security trustee's fees, upfront fees, closing fees, commitment premiums, exit fees, closing date fees, prepayment fees or agency fees), and any amounts due in respect of any indemnification and expense reimbursement obligations, including, without limitation, reasonable and documented fees and expenses of professionals retained by, or on behalf of, any of the DIP Notes Secured Parties (including, without limitation, those of Milbank LLP, Houlihan Lokey Capital, Inc., and one local legal counsel for the DIP Noteholders, and King & Spalding LLP, as legal counsel for the DIP Notes Trustee, in each case, as permitted under the DIP Notes Documents (the "DIP Notes Professional Fees")), in each case, as provided in the DIP Notes Documents, without the need to file retention or fee applications; the payment of the foregoing amounts shall be irrevocable, and shall be deemed to have been approved upon entry of this Interim Order, whether any such obligations arose before or after the Petition Date, and whether or not the transactions contemplated hereby are consummated, and upon payment thereof, shall not be subject to any contest, attack, rejection, recoupment, reduction, defense, counterclaim, offset, subordination,

recharacterization, avoidance, disallowance, impairment, or other claim, cause of action or other challenge of any nature under the Bankruptcy Code or applicable non-bankruptcy law; and

(iv) the performance of all acts required under or in connection with the DIP Notes Documents, including the granting of the DIP Notes Liens and the DIP Superpriority Claims and perfection of the DIP Notes Liens as permitted herein and therein, and to perform such other and further acts as may be necessary, desirable or appropriate in connection therewith, in each case in accordance with the terms of the DIP Notes Documents.

3. *Authorization of DIP ABL Facility and Roll Up of Prepetition ABL Obligations.*

(a) The DIP Obligors are hereby authorized to perform all of their obligations under the DIP ABL Agreement (as defined below) as provided and set forth in this Interim Order, including the granting of the DIP ABL Liens (as defined below) and the DIP Superpriority Claims and perfection of the DIP ABL Liens as permitted herein and under the DIP ABL Agreement, and perform such other acts as may be necessary, appropriate or desirable in connection therewith. The DIP Obligors are hereby authorized to incur up to \$15,000,000 under, and subject to, the DIP ABL Agreement and to guarantee the obligations under the DIP ABL Agreement, in each case, as provided in the DIP ABL Agreement and subject to any limitations set forth therein. The proceeds of any loans or other financial accommodations extended from time to time under the DIP ABL Agreement shall be used in accordance with, and for the purposes permitted under, the DIP ABL Agreement and this Interim Order, subject to and in accordance with the Approved Budget (subject to any permitted variances under, and to the extent required by, the DIP ABL Agreement).

(b) In furtherance of the foregoing and without further approval of the Court, each DIP Obligor is authorized and directed to perform all acts, to make, execute and deliver all instruments, certificates, agreements, charges, deeds and documents, execute or record pledge and

security agreements, mortgages, financing statements and other similar documents, if any, and to pay all fees, expenses and indemnities in connection with or that may be reasonably required, necessary, or desirable in connection with the DIP ABL Facility, including, without limitation:

(i) the performance of the DIP ABL Agreement;

(ii) the execution and delivery of, and performance under, one or more amendments, waivers, consents or other modifications to and under the DIP ABL Agreement, in each case, in such form as the DIP ABL Secured Parties may agree (it being understood that no further approval of the Court shall be required for any such amendments, waivers, consents or other modifications or the payment of any fees, including attorneys', accountants', appraisers' and financial advisors' fees, and other expenses, charges, costs, indemnities and other like obligations in connection therewith) that do not shorten the DIP ABL Facility Maturity Date (defined below), increase the aggregate amount of the DIP ABL Facility, increase the rate of interest or fees payable thereunder, or release any DIP ABL Liens other than in accordance with the DIP ABL Agreement, except as otherwise permitted under the DIP ABL Agreement;

(iii) the non-refundable payment to any of the DIP ABL Secured Parties of any fees in connection with the DIP ABL Facility (including any amendment fees, premiums, servicing fees, audit fees, liquidator fees, structuring fees, administrative agent's, collateral agent's or security agent's fees, upfront fees, closing fees, commitment fees, exit fees, closing date fees, prepayment fees or agency fees), and any amounts due in respect of any indemnification and expense reimbursement obligations, including, without limitation, reasonable and documented fees and expenses of professionals retained by, or on behalf of, any of the DIP ABL Secured Parties (including, without limitation, those of Goldberg Kohn Ltd. and local legal counsel, in each case, as permitted under the DIP ABL Agreement (collectively, the "DIP ABL Professional Fees")), in

each case, as provided in the DIP ABL Agreement, without the need to file any retention or fee applications; the payment of the foregoing amounts shall be irrevocable, and shall be deemed to have been approved upon entry of this Interim Order, whether any such obligations arose before or after the Petition Date, and whether or not the transactions contemplated hereby are consummated, and upon payment thereof, shall not be subject to any contest, attack, rejection, recoupment, reduction, defense, counterclaim, offset, subordination, recharacterization, avoidance, disallowance, impairment, or other claim, cause of action or other challenge of any nature under the Bankruptcy Code or applicable non-bankruptcy law; and

(iv) the performance of all acts required under or in connection with the DIP ABL Agreement, including, without limitation, the granting of the DIP ABL Liens and the DIP Superpriority Claims and perfection of the DIP ABL Liens as permitted herein and therein, and to perform such other and further acts as may be necessary, desirable or appropriate in connection therewith from time to time, in each case, in accordance with the terms of the DIP ABL Agreement.

(c) Upon entry of this Interim Order all outstanding Prepetition ABL Obligations (which, for the avoidance of doubt, will include all obligations under clauses (a), (b), (i), (ii), (iii), (iv), (v), (vi), and (vii) of the definition of “Obligations” in the Prepetition ABL Credit Agreement from time to time outstanding under the Prepetition ABL Credit Agreement and the other Prepetition ABL Loan Documents, including, without limitation, all reimbursement obligations now or hereafter owing under or in connection with any issued and outstanding Letters of Credit (as defined in the Prepetition ABL Credit Agreement), all Bank Product Obligations, all Hedge Obligations, all Swap Obligations (as each such term is defined in the Prepetition ABL Credit Agreement), all obligations owing from time to time to any DIP ABL Secured Party (or any

affiliate thereof) in respect of any Cash Management Services (as defined in the Prepetition ABL Credit Agreement), including, without limitation, interest, fees, expenses, charges, and indemnities related thereto, and all other “Secured Obligations” under the Prepetition ABL Loan Documents (collectively, the “DIP ABL Obligations”), will be, subject to paragraph 21, irrevocably paid in cash pursuant to the Roll-Up; provided, that, any contingent indemnity or reimbursement obligations of the Debtors under the Prepetition ABL Loan Documents (to the extent not outstanding) and all Bank Product Obligations (including, without limitation, all corporate credit cards) will deemed to be immediately “rolled up”, assumed and converted into post-petition financing obligations of the DIP Obligors, on a cashless dollar-for-dollar basis upon entry of this Interim Order. The terms of this paragraph 3(c) are without prejudice to such relief that the Court may enter in connection with a successful and timely Challenge of the Debtors’ stipulations as to the extent, validity or priority of the Prepetition ABL Obligations or the Prepetition ABL Liens.

(d) The DIP Obligors are authorized to pay, to the extent provided for in the DIP ABL Agreement, current interest during these chapter 11 cases in accordance with paragraph 36(d) hereof, and certain enumerated fees, costs, and expenses of the DIP ABL Secured Parties as set forth in paragraph 36(d) hereof and the DIP ABL Agreement (including, without limitation, DIP ABL Professional Fees and fees, costs, and expenses related to any audit, field examination, and/or valuation of the ABL Priority Collateral from time to time, as provided for in the DIP ABL Agreement) as such amounts become due and payable, without any other or further notice or the need to obtain further approval of the Court, whether or not such fees arose before, on, or after the Petition Date.

4. *DIP Notes Obligations and DIP ABL Obligations.* (a) With respect to the DIP Notes Documents, effective immediately upon the entry of this Interim Order and the execution and

delivery of the DIP Notes Documents, and (b) with respect to the DIP ABL Agreement, effective immediately upon the entry of this Interim Order but subject to the Challenge rights set forth in paragraph 21 hereof, the DIP Notes Documents and the DIP ABL Agreement, respectively, shall constitute legal, valid, binding and non-avoidable obligations of the DIP Obligors, respectively, enforceable against each DIP Obligor and its estate in accordance with their respective terms and this Interim Order, and any successors thereto, including any trustee appointed in these chapter 11 cases, or in any case under chapter 7 of the Bankruptcy Code upon conversion of any of these chapter 11 cases, or in any other proceedings superseding or related to any of the foregoing (collectively, the “Successor Cases”). (x) With respect to the DIP Notes Documents, effective immediately upon entry of this Interim Order and the execution and delivery of the DIP Notes Documents, and (y) with respect to the DIP ABL Agreement, effective immediately upon entry of this Interim Order but subject to the Challenge rights set forth in paragraph 21 hereof, the DIP Notes Obligations and the DIP ABL Obligations, respectively, shall include all loans and any other indebtedness or obligations, contingent or absolute, which may now or from time to time be owing by any of the DIP Obligors to any of the DIP Notes Secured Parties, in such capacities, under the DIP Notes Documents or to the any of the DIP ABL Secured Parties, in such capacities, under the DIP ABL Agreement, as applicable, and under this Interim Order or secured by the DIP Notes Liens or the DIP ABL Liens, as applicable, including, without limitation, all principal, interest, costs, fees, expenses, premiums, indemnities and other amounts. The DIP Obligors are jointly and severally liable for the DIP Notes Obligations, on the one hand, and the DIP ABL Obligations, on the other hand. Except as permitted hereby and subject to the Challenge rights set forth in paragraph 21 hereof as it relates to the DIP ABL Obligations and the DIP ABL Liens, no obligation, payment, transfer, or grant of security under this Interim Order or under the DIP Notes

Documents to the DIP Notes Trustee and/or the other DIP Notes Secured Parties (including, without limitation, any DIP Notes Obligation or any DIP Notes Lien), or under this Interim Order or under the DIP ABL Agreement to the DIP ABL Agent and/or the other DIP ABL Secured Parties (including, without limitation, any DIP ABL Obligation or any DIP ABL Lien), respectively, shall be stayed, restrained, voidable, avoidable, or recoverable, under the Bankruptcy Code or under any applicable law (including, without limitation, under chapter 5 of the Bankruptcy Code (including, without limitation, sections 502(d), 544, and 547 to 550 of the Bankruptcy Code), Section 724(a) of the Bankruptcy Code, or any other provision with respect to avoidance actions under the Bankruptcy Code or otherwise under any applicable state law, including, without limitation, any state Uniform Voidable Transactions Act, Uniform Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act, or similar statute, or common law or foreign law equivalents), or subject to any defense, avoidance, reduction, setoff, recoupment, offset, recharacterization, subordination (whether equitable, contractual, or otherwise), disallowance, impairment, claim, counterclaim, cross-claim, or any other challenge under the Bankruptcy Code or any applicable law or regulation by any person or entity.

5. *Carve-Out.*

(a) Notwithstanding anything to the contrary in this Interim Order, the DIP Obligors' obligations to the DIP Notes Secured Parties, the DIP ABL Secured Parties, and the Prepetition Secured Parties, and the liens, security interests, and superpriority claims granted herein, under the DIP Notes Documents, the DIP ABL Agreement, and the Prepetition Debt Documents, including, without limitation, the DIP Notes Liens, the DIP ABL Liens, the DIP Superpriority Claims, the Prepetition Liens, the Prepetition Secured Obligations, the Adequate

Protection Liens, and Adequate Protection Obligations shall be subject in all respects and subordinate to the Carve-Out.

(b) As used herein, the “Carve-Out” means the sum of (i) all fees required to be paid to the clerk of the Court and to the U.S. Trustee under section 1930(a) of title 28 of the United States Code plus interest at the statutory rate (without regard to the notice set forth in (iv) below); (ii) fees and expenses up to \$50,000 incurred by a trustee under section 726(b) of the Bankruptcy Code (without regard to the notice set forth in (iv) below); (iii) to the extent allowed at any time, whether by interim or final compensation order or otherwise, all unpaid fees and expenses incurred relating to services rendered by persons or firms retained by the DIP Obligors (collectively, the “Debtors’ Professionals”) and any persons or firms retained by the Creditors’ Committee (the “Committee Professionals” and, together with the Debtor Professionals, the “Professional Persons”), in each case, pursuant to and in accordance with sections 327, 328, 329, 330, 331, 363, 503(b)(4) and 1103 of the Bankruptcy Code, as applicable (collectively, “Professional Fees,”) incurred or earned at any time before or on the first business day after delivery by either the DIP Notes Trustee or the DIP ABL Agent of a Carve-Out Trigger Notice (as defined below) (the “Termination Date”), and without regard to whether such fees and expenses are provided for in any Approved Budget, whether allowed by the Court prior to or after delivery of a Carve-Out Trigger Notice (including any restructuring, sale, success, or other transaction fee of any investment bankers or financial advisors that are fully earned pursuant to the terms of the applicable engagement letters or retention applications prior to the delivery of a Carve-Out Trigger Notice); and (iv) Professional Fees incurred after the first business day following delivery by the DIP Notes Trustee or the DIP ABL Agent of the Carve-Out Trigger Notice in an aggregate amount not to exceed \$1,000,000 with respect to Professional Persons (the amount set forth in this clause

(iv) being the “Post-Carve-Out Trigger Notice Cap”), to the extent allowed at any time, whether by interim order, procedural order, final order or otherwise; *provided* that to the extent that any amount of the foregoing compensation or reimbursement is denied or reduced by a final order by the Bankruptcy Court or any other court of competent jurisdiction, such amount shall no longer constitute Professional Fees. For purposes of the foregoing, “Carve-Out Trigger Notice” shall mean a written notice delivered by email (or other electronic means) by the DIP Notes Trustee or the DIP ABL Agent (or, following the indefeasible payment in cash in full of the obligations under the DIP Notes Facility or DIP ABL Obligations, the Prepetition Representatives) to the DIP Obligors, their lead restructuring counsel, the DIP ABL Agent or DIP Notes Trustee, as applicable, each of their respective lead restructuring counsel, the U.S. Trustee, and lead counsel to the Creditors’ Committee (if any), which notice may only be delivered by the DIP Notes Trustee following the occurrence and during the continuation of an Event of Default (as defined in the DIP Notes Indenture) (but subject to any applicable grace periods, waivers, or forbearances) or the DIP ABL Agent following the occurrence and during the continuation of a DIP ABL Termination Event (as defined below) (but subject to any applicable grace periods, waivers, or forbearances), stating that the Post-Carve-Out Trigger Notice Cap has been invoked.

(c) Starting with the first full calendar week following the Petition Date, not later than the fourth business day of each such week, each Professional Person shall deliver to the Debtors, the DIP Notes Trustee, and the DIP ABL Agent a statement (each such statement, a “Weekly Statement”) setting forth a good-faith estimate of the amount of unpaid fees and expenses incurred during the preceding week by such Professional Person (through Saturday of such week, the “Calculation Date”), along with a good faith estimate of the cumulative total amount of unreimbursed fees and expenses incurred through the applicable Calculation Date and a statement

of the amount of such fees and expenses that have been paid to date by the Debtors (the “Cumulative Total Unpaid Fees and Expenses”). The Debtors shall, on a weekly basis and prior to the closing of any sale of all or substantially all of the Debtors’ assets, transfer cash proceeds from cash on hand (including Cash Collateral) in an amount equal to the Cumulative Total Unpaid Fees and Expenses (including, in the event of a sale of all or substantially all of the Debtors’ assets, any restructuring, sale, success, or other transaction fee of any investment bankers or financial advisors that are or will become fully earned upon the closing of such sale pursuant to the terms of the applicable engagement letters or retention applications) included in the most recent Weekly Statement or estimate prior to a sale of all or substantially all of the Debtors’ assets timely received by the Debtors less the amount of cash already deposited in the Professional Fees Escrow Account (as defined below) or if a Weekly Statement is not provided, the total budgeted weekly fees of Professional Persons for the prior week set forth in the Approved Budget, into a segregated account not subject to the control of the DIP Notes Trustee, the DIP Noteholders, the DIP ABL Agent, any Prepetition Secured Party or any other secured or unsecured creditor (the “Professional Fees Escrow Account”). Prior to delivery of a Carve-Out Trigger Notice, the Debtors shall use proceeds of the DIP Notes Facility (if available) to fund the Professional Fees Escrow Account prior to using Cash Collateral from ABL Priority Collateral or advances under the DIP ABL Facility to fund the Professional Fees Escrow Account. No later than one (1) business day after the delivery of a Carve-Out Trigger Notice, each Professional Person shall deliver one additional statement to the Debtors, the DIP Notes Trustee, and the DIP ABL Agent setting forth a good-faith estimate of the amount of unpaid fees and expenses incurred during the period commencing on the calendar day after the most recent Calculation Date for which a Weekly Statement has already been delivered and concluding on the Termination Date, and the Debtors shall transfer such amounts to the

Professional Fees Escrow Account, first using proceeds of the DIP Notes Facility (if available) prior to using Cash Collateral from ABL Priority Collateral.

(d) The Debtors shall use funds held in the Professional Fees Escrow Account exclusively to pay Professional Fees as they become allowed and payable pursuant to the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, and any interim or final orders of the Court; *provided* that the Debtors' obligations to pay Professional Fees shall not be limited or be deemed limited to funds held in the Professional Fees Escrow Account. Funds transferred to the Professional Fees Escrow Account shall be held in trust for and exclusively available for the payment of any fees and expenses of the Professional Persons, including with respect to obligations arising out of the Carve-Out; *provided, however*, that when all Professional Fees have been paid in full, any funds remaining in the Professional Fees Escrow Account shall be paid to the Debtors, subject to paragraph 5(g) below.

(e) On the day on which a Carve-Out Trigger Notice is received by the DIP Obligors, the Carve-Out Trigger Notice shall constitute a demand to the DIP Obligors to utilize cash on hand, including Cash Collateral, to transfer to the Professional Fees Escrow Account cash in an amount equal to (i) the difference between the aggregate amount of unpaid Professional Fees and the amount of cash already funded in the Professional Fees Escrow Account as of the date of the Termination Date, and (ii) the Post-Carve-Out Trigger Notice Cap, prior to the payment of any other claims (clauses (i) and (ii), collectively, the "Carve-Out Reserves").

(f) If, following the full funding of the Carve-Out Reserves, (i) the proportion of the amount of the Carve-Out Reserves funded from the proceeds of ABL Priority Collateral relative to the amount of the Carve-Out Reserves funded from the proceeds of the DIP Notes Facility and Notes Priority Collateral exceeds the proportion of the principal amount outstanding

under the DIP ABL Facility relative to the principal amount outstanding under the DIP Notes Facility, Prepetition 1L Notes and Prepetition 2L Notes (such excess amount, the “ABL Overfunding Amount”) and (ii) the value of the remaining ABL Priority Collateral is less than the outstanding amount of DIP ABL Obligations (the “ABL Deficiency Amount”), then proceeds of the Notes Priority Collateral shall first be paid to the DIP ABL Secured Parties in an amount equal to the lesser of the ABL Overfunding Amount and the ABL Deficiency Amount prior to any such proceeds being paid to the DIP Notes Secured Parties or the Prepetition Secured Parties; *provided* that this paragraph 5(f) shall only relate to the relative rights of the DIP ABL Secured Parties, DIP Notes Secured Parties, Prepetition 1L Secured Parties and Prepetition 2L Secured Parties as to each other and shall not be deemed to be an obligation of the Debtors or an impairment or limitation on the priority of the Carve-Out and funding obligations herein.

(g) Notwithstanding anything to the contrary in the DIP Notes Documents or the DIP Orders, following delivery of a Carve-Out Trigger Notice, the DIP Notes Trustee, the DIP ABL Agent, and the Prepetition Representatives shall not sweep or foreclose on cash (including cash received as a result of the sale or other disposition of any assets, but excluding the normal remittance of Cash Collateral into the Collection Account; it being understood that such cash in the Collection Account after a Carve-out Trigger Notice shall be used to fund the Carve Out Reserves of the Debtors (even if applied to the DIP ABL Obligations in the normal course of Cash Dominion; and, in such instance, subject only to written confirmation from the Debtors to the DIP ABL Agent of the amount of such cash to be remitted to the Professional Fees Escrow Account, the DIP ABL Agent will fund the same to the Professional Fees Escrow Account) until the Carve-Out Reserves have been fully funded to the Professional Fees Escrow Account, but shall have a lien on, and security interest in, any residual interest in the Carve-Out Reserves, with any excess,

after payment in full of all Professional Fees, paid to the DIP Notes Trustee or the DIP ABL Agent, as applicable, for application in accordance with this Interim Order. Notwithstanding anything to the contrary in the DIP Orders, (i) the failure of the Professional Fees Escrow Account to satisfy in full the Professional Fees shall not affect the priority of the Carve-Out, and (ii) in no way shall the Approved Budget, Carve-Out, Post-Carve-Out Trigger Notice Cap, Professional Fees Escrow Account, or any of the foregoing be construed as a cap or limitation on the amount of Professional Fees due and payable by the Debtors or that may be allowed by the Court at any time (whether by interim order, final order, or otherwise).

(h) For the avoidance of doubt, if the DIP Notes Obligations or DIP ABL Obligations are indefeasibly paid in cash in full or the DIP Notes Facility or DIP ABL Facility is otherwise terminated, the DIP Orders shall remain in full force and effect, including with respect to the Debtors' use of Cash Collateral, the Carve-Out, the Professional Fees Escrow Account, and all related provisions in respect thereof, and the Prepetition Representatives shall assume any rights and obligations that the DIP Notes Trustee or the DIP ABL Agent, as applicable, previously had with respect to the Carve-Out and the Professional Fees Escrow Account.

(i) Any payment or reimbursement made prior to the occurrence of the Termination Date in respect of any Professional Fees shall not reduce the Carve-Out. Any payment or reimbursement made on or after the occurrence of the Termination Date in respect of any Professional Fees shall permanently reduce the Carve-Out on a dollar-for-dollar basis.

(j) None of the DIP Notes Secured Parties, the DIP ABL Secured Parties, or the Prepetition Secured Parties shall be responsible for the payment or reimbursement of any fees or disbursements of any Professional Person incurred in connection with these chapter 11 cases or any Successor Cases. Nothing in this Interim Order or otherwise shall be construed to obligate the

DIP Notes Secured Parties, the DIP ABL Secured Parties, or the Prepetition Secured Parties, in any way, to pay compensation to, or to reimburse expenses of, any Professional Person or to guarantee that the Debtors have sufficient funds to pay such compensation or reimbursement.

(k) For the avoidance of doubt, to the extent that professional fees and expenses of the Professional Persons have been incurred by the Debtors or the Creditors' Committee at any time before or on the first business day after delivery by the DIP Notes Trustee or DIP ABL Agent of a Carve-Out Trigger Notice but have not yet been allowed by the Court, such professional fees and expenses of the Professional Persons shall constitute Professional Fees benefiting from the Carve-Out upon their allowance by the Court, whether by interim or final compensation order and whether before or after delivery of the Carve-Out Trigger Notice, and the Professional Fees Escrow Account shall include such professional fees and expenses.

6. *DIP Superpriority Claims.* Pursuant to section 364(c)(1) of the Bankruptcy Code, all of the DIP Notes Obligations and DIP ABL Obligations shall constitute allowed superpriority administrative expense claims (the "DIP Superpriority Claims") against the DIP Obligors on a joint and several basis (without the need to file any proof of claim) with priority over any and all claims against the DIP Obligors, now existing or hereafter arising, of any kind whatsoever, including, without limitation, all administrative expenses of the kind specified in sections 503(b) and 507(b) of the Bankruptcy Code and any and all administrative expenses or other claims arising under sections 105, 326, 327, 328, 330, 331, 365, 503(b), 506(c), 507(a), 507(b) and 726 of the Bankruptcy Code (including the Adequate Protection Obligations), whether or not such expenses or claims may become secured by a judgment lien or other non-consensual lien, levy or attachment, except for the Carve-Out. The DIP Superpriority Claims shall be payable from, and have recourse to, all prepetition and postpetition property of the DIP Obligors and all proceeds thereof (excluding

(x) Carve-Out Reserves and the Professional Fees Escrow Account and any amounts held therein other than the Debtors' reversionary interest therein and (y) claims and causes of action under sections 502(d), 544, 545, 547, 548 and 550 of the Bankruptcy Code, or any other avoidance actions under the Bankruptcy Code (collectively, the "Avoidance Actions") but, subject to the entry of the Final Order, including any proceeds or property recovered as a result of any Avoidance Actions, whether by judgment, settlement or otherwise (the "Avoidance Proceeds"), subject only to the Carve-Out. Notwithstanding anything contained herein, in the DIP Notes Documents, or in the DIP ABL Agreement to the contrary, the DIP Superpriority Claims granted to (x) the DIP ABL Secured Parties shall, at all times be in respect of any assets or property that constitute, or, but for the commencement of these chapter 11 cases, would have constituted, ABL Priority Collateral, senior to the DIP Superpriority Claims granted to the DIP Notes Secured Parties, (y) the DIP Notes Secured Parties shall, at all times be in respect of any assets or property that constitute, or, but for the commencement of these chapter 11 cases, would have constituted, Notes Priority Collateral, senior to the DIP Superpriority Claims granted to the DIP ABL Secured Parties, and (z) the DIP ABL Secured Parties and the DIP Notes Secured Parties shall be *pari passu* in right of payment as to the proceeds of any assets not described in the foregoing clause (x) or (y). The DIP Superpriority Claims shall be entitled to the full protection of section 364(e) of the Bankruptcy Code in the event that this Interim Order or any provision hereof is vacated, reversed or modified, on appeal or otherwise.

7. *Intercreditor Agreements.* Pursuant to Section 510 of the Bankruptcy Code, the Prepetition Notes Intercreditor Agreement and the Prepetition ABL Intercreditor Agreement and any other applicable intercreditor or subordination provisions contained in any of the other Prepetition Debt Documents (collectively, the "Intercreditor Agreements") shall (i) remain in full

force and effect, (ii) continue to govern the relative priorities, rights, and remedies of the Prepetition Secured Parties (including the relative priorities, rights and remedies of such parties with respect to replacement liens, administrative expense claims and superpriority administrative expense claims or amounts payable in respect thereof), and (iii) not be deemed to be amended, supplemented, altered or otherwise modified by the terms of this Interim Order, the DIP Notes Documents, or the DIP ABL Agreement, unless expressly set forth herein or therein. As between the ABL Priority Collateral, on the one hand, and the Notes Priority Collateral, on the other hand, the Prepetition ABL Intercreditor Agreement will govern the rights and obligations between the DIP Notes Secured Parties and the DIP ABL Secured Parties. Without limiting the foregoing, the DIP ABL Obligations constitute “ABL Facility Obligations” under, and as defined in, the Prepetition ABL Intercreditor Agreement and the DIP Notes Obligations constitute “Notes Obligations” under, and as defined in, the Prepetition ABL Intercreditor Agreement. As a result, the DIP ABL Agent's, Prepetition 1L Trustee's, and Prepetition 2L Trustee's respective interests in the Notes Priority Collateral and the ABL Priority Collateral shall, solely with respect to the Prepetition Secured Parties, be the same as that of the Prepetition ABL Agent, Prepetition 1L Trustee, and Prepetition 2L Trustee prior to the Roll Up and the commencement of these Chapter 11 Cases and be governed by the Intercreditor Agreements unless otherwise expressly provided by this Interim Order. The Intercreditor Agreements are, in each case, binding and enforceable against the Prepetition Secured Parties in accordance with their terms.

8. *DIP Notes Liens.* As security for the DIP Notes Obligations, effective and automatically properly perfected on the date this Interim Order is entered, and without the necessity of execution, recordation or filing of any perfection document or instrument, or the possession or control by the DIP Notes Trustee of, or over, any Collateral, without any further

action by the DIP Notes Secured Parties, the following valid, binding, continuing, fully perfected, enforceable and non-avoidable security interests and liens (the “DIP Notes Liens”) are hereby granted to the DIP Notes Trustee for the benefit of the DIP Notes Secured Parties (all property identified in clauses (a) through (e) below, together with all other real and personal property of the Debtors of any kind, nature, or description whatsoever, wherever located, and whenever acquired or arising, and together with all additions and accessions to, substitutions for, and replacements, proceeds, rents, issues, profits, and products of the foregoing, being collectively referred to as the “DIP Collateral”), subject and subordinate to the Carve-Out and in accordance with the priorities set forth on **Exhibit 3**:

(a) *Liens on Unencumbered Property.* Pursuant to section 364(c)(2) of the Bankruptcy Code, a first priority lien on and security interest in (subject only to the Carve-Out and in accordance with the priorities set forth on **Exhibit 3**) all tangible and intangible prepetition and postpetition property of the DIP Obligors of any kind or nature whatsoever, whether existing on the Petition Date or thereafter acquired or arising and wherever located, and the proceeds, products, rents, and profits thereof, whether arising from section 552(b) of the Bankruptcy Code (subject to paragraph 13 of this Interim Order) from time to time, that, on or as of the Petition Date, is not subject to (i) a valid, perfected and non-avoidable lien or (ii) a valid and non-avoidable lien in existence as of the Petition Date that is perfected subsequent to the Petition Date as permitted by section 546(b) of the Bankruptcy Code, other than the Avoidance Actions, the Carve-Out Reserves, the JV Interests⁵, the DIP Notes Account (any amounts held therein) and the Professional

⁵ “JV Interest” shall mean the equity interest in Convergram de Mexico S. de R.L. DE C.V., a Mexican corporation (“Convergram”) owned by Anagram International, Inc. to the extent (a) such equity interest cannot be pledged without a breach of the Management and Ownership Agreement, dated as of November 30, 2007 (as may be amended, restated, amended and restated, supplemented or otherwise modified from time to time), by and among Convertidora Industrial S.A.B. DE C.V., a Mexican limited liability company (“Convertidora”), Convergram, Anagram International, Inc., and the other parties party thereto, (b) the pledge of such Capital Stock requires obtaining prior written consent of Convertidora under any applicable laws, or (c) the pledge of such Capital Stock

Fee Escrow Account (and any amounts held therein), but including, upon and subject to entry of the Final Order, the Avoidance Proceeds (collectively, the “Unencumbered Property”).

(b) *Liens Priming Certain Prepetition Secured Parties’ Liens.* Pursuant to section 364(d)(1) of the Bankruptcy Code, a valid, binding, continuing, enforceable, fully-perfected first priority senior priming security interest (subject to the Carve-Out) in, and lien upon, all tangible and intangible prepetition and postpetition property of the DIP Obligors constituting Notes Priority Collateral, regardless of where located. Notwithstanding anything herein to the contrary, the DIP Notes Liens shall be (A) senior in all respects to the DIP ABL Liens on the Notes Priority Collateral, (B) senior in all respects to the Prepetition Liens on the Notes Priority Collateral, (C) senior to any Adequate Protection Liens on the Notes Priority Collateral and (D) not subordinate to any lien, security interest or mortgage that is avoided and preserved for the benefit of the Debtors and their estates under section 551 of the Bankruptcy Code, in each case as such priorities are set forth in **Exhibit 3**. The Prepetition Liens with respect to the Notes Priority Collateral shall be primed by and made subject and subordinate to the DIP Notes Liens.

(c) *Junior Liens Priming Certain Prepetition Secured Parties’ Liens.* Pursuant to section 364(d)(1) of the Bankruptcy Code, a valid, binding, continuing, enforceable, fully-perfected junior (subject only to (1) the Carve-Out, (2) the DIP ABL Liens, (3) the ABL Adequate Protection Liens and (4) the Prepetition ABL Liens on the ABL Priority Collateral) priority priming security interest in, and lien upon, all tangible and intangible prepetition and postpetition property of the DIP Obligors constituting ABL Priority Collateral, regardless of where located,

would result in a change of control, repurchase obligation, create a right of termination in favor of any other party to the Management and Ownership Agreement (other than the Debtors) (after giving effect to Sections 9-406, 9-407, 9-408 or 9-409 of the UCC (or any successor provision or provisions) of any relevant jurisdiction or any other applicable law or principles of equity). For avoidance of doubt, no action to perfect any security interest in the JV Interest shall be required other than the entry of this Interim Order and the filing of the UCC financing statement.

which security interest and lien shall prime the Prepetition 1L Notes Liens and Prepetition 2L Notes Liens on the ABL Priority Collateral. Notwithstanding anything herein to the contrary, the DIP Notes Liens shall be (A) junior, subject and subordinate in all respects to the DIP ABL Liens, the Prepetition ABL Liens and the ABL Adequate Protection Liens on the ABL Priority Collateral, (B) senior in all respects to the Prepetition Liens on the ABL Priority Collateral other than the Prepetition ABL Liens and ABL Adequate Protection Liens, and (C) not subordinate to any lien, security interest or mortgage that is avoided and preserved for the benefit of the Debtors and their estates under section 551 of the Bankruptcy Code, in each case as such priorities are set forth in **Exhibit 3**. The Prepetition 1L Notes Liens and Prepetition 2L Notes Liens with respect to the ABL Priority Collateral shall be primed by and made subject and subordinate to the DIP Notes Liens.

(d) *Liens Junior to Certain Other Liens.* Pursuant to section 364(c)(3) of the Bankruptcy Code, a valid, binding, continuing, enforceable, fully perfected security interest and lien upon all tangible and intangible prepetition and postpetition property of the DIP Obligors that, on or as of the Petition Date, is subject to Prepetition Permitted Senior Liens, which shall be (x) with respect to the Notes Priority Collateral, immediately junior and subordinate to the Prepetition 1L Permitted Senior Liens and Prepetition 2L Permitted Senior Liens, and (y) with respect to the ABL Priority Collateral, junior and subordinate to the Prepetition ABL Permitted Senior Liens, but (1) senior to the Prepetition Liens and Adequate Protections Liens on all Notes Priority Collateral subject to such Prepetition Permitted Senior Liens and (2) junior, subject and subordinate to the DIP ABL Liens, the ABL Adequate Protection Liens, and the Prepetition ABL Liens, but senior to the Prepetition 1L Notes Liens and the Prepetition 2L Notes Liens on all ABL Priority Collateral, subject to such Prepetition Permitted Senior Liens.

(e) *No Senior Liens.* Other than the Carve-Out, the DIP Notes Liens shall not be (i) subject or subordinate to or made *pari passu* with (A) any lien or security interest that is avoided and preserved for the benefit of the Debtors or their estates under section 551 of the Bankruptcy Code, (B) unless otherwise provided for in the DIP Notes Documents, the Intercreditor Agreements or in this Interim Order, any liens or security interests arising after the Petition Date, including, without limitation, any liens or security interests granted in favor of any federal, state, municipal or other governmental unit (including any regulatory body), commission, board or court for any liability of the DIP Obligors, or (C) any intercompany liens; or (ii) unless otherwise provided for in this Interim Order, subordinated to or made *pari passu* with any other lien or security interest under section 363 or 364 of the Bankruptcy Code.

9. *DIP ABL Liens.* As security for the DIP ABL Obligations, effective and automatically properly perfected on the date this Interim Order is entered, and without the necessity of execution, recordation or filing of any perfection document or instrument, or the possession or control by the DIP ABL Agent of, or over, any Collateral, without any further action by the DIP ABL Secured Parties, the following valid, binding, continuing, fully perfected, enforceable and non-avoidable security interests and liens (the “DIP ABL Liens”) are hereby granted to the DIP ABL Agent for the benefit of the DIP ABL Secured Parties, subject and subordinate to the Carve-Out and in accordance with the priorities set forth on **Exhibit 3**:

(a) *Liens on Unencumbered Property.* Pursuant to section 364(c)(2) of the Bankruptcy Code, a lien on and security interest in (subject only to the Carve-Out and the DIP Notes Liens and in accordance with the priorities set forth on **Exhibit 3**) all Unencumbered Property. Notwithstanding anything herein to the contrary, the DIP ABL Liens shall be (A) junior

in all respects to the Carve-Out and the DIP Notes Liens and (B) senior in all respects to the Adequate Protection Liens, in each case, on Unencumbered Property.

(b) *Liens Priming Certain Prepetition Secured Parties' Liens.* Pursuant to section 364(d)(1) of the Bankruptcy Code, a valid, binding, continuing, enforceable, fully-perfected first priority senior priming security interest (subject only to the Carve-Out) in, and lien upon, all tangible and intangible prepetition and postpetition property of the DIP Obligors constituting ABL Priority Collateral, regardless of where located. Notwithstanding anything herein to the contrary, the DIP ABL Liens shall be (A) senior in all respects to the Adequate Protection Liens, the Prepetition ABL Liens, the DIP Notes Liens, the Prepetition 1L Notes Liens, and the Prepetition 2L Notes Liens on the ABL Priority Collateral, and (B) not subordinate to any lien, security interest or mortgage that is avoided and preserved for the benefit of the Debtors and their estates under section 551 of the Bankruptcy Code, in each case as such priorities are set forth in **Exhibit 3**. The Prepetition Liens with respect to the ABL Priority Collateral shall be primed by and made subject and subordinate to the DIP ABL Liens.

(c) *Junior Liens Priming Certain Prepetition Secured Parties' Liens.* Pursuant to section 364(d)(1) of the Bankruptcy Code, a valid, binding, continuing, enforceable, fully-perfected junior (with respect to the Notes Priority Collateral, subject only to (1) Carve-Out, (2) the DIP Notes Liens, (3) the 1L Adequate Protection Liens, (4) the Prepetition 1L Notes Liens, (5) the 2L Adequate Protection Liens, and (6) the Prepetition 2L Notes Liens) priority priming security interest in, and lien upon, all tangible and intangible prepetition and postpetition property of the DIP Obligors constituting Notes Priority Collateral, regardless of where located, which security interest and lien shall prime the Prepetition ABL Liens on the Notes Priority Collateral. Notwithstanding anything herein to the contrary, the DIP ABL Liens shall be (A) with respect to

the Notes Priority Collateral, junior, subject and subordinate in all respects to the Carve-Out, the DIP Notes Liens, the 1L Adequate Protection Liens, the Prepetition 1L Notes Liens, the 2L Adequate Protection Liens, and the Prepetition 2L Notes Liens, (B) with respect to the Notes Priority Collateral, senior and prior in all respects to the ABL Adequate Protection Liens and the Prepetition ABL Liens and (C) not subordinate to any lien, security interest or mortgage that is avoided and preserved for the benefit of the Debtors and their estates under section 551 of the Bankruptcy Code, in each case as such priorities are set forth in **Exhibit 3**. The Prepetition ABL Liens with respect to the Notes Priority Collateral shall be primed by and made subject and subordinate to the DIP ABL Liens.

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

10. *Protection of DIP Noteholders', DIP ABL Secured Parties' and Prepetition Secured Parties' Rights.*

(a) So long as there are any DIP Notes Obligations and/or DIP ABL Obligations outstanding, or the DIP Noteholders or DIP ABL Secured Parties have any outstanding

commitments under the DIP Notes Facility or the DIP ABL Facility, respectively, the Prepetition Secured Parties shall: (i) have no right to and shall take no action to foreclose upon, or recover in connection with, the liens granted thereto pursuant to the Prepetition Debt Documents or this Interim Order, or otherwise seek to exercise or enforce any rights or remedies against the Notes Priority Collateral or ABL Priority Collateral, including in connection with the Adequate Protection Liens; (ii) not oppose or object to any transfer, disposition or sale of, or release of liens on, any Notes Priority Collateral to the extent such transfer, disposition, sale or release is authorized under the DIP Notes Documents; (iii) not oppose or object to any transfer, disposition or sale of, or release of liens on, any ABL Priority Collateral to the extent such transfer, disposition, sale or release is authorized under the DIP ABL Agreement; (iv) not file any financing statements, trademark filings, copyright filings, mortgages, notices of lien or similar instruments, or otherwise take any action to perfect their security interests in the DIP Collateral other than (x) to perfect, or evidence the perfection of, the liens granted pursuant to this Interim Order or (y) as may be required by applicable state or foreign law to complete a previously commenced process of perfection or to continue the perfection of valid and non-avoidable liens or security interests existing as of the Petition Date; and (v) deliver or cause to be delivered, at the cost and expense of the DIP Obligors or the DIP ABL Secured Parties, as applicable, any termination statements, releases and/or assignments in favor of the DIP Notes Secured Parties or the DIP ABL Secured Parties, as applicable, or other documents necessary to effectuate and/or evidence the release, termination and/or assignment of liens on any portion of the DIP Collateral subject to any sale or disposition permitted by the DIP Notes Documents or the DIP ABL Agreement, as applicable, or this Interim Order or any other order of the Court.

(b) Except as set forth in clause (c) immediately below, to the extent any Prepetition Secured Party has possession of, or control over, any Prepetition Collateral or DIP Collateral, or has been listed as a secured party on any certificate of title for a titled good constituting Prepetition Collateral or DIP Collateral, such Prepetition Secured Party shall be deemed to have such possession or be so listed or have such possession or control as a gratuitous bailee and/or gratuitous agent for the benefit of the DIP Notes Secured Parties or the DIP ABL Secured Parties, as applicable, and such Prepetition Secured Party shall comply with the instructions of the DIP Notes Trustee, acting at the direction of the requisite DIP Noteholders under the DIP Notes Documents, or the DIP ABL Agent, acting at the direction of the Required Lenders (as defined in the DIP ABL Agreement), as applicable, with respect to any of the foregoing.

(c) So long as there are any (i) DIP ABL Obligations outstanding and until all DIP ABL Obligations have been paid in full, in cash (and all letters of credit issued or other asserted contingent obligations under the DIP ABL Facility have been cash collateralized in accordance with the terms of the DIP ABL Agreement), or (ii) any Prepetition ABL Obligations (including the ABL 507(b) Claims) outstanding and until all Prepetition ABL Obligations (including the ABL 507(b) Claims) have been paid in full, in cash (and all letters of credit issued or other asserted contingent obligations under the Prepetition ABL Credit Agreement have been cash collateralized in accordance with the terms of the Prepetition ABL Loan Documents), solely with respect to the ABL Priority Collateral, the enforcement rights of the DIP Notes Secured Parties and the Prepetition Secured Parties (other than the Prepetition ABL Secured Parties) with respect to the ABL Priority Collateral shall be subject to the terms of the Prepetition ABL Intercreditor Agreement as if the DIP Notes Trustee was party thereto as a First Lien Notes

Security Trustee or Second Lien Notes Security Trustee, as applicable (each as defined in the Prepetition ABL Intercreditor Agreement).

(d) So long as there are any (i) DIP Notes Obligations outstanding and until all DIP Notes Obligations have been paid in full, in cash, or (ii) any Prepetition Notes Obligations (including the 1L 507(b) Claims and 2L 507(b) Claims) outstanding and until all Prepetition Notes Obligations (including the 1L 507(b) Claims and 2L 507(b) Claims) have been paid in full, in cash, solely with respect to the Notes Priority Collateral, the enforcement rights of the DIP ABL Secured Parties and the Prepetition Secured Parties (other than the Prepetition 1L Secured Parties and Prepetition 2L Secured Parties) with respect to the Notes Priority Collateral shall be subject to the terms of the Prepetition ABL Intercreditor Agreement as if the DIP ABL Agent was party thereto as an ABL Facility Administrative Agent (as defined in the Prepetition ABL Intercreditor Agreement).

(e) Except as set forth in clause (c) immediately above with respect to the ABL Priority Collateral, and subject to the terms of such clause (c), any proceeds of Prepetition Collateral received by any Prepetition Secured Party, whether in connection with the exercise of any right or remedy (including setoff) relating to the Prepetition Collateral or otherwise, shall be (i) with respect to Collateral other than ABL Priority Collateral, segregated and held in trust for the benefit of, and forthwith paid over to, the DIP Notes Trustee for the benefit of the DIP Notes Secured Parties in the same form as received, and (ii) with respect to ABL Priority Collateral, segregated and held in trust for the benefit of, and forthwith paid over to, the DIP ABL Agent for the benefit of the DIP ABL Secured Parties in the same form as received, in each case with respect to clauses (i) and (ii), with any necessary endorsements, or as a court of competent jurisdiction may otherwise direct. The DIP Notes Trustee and the DIP ABL Agent, as applicable, are each

hereby authorized to make any such endorsements as agent for the applicable Prepetition Secured Parties. This authorization is coupled with an interest and is irrevocable.

(f) The DIP Obligors shall not sell, transfer, lease, encumber or otherwise dispose of any portion of the DIP Collateral, except as otherwise permitted by the DIP Notes Documents, the DIP ABL Agreement, this Interim Order or any other order of the Court.

11. *Termination and Remedies.*

(a) Upon the occurrence and during the continuation of an Event of Default that has not been waived by the requisite DIP Noteholders under the DIP Notes Documents and following delivery of written notice at the direction of the requisite DIP Noteholders under the DIP Notes Documents (a “DIP Notes Termination Notice”) (including by e-mail) on not less than five (5) business days’ notice (such five (5) business day period, the “DIP Notes Trustee Remedies Notice Period”) to lead restructuring counsel to the Debtors, lead restructuring counsel to each of the Prepetition Representatives, lead counsel to the DIP ABL Agent, lead counsel to the Creditors’ Committee, and the U.S. Trustee (the “DIP Notes Remedies Notice Parties”), the DIP Notes Trustee may (and any automatic stay otherwise applicable to the DIP Notes Secured Parties, whether arising under sections 105 or 362 of the Bankruptcy Code or otherwise, but subject to the terms of this Interim Order (including this paragraph) is hereby modified), without further notice to, hearing of, or order from the Court, to the extent necessary to permit the DIP Notes Trustee to, unless the Court orders otherwise (*provided* that during the DIP Notes Trustee Remedies Notice Period, the Debtors, the Creditors’ Committee (if appointed) and/or any party in interest shall be entitled to seek an emergency hearing (with the DIP Notes Trustee and the requisite DIP Noteholders under the DIP Notes Documents consenting to such emergency hearing) with the Court for the purpose of contesting whether, in fact, an Event of Default has occurred and is

continuing, or to obtain non-consensual use of Cash Collateral, and provided further that if a request for such hearing is made prior to the end of the DIP Notes Trustee Remedies Notice Period, then the DIP Notes Trustee Remedies Notice Period shall be continued until the Court hears and rules with respect thereto): (i) immediately terminate and/or revoke the Debtors' right under this Interim Order and any other DIP Notes Documents to use any Cash Collateral (subject to the Carve-Out and related provisions); (ii) terminate the DIP Notes Facility and any DIP Notes Document as to any future liability or obligation of the DIP Notes Secured Parties but without affecting any of the DIP Notes Obligations or the DIP Notes Liens securing such DIP Notes Obligations; (iii) declare all DIP Notes Obligations to be immediately due and payable; and (iv) invoke the right to charge interest at the default rate under the DIP Notes Documents. Upon delivery of such DIP Notes Termination Notice by the DIP Notes Trustee at the direction of the requisite DIP Noteholders under the DIP Notes Documents, without further notice or order of the Court, the DIP Notes Secured Parties' and the Prepetition Secured Parties' consent to use Cash Collateral and the Debtors' ability to incur additional DIP Notes Obligations hereunder will, subject to the expiration of the DIP Notes Trustee Remedies Notice Period and unless the Court orders otherwise, automatically terminate and the DIP Notes Secured Parties will have no obligation to provide any DIP Notes or other financial accommodations; *provided, however*, that during the DIP Notes Trustee Remedies Notice Period, the Debtors shall have the right to use Cash Collateral to fund the Carve-Out, meet payroll obligations, and to pay necessary expenses to avoid immediate and irreparable harm to the Debtors' estates set forth in the Approved Budget in accordance with the DIP Notes Documents. As soon as reasonably practicable following receipt of a DIP Notes Termination Notice, the Debtors shall file a copy of same on the docket.

(b) Following an Event of Default and the delivery of the DIP Notes Termination Notice, but prior to exercising the remedies set forth in this sentence below or any other remedies (other than those set forth in paragraph 11(a)), the DIP Notes Secured Parties shall be required to file a motion with the Court seeking emergency relief (the “Stay Relief Motion”) on not less than five (5) business days’ notice to the DIP Notes Remedies Notice Parties (which may run concurrently with the DIP Notes Trustee Remedies Notice Period) for a further order of the Court modifying the automatic stay in these chapter 11 cases to permit the DIP Notes Secured Parties to, subject to the Intercreditor Agreements and the Carve-Out and related provisions: (i) freeze monies or balances in the Debtors’ accounts (unless such monies constitute ABL Priority Collateral or are used to fund the Carve-Out Reserves); (ii) immediately set-off any and all amounts in accounts maintained by the Debtors with the DIP Notes Trustee or the DIP Notes Secured Parties against the DIP Notes Obligations (unless such amounts constitute ABL Priority Collateral); (iii) enforce any and all rights against the DIP Collateral (other than ABL Priority Collateral), including, without limitation, foreclosure on all or any portion of the DIP Collateral (other than ABL Priority Collateral), occupying the Debtors’ premises, sale or disposition of the DIP Collateral (other than ABL Priority Collateral); and (iv) take any other actions or exercise any other rights or remedies permitted under this Interim Order, the DIP Notes Documents or applicable law (other than with respect to ABL Priority Collateral). If the DIP Notes Secured Parties are permitted by the Court to take any enforcement action with respect to the DIP Collateral (other than ABL Priority Collateral) following the hearing on the Stay Relief Motion, the Debtors shall cooperate with the DIP Notes Secured Parties in their efforts to enforce their security interest in the DIP Collateral (other than ABL Priority Collateral), and shall not take or direct any entity to take any action designed or intended to hinder or restrict in any respect such DIP Notes Secured

Parties from enforcing their security interests in the DIP Collateral. Until such time that the Stay Relief Motion has been adjudicated by the Court, and subject to the other terms of this Interim Order, the Debtors may use Cash Collateral and the proceeds of the DIP Notes Facility to the extent drawn prior to the occurrence of Event of Default to fund the Carve-Out, meet payroll obligations, and pay necessary expenses to avoid immediate and irreparable harm to the Debtors' estates in accordance with the Approved Budget and the terms of the DIP Notes Documents and the DIP ABL Agreement.

(c) As part of the DIP ABL Agreement set forth in this Interim Order, the occurrence and continuance of any of the termination events set forth in **Annex B** attached hereto shall each constitute a "DIP ABL Termination Event," unless otherwise expressly waived in writing by the DIP ABL Agent.

(a) Upon the occurrence and during the continuation of a DIP ABL Termination Event that has not been waived in writing by the DIP ABL Agent and following delivery of written notice (an "DIP ABL Termination Notice") (including by e-mail) on not less than five (5) business days' notice (such five (5) business day period, the "DIP ABL Agent Remedies Notice Period") to lead restructuring counsel to the Debtors, lead restructuring counsel to each of the Prepetition Representatives, lead counsel to the DIP Notes Trustee, lead counsel to the Creditors' Committee, and the U.S. Trustee (the "DIP ABL Remedies Notice Parties"), the DIP ABL Agent may (and any automatic stay otherwise applicable to the DIP ABL Secured Parties, whether arising under sections 105 or 362 of the Bankruptcy Code or otherwise, but subject to the terms of this Interim Order (including this paragraph) is hereby modified), without further notice to, hearing of, or order from the Court, to the extent necessary to permit the DIP ABL Agent to, unless the Court orders otherwise (*provided* that during the DIP ABL Agent Remedies Notice Period, the Debtors, the

Creditors' Committee (if appointed) and/or any party in interest shall be entitled to seek an emergency hearing (with the DIP ABL Agent consenting to such emergency hearing) with the Court for the purpose of contesting whether, in fact, a DIP ABL Termination Event has occurred and is continuing, or to obtain non-consensual use of Cash Collateral, and provided further that if a request for such hearing is made prior to the end of the DIP ABL Agent Remedies Notice Period, then the DIP ABL Agent Remedies Notice Period shall be continued until the Court hears and rules with respect thereto): (i) immediately terminate and/or revoke the Debtors' right under this Interim Order and the DIP ABL Agreement to use any Cash Collateral (subject to the Carve-Out and related provisions); (ii) terminate the DIP ABL Facility and the DIP ABL Agreement as to any future liability or obligation of the DIP ABL Secured Parties but without affecting any of the DIP ABL Obligations or the DIP ABL Liens securing such DIP ABL Obligations; (iii) implement the default rate of interest (an additional 2% per annum) on the DIP ABL Obligations under the DIP ABL Facility and (iv) declare all DIP ABL Obligations to be immediately due and payable. Upon delivery of such DIP ABL Termination Notice by the DIP ABL Agent, without further notice or order of the Court, the DIP ABL Secured Parties' and the Prepetition Secured Parties' consent to use Cash Collateral and the Debtors' ability to incur additional DIP ABL Obligations hereunder will, subject to the expiration of the DIP ABL Agent Remedies Notice Period and unless the Court orders otherwise, automatically terminate and the DIP ABL Secured Parties will have no obligation to provide any loans or other financial accommodations under the DIP ABL Agreement; *provided, however,* that during the DIP ABL Agent Remedies Notice Period, the Debtors shall have the right to use Cash Collateral to fund the Carve-Out, meet payroll obligations, and to pay necessary expenses to avoid immediate and irreparable harm to the Debtors' estates set forth in the Approved Budget in accordance with the DIP ABL Agreement and the other Prepetition ABL

Loan Documents. As soon as reasonably practicable following receipt of a DIP ABL Termination Notice, the Debtors shall file a copy of same on the docket.

(b) Following a DIP ABL Termination Event and the delivery of the DIP ABL Termination Notice, but prior to exercising the remedies set forth in this sentence below or any other remedies (other than those set forth in paragraph 11(d)), the DIP ABL Secured Parties shall be required to file a Stay Relief Motion with the Court seeking emergency relief on not less than five (5) business days' notice to the DIP ABL Remedies Notice Parties (which may run concurrently with the DIP ABL Agent Remedies Notice Period) for a further order of the Court modifying the automatic stay in these chapter 11 cases to permit the DIP ABL Secured Parties to, subject to the Intercreditor Agreements and the Carve-Out and related provisions: (i) freeze monies or balances in the Debtors' accounts (unless such monies constitute Notes Priority Collateral or are used to fund the Carve-Out Reserves); (ii) immediately set-off any and all amounts in accounts maintained by the Debtors with the DIP ABL Agent or the DIP ABL Secured Parties against the DIP ABL Obligations (other than any proceeds of the DIP Notes Indenture or amounts constituting Notes Priority Collateral); (iii) enforce any and all rights against the ABL Priority Collateral, including, without limitation, foreclosure on all or any portion of the ABL Priority Collateral, occupying the Debtors' premises, sale or disposition of the ABL Priority Collateral; and (iv) take any other actions or exercise any other rights or remedies permitted under this Interim Order, the DIP ABL Agreement, the Prepetition ABL Loan Documents or applicable law (other than with respect to Notes Priority Collateral). If the DIP ABL Secured Parties are permitted by the Court to take any enforcement action with respect to the ABL Priority Collateral following the hearing on the Stay Relief Motion, the Debtors shall cooperate with the DIP ABL Secured Parties in their efforts to enforce their security interest in the ABL Priority Collateral, and shall not take or direct

any entity to take any action designed or intended to hinder or restrict in any respect such DIP ABL Secured Parties from enforcing their security interests in the ABL Priority Collateral. Until such time that the Stay Relief Motion has been adjudicated by the Court, and subject to the other terms of this Interim Order, the Debtors may use Cash Collateral and the proceeds of the DIP ABL Facility to the extent drawn prior to the occurrence of a DIP ABL Termination Event to fund the Carve-Out, meet payroll obligations, and pay necessary expenses to avoid immediate and irreparable harm to the Debtors' estates in accordance with the Approved Budget and the terms of the DIP Notes Documents and the DIP ABL Agreement. For the avoidance of doubt, continuation of the daily application to the DIP ABL Obligations of amounts received in the Collection Account pursuant to the DIP ABL Agreement and the Roll-Up pursuant to the terms of this Interim Order will not be deemed to be an enforcement action by the DIP ABL Secured Parties.

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

12. *Limitation on Charging Expenses Against Collateral.* Except to the extent of the Carve-Out, no costs or expenses of administration of these chapter 11 cases or any Successor Case or any future proceeding that may result therefrom, including liquidation in bankruptcy or other proceeding under the Bankruptcy Code, shall be charged against or recovered from any DIP Notes Secured Party, any DIP ABL Secured Party, any Prepetition Secured Party, any DIP Collateral, or

any Prepetition Collateral (including Cash Collateral) pursuant to section 506(c) of the Bankruptcy Code or any similar principle of law, without the prior written consent of the DIP Notes Trustee, the DIP ABL Agent, and/or each Prepetition Representative, as applicable, and no consent shall be implied from any action, inaction or acquiescence by any of the DIP Notes Secured Parties, DIP ABL Secured Parties, or Prepetition Secured Parties, and nothing contained in this Interim Order shall be deemed to be a consent by any of the DIP Notes Secured Parties, the DIP ABL Secured Parties, or the Prepetition Secured Parties to any charge, lien, assessment or claims against the Collateral under section 506(c) of the Bankruptcy Code or otherwise; *provided further*, that the foregoing waiver shall be without prejudice to any provisions of the Final Order with respect to costs or expenses incurred following the entry of the Final Order.

13. The Prepetition Secured Parties shall each be entitled to all the rights and benefits of section 552(b) of the Bankruptcy Code, subject to section 552(b) of the Bankruptcy Code, and in no event shall the DIP Notes Secured Parties, the DIP ABL Secured Parties, or the Prepetition Secured Parties, as applicable, be subject to the equitable doctrine of “marshaling” or any similar doctrine with respect to the DIP Collateral, the DIP Notes Obligations, the DIP ABL Obligations, the Adequate Protection Obligations, the Prepetition Secured Obligations, or the Prepetition Collateral, as applicable. Further, in no event shall the “equities of the case” exception in section 552(b) of the Bankruptcy Code apply to the Prepetition Secured Parties, the Prepetition Secured Obligations, or the Prepetition Collateral; *provided* that the foregoing waiver shall be without prejudice to any provisions of the Final Order.

14. *Payments Free and Clear.* Any and all payments or proceeds remitted to the DIP Notes Secured Parties, the DIP ABL Secured Parties, or the Prepetition Secured Parties pursuant to the provisions of this Interim Order, the DIP Notes Documents, the DIP ABL Agreement, the

Prepetition Debt Documents, or any subsequent order of the Court shall be irrevocable, received free and clear of any claim, charge, assessment or other liability, including, without limitation, any such claim or charge arising out of or based on, directly or indirectly, sections 506(c) or 552(b) of the Bankruptcy Code, whether asserted or assessed by through or on behalf of the Debtors.

15. *Use of Cash Collateral.* The Debtors are hereby authorized, solely on the terms and conditions of this Interim Order, to use all Cash Collateral in accordance with this Interim Order, the DIP Notes Documents, the DIP ABL Agreement, and the Approved Budget (subject to any permitted variances) to the extent required under the DIP Notes Documents and the DIP ABL Agreement.

16. *Adequate Protection of Prepetition Secured Parties.* Pursuant to sections 361, 362, 363(e), 364(d)(1) and 507 of the Bankruptcy Code, as adequate protection of their respective interests in the Prepetition Collateral (including Cash Collateral) to the extent of any Diminution in Value and as an inducement to the Prepetition Secured Parties to consent to the priming of the Prepetition Liens and the use of their Cash Collateral, the Prepetition Secured Parties are granted the following Adequate Protection (collectively, the “Adequate Protection Obligations”); *provided* that the Adequate Protection Obligations granted to the Prepetition ABL Agent, the Prepetition ABL Lender, and the other Prepetition ABL Secured Parties by this Interim Order shall be effective in accordance with the terms herein if and to the extent that any portion of the Prepetition ABL Obligations are not rolled up, refinanced, and converted to DIP ABL Obligations under the DIP ABL Facility as a result of a successful Challenge timely brought in accordance with the terms of this Interim Order:

(a) *Prepetition ABL Adequate Protection Liens.* The Prepetition ABL Agent is hereby granted, for the benefit of itself and the other Prepetition ABL Secured Parties, effective

and perfected upon the date of this Interim Order and without the necessity of the execution of any mortgages, security agreements, pledge agreements, financing statements or other agreements, a valid, perfected replacement security interest and lien to the extent of any of the Prepetition ABL Secured Parties' Diminution in Value upon all of the DIP Collateral (collectively, the "ABL Adequate Protection Liens") (i) in the case of the ABL Priority Collateral, senior to all other liens, but junior, subject, and subordinate solely to the Carve-Out, the DIP ABL Liens, and the Prepetition ABL Permitted Senior Liens, (ii) in the case of the Notes Priority Collateral, junior, subject, and subordinate to (A) the Carve-Out, (B) the DIP Notes Liens, (C) the 1L Adequate Protection Liens, (D) the Prepetition 1L Notes Liens, (E) the 2L Adequate Protection Liens, (F) the Prepetition 2L Notes Liens, (G) the Prepetition 1L Permitted Senior Liens and Prepetition 2L Permitted Senior Liens, and (H) the DIP ABL Liens, and (iii) in the case of the Unencumbered Property, junior, subject, and subordinate to the Carve-Out, the DIP Notes Liens, and the DIP ABL Liens, but *pari passu* in all respects with the 1L Adequate Protection Liens, and senior and prior in all respects to the 2L Adequate Protection Liens, in each case as such priorities are set forth in Exhibit 3.

(b) *Prepetition ABL Secured Parties' Section 507(b) Claim.* The Prepetition ABL Agent, for the benefit of itself and the other Prepetition ABL Secured Parties, is hereby granted an allowed superpriority administrative expense claim against the DIP Obligors on a joint and several basis (without the need to file any proof of claim) to the extent of any of the Prepetition ABL Secured Parties' Diminution in Value under section 507(b) of the Bankruptcy Code (the "ABL 507(b) Claim"), which ABL 507(b) Claim shall be payable from and have recourse to all DIP Collateral and all proceeds thereof (excluding (x) Avoidance Actions but including, without limitation, subject to entry of the Final Order, the Avoidance Proceeds and (y) the DIP Notes

Account and amounts on deposit therein). With respect to the ABL Priority Collateral, the ABL 507(b) Claim shall be senior to all other claims against the DIP Obligors, now existing or hereafter arising, of any kind whatsoever, including, without limitation, all administrative expenses of the kind specified in sections 503(b) and 507(b) of the Bankruptcy Code, whether or not such claims may become secured by a judgment lien or other non-consensual lien, levy or attachment, except for the Carve-Out, and the ABL 507(b) Claim shall be subject and subordinate only to (i) the Carve-Out and (ii) the DIP Superpriority Claims. The ABL 507(b) Claim and the 1L 507(b) Claim shall be *pari passu* in right of payment.

(c) *Prepetition ABL Secured Parties Fees and Expenses.* As further adequate protection, the DIP Obligors shall currently pay to the Prepetition ABL Agent, in cash, all reasonable and documented prepetition and postpetition fees and out-of-pocket expenses of Goldberg Kohn Ltd., and one local legal counsel to the Prepetition ABL Secured Parties to the extent permitted under the Prepetition ABL Loan Documents (the “ABL Adequate Protection Fees and Expenses”), subject to the review procedures set forth in paragraph 20 of this Interim Order.

(d) *Prepetition ABL Post-Petition Interest.* As additional adequate protection, the Prepetition ABL Agent, on behalf of itself and the Prepetition ABL Secured Parties, shall be entitled to current payment of post-petition interest at the non-default rate applicable under the Prepetition ABL Loan Documents on the Petition Date to the Prepetition ABL Obligations.

(e) *Prepetition 1L Adequate Protection Liens.* The Prepetition 1L Trustee, for the benefit of the Prepetition 1L Secured Parties, is hereby granted, effective and perfected upon the date of this Interim Order and without the necessity of the execution of any mortgages, security agreements, control agreements, pledge agreements, financing statements or other agreements, or possession or control, to the extent of any of the Prepetition 1L Secured Parties’ Diminution in

Value, a valid, perfected replacement security interest and lien upon all of the DIP Collateral (the “1L Adequate Protection Liens”), which 1L Adequate Protection Liens shall be (x) in the case of the Notes Priority Collateral, senior to all other liens, but junior, subject, and subordinate to the Carve-Out, the Prepetition 1L Permitted Senior Liens, the Prepetition 2L Permitted Senior Liens, and the DIP Notes Liens, (y) with respect to the ABL Priority Collateral, junior, subject, and subordinate to the Carve-Out, the DIP ABL Liens, the DIP Notes Liens, the ABL Adequate Protection Liens, the Prepetition ABL Liens, and the Prepetition ABL Permitted Senior Liens, and (z) with respect to the Unencumbered Property, (i) *pari passu* in all respects with the ABL Adequate Protection Liens, (ii) junior, subject, and subordinate to the Carve-Out, the DIP Notes Liens, and the DIP ABL Liens, and (iii) senior and prior to the 2L Adequate Protection Liens, in each case as such priorities are set forth in **Exhibit 3**.

(f) *Prepetition 1L Secured Parties’ 507(b) Claim*. The Prepetition 1L Trustee, for the benefit of the Prepetition 1L Secured Parties, is hereby granted, to the extent of any of the Prepetition 1L Secured Parties’ Diminution in Value, an allowed superpriority administrative expense claim pursuant to section 507(b) of the Bankruptcy Code (the “1L 507(b) Claim”), which 1L 507(b) Claim shall be payable from and have recourse to all DIP Collateral and all proceeds thereof (excluding Avoidance Actions but subject to entry of the Final Order, the Avoidance Proceeds). The 1L 507(b) Claim shall be senior to all other claims against the DIP Obligors, now existing or hereafter arising, of any kind whatsoever, including, without limitation, all administrative expenses of the kind specified in or ordered pursuant to sections 105, 326, 328, 330, 331, 365, 503(a), 503(b), 506(c), 507(a), 507(b), 546(c), 726, 1113 and 1114 of the Bankruptcy Code, whether or not such claims may become secured by a judgment lien or other non-consensual

lien, levy or attachment, except for the following, in respect of which the 1L 507(b) Claims shall be junior, subject and subordinated: (i) the Carve-Out and (ii) the DIP Superpriority Claims.

(g) *Prepetition 1L Secured Parties Fees and Expenses.* As further adequate protection, the DIP Obligors shall currently pay, in cash, all reasonable and documented prepetition and postpetition fees and out-of-pocket expenses of the Prepetition 1L Trustee, the legal advisors to the Prepetition 1L Trustee, and Milbank LLP, Houlihan Lokey Capital, Inc., and one local legal counsel to the Ad Hoc Group (the “1L Adequate Protection Fees and Expenses”), subject to the review procedures set forth in paragraph 20 of this Interim Order.

(h) *Prepetition 1L Post-Petition Interest.* As additional adequate protection, the Prepetition 1L Trustee, on behalf of itself and the Prepetition 1L Secured Parties, shall be entitled to post-petition interest which shall accrue, but not be required to be paid, at the non-default contract rate applicable under the Prepetition 1L Notes Documents on the Petition Date to the Prepetition 1L Obligations (the “1L Adequate Protection Payments”). Upon receipt of any 1L Adequate Protection Payments set forth in this subparagraph, the Prepetition 1L Trustee is authorized and directed, without further order of the Court, to distribute such payments to the Prepetition 1L Secured Parties and, notwithstanding anything to the contrary in the Prepetition 1L Notes Indenture, the record date to establish the holders of the Prepetition 1L Notes receiving such payments shall be, with respect to each payment date, a date to be determined by the Prepetition 1L Trustee in advance of distributing such payments.

(i) *Prepetition 2L Adequate Protection Liens.* The Prepetition 2L Trustee, for the benefit of the Prepetition 2L Secured Parties, is hereby granted, effective and perfected upon the date of this Interim Order and without the necessity of the execution of any mortgages, security agreements, control agreements, pledge agreements, financing statements or other agreements, or

possession or control, to the extent of any of the Prepetition 1L Secured Parties Diminution in Value, a valid, perfected replacement security interest and lien upon all of the DIP Collateral (the “2L Adequate Protection Liens”, together with the ABL Adequate Protection Liens and the 1L Adequate Protection Liens, the “Adequate Protection Liens”), which 2L Adequate Protection Liens shall be (x) in the case of the Notes Priority Collateral, senior to all other liens, but junior, subject and subordinate to the Carve-Out, the Prepetition 1L Permitted Senior Liens, the Prepetition 2L Permitted Senior Liens, the 1L Adequate Protection Liens and the DIP Notes Liens, (y) with respect to the ABL Priority Collateral, junior, subject and subordinate to the Carve-Out, the DIP ABL Liens, the DIP Notes Liens, the ABL Adequate Protection Liens, the Prepetition ABL Liens, the 1L Adequate Protection Liens, the Prepetition 1L Notes Liens, and the Prepetition ABL Permitted Senior Liens, and (z) with respect to the Unencumbered Property, junior, subject and subordinate the Carve-Out, the DIP Notes Liens, the DIP ABL Liens, the ABL Adequate Protection Liens, and the 1L Adequate Protection Liens, in each case as such priorities are set forth in **Exhibit 3**.

(j) *Prepetition 2L Secured Parties’ 507(b) Claim.* The Prepetition 2L Trustee, for the benefit of the Prepetition 2L Secured Parties, is hereby granted, subject to the Prepetition Debt Documents and any turnover provisions contained therein, to the extent of any of the Prepetition 2L Secured Parties’ Diminution in Value, an allowed superpriority administrative expense claim pursuant to section 507(b) of the Bankruptcy Code (the “2L 507(b) Claim”, and together with the ABL 507(b) Claim and the 1L 507(b) Claim, the “Adequate Protection 507(b) Claims”), which 2L 507(b) Claim shall be payable from and have recourse to all DIP Collateral and all proceeds thereof (excluding Avoidance Actions but including, without limitation, subject to entry of the Final Order, the Avoidance Proceeds). The 2L 507(b) Claim shall be senior to all

other claims against the DIP Obligors, now existing or hereafter arising, of any kind whatsoever, including, without limitation, all administrative expenses of the kind specified in or ordered pursuant to sections 105, 326, 328, 330, 331, 365, 503(a), 503(b), 506(c), 507(a), 507(b), 546(c), 726, 1113 and 1114 of the Bankruptcy Code, whether or not such claims may become secured by a judgment lien or other non-consensual lien, levy or attachment, except for the following, in respect of which the 2L 507(b) Claims shall be junior, subject and subordinated: (i) the Carve-Out, (ii) the DIP Superpriority Claims, (iii) the ABL 507(b) Claim and (iv) the 1L 507(b) Claim.

(k) *Prepetition 2L Secured Parties Fees and Expenses.* As further adequate protection, the DIP Obligors shall currently pay, in cash, all reasonable and documented prepetition and postpetition fees and out-of-pocket expenses of the Prepetition 2L Trustee, the legal advisors to the Prepetition 2L Trustee, and Milbank LLP, Houlihan Lokey Capital, Inc., and one local legal counsel to the Ad Hoc Group (the “2L Adequate Protection Fees and Expenses”), subject to the review procedures set forth in paragraph 20 of this Interim Order. Any payments made pursuant to this paragraph shall be without prejudice to whether any such payments should be recharacterized or reallocated pursuant to section 506(b) of the Bankruptcy Code as payments of principal, interest or otherwise to the extent any claims arising from the Prepetition 2L Obligations are determined to be undersecured in a final non-appealable order.

17. *Maintenance of Collateral.* The DIP Obligors shall continue to maintain and insure the Prepetition Collateral and DIP Collateral in amounts and for the risks, and by the entities, as required under the Prepetition Debt Documents, the DIP Notes Documents, and the DIP ABL Agreement, as applicable.

18. *Perfection of DIP Notes Liens, DIP ABL Liens, and Adequate Protection Liens.*

(a) Without in any way limiting the validity of the automatic perfection of the DIP Notes Liens, the DIP ABL Liens, and the Adequate Protection Liens by the entry of this Interim Order, the DIP Notes Secured Parties, the DIP ABL Secured Parties, and the Prepetition Secured Parties are hereby irrevocably authorized, but not required, to execute in the name of the DIP Obligors, the Debtors, or the Prepetition Obligors (as applicable), as their true and lawful attorneys (with full power of substitution, to the maximum extent permitted by law) and to file or record financing statements, trademark filings, copyright filings, mortgages, notices of lien or similar perfection instruments in any jurisdiction, or take possession of and notate certificated securities or certificates of title, or take any other similar action in a manner not inconsistent herewith to document, validate or perfect the liens and security interests granted to them hereunder (the "Perfection Actions"). All such Perfection Actions shall be deemed to have been taken on the date of entry of this Interim Order. The automatic stay is hereby modified to the extent necessary to permit the DIP Notes Secured Parties, the DIP ABL Secured Parties, and each of the Prepetition Secured Parties to take any Perfection Action. For the avoidance of doubt, the DIP Notes Liens, the DIP ABL Liens, and the Adequate Protection Liens are, and will be deemed to be, valid, perfected, allowed, enforceable, non-avoidable, and not subject to challenge, dispute or subordination, at the time and on the date of entry of this Interim Order, whether or not the DIP Notes Secured Parties, the DIP ABL Secured Parties, or the Prepetition Secured Parties take any such Perfection Actions.

(b) A certified copy of this Interim Order may, in the discretion of the DIP Notes Trustee, the DIP ABL Agent, and each Prepetition Representative, be filed or recorded in the filing or recording offices in addition to or in lieu of any financing statements, mortgages,

notices of lien or similar instruments, and all filing and recording offices are hereby authorized and directed to accept a certified copy of this Interim Order for filing and/or recording, as applicable.

19. *Preservation of Rights Granted By and Under this Interim Order.*

(a) Other than the claims and liens expressly granted or permitted by this Interim Order, including the Carve-Out, no claim or lien having a priority superior to or *pari passu* with those granted by this Interim Order shall be permitted while any of the DIP Notes Obligations, the DIP ABL Obligations, or the Adequate Protection Obligations remain outstanding, and, except as otherwise expressly provided in or permitted under this Interim Order, the DIP Notes Liens, the DIP ABL Liens, and the Adequate Protection Liens shall not be: (i) junior to any lien or security interest that is avoided and preserved for the benefit of the Debtors' estates under section 551 of the Bankruptcy Code; (ii) subordinated to or made *pari passu* with any other lien or security interest heretofore or hereinafter granted in any of these chapter 11 cases or any Successor Cases, whether under section 364(d) of the Bankruptcy Code or otherwise; (iii) subordinated to or made *pari passu* with any liens arising after the Petition Date; or (iv) junior to any intercompany liens or security interests of the DIP Obligors.

(b) The occurrence and continuance of any Event of Default shall, after written notice by the DIP Notes Trustee (acting at the direction of requisite DIP Noteholders under the DIP Notes Documents) to the DIP ABL Agent and its lead counsel, the DIP Obligors and their counsel, the U.S. Trustee, and lead counsel to the Creditors' Committee (if any) constitute an event of default under this Interim Order (each an "Event of Default") and, upon such notice, interest, including, where applicable, default interest, shall accrue and be payable as set forth in the DIP Notes Indenture. Notwithstanding any order that may be entered dismissing any of these chapter

11 cases under section 1112 of the Bankruptcy Code or converting these chapter 11 cases to cases to a Successor Case: (A) the DIP Superpriority Claims, the Adequate Protection 507(b) Claims, the DIP Notes Liens, the DIP ABL Liens, the Adequate Protection Liens, and the other Adequate Protection Obligations provided to the Prepetition Secured Parties from time to time shall continue in full force and effect, shall maintain their priorities as provided in this Interim Order, and shall remain binding on all parties in interest until all of the DIP Notes Obligations, the DIP ABL Obligations, and Adequate Protection Obligations shall have been indefeasibly paid in full in cash; (B) the other rights granted by this Interim Order, including with respect to the Carve-Out, shall not be affected; and (C) the Court shall retain jurisdiction, notwithstanding such dismissal, for the purposes of enforcing the claims, liens and security interests referred to in this paragraph and otherwise in this Interim Order.

(c) If any or all of the provisions of this Interim Order are hereafter reversed, modified, vacated or stayed, such reversal, modification, vacatur or stay shall not affect (i) the validity, priority or enforceability of any DIP Notes Obligations, the DIP ABL Obligations, or Adequate Protection Obligations incurred prior to the actual receipt of written notice by the DIP Notes Trustee, the DIP ABL Agent, or the Prepetition Representatives, as applicable, of the effective date of such reversal, modification, vacatur or stay; or (ii) the validity, priority and enforceability of the DIP Notes Liens, the DIP ABL Liens, the Adequate Protection Liens, and the Carve-Out. Notwithstanding any such reversal, modification, vacatur or stay, the DIP Notes Obligations, DIP Notes Liens, the DIP ABL Obligations, the DIP ABL Liens, the Adequate Protection Obligations, the Adequate Protection Liens, the DIP Superpriority Claims and the Adequate Protection 507(b) Claims incurred prior to the actual receipt of written notice by the DIP Notes Trustee, the DIP ABL Agent, or the Prepetition Representatives, as applicable, of the

effective date of such reversal, modification, vacatur or stay shall be governed in all respects by the original provisions of this Interim Order, and the DIP Notes Secured Parties, the DIP ABL Secured Parties, and the Prepetition Secured Parties shall be entitled to, and are hereby granted, all the rights, remedies, privileges and benefits arising under sections 364(e) and 363(m) of the Bankruptcy Code.

(d) Except as expressly provided in this Interim Order or in the DIP Notes Documents or the DIP ABL Agreement, as applicable, the DIP Notes Liens, the DIP ABL Liens, the DIP Superpriority Claims, the Adequate Protection Liens, the Adequate Protection 507(b) Claims and all other rights and remedies of the DIP Notes Secured Parties, the DIP ABL Secured Parties, and the Prepetition Secured Parties granted by this Interim Order, the DIP Notes Documents, and the DIP ABL Agreement, as well as the Carve-Out, shall survive, and shall not be modified, impaired or discharged by the entry of an order (i) converting or dismissing any of these chapter 11 cases, or terminating the joint administration of these chapter 11 cases; (ii) approving the sale of any DIP Collateral pursuant to section 363(b) of the Bankruptcy Code; (iii) confirming a chapter 11 plan in any of the cases. The terms and provisions of this Interim Order, the DIP Notes Documents, and the DIP ABL Agreement shall continue in full force and effect in these chapter 11 cases and in any Successor Cases until all DIP Notes Obligations, DIP ABL Obligations, and Adequate Protection Obligations are indefeasibly paid in full in cash, and the DIP Notes Commitments and the commitments under the DIP ABL Facility have been terminated. Any confirmation order entered in these chapter 11 cases shall not discharge or otherwise affect in any way the joint and several obligations of the DIP Obligors to the DIP Notes Secured Parties under the DIP Notes Facility and the DIP Notes Documents, or of the DIP Obligors to the DIP ABL Secured Parties under the DIP ABL Facility and the DIP ABL Agreement, other than after the

indefeasible payment in full and in cash of all DIP Notes Obligations and the termination of the DIP Notes Commitments and of all DIP ABL Obligations and the termination of all commitments under the DIP ABL Facility, respectively.

20. *Payment of Fees and Expenses.* The DIP Obligors are authorized and directed to pay the ABL Adequate Protection Fees and Expenses, the 1L Adequate Protection Fees and Expenses and the 2L Adequate Protection Fees and Expenses. Subject to the review procedures set forth in this paragraph 20, payment of the ABL Adequate Protection Fees and Expenses, the 1L Adequate Protection Fees and Expenses, and the 2L Adequate Protection Fees and Expenses shall not be subject to allowance or review by the Court. Professionals for the DIP Notes Secured Parties, the DIP ABL Secured Parties, the Prepetition ABL Secured Parties, the Prepetition 1L Secured Parties, and the Prepetition 2L Secured Parties shall not be required to comply with the U.S. Trustee fee guidelines with respect to such fees and expenses, including, without limitation, with respect to any DIP Notes Professional Fees or DIP ABL Professional Fees, as applicable; *provided, however*, that any time that such professionals seek payment of fees and expenses from the Debtors prior to confirmation of a chapter 11 plan, each such professional shall provide summary copies of its invoices (including aggregate amounts of fees and expenses and total amount of time on a per-professional basis), which are not required to contain time detail and which may be redacted or modified to the extent necessary to delete any information subject to the attorney-client privilege, any information constituting attorney work product, or any other confidential information, to the DIP Obligors, counsel to any statutory committee, and the U.S. Trustee (together, the “Review Parties”); *provided further, however*, that the provision of such invoices shall not constitute a waiver of the attorney client privilege or of any benefits of the attorney work product doctrine or any other evidentiary privilege or protection recognized under

applicable law; and *provided further*, that the U.S. Trustee and the Creditors' Committee (if any) shall have the right to request additional details regarding the services rendered and expenses incurred by such professionals (each an "Information Request"). Any objections raised by any Review Party with respect to such invoices must be in writing and state with particularity the grounds therefor and must be submitted to the applicable professional within ten (10) calendar days after receipt (the "Review Period"), which shall not be extended by the delivery of an Information Request. If no written objection is received by 12:00 p.m., prevailing Eastern Time, on the last date of the Review Period, the Debtors shall pay such invoices within five (5) business days thereafter. If an objection to a professional's invoice is received within the Review Period, the Debtors shall promptly pay the undisputed amount of the invoice without the necessity of filing formal fee applications, regardless of whether the invoiced amount arose or was incurred before or after the Petition Date, and the Court shall have jurisdiction to determine the disputed portion of such invoice if the parties are unable to resolve the dispute consensually. Notwithstanding the foregoing, the Debtors are authorized and directed to pay, on or prior to the Closing Date (as defined in the DIP Notes Indenture), any costs, fees, expenses (including reasonable and documented legal fees and expenses) and other compensation required by the DIP Notes Documents and the DIP ABL Agreement. No attorney or advisor to any DIP Notes Secured Party, any DIP ABL Secured Party, or any Prepetition Secured Party shall be required to file an application seeking compensation for services or reimbursement of expenses with the Court. Any and all fees, costs, and expenses paid prior to the Petition Date by any of the Debtors to (i) the DIP Notes Secured Parties in connection with the DIP Notes Facility, (ii) the DIP ABL Secured Parties in connection with the DIP ABL Facility, and (iii) the Prepetition Secured Parties in connection with these chapter 11 cases, are hereby approved in full and shall not be subject to

recharacterization, avoidance, subordination, disgorgement or any similar form of recovery by the Debtors or any other person.

21. *Effect of Stipulations on Third Parties.* The Debtors' stipulations, admissions, agreements and releases contained in this Interim Order shall be binding upon the Debtors in all circumstances and for all purposes. The Debtors' stipulations, admissions, agreements and releases contained in this Interim Order shall be binding upon all other parties in interest, including, without limitation, any statutory or non-statutory committees appointed or formed in these chapter 11 cases and any other person or entity acting or seeking to act on behalf of the Debtors' estates, including any chapter 7 or chapter 11 trustee or examiner appointed or elected for any of the Debtors, in all circumstances and for all purposes unless such committee or other party in interest with requisite standing has timely filed an adversary proceeding or contested matter (subject to the limitations contained herein) by no later than: (i) the earlier of (A)(x) as to the Creditors' Committee only, 60 calendar days after the appointment of the Creditors' Committee, (y) if a chapter 7 or a chapter 11 trustee is appointed or elected prior to the end of the Challenge Period (as defined below), the Challenge Period solely for any such chapter 7 trustee or chapter 11 trustee shall be extended to the date that is the later of (1) 75 calendar days after entry of this Interim Order, or (2) the date that is 30 calendar days after their appointment, and (z) for all other parties in interest, 75 calendar days after entry of this Interim Order and (B) the date that is established as the deadline for filing objections to a sale of substantially all of the Debtors' assets; and (ii) any such later date as (v) has been agreed to in writing by the Prepetition ABL Agent with respect to the Prepetition ABL Obligations or the Prepetition ABL Liens, (w) has been agreed to in writing by the Prepetition 1L Trustee with respect to the Prepetition 1L Obligations or the Prepetition 1L Notes Liens, (x) has been agreed to in writing by the Prepetition 2L Trustee with respect to the Prepetition 2L

Obligations or the Prepetition 2L Notes Liens, or (y) has been ordered by the Court for cause upon a motion filed and served within any applicable period (the time period established by the foregoing clauses (i)-(ii), the “Challenge Period”), (A) objecting to or challenging the amount, validity, perfection, enforceability, priority or extent of the Prepetition Secured Obligations or the Prepetition Liens, or (B) asserting or prosecuting any Avoidance Action or any other claims, counterclaims or causes of action, objections, contests or defenses (collectively, the “Challenges”) against any Prepetition Secured Parties or any of their respective shareholders, members, subsidiaries, affiliates, officers, directors, managers, principals, employees, agents, financial advisors, attorneys, accountants, investment bankers, consultants, representatives and other professionals and the respective successors and assigns thereof, in each case in their respective capacity as such (collectively, the “Representatives”) in connection with or related to the Prepetition Debt Documents, the Prepetition Secured Obligations, the Prepetition Liens and the Prepetition Collateral; and (b) there is a final non-appealable order in favor of the plaintiff sustaining any such Challenge; *provided, however*, that any pleadings filed in connection with a Challenge shall set forth with specificity the basis for such Challenge and any Challenges not so specified prior to the expiration of the Challenge Period shall be deemed forever and fully waived, released and barred. If no Challenge is timely and properly filed during the Challenge Period or the Court does not rule in favor of the plaintiff in any such Challenge then: (1) the Debtors’ stipulations, admissions, agreements and releases contained in this Interim Order shall be binding on all parties in interest; (2) the obligations of the Prepetition Obligors under the Prepetition Debt Documents shall constitute allowed claims not subject to defense avoidance, reduction, setoff, recoupment, recharacterization, subordination (whether equitable, contractual, or otherwise, except as provided in the Intercreditor Agreements), disallowance, impairment, counterclaim,

cross-claim, or any other challenge under the Bankruptcy Code or any applicable law or regulation by any person or entity for all purposes in these chapter 11 cases and any Successor Case(s); (3) the Prepetition Liens shall be deemed to have been, as of the Petition Date, legal, valid, binding, perfected, security interests and liens, not subject to defense, avoidance, reduction, setoff, recoupment, recharacterization, subordination (whether equitable, contractual (other than as provided in the Intercreditor Agreements), or otherwise), disallowance, impairment, counterclaim, cross-claim, or any other challenge under the Bankruptcy Code or any applicable law or regulation by any person or entity, including any statutory or non-statutory committees appointed or formed in these chapter 11 cases or any other party in interest acting or seeking to act on behalf of the Debtors' estates, including, without limitation, any chapter 7 or chapter 11 trustee or examiner, and any defense, avoidance, reduction, setoff, recoupment, recharacterization, subordination (whether equitable, contractual, or otherwise), disallowance, impairment, counterclaim, cross-claim, or any other challenge under the Bankruptcy Code or any applicable law or regulation by any statutory or non-statutory committees appointed or formed in these chapter 11 cases or any other party acting or seeking to act on behalf of the Debtors' estates, including, without limitation, any chapter 7 or chapter 11 trustee or examiner, whether arising under the Bankruptcy Code or otherwise, against any of the Prepetition Secured Parties and their Representatives shall be deemed forever and fully waived, released and barred. If any Challenge is timely filed during the Challenge Period, the stipulations, admissions, agreements and releases contained in this Interim Order shall nonetheless remain binding and preclusive (as provided in the second sentence of this paragraph) on each person or entity, except to the extent that such stipulations, admissions, agreements and releases were expressly and successfully challenged in such Challenge as set forth in a final, non-appealable order of a court of competent jurisdiction. Nothing in this Interim Order vests or

confers on any person or entity (each as defined in the Bankruptcy Code), including any statutory or non-statutory committees appointed or formed in these chapter 11 cases, standing or authority to pursue any claim or cause of action belonging to the Debtors or their estates, including, without limitation, any Challenges with respect to the Prepetition Debt Documents, Prepetition Secured Obligations, Prepetition Collateral or Prepetition Liens, and any ruling on standing, if appealed, shall not stay or otherwise delay confirmation of any plan of reorganization in these chapter 11 cases. In the event that (i) there is a timely successful challenge by a final non-appealable order, pursuant and subject to the limitations contained in this paragraph 21, to the repayment of the Prepetition ABL Obligations, Prepetition 1L Obligations, and/or Prepetition 2L Obligations pursuant to this Interim Order based upon a successful challenge to the validity, enforceability, extent, perfection or priority of the Prepetition ABL Obligations, Prepetition 1L Obligations, and/or Prepetition 2L Obligations or the liens securing the same, and (ii) the Court unwinds or otherwise modifies the Prepetition ABL Obligations, Prepetition 1L Obligations, and/or Prepetition 2L Obligations (including the disgorgement or reallocation of interest, fees, principal or other incremental consideration paid in respect of the Prepetition ABL Obligations, Prepetition 1L Obligations, and/or Prepetition 2L Obligations or the avoidance of liens and/or guarantees with respect to the Debtors) then, notwithstanding anything to the contrary in this Interim Order, any amounts that are determined by the Court to have been improperly applied to any Prepetition ABL Obligations, Prepetition 1L Obligations, and/or Prepetition 2L Obligations as a result of any Challenge or other objection or determination in respect of the Prepetition ABL Obligations (including, without limitation, in connection with the Roll Up), Prepetition 1L Obligations, and/or Prepetition 2L Obligations will, in each case, be first applied to pay dollar-for-dollar any DIP ABL Obligations or DIP Notes Obligations, as applicable, that remain outstanding after any reduction

thereof as a result of such successful Challenge or other objection or determination, until the DIP ABL Obligations or DIP Notes Obligations, as applicable, are indefeasibly paid in full in cash.

22. *Limitation on Use of Proceeds of DIP Notes Facility, DIP ABL Facility, Collateral, and Carve-Out.* Notwithstanding any other provision of this Interim Order or any other order entered by the Court, without the prior written consent of (v) the Required DIP Noteholders solely with respect to the DIP Notes Secured Parties, DIP Notes Obligations and DIP Notes Liens, (w) the Required Lenders (as defined in the DIP ABL Agreement) solely with respect to the DIP ABL Secured Parties, the DIP ABL Obligations, and the DIP ABL Liens, (x) the Required Lenders (as defined in the Prepetition ABL Credit Agreement) solely with respect to the Prepetition ABL Secured Parties, the Prepetition ABL Obligations, the Prepetition ABL Liens and the related Adequate Protection granted in favor of the Prepetition ABL Secured Parties, (y) Prepetition 1L Noteholders holding at least a majority in principal amount of the Prepetition 1L Notes then outstanding solely with respect to the Prepetition 1L Secured Parties, Prepetition 1L Obligations, Prepetition 1L Notes Liens and the related Adequate Protection granted in favor of the Prepetition 1L Secured Parties, and (z) Prepetition 2L Noteholders holding at least a majority in principal amount of the Prepetition 2L Notes then outstanding solely with respect to the Prepetition 2L Secured Parties, Prepetition 2L Obligations, Prepetition 2L Notes Liens and the related Adequate Protection granted in favor of the Prepetition 2L Secured Parties, in each case, as applicable, none of the DIP Notes Facility, the DIP ABL Facility, the DIP Collateral, the Prepetition Collateral (including, without limitation, Cash Collateral), or any portion of the Carve-Out or the Professional Fees Escrow Account (and any amounts therein), nor any of the loans, financial accommodations, or proceeds of any of the foregoing, may be used by any person or entity at any time, directly or indirectly, including, without limitation, through reimbursement of professional fees of any non-

Debtor party, in connection with any: (a) investigation, threatened initiation or prosecution of any claims, causes of action, adversary proceedings, contested matters, or other litigation, including, without limitation, any Challenge, (i) against any of the DIP Notes Secured Parties, the DIP ABL Secured Parties, or the Prepetition Secured Parties, or their respective Representatives, or any action purporting to do the foregoing in respect of the DIP Notes Obligations, DIP Notes Liens, DIP Superpriority Claims, DIP ABL Obligations, DIP ABL Liens, Prepetition Secured Obligations, Adequate Protection Liens, Adequate Protection 507(b) Claims, or other Adequate Protection Obligations or (ii) challenging the amount, validity, perfection, priority, extent, or enforceability of, or asserting any defense, counterclaim or offset with respect to, any of the DIP Notes Obligations, the DIP Notes Liens, the DIP Notes Documents, the DIP ABL Obligations, the DIP ABL Liens, the DIP ABL Agreement, the Prepetition Secured Obligations, the Prepetition Liens, or the Prepetition Debt Documents, and/or any of the liens, claims, rights, or security interests securing or supporting the DIP Notes Obligations granted under the DIP Orders and the DIP Notes Documents, the DIP ABL Obligations granted under the DIP Orders and the DIP ABL Agreement, or the Prepetition Debt Documents in respect of the Prepetition Secured Obligations, including, in the case of each (i) and (ii), without limitation, for lender liability or pursuant to section 105, 510, 544, 547, 548, 549, 550 or 552 of the Bankruptcy Code, applicable non-bankruptcy law or otherwise; *provided that*, notwithstanding anything to the contrary herein, the proceeds of the DIP Notes Facility, DIP ABL Facility and Cash Collateral may each be used by the Creditors' Committee to investigate, but not to prosecute, (A) the claims and liens of the Prepetition Secured Parties and (B) potential claims, counterclaims, causes of action or defenses against the Prepetition Secured Parties, up to an aggregate cap of no more than \$100,000; (b) attempts to prevent, hinder, or otherwise delay or interfere with any of the Prepetition Secured

Parties', the DIP Notes Secured Parties' or the DIP ABL Secured Parties', as applicable, administration, enforcement, or realization on all or any portion of the Prepetition Secured Obligations, the Prepetition Collateral, the DIP Notes Obligations, the DIP ABL Obligations, or the DIP Collateral, as applicable, or any of the liens, claims and rights granted to such parties under the DIP Orders, the Prepetition Debt Documents, the DIP Notes Documents, the DIP ABL Agreement, or applicable law; (c) attempts to seek to modify any of the rights and remedies granted to the Prepetition Secured Parties, the DIP Notes Secured Parties, or the DIP ABL Secured Parties under this Interim Order, the Prepetition Debt Documents, the DIP Notes Documents or the DIP ABL Agreement, as applicable, other than in accordance with this Interim Order; (d) attempts to apply to the Court for authority to approve superpriority claims or grant liens (other than the liens and claims permitted by the DIP Notes Documents and the DIP ABL Agreement) or security interests in the DIP Collateral or any portion thereof that are senior to, or on parity with, the DIP Notes Obligations, the DIP ABL Obligations, the DIP Notes Liens, the DIP ABL Liens, the DIP Superpriority Claims, the Adequate Protection Liens, the Adequate Protection 507(b) Claims, any other Adequate Protection Obligation, the Prepetition Liens, or any of the Prepetition Secured Obligations; or (e) attempts to pay or to seek to pay any amount on account of any claims arising prior to the Petition Date unless such payments are authorized by the Court, agreed to in writing by the Required DIP Noteholders and the DIP ABL Agent, expressly permitted under this Interim Order or under the DIP Notes Documents (including the Approved Budget, subject to any permitted variances under, and to the extent required by, the DIP Notes Documents) and the DIP ABL Agreement, in each case unless all of the DIP Notes Obligations, DIP ABL Obligations, Prepetition Secured Obligations, Adequate Protection Obligations, and claims granted to the DIP Notes Secured Parties, DIP ABL Secured Parties, and Prepetition Secured Parties under this

Interim Order, have been indefeasibly paid in full in cash or otherwise agreed to in writing by the Required DIP Noteholders and the DIP ABL Agent (at the direction of the Required Lenders (as defined in the DIP ABL Agreement)). For the avoidance of doubt, this paragraph 22 shall not limit the Debtors' right to use DIP Collateral to contest that an Event of Default has occurred hereunder pursuant to and consistent with paragraph 10 of this Interim Order.

23. *Interim Order Governs.* In the event of any inconsistency between the provisions of this Interim Order, the DIP Notes Documents, the DIP ABL Agreement, or the Prepetition Debt Documents, the provisions of this Interim Order shall govern. Any authorization contained in any other order entered by the Court shall be consistent with and subject to the requirements set forth in this Interim Order, the DIP Notes Documents, and the DIP ABL Agreement, including, without limitation, the Approved Budget (subject to any permitted variances under, and to the extent required by, the DIP Notes Documents).

24. *Binding Effect; Successors and Assigns.* The DIP Notes Documents, the DIP ABL Agreement, and the provisions of this Interim Order, including all findings herein, shall be binding upon all parties in interest in these chapter 11 cases, including, without limitation, the DIP Notes Secured Parties, the DIP ABL Secured Parties, the Prepetition Secured Parties, any statutory or non-statutory committees appointed or formed in these chapter 11 cases, the Debtors and their respective successors and assigns (including any chapter 7 or chapter 11 trustee hereinafter appointed or elected for the estate of any of the Debtors, an examiner appointed pursuant to section 1104 of the Bankruptcy Code, or any other fiduciary appointed as a legal representative of any of the Debtors or with respect to the property of the estate of any of the Debtors) and shall inure to the benefit of the DIP Notes Secured Parties, the DIP ABL Secured Parties, the Prepetition Secured Parties, the Debtors, and their respective successors and assigns; *provided* that none of the DIP

Notes Secured Parties, the DIP ABL Secured Parties, or the Prepetition Secured Parties shall have any obligation to (and none of them are hereby agreeing or consenting to) permit the use of the Prepetition Collateral (including Cash Collateral) by, or to extend any financing to, any chapter 7 trustee or chapter 11 trustee or similar responsible person appointed for the estates of the Debtors.

25. Nothing in this Interim Order, the DIP Notes Documents, the DIP ABL Agreement, the Prepetition Debt Documents or any other documents related to the transactions contemplated hereby shall in any way be construed or interpreted to impose or allow the imposition upon any DIP Notes Secured Party, DIP ABL Secured Party, or Prepetition Secured Party any liability for any claims arising from the prepetition or postpetition activities of the Debtors in the operation of their businesses, or in connection with their restructuring efforts. The DIP Notes Secured Parties, the DIP ABL Secured Parties, and the Prepetition Secured Parties shall not, in any way or manner, be liable or responsible for (i) the safekeeping of the DIP Collateral or Prepetition Collateral, (ii) any loss or damage thereto occurring or arising in any manner or fashion from any cause, (iii) any diminution in the value thereof or (iv) any act or default of any carrier, servicer, bailee, custodian, forwarding agency or other person, and all risk of loss, damage or destruction of all or any portion of the DIP Collateral or the Prepetition Collateral shall be borne by the Debtors.

26. *Limitation of Liability.* In determining to make any loan or other extension of credit under the DIP Notes Documents or the DIP ABL Agreement, to permit the use of the DIP Collateral or Prepetition Collateral (including Cash Collateral) or in exercising any rights or remedies as and when permitted pursuant to this Interim Order or the DIP Notes Documents, the DIP ABL Agreement, the Prepetition Debt Documents, or applicable law, as applicable, none of the DIP Notes Secured Parties, the DIP ABL Secured Parties, or Prepetition Secured Parties shall (a) have any liability to any third party or be deemed to be in “control” of the operations of the

Debtors; (b) owe any fiduciary duty to the Debtors, their respective creditors, shareholders or estates; or (c) be deemed to be acting as a “Responsible Person” or “Owner” or “Operator” or “managing agent” with respect to the operation or management of any of the Debtors (as such terms or similar terms are used in the United States Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§ 9601, *et seq.*, as amended, or any other federal or state statute, including the Internal Revenue Code). Furthermore, nothing in this Interim Order shall in any way be construed or interpreted to impose or allow the imposition upon any of the DIP Notes Secured Parties, the DIP ABL Secured Parties, or Prepetition Secured Parties of any liability for any claims arising from the prepetition or postpetition activities of any of the Debtors and their respective Representatives.

27. *Master Proofs of Claim.* Neither Prepetition Representatives nor any other Prepetition Secured Parties shall be required to file proofs of claim in these chapter 11 cases or any Successor Cases in order to assert claims for payment of any of the Prepetition Secured Obligations, including, without limitation, any principal, unpaid interest, fees, expenses and other amounts payable under the Prepetition Debt Documents. The description of claims and liens in respect of the Prepetition Secured Obligations set forth in this Interim Order is deemed to constitute proofs of claim in respect of such indebtedness and its secured status. However, without limiting the foregoing, in order to facilitate the processing of claims, each Prepetition Representative is authorized, but not directed or required, to file a master proof of claim in the Debtors’ lead case *Anagram Holdings, LLC.*, Case No. 23-90901 (MI), on behalf of the applicable Prepetition Secured Parties (each, a “Master Proof of Claim”), which shall be deemed to have been filed against each Debtor. The provisions of this paragraph 27 and the filing of Master Proofs of Claim, if any, are intended solely for the purpose of administrative convenience and shall not affect the

right of each Prepetition Secured Party (or its successors in interest) to vote separately on any plan filed in these chapter 11 cases. The Master Proofs of Claim shall not be required to include any instruments, agreements or other documents evidencing the obligations owing by each of the Debtors to the applicable Prepetition Secured Parties, which instruments, agreements or other documents will be provided upon written request to counsel to the applicable Prepetition Representative. None of the DIP Notes Secured Parties or the DIP ABL Secured Parties shall be required to file proofs of claim with respect to the DIP Notes Obligations or the DIP ABL Obligations, respectively.

28. *Insurance.* To the extent that any Prepetition Representative is listed as a loss payee under the insurance policies of any of the DIP Obligor, the DIP Notes Trustee and the DIP ABL Agent shall also be deemed to be a loss payee under such insurance policies until the indefeasible payment in full of the DIP Notes Obligations and the DIP ABL Obligations (in each case, other than contingent indemnification obligations as to which no claim has been asserted) and termination of the DIP Notes Commitment and the commitments under the DIP ABL Facility and shall act in that capacity and distribute any proceeds recovered or received in respect of such insurance policies in accordance with this Interim Order.

29. *Credit Bidding DIP Notes Obligations and DIP ABL Obligations.* (a) the DIP Notes Trustee (acting at the direction of requisite DIP Noteholders under the DIP Notes Documents) shall have the right to credit bid, up to the full amount of the DIP Notes Obligations in any sale of the DIP Collateral, and (b) subject to the expiration of the Challenge Period and the Challenge rights set forth in paragraph 21 of this Interim Order, the DIP ABL Agent shall have the right to credit bid, up to the full amount of the DIP ABL Obligations in any sale of the DIP Collateral, in each case, without the need for further Court order authorizing the same, whether

any such sale is effectuated through section 363(k), 1123 or 1129(b) of the Bankruptcy Code, by a chapter 7 trustee under section 725 of the Bankruptcy Code or otherwise; *provided* that the DIP Notes Obligations may not be used to credit bid in any disposition of any ABL Priority Collateral unless such sale provides for indefeasible payment in full in cash of all DIP ABL Obligations and the Prepetition ABL Obligations; *provided further*, that neither the DIP ABL Obligations nor any Prepetition ABL Obligations may be used to credit bid in any disposition of any Notes Priority Collateral unless such sale provides for indefeasible payment in full in cash of all DIP Notes Obligations, Prepetition 1L Obligations and Prepetition 2L Obligations.

30. *Credit Bidding Prepetition Secured Obligations.* Subject to the terms and provisions of the Intercreditor Agreements and the lien priorities set forth herein and in the Intercreditor Agreements and unless the Court for cause orders otherwise, and subject to the expiration of the Challenge Period and the Challenge rights set forth in paragraph 21 of this Interim Order, each Prepetition Representative shall have the right, consistent with the provisions of the Prepetition Debt Documents, as applicable (and providing for the DIP Notes Obligations and the DIP ABL Obligations to be either (i) assumed or (ii) indefeasibly repaid in full in cash and the termination of the DIP Notes Commitments and of all commitments under the DIP ABL Facility, respectively), to credit bid, up to the full amount of the applicable Prepetition Secured Obligations, in the sale of the applicable Prepetition Collateral, without the need for further Court order authorizing the same, whether any such sale is effectuated through section 363(k), 1123 or 1129(b) of the Bankruptcy Code, by a chapter 7 trustee under section 725 of the Bankruptcy Code or otherwise; *provided* that neither the Prepetition 1L Obligations nor the Prepetition 2L Obligations may be used to credit bid in any disposition of any ABL Priority Collateral unless such sale provides for indefeasible payment in full in cash of all DIP ABL Obligations and the Prepetition

ABL Obligations; *provided further*, that no Prepetition ABL Obligations may be used to credit bid in any disposition of any Notes Priority Collateral unless such sale provides for indefeasible payment in full in cash of all DIP Notes Obligations, Prepetition 1L Obligations and Prepetition 2L Obligations.

31. *Modification of Automatic Stay.* The automatic stay under section 362(a) of the Bankruptcy Code is hereby modified to the extent necessary to effectuate all of the terms and provisions of this Interim Order, including, without limitation, to: (a) permit the Debtors to grant the DIP Notes Liens, the DIP ABL Liens, DIP Superpriority Claims, Adequate Protection Liens and the Adequate Protection 507(b) Claims; (b) permit the Debtors to perform such acts as the DIP Notes Secured Parties, the DIP ABL Secured Parties, or Prepetition Secured Parties may reasonably request to assure the perfection and priority of the liens granted herein; (c) permit the Debtors to incur all liabilities and obligations to the DIP Notes Secured Parties, the DIP ABL Secured Parties, and Prepetition Secured Parties under this Interim Order; (d) authorize the Debtors to pay, and the DIP Notes Secured Parties, the DIP ABL Secured Parties, and Prepetition Secured Parties to retain and apply, any payments made in accordance with the terms of this Interim Order; and (e) permit the DIP Notes Secured Parties, the DIP ABL Secured Parties, and Prepetition Secured Parties, subject to the terms of this Interim Order, to exercise all rights and remedies provided for hereunder.

32. *Effectiveness.* Notwithstanding Bankruptcy Rules 4001(a)(3), 6004(h), 6006(d), 7062, or 9014, any Local Rule or Rule 62(a) of the Federal Rules of Civil Procedure, this Interim Order shall be immediately effective and enforceable upon its entry and there shall be no stay of execution or effectiveness of this Interim Order.

33. *Governing Order.* Notwithstanding the relief granted in any other order by the Court, (i) all payments and actions by any of the Debtors pursuant to the authority granted therein shall be subject to this Interim Order, including compliance with the Approved Budget and all other terms and conditions hereof, and (ii) to the extent there is any inconsistency between the terms of such other order and this Interim Order, this Interim Order shall control, in each case, except to the extent expressly provided otherwise in the other order.

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

35. *Payments Held in Trust.*

(a) Except as expressly permitted in this Interim Order or the DIP Notes Documents and except with respect to the DIP Obligors, in the event that any person or entity receives any payment on account of a security interest in the DIP Collateral (other than ABL Priority Collateral), receives any DIP Collateral (other than ABL Priority Collateral) or any proceeds of the DIP Collateral (other than ABL Priority Collateral) or receives any other payment with respect thereto from any other source prior to indefeasible payment in full in cash of all DIP Notes Obligations and termination of all DIP Notes Commitments, such person or entity shall be deemed to have received, and shall hold, any such DIP Collateral or any payment on account or proceeds thereof (other than ABL Priority Collateral) in trust for the benefit of the DIP Notes Secured Parties and shall immediately turn over such collateral or its proceeds to the DIP Notes Trustee, or as otherwise instructed by the Court, for application in accordance with the DIP Notes Documents and this Interim Order.

(b) Except as expressly permitted in this Interim Order or the DIP ABL Agreement, and except with respect to the Debtors, in the event that any person or entity receives

any payment on account of a security interest in the ABL Priority Collateral, receives any ABL Priority Collateral or any proceeds of the ABL Priority Collateral or receives any other payment with respect thereto from any other source prior to indefeasible payment in full in cash of all DIP ABL Obligations and all Prepetition ABL Obligations and the termination of all commitments under each such facility, such person or entity shall be deemed to have received, and shall hold, any such ABL Priority Collateral or any payment on account or proceeds thereof in trust for the benefit of the DIP ABL Secured Parties and the Prepetition ABL Secured Parties, as applicable, and shall immediately turn over such collateral or its proceeds to the DIP ABL Agent or the Prepetition ABL Agent, as applicable, or as otherwise instructed by the Court, for application in accordance with the DIP ABL Agreement, the Prepetition ABL Loan Documents, and this Interim Order. For the avoidance of doubt, this paragraph will not apply to payments made or assets transferred by the Debtors as authorized under the Bankruptcy Code or any order of the Court.

36. *DIP ABL Agreement.*⁶

(a) The "DIP ABL Agreement" is hereby defined as, is deemed to consist of, and hereby incorporates the terms and conditions of (x) this Interim Order (y) the Prepetition ABL Loan Documents (as modified and to the extent not in conflict with this Interim Order) and (z) all other agreements, instruments, and documents evidencing the DIP ABL Obligations from time to time that are executed or delivered in accordance with this Interim Order. In this regard, the Prepetition ABL Credit Agreement and the other Prepetition ABL Loan Documents govern the DIP ABL Facility to give meaning or effect to the provisions of this paragraph 36 in particular and for the purposes of governing the payment of interest, the calculation and implementation of the

⁶ Capitalized terms used in this Paragraph 36 that are not otherwise defined herein shall have the meanings given to them in the Prepetition ABL Credit Agreement.

Borrowing Base, including the institution of Reserves (subject to the limitations and parameters set forth therein and herein), and otherwise to provide for the mechanics of the DIP ABL Facility. Notwithstanding anything contained in the DIP ABL Agreement or the Prepetition ABL Loan Documents, (x) the exercise of remedies of the DIP ABL Secured Parties are limited to the relief provided in this Interim Order and may only be exercised upon the occurrence and continuance of an DIP ABL Termination Event and (y) the conditions to borrowing under the DIP ABL Facility are limited to the requirements set forth in this Interim Order.

(b) *Borrowing Base Certificates and other Reporting.* On the basis required during an Increased Reporting Period, the Debtors will deliver to the DIP ABL Agent such financial reporting, Borrowing Base Certificates and other information concerning the Debtors and the DIP Collateral as required by Sections 5.1 and 5.2 of the Prepetition ABL Credit Agreement. To the extent not otherwise contained in such reporting, the Debtors will include with the delivery of each Borrowing Base Certificate a calculation of Excess Availability on the basis set forth in paragraph 36(f) below. In addition, the Debtors will deliver to the DIP ABL Agent copies of all reporting regarding the DIP Collateral or otherwise required by the DIP Notes Indenture when due thereunder, and will in all events not later than the Thursday of each week (commencing with the Thursday following the Thursday that is two full weeks after the Petition Date) deliver a detailed variance report comparing the Debtors' actual performance for the most recently ended four-week period occurring after the Petition Date to the Approved Budget for such period (or, prior to the completion of such four-week period following the Petition Date, budgeted receipts or budgeted disbursements, as applicable, on an aggregate basis, for each full fiscal week completed, and on a cumulative basis, after the Petition Date and prior to the date of such delivery); it being understood

that delivery of the Variance Report (as defined in the DIP Notes Indenture in effect on the date hereof) shall satisfy the foregoing requirement.

(c) *Reserves.* The DIP ABL Agent may administer the Borrowing Base, and implement, increase, decrease and otherwise modify Reserves against the Borrowing Base (including, without limitation, in connection with field exams or appraisals conducted during the term of the DIP ABL Facility), subject to its Permitted Discretion and to the extent generally consistent with past practices permitted under the Prepetition ABL Credit Agreement; *provided* that (x) the DIP ABL Agent shall not increase or otherwise modify Reserves or change Borrowing Base assumptions solely as a result of the commencement of these chapter 11 cases or the insolvency or financial condition of the Debtors at any time before the closing of these chapter 11 cases and (y) any Reserves (whether in effect prior to or after the Petition Date) may only reduce the Borrowing Base and not the Revolver Commitment under the DIP ABL Facility; *provided, further,* for the avoidance of doubt, the DIP ABL Agent may implement and modify Reserves, subject to its Permitted Discretion, from time to time on account of and to the extent of (i) accrued fees and expenses of Professional Persons not yet covered by amounts deposited in the Professional Fees Escrow Account (predicated on such amounts in the Approved Budget and its supporting Borrowing Base forecast) and (ii) the Post-Carve-Out Trigger Notice Cap.

(d) *Interest, Fees, Costs and Other Amounts Due in Respect of the DIP ABL Obligations.* The Debtors are authorized and directed to pay the following, from and after entry of this Interim Order, to the DIP ABL Agent, on behalf of itself and the DIP ABL Secured Parties, in immediately available funds, and if the Debtors fail to pay such amounts when due in cash, then the DIP ABL Agent may, at its election in its sole and absolute discretion, make an advance of DIP ABL Obligations to pay such amounts at any time: (i) promptly upon the entry of this Interim

Order, all accrued and unpaid amounts (whether accrued prior to or after the Petition Date) in respect of the following, and (ii) thereafter, as and when due under the DIP ABL Agreement or as provided herein (whichever is earlier), (A) all interest accruing and payable at an amount equal to (x) with respect to the Prepetition ABL Obligations, the non-default rate for interest provided for under the Prepetition ABL Credit Agreement, and (y) with respect to the DIP ABL Obligations, the default rate for interest provided for under the Prepetition ABL Credit Agreement (with the default rate of interest under the DIP ABL Facility being 2% above the foregoing rate described in this clause (y)), (B) all professional fees and expenses incurred by the Prepetition ABL Secured Parties and DIP ABL Secured Parties (*provided* that such amounts arising after the Petition Date must also be permitted to be paid pursuant to paragraph 20 of this Interim Order), (C) all amounts due in respect of Bank Product Obligations, (D) unused line and other fees in Section 2.10 of the Prepetition ABL Loan Documents but as applied to the DIP ABL Facility and (E) a \$200,000 commitment fee which is due and payable to DIP ABL Agent within two (2) Business Days following entry of this Interim Order.

(e) *Letters of Credit; Hedge Agreements.* Immediately prior to the entry of this Interim Order (i) no letters of credit are issued and outstanding under the Prepetition ABL Credit Agreement, and no new letters of credit under the DIP ABL Facility will be required to be issued after the Petition Date except in the Issuing Banks' sole discretion, and (ii) no Hedge Agreements exist under the Prepetition ABL Loan Documents and no new Hedge Agreements will be entered into after the Petition Date except in the DIP ABL Agent's sole discretion.

(f) *Repayments of the DIP ABL Obligations Prior to Maturity.* In addition to prepayments required by the terms of the Prepetition ABL Credit Agreement that are made applicable to the DIP ABL Facility by this Interim Order (including, without limitation, in

connection with out of the ordinary course sales of ABL Priority Collateral), the Debtors are authorized and required to make payments to the DIP ABL Agent on account of principal amounts of the DIP ABL Obligations immediately, at any time and to the extent that the Debtors have less than \$3,000,000 of unrestricted cash liquidity consisting of not less than \$1,500,000 of Excess Availability; *provided* that the trade payables to be taken into account for purposes of determining such Excess Availability will only include such payables (i) first incurred after the Petition Date, (ii) relating to the delivery of goods within the twenty (20) day period immediately prior to the Petition Date, or (iii) related to leases or executory contracts that the Debtors designate or move to assume (whether or not assigned) in connection with any sale or plan in these chapter 11 cases.

(g) *Borrowings under the DIP ABL Facility.* The terms and provisions in the Prepetition ABL Credit Agreement related to the process for Debtors to request and receive loan advances thereunder will apply to such matters under the DIP ABL Facility, except that (w) the matters described in Sections 4.13 and 4.18 of the DIP ABL Agreement shall, on the date of such advance, be true and correct without any modification and without the DIP Issuers making any representation or warranty in respect thereof other than as described on, and as qualified by, paragraph 23 of **Exhibit 4**, (x) the stated condition to such advances that no Defaults or Events of Default shall exist shall be deemed to mean that the DIP ABL Facility Maturity Date (as defined below) has not or will not occur as a result of such requested advance and that the Debtors are otherwise in compliance with all of the terms of this Interim Order and any Final Order, before and after giving effect to any such advance, (y) the required representations and warranties made in connection therewith are limited to those described in paragraph 20 of **Exhibit 4** hereof and (z) for purposes of determining amounts permitted to be borrowed or required to be paid under the DIP ABL Facility from time to time, (1) the aggregate "Revolver Commitment" of all Prepetition

ABL Lender and DIP ABL Lender, and the initial "Maximum Revolver Amount" will be deemed to be \$15,000,000, (2) the Borrowing Base will be calculated taking all otherwise applicable prepetition and postpetition property of the Debtors into account, and (3) the determination of existing or outstanding "Revolver Usage", "Revolving Loan Exposure", "Revolving Loans" will take both the applicable Prepetition ABL Obligations and DIP ABL Obligations into account.

(h) *Cash Dominion.* Notwithstanding anything to the contrary, a "Cash Dominion Period" under and as defined in the Prepetition ABL Loan Documents will be deemed to exist at all times from and after the Petition Date as set forth herein, and, at all times no Prepetition ABL Obligations are outstanding, all funds now and hereafter deposited in the Collection Account may be remitted on a daily basis to the DIP ABL Agent to be applied to the DIP ABL Obligations (subject to re-borrowing by the DIP Obligors in accordance with the terms and conditions of this Interim Order and subject to the funding of the Carve-Out).

(i) *DIP ABL Facility Maturity Date.* All DIP ABL Obligations shall be due and payable, and the DIP ABL Secured Parties' commitment to provide advances of the DIP ABL Obligations and consent to the use of Cash Collateral shall terminate, at the election of the DIP ABL Agent, upon such date (the "DIP ABL Facility Maturity Date") that is the earliest of: (i) April 30, 2024 and (ii) the occurrence of a DIP ABL Termination Event (as defined below).

(j) *Reaffirmation.* The terms and provisions of the DIP ABL Agreement (as modified pursuant to this Interim Order) are, and will be deemed to be, valid, binding, and fully enforceable against each of the parties thereto from time to time as and to the same extent enforceable against such parties under the Prepetition ABL Loan Documents, and each party thereto is hereby deemed to have reaffirmed and ratified all of the terms and provisions of the Prepetition ABL Loan Documents in connection with the Roll Up and to have agreed that all such

terms and provisions (including, without limitation, all of the guaranties, mortgages, and subordination agreements of each such party, as applicable) under the Prepetition ABL Loan Documents, and all of the liens and security interests granted by such party under the Prepetition ABL Loan Documents in respect of the Prepetition ABL Obligations, will, and will be deemed to, also secure and apply equally to all of the obligations (including all of the DIP ABL Obligations) under the DIP ABL Agreement. Without limiting the foregoing, all of the obligations and agreements of each party to the Prepetition ABL Loan Documents (including, without limitation, all of the guaranties, mortgages, and subordination agreements of each such party, as applicable), and all of the liens and security interests granted by such party thereunder in respect of the Prepetition ABL Obligations, will, and will be deemed to, also secure and apply equally to all of the obligations (including all of the DIP ABL Obligations) under the DIP ABL Agreement.

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

38. *No Third Party Rights.* Except as explicitly provided for herein, this Interim Order does not create any rights for the benefit of any third party, creditor, equity holder or any direct, indirect or incidental beneficiary, which rights are hereby expressly disclaimed.

39. *Necessary Action.* The Debtors, the DIP Notes Secured Parties, the DIP ABL Secured Parties, and the Prepetition Secured Parties are authorized to take all reasonable actions as are necessary or appropriate to implement the terms of this Interim Order. The automatic stay is modified to permit affiliates of the Debtors who are not debtors in these chapter 11 cases to take all actions as are necessary or appropriate to implement the terms of this Interim Order.

40. *Retention of Jurisdiction.* The Court shall retain jurisdiction to enforce the provisions of this Interim Order, and this retention of jurisdiction shall survive the confirmation

and consummation of any chapter 11 plan for any one or more of the Debtors notwithstanding the terms or provisions of any such chapter 11 plan or any order confirming any such chapter 11 plan.

41. *Final Hearing.* A final hearing to consider the relief requested in the DIP Motion on a final basis shall be held on [●] (Prevailing Central Time).

42. *Objections.* Any objections or responses to the DIP Motion shall be filed on or prior to [●] (Prevailing Central Time). Any party objecting to the relief sought at the Final Hearing shall file and serve (via mail and e-mail) written objections, which objections shall be served upon (a) counsel to the Debtors, Simpson Thacher & Bartlett LLP, 425 Lexington Avenue New York, NY 10017, Attn: Sunny Singh, Nicholas E. Baker, Moshe A. Fink and Ashley M. Gherlone, (b) counsel to the DIP Notes Trustee, King & Spalding LLP, 110 North Wacker Drive, Suite 3800, Chicago, IL 60606, Attn: Geoffrey M. King and Kevin E. Manz, (c) counsel to the DIP Noteholders, Milbank LLP, 55 Hudson Yards, New York, New York 10001, Attn: Abhilash M. Raval, Matthew L. Brod, and Justin G. Cunningham, (d) counsel to the DIP ABL Agent and the Prepetition ABL Agent, Goldberg Kohn, Ltd., 55 East Monroe, Suite 3300, Chicago, Illinois 60603, Attn: Jeremy M. Downs and Zachary J. Garrett, (e) the Office of the United States Trustee for the Southern District of Texas, (f) if appointed, the Creditors' Committee; (g) counsel to the Prepetition 1L Trustee, ArentFox Schiff LLP, 1301 Avenue of the Americas, Floor 42, New York, NY 10019, Attn: Andrew I. Silfen and Beth M. Brownstein, (h) counsel to the Prepetition 2L Trustee, Kilpatrick Townsend & Stockton LLP, 1100 Peachtree Street NE, Suite 2800, Atlanta, GA 30309-4528, Attn: Todd Meyers and Gianfranco Finizio, and (i) counsel to an existing Prepetition 1L Noteholder, Arnold & Porter Kaye Scholer LLP, 70 West Madison Street Suite 4200, Chicago, IL 60602-4231, Attn: Tyler Nurnberg (Tyler.Nurnberg@arnoldporter.com).

43. The Debtors shall promptly serve copies of this Interim Order (which shall constitute adequate notice of the Final Hearing) on the parties having been given notice of the Interim Hearing and to any party that has filed with the Court a request for notices in these chapter 11 cases.

Dated: _____, 2023
Houston, Texas

UNITED STATES BANKRUPTCY JUDGE

Exhibit 1

DIP Notes Purchase Agreement

**SENIOR SECURED SUPERPRIORITY DEBTOR-IN-POSSESSION
NOTE PURCHASE AGREEMENT**

among

ANAGRAM HOLDINGS, LLC,

and

ANAGRAM INTERNATIONAL, INC.,

Upon Entry of the Interim DIP Order, as Debtors and Debtors-in-Possession under Chapter 11 of the
Bankruptcy Code and as DIP Issuers hereunder,

THE GUARANTORS PARTY HERETO FROM TIME TO TIME,

and

ANAGRAM INTERNATIONAL HOLDINGS, INC.,

as DIP Guarantors

and

THE FINANCIAL INSTITUTIONS AND OTHER PERSONS PARTY HERETO,

as the Purchasers

Dated as of November 8, 2023

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**SENIOR SECURED SUPERPRIORITY DEBTOR-IN-POSSESSION
NOTE PURCHASE AGREEMENT**

SENIOR SECURED SUPERPRIORITY DEBTOR-IN-POSSESSION NOTE PURCHASE AGREEMENT (as may be amended, restated, supplemented, or otherwise modified from time to time in accordance with the terms hereof, this “**Agreement**”), dated as of November 8, 2023, is made by and among:

- (i) Anagram Holdings, LLC, a Delaware limited liability company, as issuer (“**Anagram LLC**”), Anagram International, Inc., a Minnesota corporation, as co-issuer (“**Anagram International**”) and, together with Anagram LLC the “**DIP Issuers**” or the “**Company**”) and, upon entry of the Interim DIP Order, as Debtors and Debtors-in-Possession under Chapter 11 of the Bankruptcy Code;
- (ii) Anagram International Holdings, Inc., a Minnesota corporation, as a guarantor and, upon entry of the Interim DIP Order, as Debtor and Debtor-in-Possession under Chapter 11 of the Bankruptcy Code (together with the other guarantors from time to time party hereto, the “**DIP Guarantors**”); and
- (iii) the financial institutions party hereto, as of the date hereof, at the time of execution (each an “**Initial Purchaser**”, and, together with any New DIP Purchasers, the “**Purchasers**”).

Each party hereto is referred to herein, individually, as a “**Party**” and, collectively, as the “**Parties**.”

RECITALS

WHEREAS, the DIP Issuers and certain of their direct and indirect subsidiaries and Affiliates, each as debtors-in-possession (collectively, the “**Debtors**”) shall commence voluntary cases (the “**Chapter 11 Cases**” and the date of such commencement, the “**Petition Date**”) under Chapter 11 of the Bankruptcy Code (as defined herein) in the United States Bankruptcy Court for the Southern District of Texas (the “**Bankruptcy Court**”). During the Chapter 11 Cases, the Debtors shall continue to operate their businesses and manage their properties as debtors-in-possession pursuant to Sections 1107 and 1108 of the Bankruptcy Code.

WHEREAS, prior to the date hereof, certain lenders and noteholders provided financing to the DIP Issuers and their Affiliates pursuant to (i) that certain indenture, dated as of July 30, 2020 (as amended, supplemented, restated or otherwise modified prior to the Petition Date, the “**Prepetition 1L Notes Indenture**”), (ii) that certain indenture, dated as of July 30, 2020 (as amended, supplemented, restated or otherwise modified prior to the Petition Date, the “**Prepetition 2L Notes Indenture**”) and (iii) that certain credit agreement dated as of May 7, 2021 (as amended, supplemented, restated or otherwise modified prior to the Petition Date, the “**Prepetition ABL Credit Agreement**”).

WHEREAS, prior to the execution of this Agreement, the DIP Issuers agreed to continue the retention of Jim Plutt and Jim Harrison as consultants on substantially the same terms of their initial engagement with the Initial Purchasers.

WHEREAS, on the date hereof, (i) the outstanding aggregate principal amount of Notes and PIK Notes (each, as defined in the Prepetition 1L Notes Indenture) and unpaid reimbursement obligations under the Prepetition 1L Notes Indenture was approximately \$125,331,399.84, plus accrued, unpaid and uncapitalized interest, fees, costs and expenses and all other Prepetition 1L Obligations under

the Prepetition 1L Notes Documents, (ii) the outstanding aggregate principal amount of Notes and PIK Notes (each, as defined in the Prepetition 2L Notes Indenture) and unpaid reimbursement obligations under the Prepetition 2L Notes Indenture was approximately \$108,900,584.61, plus accrued, unpaid and uncapitalized interest, fees, costs and expenses and all other Prepetition 2L Obligations under the Prepetition 2L Notes Documents and (iii) the outstanding principal balance of loans (as defined in the Prepetition ABL Credit Agreement) and unpaid reimbursement obligations under the Prepetition ABL Credit Agreement was approximately \$6,206,692.20, plus interest, fees, costs and expenses and all other Prepetition ABL Obligations under the Prepetition ABL Loan Documents.

WHEREAS, the Prepetition Secured Obligations under the Prepetition Debt Documents are secured by security interests and liens in substantially all of the existing and after-acquired assets of the DIP Issuers and the DIP Guarantors as more fully set forth in the Prepetition Debt Documents, and such security interests are perfected, and, with certain exceptions as described in the Prepetition Debt Documents, have priority over all other security interests.

WHEREAS, the DIP Issuers have requested, and, upon the terms and subject to the conditions set forth in this Agreement and the DIP Indenture, the Purchasers have agreed to severally purchase from the DIP Issuers, DIP Notes in an aggregate principal amount of \$22.0 million, consisting of: (i) \$10.0 million aggregate principal amount of Initial DIP Notes issuable upon the Interim DIP Order Entry Date and (ii) \$12.0 million aggregate principal amount of Additional DIP Notes issuable upon the Final DIP Order Entry Date, each to fund the working capital requirements of the DIP Issuers, the DIP Guarantors and their Subsidiaries during the pendency of the Chapter 11 Cases and costs incurred pursuant to the Chapter 11 Cases, in each case, pursuant to and in accordance with the Approved Budget.

WHEREAS, the DIP Issuers and the DIP Guarantors have agreed to secure all of their DIP Obligations under the DIP Notes by granting to the Trustee, for the benefit of the Trustee and the other DIP Secured Parties, a security interest in and lien upon all of their existing and after-acquired personal and real property. The DIP Notes will be secured by (i) a senior priming lien on the Prepetition Notes Priority Collateral and (ii) a lien that ranks senior to the liens securing the Prepetition 1L Obligations and Prepetition 2L Obligations, but junior to the liens securing the Prepetition ABL Obligations, on the Prepetition ABL Priority Collateral.

WHEREAS, the DIP Issuers' and the DIP Guarantors' business is a mutual and collective enterprise and the DIP Issuers and the DIP Guarantors believe that the DIP Notes and other financial accommodations to the DIP Issuers under the DIP Indenture will enhance the aggregate borrowing powers of the DIP Issuers and facilitate the administration of the Chapter 11 Cases and their credit relationship with the Prepetition 1L Noteholders, the Prepetition 2L Noteholders, Prepetition ABL Agent and the Prepetition ABL Lenders, all to the mutual advantage of the DIP Issuers and the DIP Guarantors.

WHEREAS, each of the DIP Issuers and DIP Guarantors acknowledges that it will receive substantial direct and indirect benefits by reason of the financing provided to the DIP Issuers as provided in the DIP Indenture.

WHEREAS, the Purchasers' willingness to extend financial accommodations to the DIP Issuers, on a combined basis as more fully set forth in the DIP Indenture and the other DIP Documents, is done as an accommodation to the DIP Issuers and the DIP Guarantors and at the DIP Issuers' and the DIP Guarantors' request and in furtherance of the DIP Issuers' and the DIP Guarantors' mutual and collective enterprise.

NOW, THEREFORE, in consideration of the mutual promises, agreements, representations, warranties and covenants contained herein, the receipt and sufficiency of which are hereby acknowledged, each of the Parties hereby agrees as follows:

ARTICLE I

DEFINITIONS

Section 1.1 Definitions. Except as otherwise expressly provided in this Agreement or as defined in the DIP Indenture, whenever used in this Agreement (including any Schedules attached hereto), the following terms shall have the respective meanings specified therefor below:

“**Additional DIP Notes**” has the meaning set forth in Section 2.1(b) hereof.

“**Additional DIP Notes Commitment**” with respect to each Purchaser means the aggregate principal amount of Additional DIP Notes which such Purchaser has agreed to purchase pursuant to this Agreement, subject to the terms and conditions contained herein, as specified opposite such Purchaser’s name under the caption “Additional DIP Notes Commitment (U.S. dollars)” in Schedule 3 of this Agreement.

“**Additional Purchase Price**” with respect to any Purchaser means the purchase price specified opposite such Purchaser’s name under the caption “Additional Purchase Price (U.S. dollars)” in Schedule 3 of this Agreement, plus any accrued interest from and including the later of the Initial Issue Date or the most recent interest payment date (if any) to, but not including the Second Issue Date.

“**Advisors**” means (i) Milbank LLP and (ii) Houlihan Lokey Capital, Inc., in their capacities as legal and financial advisors, as applicable, to the Purchasers.

“**Agreement**” has the meaning set forth in the preamble.

“**Anti-Corruption Laws**” means any and all laws, rules and regulations of any jurisdiction concerning or relating to the prevention or prohibition of bribery or corruption, including the Foreign Corrupt Practices Act of 1977, as amended and the UK Bribery Act of 2010.

“**Anti-Money Laundering Laws**” means any and all laws, rules or regulations in any jurisdiction relating to or concerning the prevention or prohibition of money laundering or terrorism financing, including the U.S. Bank Secrecy Act, as amended by the Patriot Act.

“**Audited Financial Statements**” means the audited consolidated balance sheets of the DIP Issuers and their Subsidiaries as of each of December 31, 2021 and 2020 and related consolidated statements of income, stockholders’ equity and cash flows of the DIP Issuers and their Subsidiaries for the fiscal years ended December 31, 2021 and 2020.

“**Bankruptcy Code**” means title 11 of the United States Code, 11 U.S.C. §§ 101– 1532 (as amended from time to time).

“**Bankruptcy Court**” has the meaning set forth in the Recitals.

“**Bankruptcy Court DIP Order**” means the Interim DIP Order or the Final DIP Order, as applicable.

“**Business Day**” means any day other than a Saturday, Sunday or any other day on which banks in New York City, New York are not open for business.

“**Carve-Out**” has the meaning set forth in the Bankruptcy Court DIP Order.

“**Chapter 11 Cases**” has the meaning set forth in the Recitals.

“**Claim**” means (i) a right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured or (ii) a right to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured, or unsecured, each as set forth in section 101(5) of the Bankruptcy Code.

“**Code**” means the Internal Revenue Code of 1986.

“**Collateral**” has the meaning given to the term “DIP Collateral” in the Bankruptcy Court DIP Order.

“**Collateral Agent**” means GLAS Trust Company LLC, as Collateral Agent under the DIP Indenture with respect to the Collateral.

“**Commitments**” means the sum of all Purchasers’ Initial DIP Notes Commitments and Additional DIP Notes Commitments.

“**Company**” has the meaning set forth in the preamble.

“**Company Plan**” has the meaning set forth in Section 4.20 hereof.

“**Contract**” means any agreement, contract or instrument, including any loan, note, bond, mortgage, indenture, guarantee, deed of trust, license, franchise, commitment, lease, franchise agreement, letter of intent, memorandum of understanding or other obligation, and any amendments thereto, whether written or oral.

“**Debtors**” has the meaning set forth in the Recitals.

“**DIP Documents**” has the meaning set forth in the Bankruptcy Court DIP Order.

“**DIP Guarantor**” has the meaning set forth in the preamble.

“**DIP Indenture**” means the indenture pursuant to which the DIP Notes will be issued, which shall be substantially in the form attached hereto as Exhibit A.

“**DIP Issuers**” has the meaning set forth in the preamble.

“**DIP Notes**” mean the Initial DIP Notes or the Additional DIP Notes or both, as the context requires.

“**DIP Obligations**” has the meaning set forth in the Bankruptcy Court DIP Order.

“**DIP Secured Parties**” has the meaning set forth in the Bankruptcy Court DIP Order.

Order. **“DIP Superpriority Claims”** has the meaning set forth in the Bankruptcy Court DIP

Purchaser **“Eligible Assignee”** means (a) any Purchaser and (b) any Related Fund or Affiliate of a

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

Order. **“Final DIP Order”** means the “Final Order”, as defined in the Bankruptcy Court DIP

Order. **“Final DIP Order Entry Date”** means the date on which the Final DIP Order is entered on the docket of the Bankruptcy Court.

“GAAP” means generally accepted accounting principles in the United States which are in effect on any date of determination.

“Governmental Authority” means any nation or government, any state or other political subdivision thereof, any agency, authority, instrumentality, regulatory body, court, administrative tribunal, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government.

“Indemnified Claim” has the meaning set forth in Section 8.2 hereof.

“Indemnified Person” has the meaning set forth in Section 8.1 hereof.

“Indemnifying Party” has the meaning set forth in Section 8.1 hereof.

“Initial DIP Budget” has the meaning set forth in the Interim DIP Order.

“Initial DIP Notes” has the meaning set forth in Section 2.1(a) hereof.

“Initial DIP Notes Commitment” with respect to each Purchaser means the aggregate principal amount of Initial DIP Notes which such Purchaser has agreed to purchase pursuant to this Agreement, subject to the terms and conditions contained herein, as specified opposite such Purchaser’s name under the caption “Initial DIP Notes Commitment (U.S. dollars)” in Schedule 2 of this Agreement.

“Initial Issue Date” means the date on which the DIP Issuers have issued the Initial DIP Notes in accordance with this Agreement, which shall be the date specified in the relevant Note Purchase Request so long as the conditions precedent set forth in Section 7.1 have been satisfied.

“Initial Outside Date” has the meaning set forth in Section 9.2(a) hereof.

“Initial Purchaser” has the meaning set forth in the preamble.

“Initial Purchase Price” with respect to any Purchaser means the purchase price specified opposite such Purchaser’s name under the caption “Initial Purchase Price (U.S. dollars)” in Schedule 2 of this Agreement.

“Intellectual Property” has the meaning set forth in Section 4.18 hereof.

“**Interim DIP Order**” means the “Interim Order” of the Bankruptcy Court, approving the DIP Facility on an interim basis, substantially in the form of Exhibit B hereto and otherwise as agreed upon by the Required Purchasers and the DIP Issuers.

“**Interim DIP Order Entry Date**” means the date on which the Interim DIP Order is entered on the docket of the Bankruptcy Court.

“**Issue Date**” means the Initial Issue Date or the Second Issue Date, or both, as the context requires.

“**Knowledge of Obligors**” means the actual knowledge after due inquiry of the individuals identified on Schedule 7.

“**Law**” means any law (statutory or common), statute, regulation, rule, code or ordinance enacted, adopted, issued or promulgated by any Governmental Authority.

“**Losses**” has the meaning set forth in Section 8.1 hereof.

“**Margin Stock**” has the meaning set form in Regulation U of the Board of Governors as in effect from time to time.

“**Material Adverse Effect**” means a material adverse effect on (i) the business, prospects, assets, financial condition or results of operations, in each case, of each Obligor and each of its respective Subsidiaries, taken as a whole, (ii) the rights and remedies of the Trustee under the applicable DIP Documents or (iii) the ability of the Obligors (taken as a whole) to perform their payment obligations under the DIP Documents; provided that in each case, Material Adverse Effect shall expressly exclude (x) the effect of the filing of the Chapter 11 Cases and the events and conditions resulting from any action required to be taken under the DIP Documents or Bankruptcy Court DIP Order and (y) such events that have been disclosed prior to the date hereof and identified in writing as potential Material Adverse Effects to the Required Purchasers or the Advisors.

“**Maturity Date**” has the meaning set forth in the DIP Indenture.

“**New DIP Purchaser**” has the meaning set forth in Section 2.1(d) hereof.

“**Note Purchase Request**” has the meaning set forth in Section 2.3 hereof.

“**Obligors**” means the DIP Issuers and the DIP Guarantors.

“**Order**” means any judgment, order, award, injunction, writ, permit, license or decree of any Governmental Authority or arbitrator of applicable jurisdiction.

“**Organizational Documents**” means:

(a) with respect to any corporation, the certificate or articles of incorporation and the bylaws (or equivalent or comparable constitutive documents with respect to any non-U.S. jurisdiction);

(b) with respect to any limited liability company, the certificate or articles of formation or organization and operating agreement; and

(c) with respect to any partnership, joint venture, trust or other form of business entity, the partnership, joint venture or other applicable agreement of formation or organization and any agreement,

instrument, filing or notice with respect thereto filed in connection with its formation or organization with the applicable Governmental Authority in the jurisdiction of its formation or organization and, if applicable, any certificate or articles of formation or organization of such entity.

“**Party**” has the meaning set forth in the preamble.

“**Patriot Act**” means the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001.

“**Permitted Protest**” means the right of any Obligor or any of its Subsidiaries to protest any Lien (other than any Lien that secures the DIP Obligations), taxes (other than payroll taxes or taxes that are the subject of a United States federal tax lien), or rental payment; provided, that (a) a reserve with respect to such obligation is established on such Obligor’s or its Subsidiaries’ books and records in such amount as is required under GAAP, and (b) any such protest is instituted promptly and prosecuted diligently by such Obligor or its Subsidiary, as applicable, in good faith.

“**Petition Date**” has the meaning set forth in the Recitals.

“**Prepetition 1L Noteholders**” has the meaning set forth in the Bankruptcy Court DIP Order.

“**Prepetition 1L Notes Documents**” has the meaning set forth in the Bankruptcy Court DIP Order.

“**Prepetition 1L Notes Indenture**” has the meaning set forth in the Bankruptcy Court DIP Order.

“**Prepetition 1L Obligations**” has the meaning set forth in the Bankruptcy Court DIP Order.

“**Prepetition 2L Noteholders**” has the meaning set forth in the Bankruptcy Court DIP Order.

“**Prepetition 2L Notes Documents**” has the meaning set forth in the Bankruptcy Court DIP Order.

“**Prepetition 2L Notes Indenture**” has the meaning set forth in the Bankruptcy Court DIP Order.

“**Prepetition 2L Obligations**” has the meaning set forth in the Bankruptcy Court DIP Order.

“**Prepetition ABL Agent**” has the meaning set forth in the Bankruptcy Court DIP Order.

“**Prepetition ABL Credit Agreement**” has the meaning set forth in the Bankruptcy Court DIP Order.

“**Prepetition ABL Lenders**” has the meaning set forth in the Bankruptcy Court DIP Order.

“**Prepetition ABL Loan Documents**” has the meaning set forth in the Bankruptcy Court DIP Order.

Order. “**Prepetition ABL Obligations**” has the meaning set forth in the Bankruptcy Court DIP

DIP Order. “**Prepetition ABL Priority Collateral**” has the meaning set forth in the Bankruptcy Court

DIP Order. “**Prepetition ABL Secured Parties**” has the meaning set forth in the Bankruptcy Court

Order. “**Prepetition Debt Documents**” has the meaning set forth in the Bankruptcy Court DIP

“**Prepetition Notes**” has the meaning set forth in Section 2.1(e).

“**Prepetition Notes Priority Collateral**” has the meaning set forth in the Bankruptcy Court DIP Order.

“**Prepetition Secured Obligations**” has the meaning set forth in the Bankruptcy Court DIP Order.

“**Prepetition Trustees**” has the meaning set forth in Section 2.1(e).

“**Purchaser**” has the meaning set forth in the preamble.

“**Real Property**” means, collectively, all right, title and interest (including any leasehold estate) in and to any and all parcels of or interests in real property owned in fee simple or leased by the DIP Issuers or any of their Subsidiaries, together with, in each case, all easements, hereditaments and appurtenances relating thereto, all improvements and appurtenant fixtures incidental to the ownership or lease thereof.

“**Related Fund**” means (i) any investment funds or other entities who are advised by the same investment advisor and (ii) any investment advisor with respect to an investment fund or entity it advises.

“**Related Party**” means, with respect to any Person, (i) any former, current or future, Representative, Affiliate, employee, general or limited partner, member, manager or stockholder of such Person and (ii) any former, current or future director, officer, agent, Representative, Affiliate, employee, general or limited partner, member, manager or stockholder of any of the foregoing, in each case solely in their respective capacity as such.

“**Related Purchaser**” means, with respect to any Purchaser, a creditworthy Affiliate or Related Fund of such Purchaser, as applicable.

“**Representatives**” means, with respect to any Person, such Person’s directors, officers, members, partners, managers, employees, agents, investment bankers, attorneys, accountants, advisors and other representatives.

“**Required Purchasers**” means as of any date of determination, Purchasers having more than 50% of the sum of all Total Commitments under this Agreement.

“**Sanctioned Country**” means any country, region or territory that is the subject of comprehensive Sanctions (currently, Cuba, Iran, North Korea, Syria, the so-called People’s Republic of Donetsk, the so-called People’s Republic of Luhansk and the Crimea region of Ukraine).

“**Sanctioned Person**” means any Person that is: (i) listed on any Sanctions related list of designated Persons maintained by any Sanctions Authority (including, but not limited to, the Specially Designated Nationals and Blocked Persons List maintained by the U.S. Office of Foreign Assets Control); (ii) organized, domiciled or resident in a Sanctioned Country; (iii) 50% or more owned or controlled by, or acting on behalf of, any such Person or Persons described in the foregoing clause (i) or (ii); or (iv) otherwise the subject or target of any Sanctions.

“**Sanctions**” means any economic or financial sanctions imposed, administered or enforced by any Sanctions Authority.

“**Sanctions Authority**” means: (i) the United States (including the U.S. Department of State and the Office of Foreign Assets Control of the U.S. Department of the Treasury); (ii) the European Union or any of its member states; (iii) the United Nations Security Council; (iv) the United Kingdom (including His Majesty’s Treasury); and (v) any other relevant Governmental Authority that imposes, administers or enforces economic or financial sanctions with jurisdiction over any party hereto.

“**Second Issue Date**” means the date on which the DIP Issuers have issued the Additional DIP Notes in accordance with this Agreement, which shall be the date specified in the relevant Note Purchase Request so long as the conditions precedent set forth in Section 7.2 have been satisfied.

“**Second Outside Date**” has the meaning set forth in Section 9.2(c) hereof.

“**Section 4(a)(2)**” means Section 4(a)(2) of the Securities Act.

“**Securities Act**” means the Securities Act of 1933, as amended.

“**Stalking Horse Asset Purchase Agreement**” means the Asset Purchase Agreement, to be entered into prior to the Initial Issue Date in substantially the form attached to the motion for approval of bid procedures filed with the Bankruptcy Court pursuant to Section 6.11(b) and otherwise in form and substance satisfactory to the DIP Issuers and the Required Purchasers, as amended, supplemented or otherwise modified from time to time pursuant to the terms thereof.

“**Stalking Horse Bid**” means the transactions contemplated by the Stalking Horse Asset Purchase Agreement.

“**Taxes**” means all taxes, assessments, duties, levies or other similar mandatory governmental charges paid to a Governmental Authority, including all federal, state, local, foreign and other income, franchise, profits, gross receipts, capital gains, capital stock, transfer, property, sales, use, value-added, occupation, excise, severance, windfall profits, stamp, payroll, social security, withholding and other taxes, assessments, duties, levies or other similar mandatory governmental charges of any kind whatsoever paid to a Governmental Authority (whether payable directly or by withholding and whether or not requiring the filing of a return), all estimated taxes, deficiency assessments, additions to tax, penalties and interest thereon and shall include any liability for such amounts as a result of being a member of a combined, consolidated, unitary or affiliated group.

“**Total Commitment**” with respect to each Purchaser means the sum of (i) such Purchaser’s Initial DIP Notes Commitment and (ii) such Purchaser’s Additional DIP Notes Commitment.

“**Transaction**” means the issuance of the DIP Notes and the related transactions contemplated herein and in the other DIP Documents.

“**Trustee**” means the “DIP Trustee” as defined in the Bankruptcy Court DIP Order.

“**Unaudited Financial Statements**” means the unaudited consolidated balance sheet of the DIP Issuers and their Subsidiaries as of June 30, 2023 and March 31, 2023 and related consolidated statement of income and cash flows of the DIP Issuers and their Subsidiaries for the year to date period ended June 30, 2023 and March 31, 2023.

Section 1.2 Construction. In this Agreement, unless the context otherwise requires:

(a) references to Articles, Sections and Schedules are references to the articles and sections or subsections of, and the schedules attached to, this Agreement;

(b) references in this Agreement to “writing” or comparable expressions include a reference to a written document transmitted by means of electronic mail in portable document format (.pdf), facsimile transmission or comparable means of communication;

(c) words expressed in the singular number shall include the plural and vice versa; words expressed in the masculine shall include the feminine and neuter gender and vice versa;

(d) the words “hereof,” “herein,” “hereto” and “hereunder,” and words of similar import, when used in this Agreement, shall refer to this Agreement as a whole, including all Schedules attached to this Agreement, and not to any provision of this Agreement;

(e) the term “Agreement” shall be construed as a reference to this Agreement as the same may have been, or may from time to time be, amended, modified, varied, novated or supplemented;

(f) “include,” “includes” and “including” are deemed to be followed by “without limitation” whether or not they are in fact followed by such words;

(g) references to “day” or “days” are references to calendar days;

(h) references to “the date hereof” means the date of this Agreement;

(i) unless otherwise specified, references to a statute means such statute as amended from time to time, and includes any successor legislation thereto and any rules or regulations promulgated thereunder in effect from time to time; and

(j) references to “dollars” or “\$” are references to United States of America dollars.

ARTICLE II

THE NOTES

Section 2.1 Commitments.

(a) Initial DIP Notes. Subject to the terms and conditions set forth in this Agreement including entry of the Bankruptcy Court DIP Orders, each Purchaser hereby agrees, severally and not jointly, to purchase, and the DIP Issuers hereby agree to sell to each such Purchaser on the Initial Issue

Date, the DIP Issuers' Senior Secured Superpriority Debtor-In-Possession Notes due 2024 (such notes issued on the Initial Issue Date, the "**Initial DIP Notes**") at the Initial Purchase Price.

(b) **Additional DIP Notes.** Subject to the terms and conditions set forth in this Agreement including entry of the Bankruptcy Court DIP Orders, each Purchaser hereby agrees, severally and not jointly, to purchase, and the DIP Issuers hereby agree to sell to each such Purchaser on the Second Issue Date, the DIP Issuers' Senior Secured Superpriority Debtor-In-Possession Notes due 2024 (such notes issued on the Second Issue Date, the "**Additional DIP Notes**") at the Additional Purchase Price.

(c) **Limited Commitments.** In no event shall any Purchaser be required to purchase Initial DIP Notes in a principal amount in excess of its Initial DIP Notes Commitment or Additional DIP Notes in excess of its Additional DIP Notes Commitments except as set forth below in the proviso to **Section 2.1(d)**. The DIP Notes may be repaid, redeemed, repurchased or prepaid in accordance with the provisions hereof, but once repaid, redeemed, repurchased or prepaid may not be reborrowed.

(d) **New DIP Purchasers; Reduction in Commitments.** With the consent of the Required Purchasers, one or more Prepetition 1L Noteholders (each, a "**New DIP Purchaser**") that is not a Purchaser on the date of this Agreement may become a Party to this Agreement, and make Commitments in proportion to their holdings of Prepetition 1L Obligations, by execution of a duly executed joinder agreement in the form attached hereto as Exhibit C (the "**Joinder**"). In such case, each Purchaser's (i) Initial DIP Notes Commitment and Initial Purchase Price will be ratably and proportionately reduced to accommodate each such New DIP Purchaser's commitment to purchase Initial DIP Notes and (ii) each Purchaser's Additional DIP Notes Commitment and Additional Purchase Price will be ratably and proportionately reduced to accommodate each such New DIP Purchaser's commitment to purchase Additional DIP Notes; *provided*, that if any New DIP Purchaser defaults on its Commitments, each Initial Purchaser severally and not jointly agree to purchase such defaulting New DIP Purchaser's Initial DIP Notes or Additional DIP Notes, as applicable, within five Business Days of the originally scheduled Initial Issue Date or Second Issue Date, as applicable, in proportion to each such Initial Purchaser's original Commitment (but in amounts not to exceed such original Commitment).

(e) **Purchaser Representations, Warranties and Covenants.** Each Purchaser (a) as of the date of the execution of this Agreement (or a Joinder for any New DIP Purchaser that becomes a party hereto after the date hereof), (i) is the beneficial owner of, or investment advisor or manager of funds that are beneficial owners of, the aggregate principal amount of notes under the Prepetition 1L Notes Indenture (the "**Prepetition Notes**") set forth below in Schedule 2 (or in Schedules 1 and 2 to the Joinder for any New DIP Purchaser that becomes a party hereto after the date hereof) and does not beneficially own, or manage or advise funds that own, any other Prepetition Notes and (ii) has, with respect to the beneficial owners of such Notes, (A) sole investment or voting discretion with respect to such Prepetition Notes, (B) full power and authority to vote on and consent to matters concerning such Notes or to exchange, assign and transfer such Prepetition Notes, and (C) full power and authority to bind or act on the behalf of, such beneficial owners; (b) by delivery of its signature to this Agreement (or to a Joinder for any New DIP Purchaser) confirms that it (i) consents to, and agrees to take all necessary action to direct, the Stalking Horse Bidder to perform under and consummate the Stalking Horse Bid pursuant to the terms of the Stalking Horse Asset Purchase Agreement, (ii) will direct the trustee for the Prepetition Notes (the "**Prepetition Trustees**") and the Trustee to take all necessary action to consummate the Stalking Horse Bid pursuant to the terms of the Stalking Horse Asset Purchase Agreement, (iii) will refrain from taking or initiating (or directing or encouraging the Prepetition Trustees or any other Person to initiate) any action, including the commencement of legal proceedings, that are inconsistent with, or that would delay, prevent, frustrate or impede the approval, confirmation or consummation, as applicable, of the Stalking Horse Bid pursuant to the terms of the Stalking Horse Asset Purchase Agreement, and (iv) not sell, assign or otherwise transfer its DIP Notes or Prepetition Notes unless the applicable New DIP Purchaser executes a Joinder.

Section 2.2 Purchase of DIP Notes. The DIP Notes shall be purchased by the Purchasers in accordance with their respective Commitments. The failure of any Purchaser to purchase any DIP Notes required to be purchased by it shall not relieve any other Purchaser of its obligations hereunder; provided that the Commitments of the Purchasers are several and no Purchaser shall be responsible for any other Purchaser's failure to purchase DIP Notes as required except as set forth above in the proviso to Section 2.1(d).

Section 2.3 Request for DIP Notes. To request the issuance and purchase of DIP Notes, the DIP Issuers shall notify the Trustee of such request in writing by delivery of a Note Purchase Request (by hand delivery, fax or other electronic transmission (including ".pdf" or ".tif")) signed by the DIP Issuers (i) in the case of Initial DIP Notes, not later than noon, New York City time, two (2) Business Days (or such shorter time as may be agreed to by the DIP Issuers and the Required Purchasers) before the date of the proposed issuance and purchase of Initial DIP Notes or (ii) in the case of Additional DIP Notes, not later than noon, New York City time, three (3) Business Days prior to the date of the proposed issuance and purchase (or, in each case, such later time as shall be acceptable to the Trustee) (each such notice, a "**Note Purchase Request**"). Each such written Note Purchase Request shall specify the following information:

- (a) the aggregate principal amount of the DIP Notes requested to be purchased by the Purchasers;
- (b) the Initial Purchase Price or Additional Purchase Price, as applicable (and in the case of Additional DIP Notes, specifying the portion of the Additional Purchase Price that is attributable to accrued interest, as described in the definition of "Additional Purchase Price");
- (c) the date of such issuance and purchase of such DIP Notes, which shall be a Business Day; and
- (d) the CUSIP number, ISIN and/or "Common Code" number, if any, of such DIP Notes.

Section 2.4 Funding and Issue Dates.

(a) Subject to the satisfaction or waiver in accordance with this Agreement of the applicable conditions set forth in Article VII, each Purchaser shall purchase each DIP Note to be issued by the DIP Issuers hereunder on the proposed date thereof by wire transfer of immediately available funds by noon, New York City time on each Issue Date, to the account of the DIP Issuers as specified in Schedule 5.

(b) At each Issue Date, the DIP Issuers will issue the DIP Notes to each Purchaser (or to its designee in accordance with the terms hereof) against payment of such Purchaser's Initial Purchase Price (less, in the case of the Initial Issue Date and if the Purchaser is an Initial Purchaser, its Commitment Premium) or Additional Purchase Price, as applicable, in satisfaction of such Purchaser's Initial DIP Notes Commitment or Additional DIP Notes Commitment, respectively; *provided, however*, that if this Agreement is terminated pursuant to Article IX prior to the entry of the Interim DIP Order, the Commitment Premiums shall not be due and payable upon such termination. The DIP Notes will be delivered pursuant to this clause (b) at the option of such Purchaser, in book entry form on the register of the Trustee or in the form of physical notes to the account of such Purchaser. Notwithstanding anything to the contrary in this Agreement, all the DIP Notes will be delivered with all issue, stamp, transfer, sales and use, or similar transfer Taxes or duties that are due and payable (if any) in connection with such delivery duly paid by the DIP Issuers.

Section 2.5 Designation Rights. Each Purchaser shall have the right to designate by written notice to the DIP Issuers no later than one (1) Business Day prior to each Issue Date that some or all of the DIP Notes that it is obligated to purchase on such Issue Date to be issued in the name of, and delivered to a Related Purchaser of such Purchaser upon receipt by the DIP Issuers of payment therefor in accordance with the terms hereof, which notice of designation shall (i) be addressed to the DIP Issuers and signed by such Purchaser and each such Related Purchaser, (ii) specify the principal amount of the DIP Notes to be delivered to or issued in the name of such Related Purchaser and (iii) contain a confirmation by each such Related Purchaser of the accuracy of the representations set forth in Section 5.4 through Section 5.6 hereof as applied to such Related Purchaser; *provided*, that no such designation pursuant to this Section 2.5 shall relieve such Purchaser from its obligations under this Agreement.

Section 2.6 Securities Act Exemption. The DIP Notes issued on each Issue Date will be issued and sold by the DIP Issuers to institutional “accredited investor” that meets the requirements set forth in Rule 501(a), (1), (2), (3), (7) or (8) under the Securities Act (each, an “**IAI**”) in reliance on the exemption from registration provided in Section 4(a)(2) of the Securities Act. Absent registration under the Securities Act, or another exemption therefrom, the DIP Notes may be transferred only to (i) IAIs in reliance on an exemption from registration under the Securities Act and (ii) “qualified institutional buyers” (as defined in Rule 144A under the Securities Act (“**Rule 144A**”)) (“**QIBs**”) in reliance on Rule 144A, in each case, subject to the restrictions on transfer set forth herein and all applicable securities laws.

ARTICLE III

COMMITMENT PREMIUM

Section 3.1 The Commitment Premium. As consideration for the Commitments by the Initial Purchasers in this Agreement, the DIP Issuers and the DIP Guarantors jointly and severally agree to pay a nonrefundable premium to each Initial Purchaser of 5.0% of such Initial Purchaser’s Total Commitments before giving effect to Section 2.1(d) (with respect to each Initial Purchaser, the “**Commitment Premium**”). The Commitment Premium shall be fully earned on the date of this Agreement and nonrefundable once paid and shall be paid by the DIP Issuers, free and clear of any withholding or deduction for any applicable Taxes, on the Initial Issue Date by a deemed contribution of all of the Commitment Premium toward the purchase price payable for the Initial DIP Notes, and the DIP Issuers and the DIP Guarantors shall have satisfied their obligation to pay the Commitment Premium by delivering Initial DIP Notes to such Initial Purchaser. The applicable Commitment Premium shall be payable to the Initial Purchasers or their Related Purchasers at the time the applicable DIP Notes are issued. The provisions for the payment of the applicable Commitment Premium, and the indemnification provided herein, are an integral part of the transactions contemplated by this Agreement, and without these provisions the Initial Purchasers would not have entered into this Agreement.

Section 3.2 Tax Treatment. The DIP Issuers, the DIP Guarantors and Purchasers agree to treat the right to receive the Commitment Premium as the sale of a put option by the Purchasers to the DIP Issuers and the value of the Commitment Premium as the sale price for such put option and shall file all Tax returns consistent with, and take no position inconsistent with, such treatment (whether in audits, Tax returns or otherwise) unless there is a change in applicable Law or unless required to do so pursuant to a “determination” within the meaning of Section 1313(a) of the Code.

ARTICLE IV

REPRESENTATIONS AND WARRANTIES OF THE CREDIT PARTIES

Each of the Obligors, jointly and severally, hereby represents and warrants to the Purchasers as set forth below.

Section 4.1 Organization and Qualification. Each Obligor and each of its respective Subsidiaries (i) is duly organized and incorporated and existing and in good standing under the laws of the jurisdiction of its organization or incorporation, (ii) is qualified to do business in any state where the failure to be so qualified would reasonably be expected to result in a Material Adverse Effect and (iii) subject to and in accordance with the entry of the Bankruptcy Court DIP Order, has all requisite power and authority to own and operate its properties, to carry on its business as now conducted and as proposed to be conducted and to enter into the DIP Documents to which it is a party and to carry out the Transactions contemplated thereby.

Section 4.2 Capitalization and Subsidiaries. Set forth on Schedule 6 to this Agreement (as such Schedule may be updated from time to time to reflect changes resulting from transactions permitted under this Agreement), is a complete and accurate list of the DIP Issuers direct and indirect Subsidiaries, showing: (i) the number of shares of each class of common and preferred Equity Interests authorized for each of such Subsidiaries, and (ii) the number and the percentage of the outstanding shares of each such class owned directly or indirectly by each of such Subsidiaries. All of the outstanding Equity Interests of each such Subsidiary have been validly issued and are fully paid and non-assessable.

Section 4.3 Corporate Power and Authority. Each Obligor has the requisite corporate or limited liability company, as applicable, power and authority to execute and deliver this Agreement and, subject to entry of the Bankruptcy Court DIP Order, each other DIP Document to which it is a party, perform its obligations hereunder or thereunder, and consummate the transactions contemplated hereby or thereby. This Agreement and, subject to entry of the Bankruptcy Court DIP Order, each other DIP Document has been duly authorized by each Obligor.

Section 4.4 Execution and Delivery; Enforceability. As to each Obligor, the execution, delivery, and performance by such Obligor of this Agreement, and the other DIP Documents to which it is a party, once executed, have been or will be on each Issue Date duly authorized by all necessary action on the part of such Obligor. Subject to entry of the Bankruptcy Court DIP Order, this Agreement and each other DIP Document have been or will be duly executed and delivered by each Obligor that is a party thereto and is the legally valid and binding obligation of such Obligor, enforceable against such Obligor in accordance with its respective terms, except as enforcement may be limited by equitable principles or by bankruptcy, insolvency, reorganization, moratorium or similar laws (the Bankruptcy Court DIP Order) relating to or limiting creditors' rights generally.

Section 4.5 Reserve Regulations. None of the Obligors or any of their respective Subsidiaries owns any Margin Stock or is engaged principally, or as one of its important activities, in the business of extending credit for the purpose of purchasing or carrying any Margin Stock. No Part of the proceeds of the Transactions will be used to purchase or carry any Margin Stock or for any purpose that violates the provisions of Regulation T, U or X of the Board of Governors.

Section 4.6 No Conflict. Subject to the entry of the Bankruptcy Court DIP Order and the terms thereof and except as excused pursuant to the Bankruptcy Code and the Bankruptcy Court DIP Order, the execution, delivery and performance by each Obligor of this Agreement and the other DIP Documents to which it is a party, the compliance by each Obligor with this Agreement and the other DIP Documents to which it is a party and the consummation of the Transaction herein or therein contemplated will not (i) violate any material provision of federal, state, or local law or regulation applicable to any Obligor, the Organizational Documents of any Obligor, or any order, judgement or decree of any court or other Governmental Authority binding on any Obligor or its Subsidiaries, (ii) conflict with, result in a

breach of, or constitute (with due notice of lapse of time or both) a default under any material agreement of any Obligor or its Subsidiaries where any such conflict, breach or default would individually or in aggregate reasonably be expected to have a Material Adverse Effect, (iii) result in or require the creation or imposition of any Lien or any nature whatsoever upon any assets of any Obligor, or (iv) require (a) any approval of any holder of Equity Interests of an Obligor, (b) any consent, approval, authorization, order, registration or qualification of, or with any court or governmental agency or body or (c) any approval or consent of any Person under any material agreement of any Obligor, other than consents or approvals that have been obtained and are still in force and effect and except, in the case of the foregoing clauses (b) and (c), for consents or approvals, the failure to obtain would not individually or in the aggregate reasonably be expected to cause a Material Adverse Effect.

Section 4.7 Arm's-Length Dealing. Each Obligor agrees that (i) each of the Purchasers is acting solely in the capacity of an arm's-length contractual counterparty with respect to the Transaction contemplated hereby (including in connection with determining the terms of the DIP Notes) and not as a financial advisor or a fiduciary to, or an agent of, the Obligors or any of their respective Subsidiaries and (ii) no Purchaser is advising the Obligors or any of their respective Subsidiaries as to any legal, tax, investment, accounting or regulatory matters in any jurisdiction.

Section 4.8 No Violation; Compliance with Laws. None of the Obligors or any of their respective Subsidiaries, is (i) in violation of any applicable laws, rules, regulations, executive orders, or codes that, individually or in the aggregate, would reasonably be expected to result in a Material Adverse Effect, (ii) in default in the performance or observance of any Organizational Documents, (iii) other than in respect of the Prepetition Debt Documents in default of the performance or observance of any material obligation, agreement, covenant or condition contained in any indenture, mortgage, deed of trust, loan agreement, lease or other agreement or instrument to which it is a party or by which it or any of its properties may be bound that, individually or in the aggregate, would reasonably be expected to result in a Material Adverse Effect and (iv) is subject to or in default with respect to any final judgements, writs, injunctions, decrees, rules or regulations of any court or any federal, state, municipal or other governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign, that, individually or in the aggregate, would reasonably be expected to result in a Material Adverse Effect.

Section 4.9 Legal Proceedings. Other than the Chapter 11 Cases, there are no legal or governmental actions, suits, or proceedings pending, or, to the knowledge of any Obligors, after due inquiry, threatened in writing against an Obligor or any of its Subsidiaries that either individually or in the aggregate would reasonably be expected to result in a Material Adverse Effect.

Section 4.10 Tax Matters. Subject to the Bankruptcy Code, and to the knowledge of Obligors, all material Tax returns and reports of each Obligor and its respective Subsidiaries required to be filed by any of them have been timely filed, and all Taxes shown on such Tax returns to be due and payable and all other material Taxes upon each Obligor and each of its respective Subsidiaries and upon their respective assets, income, businesses and franchises that are due and payable have been paid when due and payable, except Taxes that are subject to a Permitted Protest. None of the Obligors or any of their respective Subsidiaries is a party to any material Tax allocation or material Tax sharing agreement with any third party (other than an agreement the principal purpose of which is not the sharing, assumption or indemnification of Tax). No Obligor knows of any proposed Tax assessments or outstanding audits, assessments or written claims concerning any Tax liability against an Obligor or any of its Subsidiaries that either individually or in the aggregate could reasonably be expected to result in a Material Adverse Effect that is not being actively contested by such Obligor or such Subsidiary diligently, in good faith, and by appropriate proceedings;

provided, that reserves or other appropriate provisions, if any, as shall be required in conformity with GAAP shall have been made or provided therefor.

Section 4.11 No Stabilization. None of the Obligor or any of their respective Affiliates has taken nor will any such party take, directly or indirectly, any action which is designed to or which has constituted or which might reasonably be expected to cause or result in stabilization or manipulation of the price of any security of the Obligor to facilitate the sale or resale of the DIP Notes.

Section 4.12 Financial Data. The summary unaudited condensed consolidated financial data as of and for the three-year period ended December 31, 2022 and the six-month period ended June 30, 2023 of each DIP Issuer provided to the Purchasers have been prepared in accordance with GAAP (except, in the case of unaudited financial statements, for the lack of footnotes and being subject to year-end audit adjustments) and present fairly in all material respects, each DIP Issuer and their respective Subsidiaries' consolidated financial condition as of the date thereof and results of operations for the period then ended other than the treatment of certain inter-company amounts, and such financial data have been prepared in conformity with GAAP, except that such unaudited financial statements do not contain footnotes required by GAAP.

Section 4.13 Compliance with Money Laundering Laws. Each of the Obligor and their respective Subsidiaries has implemented and maintains in effect policies and procedures reasonably designed to ensure compliance with applicable Anti-Money Laundering Laws. Each of the Obligor and their respective Subsidiaries, to the Knowledge of Obligor, is in material compliance with applicable Anti-Money Laundering Laws. No proceeds of the sale of the DIP Notes will be used in any manner that would result in a violation of any applicable Anti-Money Laundering Law by any Person.

Section 4.14 Compliance with Anti-Corruption and Sanctions Laws.

(a) No Obligor or any of its respective Subsidiaries is in violation of, or has violated, in the past five (5) years, any applicable Sanctions. No Obligor or any of its respective Subsidiaries or any of the respective directors, officers or, to the knowledge of such Obligor, employees, or agents of any Obligor or any of its Subsidiaries is a Sanctioned Person. Each of the Obligor and their respective Subsidiaries have implemented and maintain in effect policies and procedures reasonably designed to ensure compliance with applicable Sanctions. No Obligor or any of its Subsidiaries will, directly or knowingly indirectly (subject to due care), use any part of the proceeds of the sale of the DIP Notes, or lend, contribute or otherwise make available such proceeds to any other persons, (i) to fund, finance or facilitate any or activities of or business with or involving a Sanctioned Person or in, with or involving a Sanctioned Country, in each case, in violation of applicable Sanctions or (ii) otherwise in any manner that would give rise to a violation of Sanctions by any person (including any person participating in the offering, whether as underwriter, advisor, investor or otherwise).

(b) Each of the Obligor and their respective Subsidiaries have implemented and maintain in effect policies and procedures reasonably designed to ensure compliance with applicable Anti-Corruption Laws. To the Knowledge of Obligor, each of the Obligor and their respective Subsidiaries are, and have been, during the past five (5) years, in compliance with applicable Anti-Corruption Laws. No Obligor or any of its Subsidiaries will, directly or knowingly indirectly (subject to due care), use any part of the proceeds of the sale of the DIP Notes, or lend, contribute or otherwise make available such proceeds to any other persons, in any manner that would result in a violation of any applicable Anti-Corruption Law by any Person.

Section 4.15 Investment Company Act. None of the Obligors is an “investment company” as such term is defined in the Investment Company Act of 1940, as amended.

Section 4.16 DIP Security Documents.

(a) As of each Issue Date, and subject to the entry of the Bankruptcy Court DIP Order, the DIP Security Documents will have been duly authorized, executed and delivered by the DIP Issuers and the DIP Guarantors party thereto, and will constitute a legal, valid and binding obligations of such DIP Issuers and DIP Guarantors, enforceable against such DIP Issuers and DIP Guarantors in accordance with its terms, except as the enforcement thereof may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws relating to or affecting the rights and remedies of creditors or by general equitable principles. Subject to the entry of the Bankruptcy Court DIP Order, the DIP Security Documents, when executed and delivered in connection with the issuance of the DIP Notes, will create in favor of the Collateral Agent for the benefit of itself, the Trustee and the holders of the DIP Notes, legal, valid and enforceable security interests in the Collateral and, upon the making of such filings and taking of such other actions required to be taken by the applicable DIP Security Documents (including the filings of appropriate financing statements with the office of the Secretary of State of the state of organization of the DIP Issuers and the DIP Guarantors, the filing of appropriate assignments or notices with the U.S. Patent and Trademark Office and the U.S. Copyright Office, and the taking of the other actions, in each case as further described in the DIP Security Documents), the liens on such Collateral in favor of the Collateral Agent for the benefit of itself, the Trustee and the holders of the DIP Notes will constitute perfected and continuing first-priority liens and prior to (except as otherwise provided for in the DIP Indenture and the relevant DIP Security Documents) the liens of all third Persons other than Permitted Liens.

(b) Upon entry of the Interim DIP Order (and, if entered, the Final DIP Order) the Liens granted thereunder by the Debtors to the Collateral Agent or the Trustee on any Collateral shall be valid and automatically perfected with the priority set forth herein and in the Bankruptcy Court DIP Order, and no filing or other action will be necessary to perfect such Liens and security interest with respect to the DIP Obligations and such Bankruptcy Court DIP Order.

Section 4.17 Labor Relations. To the Knowledge of Obligors, there is (i) no unfair labor practice complaint pending or threatened against any Obligor or its Subsidiaries before any Governmental Authority and no grievance or arbitration proceeding pending or threatened against any Obligor or its Subsidiaries which arises out of or under any collective bargaining agreement and that would reasonably be expected to result in a material liability, (ii) no strike, labor dispute, slowdown, stoppage or similar action or grievance pending or threatened in writing against an Obligor or its Subsidiaries that would reasonably be expected to result in a material liability, or (iii) no union representation question existing with respect to the employees of any Obligor or its Subsidiaries and no union organizing activity taking place with respect to any of the employees of any Obligor or its Subsidiaries. None of any Obligor or its Subsidiaries has incurred any liability or obligation under the Worker Adjustment and Retraining Notification Act or similar state law, which remains unpaid or unsatisfied. The hours worked and payments made to employees of each Obligor and its Subsidiaries have not been in violation of the Fair Labor Standards Act or any other applicable legal requirements, except to the extent such violations would not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect. All material payments due from any Obligor or its Subsidiaries on account of wages and employee health and welfare insurance and other

benefits have been paid or accrued as a liability on the books of the Obligors, except where failure to do so would not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect.

Section 4.18 Intellectual Property.

(a) Subject to the continuing effectiveness of the Intra-Company Agreements, to the Knowledge of Obligors, each Obligor and its respective Subsidiaries own or otherwise have the right to use all (i) patents, patent applications, and inventions (whether or not patentable), (ii) copyrights, copyright applications and other works of authorship, (iii) confidential and proprietary information (including know-how, trade secrets and other similar information, systems or procedures), (iv) trademarks, service marks, trade names, and registrations and applications therefore and (v) all other intellectual property rights (collectively, “**Intellectual Property**”) that are necessary or material to the conduct of its business;

(b) To the Knowledge of Obligors, (i) no Person is currently infringing on or misappropriating any Intellectual Property rights owned by such Obligor or its Subsidiaries and (ii) neither such Obligor nor its Subsidiaries is currently infringing on or misappropriating any Intellectual Property rights owned by any third Person, in each case of (i) or (ii), that either individually or in the aggregate could reasonably be expected to result in a Material Adverse Effect;

(c) To the Knowledge of Obligors, all Intellectual Property rights owned by such Obligor and its Subsidiaries and necessary in or material to the conduct of its business are valid and subsisting in full force and effect, and

(d) Each Obligor has taken reasonable steps to maintain the confidentiality of all trade secrets owned by such Obligor and its Subsidiaries that are necessary in or material to the conduct of the business of such Obligor.

Section 4.19 Title to Real and Personal Property and Assets; Quality of Assets and Properties. Subject to the entry of the Bankruptcy Court DIP Order, each of the Obligors and their respective Subsidiaries has (a) good and sufficient legal title in fee simple to all Real Property, (b) valid leasehold interests (in the case of leasehold interest in real or personal property), and (c) good and marketable title to (in the case of all other personal property), all of their respective assets reflected in their most recent financial statements delivered pursuant to Section 4.02 of the DIP Indenture, in each case free and clear of all liens, encumbrances and defects except as would not, individually or in the aggregate, have a Material Adverse Effect.

Section 4.20 Employee Benefit Plans. With respect to each “employee benefit plan” (within the meaning of Section 3(3) of ERISA) for which the Obligors have any liability (whether absolute or contingent) (each, a “**Company Plan**”), except as could not reasonably be expected to result in a Material Adverse Effect, (i) no failure to satisfy the minimum funding standards of Sections 302 and 303 of ERISA or Section 412 of the Code, or other event with respect to Company Plans subject to Title IV of ERISA of the kind described in Section 4043(c) of ERISA (other than events with respect to which the 30-day notice requirement under Section 4043 of ERISA has been waived) has occurred; (ii) to the extent required by applicable law to be funded, the fair market value of the assets under each Company Plan exceeds the present value of all benefits accrued under such Company Plan (determined based on those assumptions used to fund such Company Plan); (iii) no prohibited transaction, within the meaning of Section 406 of ERISA or Section 4975 of the Code, has occurred, excluding transactions effected pursuant to a statutory or administrative exemption and (iv) each Company Plan is in material compliance with applicable law, including ERISA and the Code. Except as could not reasonably be expected to result in a Material Adverse Effect, none of the Obligors or any trade or business, whether or not incorporated, that, together with the Obligors, would be deemed to be a “single employer” pursuant to Section 4001(b) of ERISA or Section

414 of the Code has incurred or reasonably expects to incur (A) any liability with respect to any Company Plan under Title IV of ERISA (other than contributions to the Company Plan or premiums to the Pension Benefit Guaranty Corporation in the ordinary course and without default) or (B) material liability in respect of any generally applicable post-employment health, medical or life insurance benefits for former, current or future employees of the Obligors or any Subsidiary, except as required to avoid excise tax under Section 4980B of the Code. No Company Plan is a “multiemployer pension plan” (as defined in Section 3(37) of ERISA). To the knowledge of the Obligors, there is no pending audit or investigation by the Internal Revenue Service, the U.S. Department of Labor, the Pension Benefit Guaranty Corporation or any other governmental agency or any foreign regulatory agency with respect to any Company Plan that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect to the Obligors, or any of their respective Subsidiaries.

Section 4.21 Insurance. Each Obligor and its respective Subsidiaries, at such obligors expense, will maintain insurance respecting each of each Obligor’s and its respective Subsidiaries’ assets wherever located, covering liabilities, losses or damages as are customarily are insured against by other Persons engaged in same or similar businesses and similarly situated and located with financially sound and reputable insurance companies and in such amounts as is carried generally in accordance with sound business practice by companies in similar businesses similarly situated and located, and all such insurance is in full force and effect. Each Obligor has no reason to believe that it or any Subsidiary will not be able (i) to renew its existing insurance coverage as and when such policies expire or (ii) to obtain comparable coverage from similar institutions as may be necessary or appropriate to conduct its business as now conducted and at a cost that would not result in a Material Adverse Effect. None of the Obligors or any of their respective Subsidiaries has been denied any insurance coverage that it has sought or for which it has applied.

Section 4.22 No Broker’s Fees. Such Obligor is not a party to any Contract with any Person (other than with respect to the DIP Documents) that would give rise to a valid Claim against such Obligor for a brokerage commission, finder’s fee or like payment in connection with the issuance or sale of the DIP Notes.

Section 4.23 [Reserved.]

Section 4.24 Disclosure.

(a) As of the date hereof and as of each Issue Date, all written information (other than projections, estimates (including financial estimates and forecasts) or other forward-looking information of a general economic or industry-specific nature), that has been or made be made available concerning the DIP Issuers, their respective Subsidiaries, the Transactions and the Chapter 11 Cases prepared by or on behalf of the foregoing or their Representatives and made available to any Purchaser in connection with the Transactions on or before the date hereof, when taken as a whole, does not or will not, when furnished, contain any untrue statements of a material fact or omit to state a material fact necessary in order to make the statements contained therein not materially misleading in light of the circumstances under which such statements are made.

(b) Any projections and pro forma financial information that has been made available to any Purchaser in connection with the Chapter 11 Cases and the Transactions on or before the date hereof has been prepared in good faith on the basis of assumptions believed by the DIP Issuers to be reasonable at the time of preparation of any such projections and pro forma financial information (it being recognized that any such projections are not to be viewed as facts and are subject to significant uncertainties and contingencies many of which are beyond the DIP Issuers’ control, and no assurance can be given that any

particular financial projections will be realized, that actual results may differ from such projections and that such differences may be material).

Section 4.25 Private Offering; No Integration.

(a) Neither the DIP Issuers nor anyone acting on their behalf has offered the DIP Notes or any similar securities for sale to, or solicited any offer to buy any of the same from, or otherwise approached or negotiated in respect thereof with, any person other than the Purchasers or other persons that are IAIs and/or QIBs, each of which has been offered the DIP Notes at a private sale for investment and not pursuant to a distribution or underwritten offering.

(b) Neither the DIP Issuers nor any of their Affiliates (as defined in Rule 501(b) of Regulation D) has, directly or through any agent, sold, offered for sale, solicited offers to buy or otherwise negotiated in respect of, any security (as defined in the Securities Act), that is or will be integrated with the sale of the DIP Notes and in a manner that would require registration of the DIP Notes under the Securities Act or to the registration requirements of any securities or blue sky laws of any applicable jurisdiction, including the jurisdiction of organization of the DIP Issuers.

(c) Neither the DIP Issuers nor any person acting on their behalf has offered or sold the DIP Notes by any form of general solicitation or general advertising, including, but not limited to, the following: (i) any advertisement, article, notice or other communication published in any newspaper, magazine, or similar media or broadcast over television or radio; (ii) any website posting or widely distributed e-mail; or (iii) any seminar or meeting whose attendees have been invited by any general solicitation or general advertising.

(d) Subject to the accuracy of the representations of the Purchasers included herein, it is not necessary in connection with the issuance of the DIP Notes to be registered under the Securities Act or blue sky laws of any applicable jurisdiction, including the jurisdiction of organization of the DIP Issuers, or for the DIP Indenture to be qualified under the Trust Indenture Act of 1939, as amended.

Section 4.26 Use of Proceeds. Subject to additional restrictions on use of proceeds provided for in the Bankruptcy Court DIP Order, the proceeds of the DIP Notes will be used in accordance with and as provided in the Approved Budget (subject to Permitted Variances) to (i) pay the transaction and administrative costs, fees and expenses of the Chapter 11 Cases, (ii) make adequate protection payments, as authorized by the Bankruptcy Court in the applicable Bankruptcy Court DIP Order and (iii) fund the working capital needs and expenditures of the Debtors during the Chapter 11 Cases.

Section 4.27 Budget. The Initial DIP Budget and each Approved Budget is based upon good faith estimates and assumptions believed by the DIP Issuers' financial advisors (in consultation with, and approved by, management of the DIP Issuers) to be reasonable at the time made, in light of the circumstances under which they were made.

Section 4.28 Chapter 11 Cases; Bankruptcy Court DIP Orders.

(a) As of the Petition Date, the Chapter 11 Cases were commenced on the Petition Date in accordance with the requirements of Law and proper notice thereof was given or will be given for (i) the motion seeking approval of the DIP Documents, the Interim DIP Order and Final DIP Order, (ii) the hearing for the entry of the Interim DIP Order and (iii) the hearing for the entry of the Final DIP Order. The Obligors shall give, on a timely basis as specified in the Interim DIP Order or the Final DIP Order, as applicable, all notices required to be given to all parties specified in the Interim DIP Order or Final DIP Order, as applicable.

(b) After the entry of the Interim DIP Order, and pursuant to and to the extent permitted in the Bankruptcy Court DIP Orders, as applicable, the DIP Obligations will constitute allowed DIP Superpriority Claims in the Chapter 11 Cases having priority over all administrative expense claims and unsecured claims against the Debtors now existing or hereafter arising, of any kind whatsoever, including all administrative expense claims of the kind specified in sections 105, 326, 330, 331, 503(b), 506(c), 507(a), 507(b), 546(c), 726, 1114 or any other provision of the Bankruptcy Code or otherwise, as provided under section 364(c)(1) of the Bankruptcy Code, subject to (i) the Carve-Out and (ii) the priorities set forth in the Interim DIP Order or Final DIP Order, as applicable.

(c) After the entry thereof by the Bankruptcy Court, the Interim DIP Order (with respect to the period on and after entry of the Interim DIP Order and prior to entry of the Final DIP Order) or the Final DIP Order (with respect to the period on and after entry of the Final DIP Order), as the case may be, is in full force and effect and has not been reversed, stayed (whether by statutory stay or otherwise), vacated, or, without the Required Purchasers' consent, modified or amended. The Obligors are in compliance in all material respects with the Bankruptcy Court DIP Orders.

(d) Notwithstanding the provisions of section 362 of the Bankruptcy Code, and subject to the applicable provisions of the Interim DIP Order or the Final DIP Order, as the case may be, upon the Maturity Date (whether by acceleration or otherwise), the Purchasers shall be entitled to immediate payment in full in cash and to enforce the remedies provided for under the DIP Indenture or under applicable laws.

ARTICLE V REPRESENTATIONS AND WARRANTIES OF THE PURCHASERS

Each Purchaser represents and warrants as to itself only (unless otherwise set forth herein, as of the date of this Agreement and as of each Issue Date) as set forth below.

Section 5.1 Incorporation. Such Purchaser is a legal entity duly organized, validly existing and, if applicable, in good standing (or the equivalent thereof) under the Laws of its jurisdiction of incorporation or organization.

Section 5.2 Corporate Power and Authority. Such Purchaser has the requisite power and authority (corporate or otherwise) to enter into, execute and deliver this Agreement and each other DIP Document to which such Purchaser is a party and to perform its obligations hereunder and thereunder and has taken all necessary actions (corporate or otherwise) required for the due authorization, execution, delivery and performance by it of this Agreement and the other DIP Documents to which such Purchaser is a party.

Section 5.3 Execution and Delivery. This Agreement and each other DIP Document to which such Purchaser is a party (i) has been, or prior to its execution and delivery will be, duly and validly executed and delivered by such Purchaser and (ii) will constitute valid and legally binding obligations of such Purchaser, enforceable against such Purchaser in accordance with its respective terms, except as enforceability may be limited by bankruptcy, insolvency, reorganization or other similar Laws limiting creditors' rights generally or by equitable principles relating to enforceability.

Section 5.4 No Registration.

(a) Such Purchaser understands that the DIP Notes to be issued to any Purchaser in satisfaction of the applicable Commitment and Commitment Premium (i) have not been registered under the Securities Act by reason of a specific exemption from the registration provisions of the Securities Act, the availability of which depends on, among other things, the bona fide nature of the investment intent and

the accuracy of such Purchaser's representations as expressed herein or otherwise made pursuant hereto and (ii) cannot be sold unless subsequently registered under the Securities Act or an exemption from registration is available.

(b) Such Purchaser represents and warrants that it has not engaged and will not engage in any form of general solicitation or general advertising in any manner involving a public offering within the meaning of Section 4(a)(2) to investors with respect to offers or sales of the DIP Notes to be issued to such Purchaser in satisfaction of the applicable Commitment and Commitment Premium, in each case under circumstances that would cause the offering or issuance of the DIP Notes not to be exempt from registration under the Securities Act pursuant to Section 4(a)(2) or any other applicable exemption.

(c) The purchase of the DIP Notes by the Purchasers, as applicable, has not been solicited by or through anyone other than the DIP Issuers or the other Obligor.

(d) The Purchasers will not sell, transfer or otherwise dispose of the DIP Notes or any interest therein, except in accordance herewith, in a registered transaction or in a transaction exempt from or not subject to the registration requirements of the Securities Act.

Section 5.5 Purchasing Intent. Each Purchaser is acquiring DIP Notes issued to such Purchaser, in satisfaction of its Commitment and applicable Commitment Premium, in each case, for its own account, not as a nominee or agent, and not with the view to, or for resale in connection with, any distribution thereof not in compliance with applicable securities laws, and each such Purchaser has no present intention of selling, granting any participation in, or otherwise distributing the same, except in compliance with applicable securities laws.

Section 5.6 Sophistication; Evaluation. Such Purchaser has such knowledge and experience in financial and business matters that it is capable of evaluating the merits and risks of its investment in the DIP Notes. Such Purchaser is an "accredited investor" within the meaning of Rule 501(a) of the Securities Act or a "qualified institutional buyer" within the meaning of Rule 144A of the Securities Act. Such Purchaser understands and is able to bear any economic risks associated with such investment (including the necessity of holding such securities for an indefinite period of time). Except for the representations and warranties expressly set forth in this Agreement or any other DIP Document, such Purchaser has independently evaluated the merits and risks of its decision to enter into this Agreement. Such Purchaser acknowledges that it (i) has been furnished with or has had full access to all the information that it considers necessary or appropriate to make an informed investment decision with respect to the DIP Notes and (ii) has had an opportunity to discuss with management of the Company the intended business and financial affairs of the Company its Subsidiaries and to obtain information necessary to verify any information furnished to it to which it had access.

Section 5.7 No Conflict. The execution and delivery by such Purchaser of this Agreement and the other DIP Documents to which it is a party, the compliance by such Purchaser with the provisions hereof and thereof and the consummation of the Transaction contemplated herein and therein will not (a) result in any violation of the provisions of the organizational or governing documents of such Purchaser or (b) result in any violation of any Law or Order applicable to such Purchaser or any of its properties.

Section 5.8 Consents and Approvals. No consent, approval, authorization, Order, registration or qualification of or with any Governmental Authority having jurisdiction over such Purchaser or any of its properties is required for the execution and delivery by such Purchaser of this Agreement and each other DIP Documents to which such Purchaser is a party, the compliance by such Purchaser with the

provisions hereof and thereof and the consummation of the transaction (including the purchase by each Purchaser of the DIP Notes) contemplated herein and therein.

Section 5.9 No Broker's Fees. Such Purchaser is not a party to any Contract with any Person (other than with respect to the DIP Documents) that would give rise to a valid Claim against such Purchaser for a brokerage commission, finder's fee or like payment in connection with the issuance or sale of the DIP Notes, as applicable, to such Purchaser.

Section 5.10 Sufficiency of Funds. As of the date of funding of the Initial Purchase Price and Additional Purchase Price pursuant to the terms hereof, as applicable, each Purchaser reasonably expects to have available funds sufficient to pay its Initial Purchase Price and Additional Purchase Price, as applicable. For the avoidance of doubt, such Purchaser acknowledges that its obligations under this Agreement and the other DIP Documents to which it is a party are not conditioned in any manner upon its obtaining financing.

ARTICLE VI

COVENANTS

The Obligors shall at all times on and after the date hereof and so long as the Commitments remain outstanding:

Section 6.1 Commercially Reasonable Efforts. Without in any way limiting any other respective obligation of the Obligors or any Purchaser in this Agreement, each Obligor shall use commercially reasonable efforts to take or cause to be taken all actions, and do or cause to be done all things, reasonably necessary, proper or advisable in order to consummate and make effective the Transaction contemplated by this Agreement, including using commercially reasonable efforts in:

(a) timely preparing and filing all documentation reasonably necessary to effect all necessary notices, reports and other filings of such Person and to obtain as promptly as practicable all consents, registrations, approvals, permits and authorizations necessary or advisable to be obtained from any third party or Governmental Authority;

(b) defending any causes of action, suits, or legal or regulatory proceedings or any other action taken by any Person in any way challenging (i) this Agreement or any other DIP Document or (ii) the consummation of the Transaction contemplated hereby and thereby, including seeking to have any stay or temporary restraining order entered by any Governmental Authority vacated or reversed;

(c) cooperation in collateral filings and perfection; and

(d) working together in good faith to finalize the DIP Documents and all other documents relating thereto, provided that the obligations of each Party under this Section 6.1 is limited to DIP Documents to which it is a party.

Section 6.2 [Reserved]

Section 6.3 Use of Proceeds. The DIP Issuers will apply the proceeds from the issuance of the DIP Notes strictly in accordance with Section 4.16 of the DIP Indenture.

Section 6.4 DIP Notes Legend. In the event that any such DIP Notes shall be subject to a restrictive notation substantially similar to the Legend in the stock ledger or other appropriate records

maintained by the Obligors or agent and the term Legend shall include such restrictive notation. The Obligors shall remove the Legend (or restrictive notation, as applicable) set forth in the DIP Indenture from the certificates evidencing any such shares (or the stock ledger or other appropriate Obligors' records, in the case of uncertified shares) at any time after the restrictions described in such Legend cease to be applicable, including, as applicable, when such shares may be sold under Rule 144 of the Securities Act without volume or manner of sale restrictions by any holder which is not an Affiliate of the DIP Issuers. The Obligors may reasonably request such opinions, certificates or other evidence that such restrictions or conditions no longer apply as a condition to removing the Legend.

Section 6.5 Budget and Variance Report. On or after the Initial Issue Date, the Obligors shall provide to each Initial Purchaser with the information and access specified in clauses (f), (g), (h) and (i) of Section 4.02 of the DIP Indenture (whether or not such information has been provided separately to the Trustee).

Section 6.6 Notices. The Obligors shall provide the advisors to each Initial Purchaser with the information specified in clause (m) of Section 4.02 of the DIP Indenture (whether or not such information has been provided separately to the Trustee).

Section 6.7 Inspection Rights. The Obligors shall provide each Initial Purchaser with the inspection rights and access specified in clause (l) of Section 4.02 of the DIP Indenture (whether or not such information has been provided separately to the Trustee or any financial advisor).

Section 6.8 Burdensome Agreements; Prepayments of Indebtedness.

(a) Neither of the DIP Issuers shall, nor shall the DIP Issuers permit any Subsidiary to (i) make any payment of principal or interest or otherwise on account of any Prepetition Secured Obligations or payables under the Prepetition Debt Documents other than (A) payments made in compliance in all material respects with the Approved Budget (subject to "Permitted Variances" (as defined in the DIP Indenture)), (B) payments agreed to in writing by the Required Purchasers, (C) payments by the Obligors made for any financial advisory, financing, underwriting or placement services or in respect of other investment banking activities, including in connection with acquisitions or divestitures, which payments are approved by the majority of the Board of Directors of the DIP Issuers in good faith and (D) payments approved by the Bankruptcy Court DIP Order and, if necessary, authorized by the Bankruptcy Court (including any adequate protection payment) or (ii) amend or modify the terms of the Prepetition Debt Documents in a manner that is materially adverse to the Purchasers or their rights and remedies under the Notes Documents (including any such amendment or modification that would have a material and adverse impact on any material portion of the Collateral); or

(b) Neither of the DIP Issuers shall, nor shall the DIP Issuers permit any of the Subsidiaries to, permit any Subsidiary to enter into any agreement or instrument that by its terms restricts the granting of Liens by such Subsidiary pursuant to the DIP Collateral Documents, in each case other than those arising under any DIP Document, except, in each case, restrictions existing by reason of:

- (i) restrictions imposed by applicable Law;
- (ii) restrictions arising under any Prepetition Debt Documents;
- (iii) customary provisions in joint venture agreements and other similar agreements applicable to joint ventures entered into in the ordinary course of business;

(iv) any restrictions imposed by any agreement relating to secured indebtedness permitted by this Agreement to the extent that such restrictions apply only to the property or assets securing such indebtedness;

(v) customary provisions contained in leases or licenses of Intellectual Property and other similar agreements entered into in the ordinary course of business;

(vi) customary provisions restricting subletting or assignment of any lease governing a leasehold interest;

(vii) customary provisions restricting assignment of any agreement entered into in the ordinary course of business; or

(viii) customary restrictions and conditions contained in any agreement relating to the sale of any asset permitted by the registrar.

Section 6.9 Chapter 11 Modifications. On and after the Initial Issue Date, the Obligors shall strictly comply with Section 4.21 of the DIP Indenture.

Section 6.10 DIP Indenture Covenants. Each Obligor shall comply with each of the covenants in Sections 4.02(a), (b), (e) and (k), 4.03, 4.04, 4.05, 4.06, 4.07, 4.12, 4.14, 4.15, 4.18, 4.20, and 4.24 of the DIP Indenture, with any deliverables hereunder at any time prior to Initial Issue Date to be made to the Initial Purchasers.

Section 6.11 Milestones. The Obligors shall not fail to timely satisfy any of the milestones on or before the following dates (or any later date approved by the Required Purchasers in their sole discretion):

(a) the Petition Date shall occur no later than one (1) Business Day after execution of this Agreement;

(b) no later than one (1) Business Day after the Petition Date, the Debtors shall have filed a motion to approve the bidding procedures with respect to a sale of their assets; and

(c) no later than four (4) Business Days after the Petition Date, the Bankruptcy Court shall have entered the Interim DIP Order, in form and substance satisfactory to the Required Purchasers, approving the DIP Notes (including the Additional DIP Notes).

Section 6.12 No Solicitation. Prior to the Second Issue Date, no DIP Notes Party or its Subsidiaries shall, and the DIP Notes Parties shall cause its Representatives not to, directly or indirectly:

(a) solicit or initiate any inquiries or the making of any proposal or offer that constitutes, or would reasonably be expected to lead to, any debtor-in-possession financing other than the DIP Notes, the “roll-up” of the Prepetition ABL Credit Agreement on terms satisfactory to the Required Purchasers and any debtor-in-possession financing with any third party with respect to which the DIP Issuers have received proposals and engaged in discussions on or prior to the date hereof.

ARTICLE VII

CONDITIONS TO THE OBLIGATIONS OF THE PARTIES

Section 7.1 Conditions Precedent to Initial Issue Date. Each Purchaser's obligation to purchase Initial DIP Notes on the Initial Issue Date is subject to satisfaction (or waiver by each affected Purchaser) of the following conditions:

(a) The Chapter 11 Cases shall have been commenced in the Bankruptcy Court and all of the "first day orders" and all material related pleadings to be entered at the time of commencement of the Chapter 11 Cases shall have been provided to counsel to the Required Purchasers and shall be in form and substance satisfactory to the Required Purchasers.

(b) The Interim DIP Order shall have been entered by the Bankruptcy Court and counsel to the Required Purchasers shall have received a true and complete copy of such order, shall be in full force and effect and shall not have been reversed, modified, amended, stayed or vacated absent prior written consent of the Required Purchasers (and with respect to amendments, modifications or supplements that affect the rights or duties of the Trustee, the Trustee).

(c) All orders entered by the Bankruptcy Court pertaining to the Obligors' cash management and adequate protection and all motions and other documents filed or to be filed with, and submitted to, the Bankruptcy Court in connection therewith shall be in form and substance satisfactory to the Required Purchasers.

(d) The Stalking Horse Asset Purchase Agreement shall have been executed.

(e) The Trustee shall have received UCC, tax and judgment lien searches and other appropriate evidence, in form and substance satisfactory to the Trustee and the Required Purchasers, evidencing the absence of any other liens or mortgages on the Collateral, except the liens securing the Prepetition Secured Obligations under the Prepetition Debt Documents, existing liens permitted under the Prepetition Debt Documents and other existing liens acceptable to the Required Purchasers.

(f) The Trustee and Required Purchasers shall have received the Initial DIP Budget, which initial Budget shall be in form and substance satisfactory to the Required Purchasers; it being acknowledged and agreed that the budget set forth on Schedule 1 to the Interim DIP Order is in form and substance acceptable to the Required Purchasers as an "Approved Budget".

(g) The DIP Issuers shall have paid to the Trustee and Purchasers in cash the fees and expenses then due and payable under the DIP Documents (provided that the fees and expenses for the Purchasers shall be limited to (i) the fees and expenses of Arnold & Porter Kaye Scholer LLP through the Initial Issue Date in an amount not to exceed \$175,000 and (ii) the fees and expenses of Milbank LLP, Houlihan Lokey Capital, Inc. and Norton Rose Fulbright US LLP) and invoiced to the DIP Issuers at least one Business Day prior to the Initial Issue Date, subject to and in accordance with the Bankruptcy Court DIP Orders.

(h) The Collateral Agent, for its benefit and the benefit of each Purchaser, shall have been granted a perfected lien on the Collateral by the Bankruptcy Court DIP Orders on the terms and conditions set forth herein and in the other DIP Documents.

(i) The Trustee shall have received appropriate UCC-1 financing statements for filing under the UCC of each jurisdiction of organization of each Obligor.

(j) The Trustee and counsel to the Required Purchasers shall have received certified copies of the Organizational Documents of each Obligor and of documents (including appropriate resolutions of the Board of Directors or similar body of each Obligor and, if necessary, shareholder or

similar approval) evidencing the due authorization by it of the making and performance by it of the DIP Documents to which it is a party and the issuance of the Initial DIP Notes and the authority of the persons signing the DIP Documents on its behalf.

(k) The Trustee and counsel to the Required Purchasers shall have received a certificate signed by a Responsible Officer of each Obligor to the effect that all representations and warranties made by such Obligor contained in each of the DIP Documents to which it is a party are true and correct in all material respects on and as of the Initial Issue Date and no default exists on and as of the Initial Issue Date covering the authority, incumbency and specimen signatures of the individuals who have executed the DIP Documents and other documents contemplated hereby on behalf of such Obligor and attaching certificates of good standing (to the extent such concept exists) from the applicable secretary of state of the state of organization of each Obligor.

(l) The Trustee shall have received all documentation and other information required by bank regulatory authorities under applicable “know-your-customer” and anti-money laundering rules and regulations (to the extent requested no later than 10 Business Days prior thereto), including the Patriot Act, in each case satisfactory to each Purchaser.

(m) The Purchasers’ receipt of the following, each of which shall be originals or “pdf” copies or other facsimiles unless otherwise specified, each properly executed by a Responsible Officer of the signing Obligor each in form and substance reasonably satisfactory to the Required Purchasers and their legal counsel:

(i) executed counterparts of (A) the DIP Indenture and (B) the Security Agreement.

(n) All orders entered by the Bankruptcy Court pertaining to any payment of the Obligors’ vendors, shippers, or other trade counterparties and all motions and other documents filed, and submitted to, the Bankruptcy Court in connection therewith shall be in form and substance reasonably satisfactory to the Required Purchasers.

(o) No trustee, receiver or examiner with expanded powers shall have been appointed in any of the Chapter 11 Cases.

(p) The Purchasers shall have received the Audited Financial Statements and the Unaudited Financial Statements.

(q) The representations and warranties of each Obligor set forth in Article IV and in each other DIP Document shall be true and correct in all respects on and as of the Initial Issue Date with the same effect as though made on and as of such date, except (i) to the extent that any such representation or warranty expressly relates to an earlier date (in which case such representation or warranty shall be true and correct in all respects on and as of such earlier date), and (ii) no default or Event of Default (or similar terms in any DIP Document howsoever described) shall have occurred and be continuing on such date or as a result of the issuance of the Initial DIP Notes and the application of proceeds therefrom.

(r) The Prepetition ABL Secured Parties shall have each consented to the use of collateral or received adequate protection (if applicable) in respect of the liens securing their respective obligations pursuant to the Interim DIP Order.

(s) The Purchasers shall have received a Note Purchase Request in accordance with the requirements hereof.

(t) The Trustee and the Purchasers shall have received such other documents as the Trustee, any Purchaser or their respective counsel may have reasonably requested.

Section 7.2 Conditions Precedent to Second Issue Date. Each Purchaser's obligation to purchase Additional DIP Notes on the Second Issue Date is subject to satisfaction (or waiver by each affected Purchaser) of each of the conditions specified in Section 7.1 (g), (j), (k), (q) and (t) (but substituting where applicable the Second Issue Date for the Initial Issue Date, *mutatis mutandis*) and the following additional conditions:

(a) The Final DIP Order shall have been entered by the Bankruptcy Court and counsel to the Required Purchasers shall have received a true and complete copy of such orders, shall be in full force and effect and shall not have been reversed, modified, amended, stayed or vacated absent prior written consent of the Required Purchasers (and with respect to amendments, modifications or supplements that affect the rights or duties of the Trustee, the Trustee).

(b) The DIP Issuers shall have paid to the Trustee and Purchasers in cash the fees and expenses then due and payable under the DIP Documents (provided that the fees and expenses of the Purchasers shall be limited to (i) the fees and expenses of Arnold & Porter Kaye Scholer LLP to the extent agreed among the Required Purchasers (for the purposes of this Section 7.2(b) only, after giving effect to the exclusion of Barings LLC and its Related Funds from the definition of "Purchaser" and the exclusion of the Total Commitments of Barings LLC and its Related Funds from the calculation of "50% of the sum of all Total Commitments"), the Obligors and Barings LLC, each in their sole discretion, and (ii) the fees and expenses of Milbank LLP, Houlihan Lokey Capital, Inc. and Norton Rose Fulbright US LLP) and invoiced to the DIP Issuers at least one Business Day prior to the Second Issue Date or, if such fees and expenses have not been paid, to permit them to be deducted from the purchase price of the Additional DIP Notes on the Second Issue Date, in each case subject to and in accordance with the Bankruptcy Court DIP Orders.

(c) The representations and warranties of each Obligor set forth in Article IV and in each other DIP Document shall be true and correct in all respects on and as of the Second Issue Date with the same effect as though made on and as of such date, except (i) to the extent that any such representation or warranty expressly relates to an earlier date (in which case such representation or warranty shall be true and correct in all respects on and as of such earlier date), and (ii) no Default or Event of Default shall have occurred and be continuing on such date or as a result of the issuance of the Additional DIP Notes and the application of proceeds therefrom.

ARTICLE VIII

INDEMNIFICATION AND CONTRIBUTION

Section 8.1 Indemnification Obligations. Subject to the limitations set forth in this Article VIII, from and after the date of this Agreement, the Obligors (collectively, the "**Indemnifying Parties**") and each, an "**Indemnifying Party**") shall, jointly and severally, indemnify and hold harmless each Purchaser and its Affiliates, Related Funds, equity holders, members, partners, general partners, managers and its and their respective Representatives and controlling persons (each, an "**Indemnified Person**") from and against any and all losses, claims, damages, liabilities and costs and expenses (other than Taxes of the Purchasers except to the extent otherwise provided for in Section 2.4(b) of this Agreement) (collectively, "**Losses**") that any such Indemnified Person may incur or to which any such Indemnified Person may become subject arising out of or in connection with this Agreement and the Transaction contemplated hereby, including the sale and purchase of the DIP Notes, the payment of the Commitment Premium or the use of the proceeds therefrom, or any claim, challenge, litigation,

investigation or proceeding relating to any of the foregoing, regardless of whether any Indemnified Person is a party thereto, whether or not such proceedings are brought by the Obligors, their respective equity holders, Affiliates, Related Funds, creditors or any other Person (but excluding, however, any such Losses arising from any such claim, challenge, litigation or proceeding between or among one or more Purchasers or between or among the Purchasers and their respective Affiliates and Related Funds that do not involve any act or omission of the Indemnifying Parties), and reimburse each Indemnified Person upon demand for reasonable documented out-of-pocket (with such documentation subject to redaction only to preserve attorney client and work product privileges) legal or other third-party expenses actually incurred in connection with investigating, preparing to defend or defending, or providing evidence in or preparing to serve or serving as a witness with respect to, any lawsuit, investigation, claim or other proceeding relating to any of the foregoing (including in connection with the enforcement of the indemnification obligations set forth herein), irrespective of whether or not the Transaction contemplated by this Agreement is consummated or whether or not this Agreement is terminated; *provided* that the foregoing indemnity will not, as to any Indemnified Person, apply to Losses to the extent they are found by a final, non-appealable judgment of a court of competent jurisdiction to arise from the willful misconduct or gross negligence of such Indemnified Person (except that this proviso shall not apply if the finding of willful misconduct or gross negligence arises solely out of the Indemnified Person's participation in the Transaction in accordance with the terms contemplated by the DIP Documents (which, for the avoidance of doubt, shall not include any finding of willful misconduct or gross negligence that arises out of or is in connection with any act or failure to act on the part of the Indemnified Person which are beyond the terms of the DIP Documents)).

Section 8.2 Indemnification Procedure. Promptly after receipt by an Indemnified Person of notice of the commencement of any claim, challenge, litigation, investigation or proceeding (an "**Indemnified Claim**"), such Indemnified Person will, if a claim is to be made hereunder against the Indemnifying Party in respect thereof, notify the Indemnifying Party promptly in writing of the commencement thereof; *provided*, that (i) the omission to so notify the Indemnifying Party will not relieve the Indemnifying Party from any liability that it may have hereunder except to the extent that it has been materially prejudiced by such failure and (ii) the omission to so notify the Indemnifying Party will not relieve the Indemnifying Party from any liability that it may have to such Indemnified Person otherwise than on account of this Agreement. In case any such Indemnified Claims are brought against any Indemnified Person and such Indemnified Person notifies the Indemnifying Party of the commencement thereof, the Indemnifying Party will be entitled to participate therein and, at its election by providing written notice to such Indemnified Person, the Indemnifying Party will be entitled to assume the defense thereof, with counsel reasonably acceptable to such Indemnified Person; *provided*, that if the parties (including any impleaded parties) to any such Indemnified Claims include both such Indemnified Person and the Indemnifying Party and based on advice of such Indemnified Person's counsel there are legal defenses available to such Indemnified Person that are different from or additional to those available to the Indemnifying Party, such Indemnified Person shall have the right to select separate counsel to assert such legal defenses and to otherwise participate in the defense of such Indemnified Claims. Upon receipt of notice from the Indemnifying Party to such Indemnified Person of its election to so assume the defense of such Indemnified Claims with counsel reasonably acceptable to the Indemnified Person, the Indemnifying Party shall not be liable to such Indemnified Person for expenses incurred by such Indemnified Person in connection with the defense thereof or participation therein (other than reasonable documented out-of-pocket costs of investigation) unless (i) such Indemnified Person shall have employed separate counsel (in addition to any local counsel) in connection with the assertion of legal defenses in accordance with the proviso to the immediately preceding sentence (it being understood, however, that the Indemnifying Party shall not be liable for the expenses of more than one separate counsel representing the Indemnified Person who is party to such Indemnified Claims (in addition to one local counsel in each jurisdiction where local counsel is required)), (ii) the Indemnifying Party shall not have employed counsel reasonably acceptable to such Indemnified Person to represent such Indemnified Person within a reasonable time after the Indemnifying Party has received notice of commencement of the Indemnified Claims from, or delivered on

behalf of, the Indemnified Person, (iii) after the Indemnifying Party assumes the defense of the Indemnified Claims, the Indemnified Person determines in good faith that the Indemnifying Party has failed or is failing to defend such claim and provides written notice of such determination and the basis for such determination, and such failure is not reasonably cured within ten (10) Business Days following receipt of such notice by the Indemnifying Party, or (iv) the Indemnifying Party shall have authorized in writing the employment of counsel for such Indemnified Person.

Section 8.3 Settlement of Indemnified Claims. The Indemnifying Party shall not be liable for any settlement of any Indemnified Claims effected by such Indemnified Person without the written consent of the Indemnifying Party (which consent shall not be unreasonably withheld, conditioned or delayed). If any settlement of any Indemnified Claims is consummated with the written consent of the Indemnifying Party or if there is a final judgment for the plaintiff in any such Indemnified Claims, the Indemnifying Party agrees to indemnify and hold harmless each Indemnified Person from and against any and all Losses by reason of such settlement or judgment to the extent such Losses are otherwise subject to indemnification by the Indemnifying Party hereunder in accordance with, and subject to the limitations of, this Article VIII. Notwithstanding anything in this Article VIII to the contrary, if at any time an Indemnified Person shall have requested the Indemnifying Party to reimburse such Indemnified Person for Losses that are subject to indemnification by the Indemnifying Party hereunder in accordance with, and subject to the limitations of, this Article VIII, the Indemnifying Party shall be liable for any settlement of any Indemnified Claims effected without its written consent if (i) such settlement is entered into more than sixty (60) days after receipt by the Indemnifying Party of such request for reimbursement and (ii) the Indemnifying Party shall not have reimbursed such Indemnified Person in accordance with this Article VIII prior to the date of such settlement. The Indemnifying Party shall not, without the prior written consent of an Indemnified Person (which consent shall be granted or withheld, conditioned or delayed in the Indemnified Person's sole discretion), effect any settlement of any pending or threatened Indemnified Claims in respect of which indemnity or contribution has been sought hereunder by such Indemnified Person unless (i) such settlement includes an unconditional release of such Indemnified Person in form and substance reasonably satisfactory to such Indemnified Person from all liability on the claims that are the subject matter of such Indemnified Claims and (ii) such settlement does not include any statement as to or any admission of fault, culpability or a failure to act by or on behalf of any Indemnified Person.

Section 8.4 Contribution. If for any reason the foregoing indemnification is unavailable to any Indemnified Person or insufficient to hold it harmless from Losses that are subject to indemnification pursuant to Section 8.1 hereof, then the Indemnifying Party shall contribute to the amount paid or payable by such Indemnified Person as a result of such Losses in such proportion as is appropriate to reflect not only the relative benefits received by the Indemnifying Party, on the one hand, and such Indemnified Person, on the other hand, but also the relative fault of the Indemnifying Party, on the one hand, and such Indemnified Person, on the other hand, as well as any relevant equitable considerations. It is hereby agreed that the relative benefits to the Indemnifying Party, on the one hand, and all Indemnified Persons, on the other hand, shall be deemed, with respect to the Purchasers, to be in the same proportion as (i) the total value received or proposed to be received by the Obligors from the Purchasers pursuant to the issuance and sale of the DIP Notes bears to (ii) the Commitment Premium paid or proposed to be paid to the Purchasers. Subject to Section 8.6 hereof, the Indemnifying Parties also agree that no Indemnified Person shall have any liability based on their comparative or contributory negligence to the Indemnifying Parties in connection with an Indemnified Claim.

Section 8.5 Treatment of Indemnification Payments. All amounts paid by an Indemnifying Party to an Indemnified Person under this Article VIII shall, to the extent permitted by applicable Law, be treated as adjustments to the purchase price solely for Tax purposes. The provisions of

this Article VIII are an integral part of the Transaction contemplated by this Agreement and without these provisions the Purchasers would not have entered into this Agreement.

Section 8.6 Survival of Representations, Warranties, Covenants, Indemnities and Agreements. All representations, warranties, covenants and agreements made in this Agreement shall survive the Initial Issue Date and the Second Issue Date, except for covenants and agreements that by their express terms are to be satisfied at funding, and will remain operative and in full force and effect until the latest date permitted by applicable Law, including the indemnification and other obligations of the Obligors pursuant to this Article VIII and the other obligations set forth in Section 9.5.

ARTICLE IX

TERMINATION

Section 9.1 Consensual Termination. This Agreement may be terminated, the Transaction contemplated hereby may be abandoned and all unused Commitments shall be extinguished, at any time prior to the Second Issue Date by mutual written consent of the Obligors and the Required Purchasers, provided, that the Obligors shall, in their discretion, be permitted to request and issue Additional DIP Notes in an amount less than the outstanding Commitments.

Section 9.2 Termination by the Required Purchasers. This Agreement may be terminated by the Required Purchasers, the Transaction contemplated hereby may be abandoned and all unused Commitments shall be extinguished, upon written notice by the Required Purchasers to the Obligors if:

(a) the commencement of the Chapter 11 Cases has not occurred in accordance with Section 6.11(a).

(b) the Initial Issue Date has not occurred by (i) 11:59 p.m., New York City time on the day that is five Business Days after the Interim DIP Order Entry Date (or such later date as the DIP Notes are funded by the Initial Purchasers pursuant to the proviso to Section 2.1(d)) or (ii) such later date as agreed to by the Required Purchasers (the “**Initial Outside Date**”); other than solely as a result of the Purchasers’ refusal or inability to honor their Initial DIP Notes Commitment;

(c) the Second Issue Date has not occurred by (i) 11:59 p.m., New York City time on the date that is five Business Days after the Final DIP Order Entry Date (or such later date as the DIP Notes are funded by the Initial Purchasers pursuant to the proviso to Section 2.1(d)) or (ii) such later date as agreed to by the Required Purchasers (the “**Second Outside Date**”); other than solely as a result of the Purchasers’ refusal or inability to honor their Additional DIP Notes Commitments;

(d) an “Event of Default” under the DIP Indenture has occurred and is continuing for a period of five days;

(e) any of the executed DIP Documents or any of the other executed Definitive Documents is amended or modified in any material respect without the prior written consent of the Required Purchasers;

(f) other than as expressly contemplated in the Interim DIP Order, or with the prior written consent of the Required Purchasers, the Obligors file any cause of action against and/or seek to restrict or hinder the enforcement of any rights of the holders of DIP Obligations, Prepetition 1L Obligations and Prepetition 2L Obligations and/or seek to restrict or hinder the enforcement of any rights of holders of

DIP Obligations (or if the Obligor support any such motion, application or adversary proceeding commenced by any third party or consent to the standing of any such third party) except to the extent the Obligor are seeking to enforce the provisions of the DIP Documents;

(g) any Obligor (i) amends or modifies, or files a pleading seeking authority to amend or modify, the DIP Documents or any of the other Definitive Documents in a manner that is materially inconsistent with this Agreement; (ii) suspends or revokes the DIP Documents; or (iii) publicly announces its intention to take any such action listed in sub-clause (g) or (g) of this subsection, in each case without the prior written consent of the Required Purchasers;

(h) (i) a breach in any material respect by any Obligor of any representation, warranty, covenant or other agreement made by such Obligor in this Agreement or any such representation or warranty shall have become inaccurate, (ii) the Required Purchasers shall have delivered written notice of such breach or inaccuracy to the Obligor (provided that the failure of the Obligor to properly notify the Purchasers of the occurrence of such breach or inaccuracy in accordance herewith shall not prohibit the Required Purchasers from terminating this Agreement in accordance with this clause (g)), and (iii) if such breach or inaccuracy is capable of being cured, such breach or inaccuracy is not cured by the Obligor by the fifth (5th) Business Day after receipt of such notice; *provided*, that neither the Initial Issue Date nor the Second Issue Date shall occur (or, if such breach occurs after the Initial Issue Date, the Second Issue Date shall not occur) until such breach is cured; *provided further*, that this Agreement shall not terminate pursuant to this clause (g) if the Required Purchasers are then in willful or intentional material breach of this Agreement.

For the avoidance of doubt, termination of this Agreement shall not trigger rescission or acceleration of any outstanding DIP Notes.

Section 9.3 Termination by Purchaser. This Agreement may be terminated by any Purchaser, as to itself only, upon written notice to the Obligor if either the Initial Issue Date or the Second Issue Date has not occurred by 11:59 p.m., New York City time on the two-month anniversary of the Second Outside Date.

Section 9.4 Termination by the Obligor. At any time prior to the entry of the Interim DIP Order, the Obligor shall be permitted to terminate the Commitments without premium, penalty or the requirement to pay any fees.

Section 9.5 Effect of Termination.

(a) Upon termination of this Agreement as to all or any Party pursuant to this Article IX (other than Section 9.3), this Agreement shall forthwith become void and of no force or effect and there shall be no further obligations or liabilities on the part of each such Party; *provided*, that (i) any obligations of the Obligor to pay the fees (including the Commitment Premium) and expense reimbursement and to satisfy their indemnification obligations hereunder shall survive the termination of this Agreement and shall remain in full force and effect until each such obligation has been satisfied, (ii) the provisions set forth in this Section 9.5 and Article X shall survive the termination of this Agreement in accordance with their terms and (iii) subject to Section 10.10 hereof, nothing in this Section 9.5 shall relieve any Party from liability for its gross negligence, willful misconduct or any willful or intentional breach of this Agreement. For purposes of this Agreement, “willful or intentional breach” means a breach of this Agreement that is a consequence of an act undertaken by the breaching party with the knowledge that the taking of such act would, or would reasonably be expected to, cause a breach of this Agreement. Notwithstanding the foregoing, if this Agreement is terminated after the Initial Issue Date but no Default or Event of Default shall have occurred

or is continuing at such time under the DIP Indenture, the DIP Indenture shall continue to govern the outstanding DIP Notes in accordance with its terms.

(b) Upon termination of this Agreement as to one or more Purchasers pursuant to Section 9.3, each such Purchaser's unused Initial DIP Notes Commitments and Additional DIP Notes Commitments shall become void and of no force or effect and there shall be no further obligations or liabilities on the part of such Purchaser; *provided*, that (i) the obligations of the Obligors to pay the fees of such Purchaser (including the Commitment Premium) and expense reimbursement and to satisfy their indemnification obligations to such Purchaser hereunder shall survive the termination of such Purchaser's unused Initial DIP Notes Commitments and Additional DIP Notes and shall remain in full force and effect until each such obligation has been satisfied, (ii) the provisions set forth in this Section 9.5 and Article X shall survive the termination of such Purchaser's unused Initial DIP Notes Commitments and Additional DIP Notes in accordance with their terms and (iii) subject to Section 10.10 hereof, nothing in this Section 9.5 shall relieve any Party from liability for its gross negligence, willful misconduct or any willful or intentional breach of this Agreement. For purposes of this Agreement, "willful or intentional breach" means a breach of this Agreement that is a consequence of an act undertaken by the breaching party with the knowledge that the taking of such act would, or would reasonably be expected to, cause a breach of this Agreement.

ARTICLE X

GENERAL PROVISIONS

Section 10.1 Notices and Certain Approvals. All notices and other communications in connection with this Agreement shall be in writing and shall be deemed given if delivered personally, sent via electronic facsimile (with confirmation), mailed by registered or certified mail (return receipt requested) or delivered by an express courier (with confirmation) to the Parties at the following addresses (or at such other address for a Party as may be specified by like notice):

(a) If to the Obligors:

Anagram International, Inc.
7700 Anagram Drive
Minneapolis, MN 55344

Attention: Christopher Wiles

Email: wilesc@anagramintl.com

with a copy (which shall not constitute notice) to:

Simpson Thacher & Bartlett LLP
425 Lexington Avenue
New York, New York 10017

Attention: Sunny Singh
Nicholas Baker

Email: 2Sunny.Singh@stblaw.com
NBaker@stblaw.com

(b) If to the Purchasers (or to any of them) or any other Person to which notice is to be delivered hereunder, to the address set forth adjacent to each such Purchaser's name on Schedule 4,

with a copy (which shall not constitute notice) to:

Milbank LLP
55 Hudson Yards
New York, New York 10001
Attention: Abhilash M. Raval
Paul Denaro
Matthew Brod

Email: Araval@milbank.com
Pdenaro@milbank.com
Mbrod@milbank.com

In this Agreement, when the Purchasers (or any of them) have the right to approve or otherwise pass on the "form and substance" of a document, the other Parties may rely on an e-mail confirmation from Milbank LLP as evidence of such approval.

Section 10.2 Assignment; Third-Party Beneficiaries. Neither this Agreement nor any of the rights, interests or obligations under this Agreement shall be assigned by any Party (whether by operation of Law or otherwise) without the prior written consent of the Obligors and each Purchaser, other than an assignment by a Purchaser (i) expressly permitted hereunder pursuant to Article II or (ii) to a Related Purchaser, and any purported assignment in violation of this Section 10.2 shall be void *ab initio* and of no force or effect. Any Purchaser may at any time sell, assign or otherwise transfer to one or more Eligible Assignees its beneficial interest in any Notes and all or any portion of its rights and obligations under this Agreement (including, without limitation, all or a portion of its Commitments and the Notes beneficially held by it), subject in all cases to the requirements of Section 2.1(e). In addition, any assignment by a Purchaser pursuant to, Section 2.1(d) shall be permitted without the consent of the Obligors or any Purchaser. Except as expressly provided in Article VIII with respect to the Indemnified Persons, this Agreement (including the documents and instruments referred to in this Agreement) is not intended to and does not confer upon any Person any rights or remedies under this Agreement other than to the Parties.

Section 10.3 Prior Negotiations; Entire Agreement. This Agreement (including the documents and instruments referred to in this Agreement) constitutes the entire agreement of the Parties and supersedes all prior agreements, arrangements or understandings, whether written or oral, among the Parties with respect to the subject matter of this Agreement (including, for the avoidance of doubt, with respect to (i) the allocation of the Commitment Premium and (ii) the Commitments of each of Purchaser), except that the Parties hereto acknowledge that any confidentiality agreements heretofore executed between or among the Parties will each continue in full force and effect to the extent applicable pursuant to the stated terms therein.

Section 10.4 Governing Law; Venue. EXCEPT TO THE EXTENT SUPERSEDED BY THE BANKRUPTCY CODE, THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW.

(a) **ALL JUDICIAL PROCEEDINGS BROUGHT AGAINST ANY PARTY ARISING OUT OF OR RELATING HERETO OR ANY OTHER DIP DOCUMENTS, OR ANY OF**

THE DIP OBLIGATIONS, SHALL BE BROUGHT IN THE BANKRUPTCY COURT, OR IF THE BANKRUPTCY COURT DOES NOT HAVE (OR ABSTAINS FROM) JURISDICTION, ANY FEDERAL COURT OF THE UNITED STATES OF AMERICA SITTING IN THE BOROUGH OF MANHATTAN OR, IF THAT COURT DOES NOT HAVE SUBJECT MATTER JURISDICTION, IN ANY STATE COURT LOCATED IN THE CITY AND COUNTY OF NEW YORK. BY EXECUTING AND DELIVERING THIS AGREEMENT, EACH PARTY, FOR ITSELF AND IN CONNECTION WITH ITS PROPERTIES, IRREVOCABLY (A) ACCEPTS GENERALLY AND UNCONDITIONALLY THE EXCLUSIVE JURISDICTION AND VENUE OF SUCH COURTS (OTHER THAN WITH RESPECT TO ACTIONS BY ANY AGENT IN RESPECT OF RIGHTS UNDER ANY COLLATERAL DOCUMENTS GOVERNED BY LAWS OTHER THAN THE LAWS OF THE STATE OF NEW YORK OR WITH RESPECT TO ANY COLLATERAL SUBJECT THERETO); (B) WAIVES ANY DEFENSE OF FORUM NON CONVENIENS; (C) AGREES THAT SERVICE OF ALL PROCESS IN ANY SUCH PROCEEDING IN ANY SUCH COURT MAY BE MADE BY REGISTERED OR CERTIFIED MAIL, RETURN RECEIPT REQUESTED, TO THE APPLICABLE PARTY AT ITS ADDRESS PROVIDED IN ACCORDANCE WITH SECTION 10.1(b); (D) AGREES THAT SERVICE AS PROVIDED IN CLAUSE (C) ABOVE IS SUFFICIENT TO CONFER PERSONAL JURISDICTION OVER THE APPLICABLE PARTY IN ANY SUCH PROCEEDING IN ANY SUCH COURT, AND OTHERWISE CONSTITUTES EFFECTIVE AND BINDING SERVICE IN EVERY RESPECT AND (E) AGREES THAT THE PARTIES RETAIN THE RIGHT TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY LAW OR TO BRING PROCEEDINGS AGAINST ANY DIP NOTES PARTY IN THE COURTS OF ANY OTHER JURISDICTION IN CONNECTION WITH THE EXERCISE OF ANY RIGHTS UNDER ANY COLLATERAL DOCUMENT OR THE ENFORCEMENT OF ANY JUDGMENT.

(b) THE OBLIGORS AND THE PURCHASERS EACH IRREVOCABLY AND UNCONDITIONALLY WAIVES TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER DIP DOCUMENT IN ANY COURT REFERRED TO IN PARAGRAPH (a) OF THIS SECTION 10.4. EACH SUCH PARTY HERETO HEREBY IRREVOCABLY WAIVES, OR IS DEEMED TO IRREVOCABLY WAIVE, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING IN ANY SUCH COURT.

Section 10.5 Waiver of Jury Trial. EACH PARTY HEREBY WAIVES ALL RIGHTS TO TRIAL BY JURY IN ANY JURISDICTION IN ANY ACTION, SUIT OR PROCEEDING BROUGHT TO RESOLVE ANY DISPUTE AMONG THE PARTIES UNDER THIS AGREEMENT, WHETHER IN CONTRACT, TORT OR OTHERWISE.

Section 10.6 Counterparts. This Agreement may be executed in any number of counterparts, all of which will be considered one and the same agreement, and will become effective when counterparts have been signed by each of the Parties and delivered to each other Party (including via facsimile or other electronic transmission), it being understood that each Party need not sign the same counterpart. Any facsimile or electronic signature shall be treated in all respects as having the same effect as having an original signature. Each Party agrees that this Agreement and any other documents to be delivered in connection herewith may be electronically signed, and that any electronic signatures appearing

on this Agreement or such other documents are handwritten signatures for the purposes of validity, enforceability and admissibility.

Section 10.7 Waivers and Amendments; Rights Cumulative; Consent. Subject to the terms of this Agreement, this Agreement may be amended, restated, modified or changed only by a written instrument signed by the Obligors and the Required Purchasers; provided, that, in addition to the foregoing consents, any Purchaser's prior written consent shall be required for any amendment that would, directly or indirectly, (i) modify, extend or increase such Purchaser's Initial DIP Notes Commitments and Additional DIP Notes Commitments, as the case may be, (ii) increase the Initial Purchase Price or Additional Purchase Price, as the case may be, to be paid by such Purchaser in respect of the DIP Notes, (iii) waive, reduce or postpone any scheduled payment due such Purchaser under this Agreement, (iv) extend the time for payment of any interests or fees to such Purchaser under this Agreement, (v) amend the definition "Required Purchasers" or any other provision specifying the number of Purchasers or portion of the Commitments required to take any action under this Agreement, or (vi) modify Section 6.10, Section 9.3 or this Section 10.7. Notwithstanding the foregoing, Schedules 2 and 3 shall be ratably and proportionally reduced as necessary to accommodate a New DIP Purchaser as described in Section 2.1(d) without requiring a written instrument signed by the Obligors and any Purchaser (other than as contemplated in Section 2.1(d) or Section 3.1), as applicable (but only for such limited purpose).

Section 10.8 Headings. The headings in this Agreement are for reference purposes only and will not in any way affect the meaning or interpretation of this Agreement.

Section 10.9 Specific Performance. The Parties agree that irreparable damage would occur if any provision of this Agreement were not performed in accordance with the terms hereof and that the Parties shall be entitled to an injunction or injunctions without the necessity of posting a bond to prevent breaches of this Agreement or to enforce specifically the performance of the terms and provisions hereof, in addition to any other remedy to which they are entitled at law or in equity. Unless otherwise expressly stated in this Agreement, no right or remedy described or provided in this Agreement is intended to be exclusive or to preclude a Party from pursuing any other rights and remedies to the extent available under this Agreement, at law or in equity.

Section 10.10 Damages. Notwithstanding anything to the contrary in this Agreement, none of the Parties will be liable for, and none of the Parties shall claim or seek to recover, any punitive, special, indirect or consequential damages or damages for lost profits in connection with the breach or termination of this Agreement.

Section 10.11 No Reliance. No Purchaser or any of its Related Parties shall have any duties or obligations to the other Purchasers or the Obligors in respect of this Agreement or the Transaction contemplated hereby or thereby, except those expressly set forth herein. Without limiting the generality of the foregoing, (i) no Purchaser or any of its Related Parties shall be subject to any fiduciary or other implied duties to the other Purchasers or the Obligors, (ii) no Purchaser or any of its Related Parties shall have any duty to take any discretionary action or exercise any discretionary powers on behalf of any other Purchaser, (iii) no Purchaser or any of its Related Parties shall have any duty to the other Purchasers to obtain, through the exercise of diligence or otherwise, to investigate, confirm, or disclose to the other Purchasers any information relating to the Obligors or any of their Subsidiaries that may have been communicated to or obtained by such Purchaser or any of its Affiliates in any capacity, and (iv) no Purchaser may rely, or has relied, on any due diligence investigation that any other Purchaser or any Person acting on behalf of such

other Purchaser may have conducted with respect to the Obligors or any of their Affiliates or any of their respective securities.

Section 10.12 Publicity. At all times prior to the Issue Date or the earlier termination of this Agreement in accordance with its terms, the Obligors and the Purchasers shall consult with each other prior to issuing any press releases (and provide each other a reasonable opportunity to review and comment upon any such release) or otherwise making public announcements with respect to the Transaction contemplated by this Agreement.

Section 10.13 No Recourse. Notwithstanding anything that may be expressed or implied in this Agreement, and notwithstanding the fact that certain of the Parties may be partnerships or limited liability companies, each Party covenants, agrees and acknowledges that no recourse under this Agreement or any documents or instruments delivered in connection with this Agreement shall be had against any Party's Affiliates or any of the respective Related Parties of such Party or of the Affiliates of such Party (in each case other than the Parties to this Agreement and each of their respective successors and permitted assignees under this Agreement), whether by the enforcement of any assessment or by any legal or equitable proceeding, or by virtue of any applicable Law, it being expressly agreed and acknowledged that no personal liability whatsoever shall attach to, be imposed on or otherwise be incurred by any of such Related Parties, as such, for any obligation or liability of any Party under this Agreement or any documents or instruments delivered in connection herewith for any Claim based on, in respect of or by reason of such obligations or liabilities or their creation; *provided, however*, nothing in this Section 10.13 shall relieve or otherwise limit the liability of any Party hereto or any of their respective successors or permitted assigns for any breach or violation of its obligations under this Agreement or such other documents or instruments. For the avoidance of doubt, none of the Parties will have any recourse, be entitled to commence any proceeding or make any Claim under this Agreement or in connection with the Transaction contemplated hereby except against any of the Parties or their respective successors and permitted assigns, as applicable.

Section 10.14 Confidentiality. Each Party represents, covenants and agrees that in no event will it disclose the Commitments of any other Party, or the information set forth in Schedules 2 and 3, other than as required by legal proceedings, subpoena, civil investigative demand or other similar process or by any law, rule or regulation of any governmental agency or regulatory authority.

Section 10.15 Severability. In the event that any one or more of the provisions contained in this Agreement is held to be invalid, illegal or unenforceable in any respect for any reason, the validity, legality and enforceability of any such provision in every other respect and of the remaining provisions contained herein will not be in any way impaired thereby, it being intended that all of the rights and privileges of the Parties hereto will be enforceable to the fullest extent permitted by law.

Section 10.16 Conflict. On and after the Initial Issue Date, to the extent of any conflict between this Agreement and the DIP Indenture on and after the Initial Issue Date, the terms of the DIP Indenture shall govern. On and after the Initial Issue Date, to the extent of any conflict between this Agreement and the Bankruptcy Court DIP Order, the Bankruptcy Court DIP Order shall prevail.

[Signature Pages Follow]

IN WITNESS WHEREOF, the Parties have duly executed this Agreement as of the date first above written.

ANAGRAM HOLDINGS, LLC

By: /s/ Christopher P. Wiles
Name: Christopher P. Wiles
Title: Vice President Finance

ANAGRAM INTERNATIONAL, INC.

By: /s/ Christopher P. Wiles
Name: Christopher P. Wiles
Title: Vice President Finance

ANAGRAM INTERNATIONAL HOLDINGS, INC.,
as DIP Guarantor

By: /s/ Christopher P. Wiles
Name: Christopher P. Wiles
Title: Vice President Finance

Exhibit 2

DIP Notes Indenture

Anagram Holdings, LLC

and

Anagram International, Inc.,

as Debtors and Debtors-in-Possession under Chapter 11 of the Bankruptcy Code and as DIP Issuers
hereunder,

The Guarantors Party Hereto From Time to Time,

as DIP Guarantors,

and

GLAS Trust Company LLC,

as DIP Trustee and Collateral Agent

Senior Secured Superpriority Debtor-In-Possession Notes due 2024

INDENTURE

Dated as of [•], 2023

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Appendix

Appendix A Transfer Restrictions

Exhibits

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 Exhibit B Certificate of Authentication
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Schedules

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 Schedule 2 Existing Investments
 Schedule 3 Existing Affiliate Relationships
 Schedule 4 Existing Liens

This DIP INDENTURE dated as of [•], 2023 among Anagram Holdings, LLC, a Delaware limited liability company, as issuer (“Anagram LLC”), Anagram International, Inc., a Minnesota corporation, as co-issuer (“Anagram International” and, together with Anagram LLC, the “DIP Issuers” or the “Company”), the affiliates of the DIP Issuers from time to time party hereto as guarantors (the “DIP Guarantors”), and GLAS Trust Company LLC, a limited liability company organized and existing under the laws of the State of New Hampshire, as trustee (together with its successors and permitted assigns, in such capacity, the “DIP Trustee”) and as collateral agent (together with its successors and permitted assigns, in such capacity, the “Collateral Agent”) for the benefit of the DIP Secured Parties (as defined herein). The Company is a wholly-owned subsidiary of Anagram LLC. Anagram International is a wholly-owned subsidiary of Anagram LLC. The DIP Issuers are wholly-owned subsidiaries of Party City Holdco Inc. (“PCHI”).

On November [•], 2023 (the “Petition Date”), the DIP Issuers and certain of their direct and indirect subsidiaries and Affiliates, each as debtors-in-possession (collectively, the “Debtors”) commenced voluntary cases (the “Chapter 11 Cases”) under Chapter 11 of the Bankruptcy Code (as defined herein) in the United States Bankruptcy Court for the Southern District of Texas (the “Bankruptcy Court”). The Debtors continue to operate their businesses and manage their properties as debtors-in-possession pursuant to Sections 1107 and 1108 of the Bankruptcy Code.

Prior to the Petition Date, certain lenders and noteholders provided financing to the DIP Issuers and their Affiliates pursuant to (i) that certain Indenture, dated as of July 30, 2020 (as amended, supplemented, restated or otherwise modified prior to the Petition Date, the “Prepetition 1L Indenture”), (ii) that certain Indenture, dated as of July 30, 2020 (as amended, supplemented, restated or otherwise modified prior to the Petition Date, the “Prepetition 2L Indenture”), and (iii) that certain Credit Agreement dated as of May 7, 2021 (as amended, supplemented, restated or otherwise modified prior to the Petition Date, the “Prepetition ABL Credit Agreement”). The outstanding Prepetition ABL Obligations will be gradually rolled-up in accordance with, and subject to, the Bankruptcy Court DIP Order, by application of all proceeds of ABL Priority Collateral required to be deposited on or after the Petition Date into the collection account pursuant to the Prepetition ABL Credit Agreement until “rolled up”, refinanced and repaid in full, subject to the DIP Issuers’ ability to borrow under the DIP ABL Facility (the date that the Prepetition ABL Obligations are rolled-up in full pursuant to the Bankruptcy Court DIP Order, the “ABL Roll-Up Date”).

On the Petition Date, (i) the outstanding aggregate principal amount of Notes and PIK Notes (each, as defined in the Prepetition 1L Indenture) and unpaid reimbursement obligations under the Prepetition 1L Indenture was approximately \$125,331,399.84, plus accrued, unpaid and uncapitalized interest, fees, costs and expenses and all other Prepetition 1L Obligations under the Prepetition 1L Notes Documents, (ii) the outstanding aggregate principal amount of Notes and PIK Notes (each, as defined in the Prepetition 2L Indenture) and unpaid reimbursement obligations under the Prepetition 2L Indenture was approximately \$108,900,584.61, plus accrued, unpaid and uncapitalized interest, fees, costs and expenses and all other Prepetition 2L Obligations under the Prepetition 2L Notes Documents and (iii) the outstanding principal balance of Loans (as defined in the Prepetition ABL Credit Agreement) and unpaid reimbursement obligations under the Prepetition ABL Credit Agreement was approximately \$6,206,692.20, plus interest, fees, costs and expenses and all other Prepetition ABL Obligations under the Prepetition ABL Loan Documents.

The Prepetition Secured Obligations under the Prepetition Debt Documents are secured by security interests and liens in substantially all of the existing and after-acquired assets of the DIP Issuers and the DIP Guarantors as more fully set forth in the Prepetition Debt Documents, and such security interests are perfected, and, with certain exceptions as described in the Prepetition Debt Documents, have priority over all other security interests.

The DIP Issuers have requested, and, upon the terms and subject to the conditions set forth in this DIP Indenture and the DIP Note Purchase Agreement, the initial DIP Noteholders have agreed to severally purchase from the DIP Issuers, DIP Notes (including Additional DIP Notes) in an aggregate principal amount of \$22.0 million, consisting of: (i) \$10.0 million aggregate principal amount of DIP Notes issuable upon the Interim DIP Order Entry Date and (ii) \$12.0 million aggregate principal amount of Additional DIP Notes issuable upon the Final DIP Order Entry Date, each to fund the working capital requirements of the DIP Issuers, the DIP Guarantors and their Subsidiaries during the pendency of the Chapter 11 Cases, in each case, pursuant to and in accordance with the Approved Budget.

The DIP Issuers and the DIP Guarantors have agreed to secure all of their DIP Obligations under the DIP Notes (including any Additional DIP Notes) by granting to the DIP Trustee, for the benefit of the DIP Trustee and the other DIP Secured Parties, a security interest in and lien upon all of their existing and after-acquired personal and real property. The DIP Notes will be secured by (i) a senior priming lien on the Prepetition Notes Priority Collateral and (ii) a lien that ranks senior to the liens securing the Prepetition 1L Obligations and Prepetition 2L Obligations, but junior to the liens securing the ABL Obligations, on the ABL Priority Collateral.

The DIP Issuers' and the DIP Guarantors' business is a mutual and collective enterprise and the DIP Issuers and the DIP Guarantors believe that the DIP Notes (including any Additional DIP Notes) and other financial accommodations to the DIP Issuers under this DIP Indenture will enhance the aggregate borrowing powers of the DIP Issuers and facilitate the administration of the Chapter 11 Cases and their credit relationship with the Prepetition 1L Noteholders, the Prepetition 2L Noteholders, the ABL Agent and the ABL Lenders, all to the mutual advantage of the DIP Issuers and the DIP Guarantors.

Each of the DIP Issuers and the DIP Guarantors acknowledges that it will receive substantial direct and indirect benefits by reason of the making of loans and other financial accommodations to the DIP Issuers as provided in this DIP Indenture.

The initial DIP Noteholders' willingness to extend financial accommodations to the DIP Issuers, and the Collateral Agent's willingness to administer the DIP Issuers' and DIP Guarantors' collateral security therefor, on a combined basis as more fully set forth in this DIP Indenture and the other DIP Documents, is done as an accommodation to the DIP Issuers and the DIP Guarantors and at the DIP Issuers' and the DIP Guarantors' request and in furtherance of the DIP Issuers' and the DIP Guarantors' mutual and collective enterprise.

All capitalized terms used in this DIP Indenture, including in these recitals, shall have the meanings ascribed to them in Sections 1.01 and 1.02, and, for purposes of this DIP Indenture and the other DIP Documents, the rules of construction set forth in Section 1.03 shall govern. All Schedules, Exhibits, Annexes, and other attachments hereto, or expressly identified in this DIP Indenture, are incorporated by reference, and taken together with this DIP Indenture, shall constitute a single agreement. These recitals shall be construed as part of this DIP Indenture.

In consideration of the mutual covenants and agreements herein contained, the parties hereto covenant and agree as follows:

ARTICLE 1

DEFINITIONS AND INCORPORATION BY REFERENCE

SECTION 1.01. Definitions. Unless the context otherwise requires, for all purposes under this DIP Indenture and any DIP Security Document (as defined below), (i) references to

the DIP Notes include any related Additional DIP Notes (as defined below) and (ii) references to the “principal amount” of DIP Notes includes any increase in the principal amount of outstanding DIP Notes as a result of the issuance of Additional DIP Notes.

“ABL Adequate Protection Liens” has the meaning set forth in the Bankruptcy Court DIP Order.

“ABL Agent” means the Prepetition ABL Agent and the DIP ABL Agent, as applicable.

“ABL DIP Facility” has the meaning set forth in the Bankruptcy Court DIP Order.

“ABL Facility” means the Prepetition ABL Facility until the DIP Roll-Up Date and, thereafter, the ABL DIP Facility.

“ABL Lenders” means the Prepetition ABL Lenders until the DIP Roll-Up Date and, thereafter, the DIP ABL Lenders.

“ABL Obligations” means the Prepetition ABL Obligations until the DIP Roll-Up Date and, thereafter, the DIP ABL Obligations.

“ABL Priority Collateral” has the meaning set forth in the Bankruptcy Court DIP Order.

“ABL Roll-Up Date” has the meaning set forth in the recitals.

“Acquired Indebtedness” means, with respect to any specified Person:

(1) Indebtedness of any other Person existing at the time such other Person is consolidated, merged or amalgamated with or into or became a Restricted Subsidiary of such specified Person, including Indebtedness incurred in connection with, or in contemplation of, such other Person merging or amalgamating with or into, or becoming a Restricted Subsidiary of, such specified Person, and

(2) Indebtedness secured by a Lien encumbering any asset acquired by such specified Person.

“Additional DIP Notes” has the meaning set forth in Section 2.16(a).

“Affiliate” of any specified Person means any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person. For purposes of this definition, “*control*” (including, with correlative meanings, the terms “*controlling*,” “*controlled by*” and “*under common control with*”), as used with respect to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such Person, whether through the ownership of voting securities, by agreement or otherwise.

“Applicable Rate” means 13.0% per annum.

“Approved Budget” has the meaning assigned to such term in Section 4.02(f).

“Approved Sale” has the meaning assigned to such term in Section 6.01(z).

“Asset Sale” means:

(1) the sale, conveyance, transfer or other disposition, whether in a single transaction or a series of related transactions, of property or assets (including by way of a Sale and Lease-Back Transaction) of the DIP Issuers or any of their Restricted Subsidiaries (each referred to in this definition as a “*disposition*”); or

(2) the issuance or sale of Equity Interests of any Restricted Subsidiary, whether in a single transaction or a series of related transactions;

in each case, other than:

(a) any disposition of (i) Cash Equivalents or Investment Grade Securities, (ii) surplus, obsolete, damaged or worn out property or equipment in the ordinary course of business or any disposition of inventory or goods (or other assets) held for sale in the ordinary course of business and (iii) property no longer used or useful in the conduct of business of the DIP Issuers and their Restricted Subsidiaries;

(b) the disposition of all or substantially all of the assets of the DIP Issuers in a manner permitted pursuant to Section 5.01 or any disposition that constitutes a Change of Control;

(c) the making of any Restricted Payment that is permitted to be made, and is made, under Section 4.04;

(d) any disposition of assets of the DIP Issuers or any Restricted Subsidiary or issuance or sale of Equity Interests of any Restricted Subsidiary in any transaction or series of transactions with an aggregate Fair Market Value of less than \$250,000;

(e) any disposition of property or assets or issuance of securities by the DIP Guarantors to a DIP Issuer or by a DIP Issuer or the DIP Guarantors to a DIP Issuer or the DIP Guarantors; *provided* that in the case of a sale of DIP Collateral, the transferee shall cause such amendments, supplements or other instruments to be executed, filed and recorded in such jurisdictions as may be required by applicable law to preserve and protect the Lien on the DIP Collateral owned by or transferred to the transferee, together with such financing statements or comparable documents as may be required to perfect any security interests in such DIP Collateral, which may be perfected by the filing of a financing statement or a similar document under the Uniform Commercial Code or other similar statute or regulation of the relevant states or jurisdictions; to the extent allowable under Section 1031 of the Internal Revenue Code of 1986, as amended, any exchange of like property (excluding any boot thereon) for use in a Similar Business;

(f) (i) the lease, assignment, sublease, license or sublicense of any real or personal property in the ordinary course of business and (ii) the termination of leases in the ordinary course of business;

(g) any disposition arising from foreclosure, casualty, condemnation or any similar action or transfers by reason of eminent domain with respect to any property or other asset of the DIP Issuers or any of the Restricted Subsidiaries or exercise of termination rights under any lease, sublease, license, sublicense, concession or other agreement;

(h) dispositions in connection with the granting of a Lien that is permitted under Section 4.12;

(i) the issuance by a Restricted Subsidiary of Preferred Stock or Disqualified Stock that is permitted under Section 4.03;

(j) any grant in the ordinary course of business of any license of patents, trademarks, know-how or any other intellectual property, including, but not limited to, grants of franchises or licenses, franchise or license master agreements and/or area development agreements; *provided* any such grants to Affiliates shall be treated as a disposition subject to the requirements of Section 4.07(a) hereof, and if such grant, when treated as a disposition subject to Section 4.07(a), is not in compliance with the requirements of Section 4.07(a), such grant shall constitute an “Asset Sale”;

(k) dispositions of receivables in connection with the compromise, settlement or collection thereof in the ordinary course of business or in bankruptcy or similar proceedings;

(l) the discount of inventory, accounts receivable or notes receivable or the conversion of accounts receivable to notes receivable, in each case in the ordinary course of business;

(m) the abandonment of intellectual property rights in the ordinary course of business which in the reasonable good faith determination of the DIP Issuers are not material to the conduct of the business of the DIP Issuers and the Restricted Subsidiaries taken as a whole; *provided* that any such abandonments shall be treated as a disposition subject to the requirements of Section 4.07(a) hereof, and if such abandonment, when treated as a disposition subject to Section 4.07(a), is not in compliance with the requirements of Section 4.07(a) hereof, such abandonment shall constitute an “Asset Sale.”

(n) licenses for the conduct of licensed departments within the DIP Issuers in the ordinary course of business;

(o) termination of Hedging Obligations pursuant to the terms of the documentation governing such Hedging Obligations;

(p) any surrender or waiver of contract rights or the settlement, release, recovery on or surrender of contract, tort or other claims of any kind in the ordinary course of business;

(q) sales, transfers and other dispositions of Investments in joint ventures to the extent required by, or made pursuant to, customary buy/sell arrangements between the joint venture parties set forth in joint venture arrangements and similar binding arrangements; and

(r) dispositions of property to the extent that (i) such property is exchanged for credit against the purchase price of similar replacement property or (ii) an amount equal to the Net Proceeds of such disposition are promptly applied to the purchase price of such replacement property.

“Authenticating Agent” has the meaning set forth in Section 2.03.

“Bank Products” means any services or facilities on account of credit or debit cards, purchase cards or merchant services constituting a line of credit.

“Bankruptcy Code” means title 11 of the United States Code, as amended.

“Bankruptcy Court” has the meaning set forth in the recitals.

“Bankruptcy Court DIP Order” means the Interim DIP Order or the Final DIP Order, or both, as applicable.

“Bankruptcy Law” means the Bankruptcy Code and any similar federal, state or foreign law for relief of debtors.

“Budget Event” means the actual amount of aggregate cumulative operating disbursements during any Budget Testing Period exceeding the projected cumulative operating disbursements in the Approved Budget for such Budget Testing Period by more than a Permitted Variance.

“Budget Testing Date” means, with respect to the Approved Budget, 5:00 p.m. New York City time on the Thursday that is two full weeks occurring after the Petition Date and each Thursday thereafter.

“Budget Testing Period” means, the most recently ended four-week (or such shorter period after the Petition Date in the case of the first two Budget Testing Dates) period ending on the most recent Friday immediately prior to the Budget Testing Date.

“Business Day” means each day which is not a Legal Holiday.

“Calculation Agent” means an agent appointed by the DIP Issuers to calculate Term SOFR, which shall be the DIP Trustee.

“Capital Stock” means:

- (1) in the case of a corporation, shares in the capital of such corporation;
- (2) in the case of an association or business entity, any and all shares, interests, participations, rights or other equivalents (however designated) of capital stock;
- (3) in the case of a partnership or limited liability company, partnership or membership interests (whether general or limited); and
- (4) any other interest or participation that confers on a Person the right to receive a share of the profits and losses of, or distributions of assets of, the issuing Person.

“Capitalized Software Expenditures” shall mean, for any period, the aggregate of all expenditures (whether paid in cash or accrued as liabilities) by a Person and its Subsidiaries during such period in respect of licensed or purchased software or internally developed software and enhancements that, in conformity with GAAP, are or are required to be reflected as capitalized costs on the consolidated balance sheet of such Person and such Subsidiaries.

“Carve-Out” has the meaning set forth in the Bankruptcy Court DIP Order.

“Cash Collateral” has the meaning set forth in the Bankruptcy Court DIP Order.

“Cash Equivalents” means:

- (1) United States dollars;
- (2) securities issued or directly and fully and unconditionally guaranteed or insured by the U.S. government or any agency or instrumentality thereof the securities of which are unconditionally guaranteed as a full faith and credit obligation of such government with maturities of 24 months or less from the date of acquisition;
- (3) certificates of deposit, time deposits and eurodollar time deposits with maturities of one year or less from the date of acquisition, bankers’ acceptances with maturities not exceeding one year and overnight bank deposits, in each case with any commercial bank having capital and surplus of not less than \$250.0 million and permitted under clause (1) above;
- (4) repurchase obligations for underlying securities of the types described in clauses (2) and (3) above entered into with any financial institution meeting the qualifications specified in clause (3) above, and in each case in United States dollars;
- (5) commercial paper rated at least “A2” by Moody’s or at least “A” by S&P (or reasonably equivalent ratings of another internationally recognized ratings agency) and in each case maturing within 24 months after the date of creation thereof, and in each case in United States dollars;
- (6) marketable short-term money market and similar securities having a rating of at least “A2” or “A” from either Moody’s or S&P, respectively (or reasonably equivalent ratings of another internationally recognized ratings agency) and in each case maturing within 24 months after the date of creation thereof and in United States dollars;
- (7) readily marketable direct obligations issued by any state, commonwealth or territory of the United States or any political subdivision or taxing authority thereof having an Investment Grade Rating from either Moody’s or S&P (or reasonably equivalent ratings of another internationally recognized rating agency) with maturities of 24 months or less from the date of acquisition;
- (8) Indebtedness or Preferred Stock issued by Persons with a rating of “A” or higher from S&P or “A2” or higher from Moody’s (or reasonably equivalent ratings of another internationally recognized ratings agency) with maturities of 24 months or less from the date of acquisition and in each case in United States dollars;
- (9) investments with average maturities of 12 months or less from the date of acquisition in money market funds rated “AAA-” (or the equivalent thereof) or better by S&P or “Aaa3” (or the equivalent thereof) or better by Moody’s and in each case in United States dollars; and
- (10) investment funds investing substantially all of their assets in securities of the types described in clauses (1) through (9) above.

Notwithstanding the foregoing, Cash Equivalents shall include amounts denominated in currencies other than United States dollars; *provided* that such amounts are converted into United States dollars as promptly as practicable and in any event within ten (10) Business Days following the receipt of such amounts.

“Cash Management Services” means any of the following to the extent not constituting a line of credit: treasury and/or cash management services, including, without limitation, controlled disbursement services, foreign exchange facilities, deposit and other accounts and merchant services.

“Change of Control” means the occurrence of any of the following after the Initial Issue Date:

- (1) [Reserved];
- (2) the sale, lease or transfer, in one or a series of related transactions (other than by way of merger or consolidation), of all or substantially all of the assets of the DIP Issuers and their Subsidiaries, taken as a whole, to any Person; or
- (3) the DIP Issuers become aware of (by way of a report or any other filing pursuant to Section 13(d) of the Exchange Act, proxy, vote, written notice or otherwise) the acquisition by (i) any Person or (ii) Persons that are together (A) a group (within the meaning of Section 13(d)(3) or Section 14(d)(2) of the Exchange Act, or any successor provision), or (B) are acting, for the purpose of acquiring, holding or disposing of securities (within the meaning of Rule 13d-5(b)(1) under the Exchange Act), as a group, in a single transaction or in a related series of transactions, by way of merger, consolidation or other business combination or purchase of beneficial ownership (within the meaning of Rule 13d-3 under the Exchange Act, or any successor provision) of more than 35% of the total voting power of the Voting Stock of either (x) the Company or (y) Anagram LLC. For purposes of this definition, a Person or group shall not be deemed to beneficially own Voting Stock subject to a stock or asset purchase agreement, merger agreement, option agreement, warrant agreement or similar agreement (or voting or option or similar agreement related thereto) until the consummation of the acquisition of the Voting Stock in connection with the transactions contemplated by such agreement. Notwithstanding the foregoing, a transaction will not be deemed to be a Change of Control under this clause (3) if the DIP Issuers become direct or indirect wholly-owned subsidiaries of one or more holding companies (which may include PCHI in respect of the DIP Issuers) and immediately following that transaction no Person or group beneficially owns, directly or indirectly, more than or 35% of the Voting Stock of each such holding company.

“Chapter 11 Cases” has the meaning specified in the recitals hereto.

“Collateral Agent” has the meaning set forth in the recitals.

“Commitment” has the meaning set forth in the DIP Note Purchase Agreement.

“Committee Professionals” has the meaning set forth in the Bankruptcy Court DIP Order.

“Consolidated Depreciation and Amortization Expense” means, with respect to any Person for any period, the total amount of depreciation and amortization expense, including without limitation the amortization of intangible assets, deferred financing fees and Capitalized Software Expenditures, of such Person and its Restricted Subsidiaries for such period on a consolidated basis and otherwise determined in accordance with GAAP.

“Consolidated Interest Expense” means, with respect to any Person for any period, without duplication, the sum of:

- (1) consolidated interest expense of such Person and its Restricted Subsidiaries for such period, to the extent such expense was deducted (and not added back) in computing Consolidated Net Income including (i) amortization of original issue discount resulting from the issuance of Indebtedness at

less than par, (ii) all commissions, discounts and other fees and charges owed with respect to letters of credit or bankers acceptances, (iii) non-cash interest payments (but excluding any non-cash interest expense attributable to the movement in the mark to market valuation of Hedging Obligations or other derivative instruments pursuant to GAAP), (iv) the interest component of Financing Lease Obligations, and (v) net payments, if any, made (less net payments, if any, received) pursuant to interest rate Hedging Obligations with respect to Indebtedness, and excluding (A) penalties and interest related to taxes, (B) amortization of deferred financing fees, debt issuance costs, discounted liabilities, commissions, fees and expenses, (C) any expensing of bridge, commitment and other financing fees, (D) any expense resulting from the discounting of Indebtedness in connection with the application of recapitalization accounting or, if applicable, acquisition accounting; *plus*

(2) consolidated capitalized interest of such Person and its Restricted Subsidiaries for such period, whether paid or accrued; *less*

(3) interest income of such Person and its Restricted Subsidiaries for such period.

For purposes of this definition, interest on a Financing Lease Obligation shall be deemed to accrue at an interest rate reasonably determined by the DIP Issuers to be the rate of interest implicit in such Financing Lease Obligation in accordance with GAAP.

“Consolidated Net Income” means, with respect to any Person for any period, the aggregate of the Net Income, of such Person and its Restricted Subsidiaries for such period, on a consolidated basis, and otherwise determined in accordance with GAAP; *provided, however*, that, without duplication,

(1) any after-tax effect of extraordinary, non-recurring or unusual gains or losses, including costs of and payments of legal settlements, fines, judgments or orders (less all fees and expenses relating thereto) shall be excluded,

(2) the Net Income for such period shall not include the cumulative effect of a change in accounting principles during such period,

(3) any net after-tax gains, charges or losses with respect to disposed, abandoned, closed or discontinued operations (other than assets held for sale) and any accretion or accrual of discounted liabilities and with respect to facilities or distribution centers that have been closed during such period, shall be excluded,

(4) any after-tax effect of gains or losses (less all fees and expenses relating thereto) attributable to asset dispositions (including asset retirement costs) or returned surplus assets of any employee pension benefit plan other than in the ordinary course of business shall be excluded,

(5) the Net Income for such period of any Person that is not a Subsidiary, or that is accounted for by the equity method of accounting, shall be excluded; *provided* that Consolidated Net Income of the DIP Issuers shall be increased by the amount of dividends or distributions or other payments that are actually paid in cash (or to the extent converted into cash) to the referent Person or a Restricted Subsidiary thereof in respect of such period by such Person,

(6) effects of fair value adjustments (including the effects of such adjustments pushed down to the DIP Issuers and their Restricted Subsidiaries) in the merchandise inventory, property and equipment, goodwill, intangible assets, deferred revenue, deferred rent, deferred franchise fees and debt line items in such Person’s consolidated financial statements pursuant to GAAP resulting from the application of acquisition accounting in relation to any consummated acquisition and the amortization or

write-off or removal of revenue otherwise recognizable of any amounts thereof, net of taxes, shall be excluded or added back in the case of lost revenue,

(7) any after-tax effect of income (loss) from the early extinguishment or conversion of Indebtedness or Hedging Obligations or other derivative instruments shall be excluded,

(8) any impairment charge or asset write-up, write-off or write-down, in each case, pursuant to GAAP and the amortization of intangibles arising pursuant to GAAP shall be excluded,

(9) any non-cash compensation charge or expense, including any such charge or expense arising from the grant of stock appreciation or similar rights, stock options, restricted stock or other equity incentive programs shall be excluded,

(10) any fees and expenses incurred during such period, or any amortization or write-off thereof for such period in connection with any acquisition, Investment, Asset Sale, issuance or repayment of Indebtedness, issuance of Equity Interests, refinancing transaction or amendment or modification of any debt instrument (in each case, including any such transaction consummated prior to the Initial Issue Date and any such transaction undertaken but not completed) and any charges or non-recurring merger costs incurred during such period as a result of any such transaction shall be excluded,

(11) any net gain or loss resulting from currency translation gains or losses related to currency remeasurements of Indebtedness (including any net loss or gain resulting from hedge agreements for currency exchange risk) and any foreign currency translation gains or losses shall be excluded,

(12) the excess of (i) GAAP rent expense over (ii) actual cash rent paid, including the benefit of lease incentives shall be excluded and the excess of (A) actual cash rent paid, including the benefit of lease incentives, over (B) GAAP rent expense shall be included (in each case during such period due to the use of straight line rent for GAAP purposes), and

(13) any unrealized net gains and losses resulting from Hedging Obligations and the application of Statement of Financial Accounting Standards No. 133 shall be excluded.

In addition, to the extent not already included in the Net Income of such Person and its Restricted Subsidiaries, notwithstanding anything to the contrary in the foregoing, Consolidated Net Income shall include the amount of proceeds received from business interruption insurance and reimbursements of any expenses and charges that are covered by indemnification or other reimbursement provisions in connection with any Permitted Investment or any sale, conveyance, transfer or other disposition of assets permitted under this DIP Indenture.

“Consultants” means Jim Plutt and Jim Harrison, in their capacities as consultants pursuant to terms satisfactory to the Required DIP Noteholders.

“Contingent Obligations” means, with respect to any Person, any obligation of such Person guaranteeing any leases, dividends or other obligations that do not constitute Indebtedness (“*primary obligations*”) of any other Person (the “*primary obligor*”) in any manner, whether directly or indirectly, including, without limitation, any obligation of such Person, whether or not contingent,

(1) to purchase any such primary obligation or any property constituting direct or indirect security therefor;

(2) to advance or supply funds:

(a) for the purchase or payment of any such primary obligation; or

(b) to maintain working capital or equity capital of the primary obligor or otherwise to maintain the net worth or solvency of the primary obligor; or

(3) to purchase property, securities or services primarily for the purpose of assuring the owner of any such primary obligation of the ability of the primary obligor to make payment of such primary obligation against loss in respect thereof.

“Debtor Relief Laws” means the Bankruptcy Code of the United States, and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization or similar debtor relief Laws of the United States or other applicable jurisdictions from time to time in effect and affecting the rights of creditors generally.

“Debtors” has the meaning set forth in the Bankruptcy Court DIP Order.

“Debtors’ Professionals” has the meaning set forth in the Bankruptcy Court DIP Order.

“Default” means any event that is, or with the passage of time or the giving of notice or both would be, an Event of Default; *provided* that any Default that results solely from the taking of an action that would have been permitted but for the continuation of a previous Default will be deemed to be cured if such previous Default is cured prior to becoming an Event of Default.

“Depository” means, with respect to the Securities issuable or issued in whole or in part in global form, the Person specified in Section 2.04 hereof as the Depository with respect to the DIP Notes, and any and all successors thereto appointed as depository hereunder and having become such pursuant to the applicable provision of this DIP Indenture.

“DIP ABL Agent” has the meaning set forth in the Bankruptcy Court DIP Order.

“DIP ABL Lenders” has the meaning set forth in the Bankruptcy Court DIP Order.

“DIP ABL Obligations” has the meaning set forth in the Bankruptcy Court DIP Order.

“DIP Collateral” has the meaning set forth in the Bankruptcy Court DIP Order.

“DIP Collateral and Guarantee Requirement” means, at any time, the requirement that:

(1) all DIP Obligations shall have been unconditionally guaranteed by the DIP Guarantors and each Subsidiary of the DIP Notes Parties that is not a DIP Issuer;

(2) the DIP Obligations, including the DIP Guarantee, shall have been secured by a first-priority security interest (subject to the Carve-Out in all respects and Liens permitted by Section 4.12) through the provisions of the Interim DIP Order and the Final DIP Order, as applicable, in (i) all the Equity Interests of the DIP Issuers and (ii) all Equity Interests of each direct, wholly owned Subsidiary that is directly owned by the DIP Notes Parties; and

(3) except to the extent otherwise provided hereunder, including subject to Liens permitted by Section 4.12, or under any DIP Collateral Document or the Bankruptcy Court DIP Order, the DIP Obligations, including the DIP Guarantee, shall have been secured by a perfected first-priority (subject in all respects to the Carve-Out, the Bankruptcy Court DIP Order (including with respect to Lien priorities

set forth therein) and Liens permitted by Section 4.12) security interest (to the extent such security interest may be perfected by virtue of the Bankruptcy Court DIP Order or by filing financing statements under the Uniform Commercial Code or making any necessary filings for perfection with the United States Patent and Trademark Office or United States Copyright Office) in substantially all tangible and intangible personal property of the DIP Issuers and the DIP Guarantors (including accounts (other than deposit accounts, other bank or securities accounts), inventory, equipment, investment property, contract rights, applications and registrations of intellectual property filed in the United States, other general intangibles, and proceeds of the foregoing), in each case, with the priority required by the DIP Collateral Documents and set forth in the Bankruptcy Court DIP Order, in each case subject to exceptions and limitations otherwise set forth in this DIP Indenture, the DIP Collateral Documents and the Bankruptcy Court DIP Order; provided that any such security interests in ABL Priority Collateral shall be subject to the terms of the Prepetition ABL Intercreditor Agreement and the Bankruptcy Court DIP Order.

The foregoing definition shall not require the perfection of pledges of or security interests in, or the obtaining of title insurance, surveys, abstracts or appraisals with respect to, particular assets if and for so long as, in the reasonable judgment of the Required DIP Noteholders and the DIP Issuers, the cost of perfecting such pledges or security interests in such assets or obtaining title insurance, surveys abstracts or appraisals in respect of such assets shall be excessive in view of the benefits to be obtained by the DIP Noteholders therefrom.

Each DIP Guarantee shall be released in accordance with Section 10.02(b).

“DIP Collateral Documents” means, collectively, the Bankruptcy Court DIP Order, the DIP Security Agreement, the Intellectual Property Security Agreements, the Mortgages (if any), each of the collateral assignments, security agreements, pledge agreements or other similar agreements delivered to the DIP Trustee, Collateral Agent or the DIP Noteholders pursuant to Section 7.1 of the DIP Note Purchase Agreement and Sections 4.19 or 4.22 and each of the other agreements, instruments or documents that creates or purports to create a Lien in favor of the Collateral Agent for the benefit of the DIP Secured Parties.

“DIP Documents” has the meaning set forth in the Bankruptcy Court DIP Order.

“DIP Facilities” means the DIP Notes and the Additional DIP Notes, or both of them together, as the context may require, and “DIP Facility” means any of them.

“DIP Guarantee” means the guarantee by the DIP Guarantors pursuant to Article 10.

“DIP Guarantors” means the parties described as such in the preamble and successors thereto.

“DIP Indenture” means this DIP Indenture as amended or supplemented from time to time.

“DIP Issuers” means the parties named as such in the preamble and successors thereto.

“DIP Noteholders” means each Holder or, with respect to “Required DIP Noteholders” and related definition, each Person holding Commitments.

“DIP Notes” or “Securities” shall have the meaning given to the term “DIP Notes” in the recitals.

“DIP Notes Party” means, collectively, the DIP Issuers and the DIP Guarantors from time to time party hereto.

“DIP Note Purchase Agreement” has the meaning set forth in the Bankruptcy Court DIP Order.

“DIP Obligations” has the meaning set forth in the Bankruptcy Court DIP Order.

“DIP Professional Fees” means all professional fees required to be paid by the Debtors in the Chapter 11 Cases, including without limitation the “DIP Notes Professional Fees” as set forth in the Bankruptcy Court DIP Order.

“DIP Secured Parties” has the meaning set forth in the Bankruptcy Court DIP Order.

“DIP Security Agreement” means that certain DIP First Lien Pledge and Security Agreement, dated as of the date hereof, by and among the DIP Issuers and the DIP Guarantors, as grantors, and the Collateral Agent, in the form of the Existing Security Agreement, and otherwise in such form and substance satisfactory to the DIP Notes Parties and Required DIP Noteholders (as amended, restated, amended and restated, supplemented, renewed, replaced or otherwise modified, in whole or part, from time to time, in accordance with its terms).

“DIP Security Documents” means the DIP Security Agreement and any one or more additional security agreements, pledge agreements, intellectual property security agreements, collateral assignments, intellectual property security agreements, mortgages, deeds of covenants, assignments of earnings and insurances, share pledges, share charges, collateral agency agreements, deeds of trust or other grants or transfers for security executed and delivered by the DIP Issuers or the DIP Guarantors to be entered into on the Initial Issue Date for such DIP Issuer or the DIP Guarantors, creating, or purporting to create, a Lien upon all or a portion of the DIP Collateral in favor of the Collateral Agent for the benefit of the DIP Secured Parties, in each case as amended, restated, amended and restated, supplemented, renewed, replaced or otherwise modified, in whole or part, from time to time, in accordance with its terms.

“DIP Superpriority Claims” has the meaning set forth in the Bankruptcy Court DIP Order.

“DIP Trustee” means the party named as such in the preamble until a successor replaces it and, thereafter, means the successor.

“Disqualified Stock” means, with respect to any Person, any Capital Stock of such Person which, by its terms, or by the terms of any security into which it is convertible or for which it is redeemable or exchangeable, or upon the happening of any event, matures or is mandatorily redeemable pursuant to a sinking fund obligation or otherwise or is redeemable at the option of the holder thereof (in each case other than solely as a result of a change of control or asset sale; *provided* that the relevant change of control or asset sale provisions, taken as a whole, are no more favorable to holders of such Capital Stock than the change of control and asset sale provisions applicable to the DIP Notes and any purchase requirement triggered thereby may not become operative until (or contemporaneously with) compliance with the asset sale and change of control provisions applicable to the Securities (including the purchase of any DIP Notes tendered pursuant thereto)), in whole or in part, in each case prior to the date 91 days after the earlier of the Maturity Date of the DIP Notes or the date the DIP Notes are no longer outstanding; *provided, further*, that if such Capital Stock is issued to any current or former employee or to any plan for the benefit of employees, directors, officers, members of management or consultants of the DIP Issuers or their Subsidiaries or by any such plan to such employees, directors, officers, members or management or consultants, such Capital Stock shall not constitute Disqualified Stock solely because it may be required to be repurchased by the

DIP Issuers or their Subsidiaries in order to satisfy applicable statutory or regulatory obligations or as a result of such employee's, director's, officer's, management member's or consultant's termination, death or disability.

“Domestic Subsidiaries” shall mean all Subsidiaries of the DIP Issuers incorporated or organized under the laws of the United States of America, any State thereof or the District of Columbia.

“Equity Interests” means Capital Stock and all warrants, options or other rights to acquire Capital Stock, but excluding any debt security that is convertible into, or exchangeable for, Capital Stock.

“ERISA” has the meaning set forth in the DIP Note Purchase Agreement

“ERISA Affiliate” has the meaning set forth in the DIP Note Purchase Agreement

“Exchange Act” means the Securities Exchange Act of 1934, as amended, and the rules and regulations of the SEC promulgated thereunder.

“Existing Security Agreement” means that certain First Lien Pledge and Security Agreement dated as of July 30, 2020, by and among the DIP Issuers as issuers, the DIP Guarantors as grantors and Ankura Trust Company, LLC as collateral trustee.

“Fair Market Value” means the price which could be negotiated in an arm's-length, free market transaction between a willing seller and a willing and able buyer, neither of whom is under undue pressure or compulsion to complete the transaction, as reasonably determined in good faith (i) by senior management of the DIP Issuers in consultation with each Consultant or (ii), for determinations in excess of \$250,000, the Board of Directors of Anagram LLC and evidenced by a board resolution.

“Final DIP Order” means the Final Order (as defined in the Bankruptcy Court DIP Order) approving the DIP Facility on a final basis.

“Final DIP Order Entry Date” means the date on which the Final DIP Order is entered on the docket of the Bankruptcy Court.

“Financing Lease Obligation” means, at the time any determination thereof is to be made, an obligation that is required to be accounted for as a finance lease (and, for the avoidance of doubt, not a straight-line or operating lease) on both the balance sheet and income statement for financial reporting purposes in accordance with GAAP, including, without limitation, Accounting Standards Codification 842 and related accounting rules and regulations, as such may be amended or re-codified from time to time, which obligation effectively transfers control of the underlying asset and constitutes an in-substance financed purchase of an asset; *provided* that the amount of any Financing Lease Obligation shall be the amount thereof accounted for as a liability in accordance with GAAP; and *provided, further* and for avoidance of doubt, the term “Financing Lease Obligation” does not include obligations under any operating leases that do not effectively transfer control of the underlying asset and do not represent an in-substance financed purchase of an asset under GAAP, including, without limitation, Accounting Standards Codification 842 and related accounting rules and regulations, as such may be amended or re-codified from time to time, notwithstanding that GAAP and such accounting rules and regulations, such as Accounting Standards Codification 842, may require that such obligations be recognized on the balance sheet of such Person as a lease liability (along with the related right-of-use asset).

“Flood Insurance Laws” means, collectively, (i) the National Flood Insurance Act of 1968 as now or hereafter in effect or any successor statute thereto, (ii) the Flood Disaster Protection Act of 1973

as now or hereafter in effect or any successor statute thereto, (iii) the National Flood Insurance Reform Act of 1994 as now or hereafter in effect or any successor statute thereto and (iv) the Flood Insurance Reform Act of 2004 as now or hereafter in effect or any successor statute thereto.

“GAAP” means generally accepted accounting principles in the United States which are in effect on the date hereof. For purposes of this DIP Indenture, the term “consolidated” with respect to any Person means such Person consolidated with its Restricted Subsidiaries.

“Government Securities” means money market funds invested 100% in securities that are:

(1) direct obligations of the United States of America for the timely payment of which its full faith and credit is pledged; or

(2) obligations of a Person controlled or supervised by and acting as an agency or instrumentality of the United States of America, the timely payment of which is unconditionally guaranteed as a full faith and credit obligation by the United States of America, which, in either case, are not callable or redeemable at the option of the DIP Issuers thereof, and shall also include a depository receipt issued by a bank (as defined in Section 3(a)(2) of the Securities Act), as custodian with respect to any such Government Securities or a specific payment of principal of or interest on any such Government Securities held by such custodian for the account of the holder of such depository receipt; *provided* that (except as required by law) such custodian is not authorized to make any deduction from the amount payable to the holder of such depository receipt from any amount received by the custodian in respect of the Government Securities or the specific payment of principal of or interest on the Government Securities evidenced by such depository receipt.

“Governmental Authority” means any nation or government, any state or other political subdivision thereof, any agency, authority, instrumentality, regulatory body, court, administrative tribunal, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government.

“Grantor Supplement” means a supplement to the Security Agreement substantially in the form of Exhibit 1 attached to the Security Agreement.

“guarantee” means a guarantee (other than by endorsement of negotiable instruments for collection in the ordinary course of business), direct or indirect, in any manner (including letters of credit and reimbursement agreements in respect thereof), of all or any part of any Indebtedness or other obligations.

“Hedging Obligations” means, with respect to any Person, the obligations of such Person under any interest rate swap agreement, interest rate cap agreement, interest rate collar agreement, commodity swap agreement, commodity cap agreement, commodity collar agreement, foreign exchange contract, currency swap agreement or similar agreement providing for the transfer or mitigation of interest rate, commodity price or currency risks either generally or under specific contingencies.

“Holder” means the Person in whose name a DIP Note is registered on the registrar’s books.

“Indebtedness” means, with respect to any Person, without duplication:

(1) any indebtedness (including principal and premium) of such Person, whether or not contingent:

(a) in respect of borrowed money;

(b) evidenced by bonds, notes, debentures or similar instruments or letters of credit or bankers' acceptances (or, without duplication, reimbursement agreements in respect thereof);

(c) representing the balance deferred and unpaid of the purchase price of any property (including Financing Lease Obligations), except (i) any such balance that constitutes an obligation in respect of a commercial letter of credit, a trade payable or similar obligation, in each case accrued in the ordinary course of business, (ii) any earn-out obligations until such obligation becomes a liability on the balance sheet of such Person in accordance with GAAP and is not paid after becoming due and payable, and (iii) any such obligations under ERISA or liabilities associated with customer prepayments; or

(d) representing any Hedging Obligations;

if and to the extent that any of the foregoing Indebtedness (other than letters of credit (other than commercial letters of credit) and Hedging Obligations) would appear as a liability upon a balance sheet (excluding the footnotes thereto) of such Person prepared in accordance with GAAP;

(2) to the extent not otherwise included, any obligation by such Person to be liable for, or to pay, as obligor, guarantor or otherwise, on the obligations of the type referred to in clause (1) of a third Person (whether or not such items would appear upon the balance sheet of such obligor or guarantor), other than by endorsement of negotiable instruments for collection in the ordinary course of business; and

(3) to the extent not otherwise included, the obligations of the type referred to in clause (1) of a third Person secured by a Lien on any asset owned by such first Person, whether or not such Indebtedness is assumed by such first Person; *provided, however*, that the amount of such Indebtedness will be the lesser of: (i) the Fair Market Value of such asset at such date of determination, and (ii) the amount of such Indebtedness of such other Person; *provided, however*, that notwithstanding the foregoing, Indebtedness shall be deemed not to include (A) Contingent Obligations incurred in the ordinary course of business and (B) deferred or prepaid revenues.

Notwithstanding anything in this DIP Indenture to the contrary, Indebtedness shall not include, and shall be calculated without giving effect to, the effects of Accounting Standards Codification Topic 815 and related interpretations to the extent such effects would otherwise increase or decrease an amount of Indebtedness for any purpose under this DIP Indenture as a result of accounting for any embedded derivatives created by the terms of such Indebtedness; and any such amounts that would have constituted Indebtedness under this DIP Indenture but for the application of this sentence shall not be deemed an incurrence of Indebtedness under this DIP Indenture.

“Initial Issue Date” has the meaning set forth in the DIP Note Purchase Agreement.

“Initial DIP Noteholders” means “Initial Purchasers” which has the meaning set forth for “Initial Purchasers” in the DIP Note Purchase Agreement.

“Interim DIP Order” has the meaning set forth in the DIP Note Purchase Agreement.

“Interim DIP Order Entry Date” has the meaning set forth in the DIP Note Purchase Agreement.

“Intra-Company Agreements” means (i) the services agreement for the provision of corporate services by Party City Holdco Inc. or its affiliates to the Company, (ii) the product purchase agreement for the purchases of products from the Company by Party City Holdco Inc. or its affiliates and (iii) the intellectual property license agreement among Party City, its affiliates and the Company, in each case, as amended from time to time.

“Investment Grade Rating” means a rating equal to or higher than Baa3 (or the equivalent) by Moody’s and BBB- (or the equivalent) by S&P, or, in either case, an equivalent rating by any other Rating Agency.

“Investment Grade Securities” means:

- (1) securities issued or directly and fully guaranteed or insured by the United States government or any agency or instrumentality thereof (other than Cash Equivalents);
- (2) securities or instruments with an Investment Grade Rating, but excluding any debt securities or instruments constituting loans or advances among the DIP Issuers and their Subsidiaries; and
- (3) investments in any fund that invests exclusively in investments of the type described in clauses (1) and (2) which fund may also hold immaterial amounts of cash pending investment or distribution.

“Investments” means, with respect to any Person, all investments by such Person in other Persons (including Affiliates) in the form of loans (including guarantees), advances or capital contributions (excluding accounts receivable, credit card and debit card receivables, trade credit, advances to customers, commission, reasonable travel and similar advances to officers, directors, distributors, consultants and employees, in each case made in the ordinary course of business and consistent with past practice), purchases or other acquisitions for consideration of Indebtedness, Equity Interests or other securities issued by any other Person and investments that are required by GAAP to be classified on the balance sheet (excluding the footnotes thereto) of the DIP Issuers in the same manner as the other investments included in this definition to the extent such transactions involve the transfer of cash or other property. The amount of any Investment shall be deemed to be the amount actually invested, without adjustment for subsequent increases or decreases in value or any write-downs or write-offs, but giving effect to any repayments thereof in the form of loans and any return on capital or return on Investment in the case of equity Investments (whether as a distribution, dividend, redemption or sale but not in excess of the amount of such Investment).

“Laws” means, collectively, all international, foreign, federal, state and local statutes, treaties, rules, guidelines, regulations, ordinances, codes, administrative or judicial precedents or authorities and executive orders, including the interpretation or administration thereof by any Governmental Authority charged with the enforcement, interpretation or administration thereof, and all applicable administrative orders, directed duties, requests, licenses, authorizations and permits of, and agreements with, any Governmental Authority.

“Legal Holiday” means a Saturday, a Sunday or a day on which commercial banking institutions are not required to be open in the State of New York or in the State at the place of payment. If a payment date at a place of payment is on a Legal Holiday, payment shall be made at that place on the next succeeding Business Day, and no interest shall accrue on such payment for the intervening period.

“Lien” means, with respect to any asset, any mortgage, lien, deed of trust, hypothecation, pledge, charge, security interest or encumbrance of any kind in respect of such asset, whether or not filed, recorded or otherwise perfected under applicable law (including any conditional sale or other title retention

agreement), any lease in the nature thereof; *provided* that in no event shall an operating lease be deemed to constitute a Lien.

“Material Adverse Effect” has the meaning set forth in the DIP Note Purchase Agreement.

“Material Real Property” means any fee-owned real property located in the United States and owned by any loan party, having a fair market value in excess of \$250,000 at the time of acquisition or as of the date of substantial completion of any material improvement thereon or new construction thereof.

“Maturity Date” means the earliest of (i) the date that is six (6) months following the Initial Issue Date, (ii) the effective date and the date of the substantial consummation (as defined in Section 1102(2) of the Bankruptcy Code) of a plan of reorganization (any such plan a “Plan of Reorganization”) that has been confirmed by an order of the Bankruptcy Court, (iii) the consummation of a sale or other disposition of all or substantially all of the assets of the Debtors under Section 363 of the Bankruptcy Code, (iv) the date the Bankruptcy Court orders the conversion of the bankruptcy case of any of the DIP Notes Parties to a Chapter 7 liquidation and (v) the acceleration of the DIP Notes in accordance with the terms of this Agreement.

“Moody’s” means Moody’s Investors Service, Inc. and any successor to its rating agency business.

“Mortgages” means collectively, the deeds of trust, trust deeds, hypothecs, deeds to secure debt and mortgages made by the DIP Notes Parties in favor or for the benefit of the Collateral Agent for the benefit of the DIP Secured Parties in form and substance reasonably satisfactory to the Collateral Agent, including such modifications as may be required by local laws, and any other deeds of trust, trust deeds, hypothecs, deeds to secure debt or mortgages executed and delivered.

“Multiemployer Plan” means any employee benefit plan of the type described in Section 3(37) or 4001(a)(3) of ERISA, to which the DIP Issuers, any Subsidiary or any ERISA Affiliate makes or is obligated to make contributions, or during the preceding five plan years, has made or been obligated to make contributions.

“Net Income” means, with respect to any Person, the net income (loss) of such Person, determined in accordance with GAAP and before any reduction in respect of Preferred Stock dividends.

“Net Proceeds” means the aggregate proceeds received by the DIP Issuers or any of their Restricted Subsidiaries in respect of any Asset Sale, net of the direct costs relating to such Asset Sale, including legal, accounting and investment banking fees, payments made in order to obtain a necessary consent or required by applicable law, and brokerage and sales commissions, all dividends, distributions or other payments required to be made to minority interest holders in Restricted Subsidiaries that are not DIP Guarantors as a result of any such Asset Sale by such Restricted Subsidiary, the amount of any purchase price or similar adjustment claimed by any Person to be owed by the DIP Issuers or any Restricted Subsidiary as a result of such Asset Sale, until such time as such claim shall have been settled or otherwise finally resolved, or paid or payable by the DIP Issuers or any Restricted Subsidiary, in either case, in respect of such Asset Sale, any relocation expenses incurred as a result thereof, other fees and expenses, including title and recordation expenses, taxes paid or payable as a result thereof or any transactions occurring or deemed to occur to effectuate a payment under this DIP Indenture (including taxes that are or would be imposed on the distribution or repatriation of any such Net Proceeds) (after taking into account any available tax credits or deductions and any tax sharing arrangements directly relating to such Asset Sale), amounts required to be applied to the repayment of principal, premium, if any, and interest on Indebtedness (other than Indebtedness under the DIP Documents, the Prepetition Debt Documents and Subordinated

Indebtedness) secured by a Lien on the assets disposed of required to be paid as a result of such transaction and any deduction of appropriate amounts to be provided by the DIP Issuers or any of their Restricted Subsidiaries as a reserve in accordance with GAAP against any liabilities associated with the asset disposed of in such transaction and retained by the DIP Issuers or any of their Restricted Subsidiaries after such sale or other disposition thereof, including pension and other post-employment benefit liabilities and liabilities related to environmental matters or against any indemnification obligations associated with such transaction.

“Officer” means the Chairman of the Board, the Chief Executive Officer, the Chief Financial Officer, the Chief Restructuring Officer, the President, any Executive Vice President, Senior Vice President or Vice President, the Treasurer or the Secretary of the DIP Issuers.

“Officer’s Certificate” means a certificate signed on behalf of the DIP Issuers by an Officer of the DIP Issuers which meets the requirements set forth in this DIP Indenture and is delivered to the DIP Trustee.

“Opinion of Counsel” means a written opinion from legal counsel who is reasonably acceptable to the DIP Trustee, which meets the requirements set forth in this DIP Indenture. The counsel may be an employee of or counsel to the DIP Issuers.

“Paying Agent” means an office or agency maintained by the DIP Issuers pursuant to the terms of this DIP Indenture, where DIP Notes may be presented for payment. The DIP Trustee shall at all times serve as Paying Agent.

“PCHI” has the meaning set forth in the preamble.

“Permitted Disbursements Variance” means in the case of disbursements 115.0% of the projected applicable disbursements (excluding DIP Professional Fees) in the then in-effect Approved Budget.

“Permitted Investment” means:

- (1) any Investment in any DIP Issuer or a DIP Guarantors;
- (2) any Investment in cash and Cash Equivalents or Investment Grade Securities and Investments that were Cash Equivalents or Investment Grade Securities when made;
- (3) any Investment by the DIP Issuers or any of their Restricted Subsidiaries in any Person listed on Schedule 2 hereto if as a result of such Investment:
 - (a) such Person becomes a DIP Guarantor; or
 - (b) such Person, in one transaction or a series of related transactions, is merged, amalgamated or consolidated with or into, or transfers or conveys substantially all of its assets to, or is liquidated into, the DIP Issuers or the DIP Guarantors,

and, in each case, any Investment held by such Person; *provided* that such Investment was not acquired by such Person in contemplation of such acquisition, merger, consolidation or transfer;

(4) any Investment in securities or other assets not constituting cash, Cash Equivalents or Investment Grade Securities and received in connection with an Asset Sale made pursuant to Section 4.06(a) or any other disposition of assets not constituting an Asset Sale;

(5) any Investment existing on the Initial Issue Date and listed on Schedule 2 hereto; *provided* that the amount of any such Investment may not be increased above the amount outstanding on the Initial Issue Date unless otherwise permitted under this DIP Indenture;

(6) any Investment acquired by the DIP Issuers or any of their Restricted Subsidiaries:

(a) in exchange for any other Investment or accounts receivable held by the DIP Issuers or any such Restricted Subsidiary in connection with or as a result of a bankruptcy, workout, reorganization or recapitalization of, or settlement of delinquent accounts and disputes with or judgments against, the issuer of such other Investment or accounts receivable;

(b) as a result of a foreclosure by the DIP Issuers or any of their Restricted Subsidiaries with respect to any secured Investment or other transfer of title with respect to any secured Investment in default;

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

(d) in settlement of debts created in the ordinary course of business;

(7) [Reserved];

(8) [Reserved];

(9) guarantees (including Guarantees) of Indebtedness of a DIP Issuer or any Restricted Subsidiary permitted under Section 4.03, including, without limitation, any guarantee or other obligation issued or incurred under the ABL DIP Facility in connection with any letter of credit issued for the account of a DIP Issuer or any of its Subsidiaries (including with respect to the issuance of, or payments in respect of drawings under, such letters of credit) and performance guarantees that are Contingent Obligations in the ordinary course of business;

(10) Investments consisting of or to finance purchases and acquisitions of inventory, supplies, materials, services or equipment or purchases of contract rights or licenses or leases of intellectual property, in each case, in the ordinary course of business;

(11) Investments set forth in the Approved Budget;

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

(13) Investments in any DIP Guarantor in connection with intercompany cash management arrangements or related activities arising in the ordinary course of business;

(14) Investments in the ordinary course of business consisting of (x) Uniform Commercial Code Article 3 endorsements for collection or deposit and (y) Article 4 customary trade

arrangements with customers that are not Affiliates of the DIP Issuers or any Restricted Subsidiary and otherwise consistent with past practices;

(15) [Reserved]; and

(16) guarantees of leases (other than capital leases) or of other obligations not constituting Indebtedness in favor of Persons who are not Affiliates of the DIP Issuers or any Restricted Subsidiary, in each case in the ordinary course of business.

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

(1) (i) (A) pledges, deposits or security by such Person under workmen’s compensation laws, unemployment insurance, employers’ health tax and other social security laws or similar legislation or regulations, health, disability or other employee benefits or property and deposits securing liability to insurance carriers under insurance or self-insurance arrangements in respect of such obligations and (B) pledges and deposits and other Liens securing liability for reimbursement or indemnification obligations of (including obligations in respect of letters of credit or bank guarantees for the benefit of) insurance carriers providing property, casualty or liability insurance to the DIP Issuers or any Subsidiary; or (ii) Liens, pledges and deposits in connection with bids, tenders, contracts (other than for Indebtedness for borrowed money) or leases, statutory obligations, surety, customs, bid and appeal bonds, performance and return of money bonds, bids, leases, government contracts, trade contracts, agreements with utilities, performance and completion guarantees and other obligations of a like nature (including letters of credit in lieu of any such items or to support the issuance thereof), in each case of clauses (i) and (ii) above, incurred in the ordinary course of business to secure health, safety and environmental obligations and obligations in respect of letters of credit or bank guarantees that have been posted to support payment of the items described in this clause (1);

(2) Liens imposed by law, such as landlord’s, carriers’, warehousemen’s, materialmen’s, repairmen’s, construction and mechanics’ Liens, in each case so long as such Liens arise in the ordinary course of business and secure amounts not overdue for a period of more than 30 days or, if more than 30 days overdue either (i) such amounts are being contested in good faith by appropriate actions or other Liens arising out of judgments or awards against such Person with respect to which such Person shall then be proceeding with an appeal or other proceedings for review if adequate reserves with respect thereto are maintained on the books of such Person in accordance with GAAP or (ii) with respect to which the failure to make payment could not reasonably be expected to have a Material Adverse Effect;

(3) Liens for taxes, assessments or other governmental charges not yet overdue for a period of more than 30 days or, if overdue by more than 30 days, such taxes, assessments or other governmental charges (i) are being contested in good faith by appropriate actions diligently conducted, if adequate reserves with respect thereto are maintained on the books of such Person in accordance with GAAP, or (ii) are taxes, assessments or other governmental charges with respect to which the failure to make payment could not reasonably be expected to have a Material Adverse Effect;

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

(5) minor survey exceptions, minor encumbrances, ground leases, easements or reservations of, or rights of others for, licenses, rights-of-way, servitudes, sewers, electric lines, drains,

telegraph and telephone and cable television lines, gas and oil pipelines and other similar purposes, or zoning, building codes or other restrictions (including, without limitation, minor defects or irregularities in title and similar encumbrances) as to the use of real properties or Liens incidental to the conduct of the business of such Person or to the ownership of its properties which were not incurred in connection with Indebtedness and which do not in the aggregate materially impair their use in the operation of the business of such Person;

(6) Liens existing on the Initial Issue Date and listed on Schedule 4 hereto;

(7) [Reserved];

(8) [Reserved];

(9) [Reserved];

(10) [Reserved];

(11) Liens on specific items of inventory or other goods and proceeds of any Person securing such Person's obligations in respect of bankers' acceptances, a bank guarantee or letters of credit issued or created for the account of such Person to facilitate the purchase, shipment or storage of such inventory or other goods;

(12) leases, subleases, licenses or sublicenses, grants or permits (including with respect to intellectual property and software) granted to others in the ordinary course of business which do not materially interfere with the ordinary conduct of the business of the DIP Issuers or any of their Restricted Subsidiaries and the customary rights reserved or vested in any Person by the terms of any lease, sublease, license, sublicense, grant or permit, or to require annual or periodic payments as a condition to the continuance thereof;

(13) Liens arising from Uniform Commercial Code (or equivalent statutes) financing statement filings regarding operating leases, consignments or accounts in connection with any transaction otherwise permitted under this DIP Indenture;

(14) Liens in favor of any DIP Issuer or any DIP Guarantor;

(15) Liens on equipment of the DIP Issuers or any of their Restricted Subsidiaries granted in the ordinary course of business to the DIP Issuers' clients that are not Affiliates of the DIP Issuers or any Restricted Subsidiary;

(16) Liens to secure any modification, refinancing, refunding, extension, renewal or replacement (or successive refinancing, refunding, extensions, renewals or replacements) as a whole, or in part, of any Indebtedness secured by any Lien referred to in clause (6) and this clause (16) hereof; *provided, however*, that (i) such new Lien shall be limited to all or part of the same property that secured the original Lien (plus improvements, accessions, proceeds or dividends or distributions in respect thereof and after-acquired property) and proceeds and products thereof, (ii) such new Lien shall have the same Lien priorities as the prior Lien, and (iii) the Indebtedness secured by such Lien at such time is not increased to any amount greater than the sum of (A) the outstanding principal amount or, if greater, committed amount of the Indebtedness described under clause (6) and this clause (16) hereof at the time the original Lien became a Permitted Lien under this DIP Indenture, and (B) an amount necessary to pay any fees (including original issue discount, upfront fees or similar fees) and expenses, including premiums (including tender premiums

and accrued and unpaid interest), penalties or similar amounts, related to such modification, refinancing, refunding, extension, renewal or replacement;

(17) deposits made or other security provided to secure liabilities to insurance carriers under insurance or self-insurance arrangements in the ordinary course of business;

(18) Liens securing judgments for the payment of money not constituting an Event of Default under Section 6.01 so long as such Liens are, adequately bonded and any appropriate legal proceedings that may have been duly initiated for the review of such judgment have not been finally terminated or the period within which such proceedings may be initiated has not expired;

(19) Liens in favor of customs and revenue authorities arising as a matter of law to secure payment of customs duties in connection with the importation of goods in the ordinary course of business;

(20) Liens (i) of a collection bank arising under Section 4-210 of the Uniform Commercial Code on items in the course of collection, (ii) attaching to commodity trading accounts or other commodity brokerage accounts incurred in the ordinary course of business, and (iii) in favor of banking institutions arising as a matter of law encumbering deposits (including the right of set-off) and which are within the general parameters customary in the banking industry;

(21) Liens deemed to exist in connection with Investments in repurchase agreements or other Cash Equivalents permitted under Section 4.03; *provided* that such Liens do not extend to any assets other than those that are the subject of such repurchase agreement or other Cash Equivalent;

(22) Liens encumbering reasonable customary initial deposits and margin deposits and similar Liens attaching to commodity trading accounts or other brokerage accounts incurred in the ordinary course of business and not for speculative purposes;

(23) Liens that are contractual rights of set-off (i) relating to the establishment of depository relations in the ordinary course of business with banks and not given in connection with the issuance of Indebtedness, (ii) relating to pooled deposit or sweep accounts of the DIP Issuers or any of their Restricted Subsidiaries to permit satisfaction of overdraft or similar obligations incurred in the ordinary course of business of the DIP Issuers and their Restricted Subsidiaries or (iii) relating to purchase orders and other agreements entered into with customers of the DIP Issuers or any of their Restricted Subsidiaries in the ordinary course of business;

(24) Liens solely on any cash earnest money deposits made by the DIP Issuers or any of their Restricted Subsidiaries in connection with any letter of intent or purchase agreement permitted under this DIP Indenture;

(25) the rights reserved or vested in any Person by the terms of any lease, license, franchise, grant or permit held by the DIP Issuers or any of their Restricted Subsidiaries or by a statutory provision, to terminate any such lease, license, franchise, grant or permit, or to require annual or periodic payments as a condition to the continuance thereof;

(26) restrictive covenants affecting the use to which real property may be put entered into in the ordinary course of business; *provided, however*, that the covenants are complied with;

(27) security given to a public utility or any municipality or governmental authority when required by such utility or authority in connection with the operations of that Person in the ordinary course of business;

(28) zoning by-laws and other land use restrictions, including, without limitation, site plan agreements, development agreements and contract zoning agreements;

(29) Liens arising out of conditional sale, title retention, consignment or similar arrangements for sale of goods entered into by the DIP Issuers or any Restricted Subsidiary in the ordinary course of business;

(30) [Reserved];

(31) (i) the prior rights of consignees and their lenders under consignment arrangements entered into in the ordinary course of business, (ii) Liens arising out of conditional sale, title retention or similar arrangements for the sale of goods in the ordinary course of business and (iii) Liens arising by operation of law under Article 2 of the Uniform Commercial Code;

(32) Liens securing (i) the DIP Notes issued on the Initial Issue Date, (ii) any Additional DIP Notes issued under this DIP Indenture, (iii) the Prepetition 1L Notes outstanding on the Initial Issue Date (including PIK Securities with respect thereto) and (iv) Guarantees and DIP Guarantee with respect to securities described in clauses (i) through (iii), (iv) the Prepetition 2L Notes outstanding on the Initial Issue Date (including PIK Securities (as defined in the Prepetition 2L Indenture)) and Guarantees (as defined in the Prepetition 2L Indenture) of such Prepetition 2L Notes, so long as any such Liens on the Prepetition 2L Notes are subject to the terms of the Prepetition Notes Intercreditor Agreement;

(33) Liens securing obligations in respect of (x) Indebtedness and other obligations permitted to be incurred under the ABL DIP Facility, including any letter of credit facility relating thereto, that was permitted by the terms of this DIP Indenture to be incurred pursuant to clause (i) of Section 4.03(b) and (y) obligations of any DIP Issuer or any DIP Guarantor in respect of any Bank Products or Cash Management Services provided by any lender party to the ABL DIP Facility or any affiliate of such lender (or any Person that was a lender or an affiliate of a lender at the time the applicable agreements pursuant to which such Bank Products or Cash Management Services are provided were entered into); *provided, however*, that (i) any such Lien on collateral other than ABL Priority Collateral will be junior to the Liens with respect to Secured DIP Obligations and (ii) any such Lien shall be subject to the Prepetition ABL Intercreditor Agreement; *provided, further*, that all such Liens pursuant to this Clause (33) are subject to the limitations contained in the definition of “ABL Credit Agreement” and “ABL Priority Collateral” in the Prepetition 1L Indenture;

(34) Liens on cash and Cash Equivalents that are earmarked to be used to defease, redeem, satisfy or discharge Indebtedness; *provided* (i) such cash and/or Cash Equivalents are deposited into an account from which payment is to be made, directly or indirectly, to the Person or Persons holding the Indebtedness that is to be defeased, redeemed, satisfied or discharged, (ii) such Liens extend solely to the account in which such cash and/or Cash Equivalents are deposited and are solely in favor of the Person or Persons holding the Indebtedness (or any agent or trustee for such Person or Persons) that is to be defeased, redeemed, satisfied or discharged, and (iii) the defeasance, redemption, satisfaction or discharge of such Indebtedness is expressly permitted under this DIP Indenture;

(35) [Reserved]; and

(36) ABL Adequate Protection Liens.

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

“Permitted Receipts Variance” means in the case of receipts, no less than 85.0% of the aggregate applicable receipts in the Approved Budget; *provided* that receipts received from PCHI within seven calendar days of a documented payment due date and budgeted to be received on such payment due date in the Approved Budget shall be deemed to be received on such payment due date.

“Permitted Variance” means, collectively, the Permitted Receipts Variance and the Permitted Disbursements Variance.

“Person” means any individual, corporation, limited liability company, partnership, joint venture, association, joint stock company, trust, unincorporated organization, government or any agency or political subdivision thereof or any other entity.

“Petition Date” has the meaning specified in the recitals hereto.

“Preferred Stock” means any Equity Interest with preferential rights of payment of dividends or upon liquidation, dissolution, or winding up.

“Prepetition 1L Noteholders” has the meaning set forth in the Bankruptcy Court DIP Order.

“Prepetition 1L Notes” has the meaning set forth in the Bankruptcy Court DIP Order.

“Prepetition 1L Notes Documents” has the meaning set forth in the Bankruptcy Court DIP Order.

“Prepetition 1L Obligations” has the meaning set forth in the Bankruptcy Court DIP Order.

“Prepetition 1L Secured Parties” has the meaning set forth in the Bankruptcy Court DIP Order.

“Prepetition 2L Noteholders” has the meaning set forth in the Bankruptcy Court DIP Order.

“Prepetition 2L Notes” has the meaning set forth in the Bankruptcy Court DIP Order.

“Prepetition 2L Notes Documents” has the meaning set forth in the Bankruptcy Court DIP Order.

“Prepetition 2L Obligations” has the meaning set forth in the Bankruptcy Court DIP Order.

“Prepetition 2L Secured Parties” has the meaning set forth in the Bankruptcy Court DIP Order.

“Prepetition ABL Agent” has the meaning set forth in the Bankruptcy Court DIP Order.

“Prepetition ABL Credit Agreement” has the meaning specified in the recitals hereto.

“Prepetition ABL Facility” has the meaning set forth in the Bankruptcy Court DIP Order.

“Prepetition ABL Intercreditor Agreement” has the meaning set forth in the Bankruptcy Court DIP Order.

“Prepetition ABL Lenders” has the meaning set forth in the Bankruptcy Court DIP Order.

“Prepetition ABL Loan Documents” has the meaning set forth in the Bankruptcy Court DIP Order.

“Prepetition ABL Obligations” has the meaning set forth in the Bankruptcy Court DIP Order.

“Prepetition Debt Documents” has the meaning set forth in the Bankruptcy Court DIP Order.

“Prepetition Notes Priority Collateral” has the meaning set forth in the Bankruptcy Court DIP Order.

“Prepetition Secured Obligations” has the meaning set forth in the Bankruptcy Court DIP Order.

“Proposed Budget” has the meaning set forth in Section 4.02(f).

“Qualified Capital Stock” means any Capital Stock that is not Disqualified Stock and any warrants, rights or options to purchase or acquire Capital Stock that is not Disqualified Stock and that are not convertible into or exchangeable into Disqualified Stock; *provided* that such Capital Stock shall not be deemed Qualified Capital Stock to the extent financed, directly or indirectly, using funds borrowed from such Person or any Subsidiary of such Person until and to the extent such borrowing is repaid.

“Rating Agencies” means Moody’s and S&P or if Moody’s or S&P or both shall not make a rating publicly available, a nationally recognized statistical rating agency or agencies, as the case may be.

“Relevant Governmental Body” means, the Federal Reserve Board and/or the NYFRB, as applicable, or a committee officially endorsed or convened by the Federal Reserve Board and/or the NYFRB or, in each case, any successor thereto.

“Required DIP Noteholders” means as of any date of determination, DIP Noteholders having a majority in aggregate principal amount of the then outstanding DIP Notes.

“Responsible Officer” means the chief executive officer, chief restructuring officer, president, senior vice president, senior vice president (finance), vice president, chief financial officer, treasurer, manager of treasury activities or assistant treasurer or other similar officer or Person performing similar functions of a DIP Notes Party, and, as to any document delivered on the Initial Issue Date, any secretary or assistant secretary of a DIP Notes Party. Any document delivered hereunder that is signed by a Responsible Officer of a DIP Notes Party shall be conclusively presumed to have been authorized by all necessary corporate, partnership and/or other action on the part of such DIP Notes Party and such Responsible Officer shall be conclusively presumed to have acted on behalf of such DIP Notes Party. Unless otherwise specified, all references herein to a “Responsible Officer” shall refer to a Responsible Officer of the DIP Issuers.

“Restricted Investment” means an Investment other than a Permitted Investment.

“Restricted Subsidiary” means, at any time, any direct or indirect Subsidiary of the DIP Issuers.

“S&P” means S&P Global Ratings and any successor to its rating agency business.

“Sale and Lease-Back Transaction” means any arrangement providing for the leasing by the DIP Issuers or any of their Restricted Subsidiaries of any real or tangible personal property, which property has been or is to be sold or transferred by a DIP Issuer or such Restricted Subsidiary to a third Person in contemplation of such leasing to which funds have been or are to be advanced by such third Person on the security of the leased property; provided that in connection with any Sale and Lease-Back Transaction, a DIP Issuer or such Restricted Subsidiary shall have received cash proceeds in an amount equal to or greater than the Fair Market Value of such property so sold or transferred on terms at least as favorable to such DIP Issuer or such Restricted Subsidiary as could be obtained on an arm’s length basis from a non-Affiliate, as reasonably determined by the board of directors of Anagram LLC in good faith.

“SEC” means the U.S. Securities and Exchange Commission.

“Secured DIP Obligations” has the meaning set forth in the DIP Security Agreement.

“Secured Indebtedness” means any Indebtedness of the DIP Issuers or any of their Restricted Subsidiaries secured by a Lien.

“Securities Act” means the Securities Act of 1933, as amended, and the rules and regulations of the SEC promulgated thereunder.

“Security Register” means the register of Securities, maintained by the Registrar, pursuant to Section 2.04 hereof.

“Significant Subsidiary” means any Restricted Subsidiary that would be a “significant subsidiary” as defined in Article 1, Rule 1-02 of Regulation S-X, promulgated pursuant to the Securities Act, as such regulation is in effect on the Initial Issue Date.

“Similar Business” means any business conducted by the DIP Issuers and their Restricted Subsidiaries on the Initial Issue Date or any business that is a reasonable extension, development or expansion of any of the foregoing or is similar, reasonably related, incidental or ancillary thereto (including, for the avoidance of doubt, any sourcing companies created in connection with any of the foregoing).

“Stalking Horse Asset Purchase Agreement” has the meaning set forth in the DIP Note Purchase Agreement.

“Stalking Horse Bid” has the meaning set forth in the DIP Notes Purchase Agreement.

“Subordinated Indebtedness” means, with respect to the DIP Notes,

(1) any Indebtedness of the DIP Issuers which is by its terms subordinated in right of payment to the DIP Notes, and

(2) any Indebtedness of the DIP Guarantors which is by its terms subordinated in right of payment to the DIP Guarantee of such entity of the DIP Notes.

“Subsidiary” means, with respect to any Person:

(1) any corporation, association, or other business entity (other than a partnership, joint venture, limited liability company or similar entity) of which more than 50% of the total voting power

of shares of Capital Stock entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers or trustees thereof is at the time of determination owned or controlled, directly or indirectly, by such Person or one or more of the other Subsidiaries of that Person or a combination thereof or is consolidated under GAAP with such Person at such time; and

(2) any partnership, joint venture, limited liability company or similar entity of which

(a) more than 50% of the capital accounts, distribution rights, total equity and voting interests or general or limited partnership interests, as applicable, are owned or controlled, directly or indirectly, by such Person or one or more of the other Subsidiaries of that Person or a combination thereof whether in the form of membership, general, special or limited partnership or otherwise, and

(b) such Person or any Restricted Subsidiary of such Person is a controlling general partner or otherwise controls such entity.

“Trust Indenture Act” means the Trust Indenture Act of 1939, as amended (15 U.S.C. §§ 77aaa-77bbbb).

“Trust Officer” means:

(1) any officer within the corporate trust department of the DIP Trustee, including any vice president, assistant vice president, trust officer or any other officer of the DIP Trustee who customarily performs functions similar to those performed by the Persons who at the time shall be such officers, respectively, or to whom any corporate trust matter is referred because of such Person’s knowledge of and familiarity with the particular subject, and

(2) who shall have direct responsibility for the administration of this DIP Indenture.

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

“Unrestricted Cash” means, as of any date of determination, with respect to the DIP Issuers and their Subsidiaries on a consolidated basis, all cash and Cash Equivalents of such Persons, as of the date of such determination (i) that is not pledged as performance collateral or bid bond collateral, (ii) that is not deposited in any account that is blocked and not accessible to the DIP Issuers or any of their Subsidiaries following the occurrence of an event of default or other enforcement action under any financing or security document to which the DIP Issuers or such Subsidiary is a party (other than pursuant to the DIP Security Documents), and (iii) that would not be designated as “restricted” on a consolidated balance sheet in accordance with GAAP.

“Variance Report” has the meaning set forth in Section 4.02(h).

“Voting Stock” of any Person as of any date means the Capital Stock of such Person that is at the time entitled to vote in the election of the board of directors of such Person.

“Wholly-Owned Subsidiary” of any Person means a Subsidiary of such Person, 100% of the outstanding Equity Interests of which (other than directors’ qualifying shares and shares issued to foreign nationals as required under applicable law) shall at the time be directly or indirectly owned by such Person or by one or more Wholly-Owned Subsidiaries of such Person or by such Person and one or more Wholly-Owned Subsidiaries of such Person.

SECTION 1.02. Other Definitions.

Term	Defined in Section
“Additional Interest”	2.12
“Asset Sale Offer Threshold”	4.06(b)
“Authentication Order”	2.03
“Clearstream”	Appendix A
“covenant defeasance option”	8.01(2)
“Definitive Security”	Appendix A
“Depository”	Appendix A
“Euroclear”	Appendix A
“Event of Default”	6.01
“Global Securities”	Appendix A
“Global Securities Legend”	Appendix A
“Guaranteed Obligations”	10.01(a)
“IAI”	Appendix A
“incur”	4.03(a)
“legal defeasance option”	8.01(2)
“OID Legend”	Appendix A
“Payment Default”	2.12
“protected purchaser”	2.08
“QIB”	Appendix A
“Registrar”	2.04(a)
“Regulation S”	Appendix A
“Regulation S Global Securities”	Appendix A
“Regulation S Permanent Global Security”	Appendix A
“Regulation S Securities”	Appendix A
“Regulation S Temporary Global Security”	Appendix A
“Restricted Payments”	4.04(a)
“Restricted Period”	Appendix A
“Restricted Securities Legend”	Appendix A
“Rule 144A”	Appendix A
“Rule 144A Global Securities”	Appendix A
“Rule 144A Securities”	Appendix A
“Rule 501”	Appendix A
“Securities Custodian”	Appendix A
“Successor Person”	5.01(b)(i)
“Transfer Restricted Securities”	Appendix A
“Unrestricted Definitive Securities”	Appendix A
“Unrestricted Global Securities”	Appendix A

SECTION 1.03. Rules of Construction. Unless the context otherwise requires:

- (a) a term has the meaning assigned to it;
- (b) an accounting term not otherwise defined has the meaning assigned to it in accordance with GAAP;
- (c) “or” is not exclusive;

- (d) “including” means including without limitation;
- (e) words in the singular include the plural and words in the plural include the singular;
- (f) unsecured Indebtedness shall not be deemed to be subordinate or junior to Secured Indebtedness merely by virtue of its nature as unsecured Indebtedness, and senior Indebtedness shall not be deemed to be subordinate or junior to any other senior Indebtedness merely by virtue of its junior priority with respect to the same collateral;
- (g) “\$” and “U.S. dollars” each refer to United States dollars, or such other money of the United States of America that at the time of payment is legal tender for payment of public and private debts;
- (h) “consolidated” means, with respect to any Person, such Person consolidated with its Restricted Subsidiaries;
- (i) “will” shall be interpreted to express a command;
- (j) provisions apply to successive events and transactions;
- (k) unless the context otherwise requires, any reference to an “Appendix,” “Article,” “Section,” “clause,” “Schedule” or “Exhibit” refers to an Appendix, Article, Section, clause, Schedule or Exhibit, as the case may be, of this DIP Indenture;
- (l) the words “herein,” “hereof” and other words of similar import refer to this DIP Indenture as a whole and not any particular Article, Section, clause or other subdivision;
- (m) references to sections of, or rules under the Securities Act, the Exchange Act shall be deemed to include substitute, replacement or successor sections or rules adopted by the SEC from time to time;
- (n) unless otherwise provided, references to agreements and other instruments shall be deemed to include all amendments and other modifications to such agreements or instruments, but only to the extent such amendments and other modifications are not prohibited by the terms of this DIP Indenture; and
- (o) the DIP Indenture is not qualified under the Trust Indenture Act, and the Trust Indenture Act shall not apply to or in any way govern the terms of this DIP Indenture, including Section 316(b) thereof. No provisions of the Trust Indenture Act are incorporated into this DIP Indenture, other than as referenced for the limited purpose set forth in Section 7.09 hereof.

SECTION 1.04. Acts of Holders.

- (a) Any request, demand, authorization, direction, notice, consent, waiver or other action provided by this DIP Indenture to be given or taken by Holders may be embodied in and evidenced by one or more instruments of substantially similar tenor signed by such Holders in person or by an agent duly appointed in writing. Except as herein otherwise expressly provided, such action shall become effective when such instrument or instruments or record or both are delivered in writing to the DIP Trustee and, where it is hereby expressly required, to the DIP Issuers. Proof of execution of any such instrument or of a writing appointing any such agent, or the holding by any Person of a Security, shall be sufficient for

any purpose of this DIP Indenture and (subject to Section 7.01) conclusive in favor of the DIP Trustee and the DIP Issuers, if made in the manner provided in this Section 1.04.

(b) The fact and date of the execution by any Person of any such instrument or writing may be proved by the affidavit of a witness of such execution or by the certificate of any notary public or other officer authorized by law to take acknowledgements of deeds, certifying that the individual signing such instrument or writing acknowledged to him the execution thereof. Where such execution is by or on behalf of any legal entity other than an individual, such certificate or affidavit shall also constitute proof of the authority of the Person executing the same. The fact and date of the execution of any such instrument or writing, or the authority of the Person executing the same, may also be proved in any other manner that the DIP Trustee deems sufficient, provided that such proof shall always be in writing.

(c) The ownership of DIP Notes shall be proved by the Security Register.

(d) Any request, demand, authorization, direction, notice, consent, waiver or other action by the Holder of any DIP Notes shall bind every future Holder of the same DIP Note and the Holder of every DIP Notes issued upon the registration of transfer thereof or in exchange therefor or in lieu thereof, in respect of any action taken, suffered or omitted by the DIP Trustee or the DIP Issuers in reliance thereon, whether or not notation of such action is made upon such DIP Note.

(e) The DIP Issuers may, at their option, set a record date for purposes of determining the identity of Holders entitled to give any request, demand, authorization, direction, notice, consent, waiver or take any other act, or to vote or consent to any action by vote or consent authorized or permitted to be given or taken by Holders, but the DIP Issuers shall have no obligation to do so.

(f) Without limiting the foregoing, a Holder entitled to take any action hereunder with regard to any particular DIP Note may do so with regard to all or any part of the principal amount of such DIP Note or by one or more duly appointed agents, each of which may do so pursuant to such appointment with regard to all or any part of such principal amount. Any notice given or action taken by a Holder or its agents with regard to different parts of such principal amount pursuant to this paragraph shall have the same effect as if given or taken by separate Holders of each such different part.

(g) Without limiting the generality of the foregoing, a Holder, including the Depository, may make, give or take, by a proxy or proxies duly appointed in writing, any request, demand, authorization, direction, notice, consent, waiver or other action provided in this DIP Indenture to be made, given or taken by Holders, and the Depository may provide its proxy to the beneficial owners of interests in any such Global Security through such Depository's standing instructions and customary practices.

ARTICLE 2

THE DIP NOTES

SECTION 2.01. Amount of DIP Notes. The aggregate principal amount of DIP Notes that may be authenticated and delivered under this DIP Indenture on the Initial Issue Date is \$10.0 million. Subject to the terms of this DIP Indenture, Additional DIP Notes may also be issued after the Initial Issue Date in accordance with Section 2.16. The DIP Notes issued on the Initial Issue Date and any Additional DIP Notes subsequently issued under this DIP Indenture in accordance with Section 2.16 will be treated as a single class for all purposes hereunder, including, without limitation, waivers, amendments, redemptions and offers to purchase, and under the DIP Security Documents. The Company shall maintain a register of the outstanding principal amount of DIP Notes, reflecting any increase on account the issuance of Additional DIP Notes, and any redemptions or prepayments thereof. Absent

manifest error, such register shall be conclusive evidence of the outstanding principal amount of DIP Notes. The DIP Trustee shall have no obligation or duty to monitor, determine or inquire as to principal amounts of the DIP Notes on such register and shall have no liability or responsibility for such register.

SECTION 2.02. Form and Dating. Provisions relating to the DIP Notes are set forth in the Appendix, which is hereby incorporated into and expressly made a part of this DIP Indenture. The DIP Notes and the DIP Trustee's certificate of authentication shall each be substantially in the form of Exhibit B hereto, which is hereby incorporated in and expressly made a part of this DIP Indenture. The DIP Notes may have notations, legends or endorsements required by law, stock exchange rule, agreements to which any DIP Issuer or any DIP Guarantor is subject, if any, or usage (*provided* that any such notation, legend or endorsement is in a form acceptable to the DIP Issuers). Each DIP Note shall be dated the date of its authentication. The DIP Notes shall be issuable only in registered form without interest coupons, in minimum denominations of \$1.00 and any integral multiples of \$1.00 in excess thereof.

SECTION 2.03. Execution and Authentication. On the Initial Issue Date and the issue date of any Additional DIP Notes, the DIP Trustee shall authenticate and make available for delivery upon a written order of the DIP Issuers signed by one Officer of each DIP Issuer (an "Authentication Order") DIP Notes for original issue on the Initial Issue Date in an aggregate principal amount of \$10.0 million. In addition, subject to the terms of this DIP Indenture, the DIP Trustee shall upon receipt of an Authentication Order authenticate and deliver any Additional DIP Notes issued after the Initial Issue Date in an aggregate principal amount of \$12.0 million. Such Authentication Order shall specify the amount of the DIP Notes to be authenticated and the date on which the issue of DIP Notes is to be authenticated, the registered holder of each of the DIP Notes and delivery instructions. It is understood that, notwithstanding anything to the contrary in this DIP Indenture, only an Authentication Order and an Officer's Certificate and not an Opinion of Counsel is required for the DIP Trustee to authenticate the DIP Notes (including Additional DIP Notes).

One Officer shall sign the DIP Notes for the DIP Issuers by manual, facsimile or PDF signature.

If an Officer whose signature is on a DIP Note no longer holds that office at the time the DIP Trustee authenticates the DIP Note, the DIP Note shall be valid nevertheless.

A DIP Note shall not be entitled to any benefit under this DIP Indenture or valid until an authorized signatory of the DIP Trustee manually signs the certificate of authentication on the DIP Note. The signature shall be conclusive evidence that the DIP Note has been authenticated under this DIP Indenture.

The DIP Trustee may appoint one or more authenticating agents (an "Authenticating Agent") reasonably acceptable to the DIP Issuers to authenticate the DIP Note. Unless limited by the terms of such appointment, an Authenticating Agent may authenticate DIP Notes whenever the DIP Trustee may do so. Each reference in this DIP Indenture to authentication by the DIP Trustee includes authentication by such agent. An Authenticating Agent has the same rights as any Registrar, Paying Agent or agent for service of notices and demands.

The terms and provisions contained in the DIP Notes shall constitute, and are expressly made, a part of this DIP Indenture and, to the extent applicable, the DIP Issuers, the DIP Guarantors and the DIP Trustee, by their execution and delivery of this DIP Indenture, expressly agree to such terms and provisions and agree to be bound thereby.

SECTION 2.04. Registrar and Paying Agent

(a) The DIP Issuers shall maintain (i) an office or agency where DIP Notes may be presented for registration of transfer or for exchange (the “Registrar”) and (ii) the Paying Agent. The Registrar shall keep a register of the DIP Notes and of their transfer and exchange. The DIP Issuers may have one or more co-registrars and one or more additional paying agents. The term “Registrar” includes any co-registrars. The term “Paying Agent” includes the Paying Agent and any additional paying agents. The DIP Issuers initially appoints the DIP Trustee as Registrar, Paying Agent and the Securities Custodian with respect to the Global Securities. When the DIP Issuers enter into an agency agreement with any registrar, paying agent, co-registrar or transfer agent that is not the DIP Trustee, it will notify the DIP Trustee in writing of the name and address of each such agent.

(b) The DIP Issuers shall enter into an appropriate agency agreement with any Registrar or Paying Agent not a party to this DIP Indenture. The agreement shall implement the provisions of this DIP Indenture that relate to such agent. The DIP Issuers shall notify the DIP Trustee in writing of the name and address of any such agent. If the DIP Issuers fails to maintain a Registrar or Paying Agent, the DIP Trustee shall act as such and shall be entitled to appropriate compensation therefor pursuant to Section 7.06.

(c) The DIP Issuers may remove any Registrar or Paying Agent upon written notice to such Registrar or Paying Agent and to the DIP Trustee and without prior notice to any Holder; *provided, however*, that no such removal shall become effective until (i) if applicable, acceptance of an appointment by a successor as evidenced by an appropriate agreement entered into by the DIP Issuers and such successor Registrar or Paying Agent, as the case may be, and delivered to the DIP Trustee in writing or (ii) notification to the DIP Trustee in writing that the DIP Trustee shall serve as Registrar or Paying Agent until the appointment of a successor in accordance with clause (i) above. The Registrar or Paying Agent may resign at any time upon written notice to the DIP Issuers and the DIP Trustee; *provided, however*, that the DIP Trustee may resign as Paying Agent or Registrar only if the DIP Trustee also resigns as DIP Trustee in accordance with Section 7.07.

SECTION 2.05. Paying Agent to Hold Money in Trust. Prior to by 12:00 PM (New York City Time) or on each due date of the principal of and cash interest on any DIP Note, the DIP Issuers shall deposit with the Paying Agent a sum sufficient to pay such principal and cash interest when so becoming due. The DIP Issuers shall require each Paying Agent (other than the DIP Trustee) to agree in writing that the Paying Agent shall hold in trust for the benefit of Holders or the DIP Trustee all money held by the Paying Agent for the payment of principal of and cash interest on the DIP Notes, and shall notify the DIP Trustee in writing of any default by the DIP Issuers in making any such payment. The DIP Issuers at any time or, during the continuance of a Default under this DIP Indenture, the DIP Trustee may require the Paying Agent to pay all money held by it to the DIP Trustee and to account for any funds disbursed by such Paying Agent. Upon complying with this Section, the Paying Agent shall have no further liability for the money delivered to the DIP Trustee. The DIP Trustee shall serve as Paying Agent for the DIP Notes.

SECTION 2.06. Holder Lists. The DIP Trustee shall preserve in as current a form as is reasonably practicable the most recent list available to it of the names and addresses of Holders. If the DIP Trustee is not the Registrar, the DIP Issuers shall furnish, or cause the Registrar to furnish, to the DIP Trustee, in writing at least five Business Days before each interest payment date and at such other times as the DIP Trustee may request in writing, a list in such form and as of such date as the DIP Trustee may reasonably require of the names and addresses of Holders.

SECTION 2.07. Transfer and Exchange. The DIP Notes shall be issued in registered form and shall be transferable only upon the surrender of a DIP Note for registration of transfer and in compliance with the Appendix. When a DIP Note is presented to the Registrar with a request to

register a transfer, the Registrar shall register the transfer as requested if its requirements therefor are met. When DIP Notes are presented to the Registrar with a request to exchange them for an equal principal amount of DIP Notes of other denominations, the Registrar shall make the exchange as requested if the same requirements are met. To permit registration of transfers and exchanges, the DIP Issuers shall execute and the DIP Trustee shall authenticate DIP Notes at the Registrar's request. The DIP Issuers may require payment of a sum sufficient to pay all taxes, assessments or other governmental charges in connection with any transfer or exchange pursuant to this Section. The DIP Trustee shall be provided all information reasonably requested by the DIP Trustee to allow the DIP Trustee to comply with any applicable tax reporting obligations, including without limitation any cost basis reporting obligations under Internal Revenue Code Section 605. The DIP Trustee may rely on the information provided to it and shall have no responsibility to verify or ensure the accuracy of such information. The DIP Issuers shall not be required to make, and the Registrar need not register, transfers or exchanges of any DIP Notes (i) selected for redemption (except, in the case of DIP Notes to be redeemed in part, the portion thereof not to be redeemed), (ii) for a period of 15 days before the mailing of a notice of redemption of DIP Notes to be redeemed or (iii) between a regular record date and the next succeeding interest payment date.

Prior to the due presentation for registration of transfer of any DIP Note, the DIP Issuers, the DIP Guarantors, the DIP Trustee, the Paying Agent and the Registrar may deem and treat the Person in whose name a DIP Note is registered as the absolute owner of such DIP Note for the purpose of receiving payment of principal of and interest on such DIP Note and for all other purposes whatsoever, whether or not such DIP Note is overdue, and none of any DIP Issuer, any DIP Guarantor, the DIP Trustee, the Paying Agent or the Registrar shall be affected by notice to the contrary.

Any Holder of a beneficial interest in a Global Security shall, by acceptance of such beneficial interest, agree that transfers of beneficial interests in such Global Security may be effected only through a book-entry system maintained by (a) the Holder of such Global Security (or its agent) or (b) any Holder of a beneficial interest in such Global Security, and that ownership of a beneficial interest in such Global Security shall be required to be reflected in a book entry.

All DIP Notes issued upon any transfer or exchange pursuant to the terms of this DIP Indenture shall evidence the same debt and shall be entitled to the same benefits under this DIP Indenture as the DIP Notes surrendered upon such transfer or exchange.

SECTION 2.08. Replacement DIP Notes. If a mutilated DIP Note is surrendered to the Registrar or if the Holder of a DIP Note claims that the DIP Note has been lost, destroyed or wrongfully taken, the DIP Issuers shall issue, and the DIP Trustee shall authenticate, a replacement DIP Note if the requirements of Section 8-405 of the New York UCC are met, such that the Holder (a) satisfies the DIP Issuers or the DIP Trustee within a reasonable time after such Holder has notice of such loss, destruction or wrongful taking and the Registrar does not register a transfer prior to receiving such notification, (b) makes such request to the DIP Issuers or the DIP Trustee prior to the DIP Note being acquired by a protected purchaser as defined in Section 8-303 of the New York UCC (a "protected purchaser") and (c) satisfies any other reasonable requirements of the DIP Trustee. Such Holder shall furnish an indemnity bond sufficient in the judgment of (i) the DIP Trustee to protect the DIP Trustee or (ii) the DIP Issuers to protect the DIP Issuers, the DIP Trustee, the Paying Agent and the Registrar from any loss that any of them may suffer if a DIP Note is replaced. The DIP Issuers and the DIP Trustee may charge the Holder for their expenses in replacing a DIP Note (including without limitation, attorneys' fees and disbursements in replacing such DIP Note). In the event any such mutilated, lost, destroyed or wrongfully taken DIP Note has become or is about to become due and payable, the DIP Issuers in their discretion may pay such DIP Note instead of issuing a new DIP Note in replacement thereof.

Every replacement DIP Note is an additional obligation of the DIP Issuers.

The provisions of this Section 2.08 are exclusive and shall preclude (to the extent lawful) all other rights and remedies with respect to the replacement or payment of mutilated, lost, destroyed or wrongfully taken DIP Notes.

SECTION 2.09. Outstanding DIP Notes. DIP Notes outstanding at any time are all DIP Notes authenticated by the DIP Trustee except for those canceled by it, those delivered to it for cancellation, those paid pursuant to Section 2.08 and those described in this Section as not outstanding. Subject to Section 12.04, a DIP Note does not cease to be outstanding because the DIP Issuers or an Affiliate of the DIP Issuers holds the DIP Notes.

If a DIP Note is replaced pursuant to Section 2.08, it ceases to be outstanding unless the DIP Trustee and the DIP Issuers receive proof satisfactory to them that the replaced DIP Note is held by a protected purchaser.

If the Paying Agent segregates and holds in trust, in accordance with this DIP Indenture, on a redemption date or maturity date or any date of purchase pursuant to an offer to purchase money sufficient to pay all principal and interest payable on that date with respect to the DIP Notes (or portions thereof) to be redeemed, maturing or purchased, as the case may be, and no Paying Agent is prohibited from paying such money to the Holders on that date pursuant to the terms of this DIP Indenture, then on and after that date such DIP Notes (or portions thereof) cease to be outstanding and interest on them ceases to accrue.

SECTION 2.10. Temporary DIP Notes. In the event that Definitive Securities are to be issued under the terms of this DIP Indenture, until such Definitive Securities are ready for delivery, the DIP Issuers may prepare and the DIP Trustee shall authenticate temporary DIP Notes. Temporary DIP Notes shall be substantially in the form of Definitive Securities but may have variations that the DIP Issuers considers appropriate for temporary Securities. Without unreasonable delay, the DIP Issuers shall prepare and the DIP Trustee shall authenticate Definitive Securities and make them available for delivery in exchange for temporary Securities upon surrender of such temporary Securities at the office or agency of the DIP Issuers, without charge to the Holder. Until such exchange, temporary Securities shall be entitled to the same rights, benefits and privileges as Definitive Securities.

SECTION 2.11. Cancellation. The DIP Issuers at any time may deliver DIP Notes to the DIP Trustee for cancellation. The Registrar and each Paying Agent shall forward to the DIP Trustee any DIP Notes surrendered to them for registration of transfer, exchange or payment. The DIP Trustee, or at the written direction of the DIP Trustee, the Registrar or the Paying Agent and no one else shall cancel all DIP Notes surrendered for registration of transfer, exchange, payment or cancellation and shall dispose of canceled DIP Notes in accordance with its customary procedures (subject to the record retention requirement of the Exchange Act). The DIP Issuers may not issue new DIP Notes to replace DIP Notes they have redeemed, paid or delivered to the DIP Trustee for cancellation. The DIP Trustee shall not authenticate DIP Notes in place of canceled DIP Notes other than pursuant to the terms of this DIP Indenture.

SECTION 2.12. Defaulted Interest and Additional Interest. If the DIP Issuers defaults in a payment of interest on the DIP Notes (a "Payment Default"), the DIP Issuers shall pay the defaulted interest then borne by the DIP Notes plus additional interest ("Additional Interest") on the principal amount of the DIP Notes at a rate of 2.0% per annum (plus interest on such defaulted interest to the extent lawful) in cash and in any lawful manner. The DIP Issuers may pay the defaulted interest and Additional Interest to the Persons who are Holders on a subsequent special record date. Additional Interest shall continue to accrue on the outstanding principal amount of the DIP Notes until, but not including, the date the related Payment Default is cured. The DIP Issuers shall fix or cause to be fixed

any such special record date and payment and shall promptly mail or cause to be sent to each affected Holder and the DIP Trustee a notice that states the special record date, the payment date and the amount of defaulted interest and Additional Interest to be paid. The DIP Issuers shall notify the DIP Trustee in writing of the amount of defaulted cash interest proposed to be paid on each DIP Note and the date of the proposed payment, and at the same time the DIP Issuers shall deposit with the DIP Trustee an amount of money equal to the aggregate amount proposed to be paid in respect of such defaulted interest or shall make arrangements satisfactory to the DIP Trustee for such deposit prior to the date of the proposed payment, such money when deposited to be held in trust for the benefit of the Persons entitled to (but in no event earlier than fifteen days before the date of the proposed payment) such defaulted interest as provided in this Section 2.12.

SECTION 2.13. CUSIP Numbers, ISINs, etc. The DIP Issuers in issuing the DIP Notes may use CUSIP numbers, ISINs and “Common Code” numbers (if then generally in use) and, if so, the DIP Trustee shall use CUSIP numbers, ISINs and “Common Code” numbers in notices of redemption as a convenience to Holders; *provided, however*, that any such notice may state that no representation is made as to the correctness of such numbers, either as printed on the DIP Notes or as contained in any notice of a redemption that reliance may be placed only on the other identification numbers printed on the DIP Notes and that any such redemption shall not be affected by any defect in or omission of such numbers. The DIP Issuers shall promptly advise the DIP Trustee in writing of any change in the CUSIP numbers, ISINs and “Common Code” numbers.

SECTION 2.14. Calculation of Principal Amount of DIP Notes. The aggregate principal amount of the DIP Notes, at any date of determination, shall be the principal amount of the DIP Notes outstanding at such date of determination (including any outstanding Additional DIP Notes). With respect to any matter requiring consent, waiver, approval or other action of the Holders of a specified percentage of the principal amount of all the DIP Notes, such percentage shall be calculated, on the relevant date of determination, by dividing (a) the principal amount, as of such date of determination, of DIP Notes, the Holders of which have so consented, by (b) the aggregate principal amount, as of such date of determination, of the DIP Notes then outstanding, in each case, as determined in accordance with the preceding sentence, Section 2.09 and Section 12.04 of this DIP Indenture. Any such calculation made pursuant to this Section 2.14 shall be made by the DIP Issuers and delivered to the DIP Trustee pursuant to an Officer’s Certificate.

SECTION 2.15. Payment of Interest. Interest shall be payable in cash monthly in arrears on [•] of each month, or if any such day is not a Business Day, on the next succeeding Business Day (each, an “interest payment date”). Interest on the DIP Notes shall accrue from the most recent date to which interest has been paid or, if no interest has been paid, from the date of issuance at a rate per annum equal to the Applicable Rate. The DIP Issuers shall also pay any Additional Interest required to be paid pursuant to Section 2.12 of this DIP Indenture. Interest on the DIP Notes will be computed on the basis of a 360-day year comprised of twelve 30-day months.

SECTION 2.16. Issuance of Additional DIP Notes.

(a) Notwithstanding anything in this DIP Indenture or the DIP Documents to the contrary, the DIP Issuers may issue additional DIP Notes under this DIP Indenture in an aggregate principal amount of \$12.0 million having identical terms and conditions as the DIP Notes issued on the Initial Issue Date (such additional DIP Notes, “Additional DIP Notes”), except that the applicable issue price, issue date and date from which interest accrues may differ. Any subsequent issue of Additional DIP Notes will be secured, equally and ratably, with the DIP Notes issued on the Initial Issue Date. Such Additional DIP Notes may be issued in one or more series and with the same or different CUSIP number as the DIP Notes issued on the Initial Issue Date; *provided, however*, that unless such Additional DIP Notes are issued under a

separate CUSIP number, such Additional DIP Notes must be fungible with the DIP Notes issued on the Initial Issue Date for U.S. federal income tax purposes. The DIP Notes issued on the Initial Issue Date and the Additional DIP Notes, if any, shall be treated as a single class for all purposes under this DIP Indenture and the DIP Documents, including waivers, amendments, redemptions or prepayment. Any Additional DIP Notes shall be part of the same issue as the DIP Notes issued on the Initial Issue Date and shall vote on all matters with the DIP Noteholders.

(b) With respect to any Additional DIP Notes, the DIP Issuers shall set forth in an Officer's Certificate delivered to the DIP Trustee, the following information:

(i) the aggregate principal amount of such Additional DIP Notes to be authenticated and delivered pursuant to this Agreement;

(ii) the issue date and the CUSIP and ISIN numbers, if any, of such Additional DIP Notes; and

(iii) whether such Additional DIP Notes shall be Rule 144A Securities, Regulation S Notes or 4(a)(2) Securities.

(c) Upon receipt of an Officer's Certificate pursuant to Section 2.16(b), the DIP Trustee shall authenticate such Additional DIP Notes.

SECTION 2.17. Credit Bidding. Each DIP Notes Party and each DIP Noteholder agrees that a credit bid of up to the full amount of the DIP Obligations outstanding under the DIP Documents (including as part of a joint credit bid with Prepetition 1L Obligations and/or Prepetition 2L Obligations) shall be made at the written direction of the Required DIP Noteholders during any sale of all or any portion of any DIP Notes Parties' or DIP Notes Parties' affiliates' assets or equity, including without limitation, sales occurring pursuant to Section 363 of the Bankruptcy Code or included as part of any Plan of Reorganization subject to confirmation under Section 1129(b)(2)(A)(iii) of the Bankruptcy Code. Each DIP Noteholder further agrees that it will be bound by any such credit bid made, and any receipt of "take-back" debt or other securities contemplated by Section 9.03, at the direction of the Required DIP Noteholders. Without limiting the foregoing, each DIP Notes Party consents and agrees to the credit bid by the DIP Trustee as contemplated in the Stalking Horse Asset Purchase Agreement.

ARTICLE 3

REDEMPTION

SECTION 3.01. Redemption. The DIP Notes may be redeemed, in whole but not in part, subject to the conditions and at the redemption prices set forth in Section 3.09 hereof, together with accrued and unpaid interest to, but excluding, the redemption date.

SECTION 3.02. Applicability of Article. Redemption of DIP Notes at the election of the DIP Issuers or otherwise, as permitted or required by any provision of this DIP Indenture, shall be made in accordance with such provision and this Article.

SECTION 3.03. Notices to DIP Trustee. If the DIP Issuers elects to redeem the DIP Notes pursuant to the optional redemption provisions of Section 3.09 hereof, it shall notify the DIP Trustee in writing of (i) the Section or subsection of this DIP Indenture pursuant to which the redemption

shall occur, (ii) the redemption date, (iii) the principal amount of DIP Notes to be redeemed and (iv) the redemption price. The DIP Issuers shall give notice to the DIP Trustee in writing provided for in this paragraph at least five (5) Business Days (or such shorter period as shall be acceptable to the DIP Trustee) before notice of redemption is required to be delivered or mailed to Holders pursuant to Section 3.05 but not more than 60 days before a redemption date if the redemption is pursuant to Section 3.09; *provided*, notice may be given more than 60 days prior to a redemption date if the notice is (i) issued in connection with Section 8.01 or (ii) conditioned upon satisfaction (or waiver by the DIP Issuers in their sole discretion) of one or more conditions precedent and any or all such conditions shall not have been satisfied (or waived by the DIP Issuers in their sole discretion). Such notice shall be accompanied by an Officer's Certificate from the DIP Issuers to the effect that such redemption will comply with the conditions herein. Any such notice may be canceled at any time prior to notice of such redemption being sent to any Holder and shall thereby be void and of no effect.

SECTION 3.04. [Reserved].

SECTION 3.05. Notice of Optional Redemption.

(a) At least 5 Business Days but not more than 60 days before a redemption date pursuant to the optional redemption provisions of Section 3.09 hereof, the DIP Issuers shall send electronically, mail or cause to be mailed by first-class mail a notice of redemption to each Holder whose DIP Notes are to be redeemed (except that such notice of redemption may be mailed more than 60 days prior to a redemption date if the notice is (i) issued in connection with Section 8.01 or (ii) conditioned upon satisfaction (or waiver by the DIP Issuers in its sole discretion) of one or more conditions precedent and any or all such conditions shall not have been satisfied (or waived by the DIP Issuers in its sole discretion)).

Any such notice shall identify the DIP Notes to be redeemed and shall state:

- (i) the redemption date;
- (ii) the redemption price and the amount of accrued and unpaid interest to the redemption date;
- (iii) the Section of this DIP Indenture pursuant to which the DIP called for redemption are being redeemed;
- (iv) the name and address of the Paying Agent;
- (v) that DIP Notes called for redemption must be surrendered to the Paying Agent to collect the redemption price, plus accrued interest;
- (vi) [Reserved];
- (vii) any condition to such redemption;
- (viii) that, unless the DIP Issuers defaults in making such redemption payment or the Paying Agent is prohibited from making such payment pursuant to the terms of this DIP Indenture, interest on DIP Notes called for redemption ceases to accrue on and after the redemption date;
- (ix) the CUSIP number, ISIN and/or "Common Code" number, if any, printed on the DIP Notes being redeemed; and

(x) that no representation is made as to the correctness or accuracy of the CUSIP number or ISIN and/or “Common Code” number, if any, listed in such notice or printed on the Securities.

(b) At the DIP Issuers’ written request, the DIP Trustee shall give the notice of redemption in the DIP Issuers’ name and at the DIP Issuers’ expense. In such event, the DIP Issuers shall provide the DIP Trustee with the information in writing required by this Section 3.05 at least 5 Business Days (or such shorter period as shall be acceptable to the DIP Trustee) prior to the date such notice is to be provided to Holders.

(c) Notice of any redemption of DIP Notes described above may be given prior to such redemption, and any such redemption or notice may, at the DIP Issuers’ sole discretion, be subject to one or more conditions precedent, and any notice of redemption made in connection with a related transaction or event may, at the DIP Issuers’ discretion, be given prior to the completion or the occurrence thereof. In addition, if such redemption is subject to satisfaction of one or more conditions precedent, such notice of redemption shall describe each such condition, and, if applicable, shall state that such redemption may not occur and such notice may be rescinded in the event that any or all such conditions shall not have been satisfied (or waived, in the DIP Issuers’ sole discretion) by the redemption date, or that such notice may be rescinded at any time in the DIP Issuers’ discretion if in the good faith judgment of the DIP Issuers any or all of such conditions will not be satisfied. If any such condition precedent has not been satisfied, the DIP Issuers shall provide written notice to the DIP Trustee prior to the close of business on the Business Day immediately prior to the redemption date. Upon receipt of such notice, the notice of redemption shall be rescinded, and the redemption of the DIP Notes shall be rescinded as provided in such notice. Upon receipt, the DIP Trustee shall deliver such written notice to each Holder. In addition, the DIP Issuers may provide in such notice that payment of the redemption price and performance of the DIP Issuers’ obligations with respect to such redemption may be performed by another Person.

SECTION 3.06. Effect of Notice of Redemption. Once notice of redemption is mailed or sent in accordance with Section 3.05, DIP Notes called for redemption become due and payable on the redemption date and at the redemption price stated in the notice (except as described in Section 3.05). Upon surrender to the Paying Agent, such DIP Notes shall be paid at the redemption price stated in the notice, plus accrued interest, to, but not including, the redemption date; *provided, however*, that if the redemption date is after a regular record date and on or prior to the interest payment date, the accrued interest shall be payable to the Holder of the redeemed Securities registered on the relevant record date. The notice, if mailed in a manner herein provided, shall be conclusively presumed to have been given, whether or not the Holder receives such notice. Failure to give notice or any defect in the notice to any Holder shall not affect the validity of the notice to any other Holder. In the event that such DIP Note is not surrendered to the Paying Agent by the redemption date, the DIP Trustee shall be entitled to escheat any funds in accordance with applicable law.

SECTION 3.07. Deposit of Redemption Price. With respect to any DIP Notes, prior to 11:00 a.m., New York City time, on the redemption date, the DIP Issuers shall deposit with the Paying Agent money sufficient to pay the redemption price of and accrued interest on all DIP Notes to be redeemed on that date other than DIP Notes called for redemption that have been delivered by the DIP Issuers to the DIP Trustee in writing for cancellation. On and after the redemption date, interest shall cease to accrue on DIP Notes called for redemption so long as the DIP Issuers have deposited with the Paying Agent funds sufficient to pay the principal of, plus accrued and unpaid interest on, the DIP Notes to be redeemed, unless the Paying Agent is prohibited from making such payment pursuant to the terms of this DIP Indenture or applicable law. If a DIP is redeemed on or after a record date but on or prior to the related interest payment date, then any accrued and unpaid interest to the redemption date shall be

paid on the relevant interest payment date to the Person in whose name such Security was registered at the close of business on such record date.

SECTION 3.08. [Reserved].

SECTION 3.09. Optional Redemption. The DIP Issuers may redeem the DIP Notes, at their option, at any time and from time to time, in whole or in part, upon notice in accordance with Section 3.05 hereof, at a price of 100.00% (expressed as a percentage of the principal amount of the DIP Notes to be redeemed), plus accrued and unpaid interest thereon to, but not including, the applicable redemption date (subject to the right of the Holders of record on the relevant record date to receive interest due on the relevant interest payment date).

ARTICLE 4

COVENANTS

SECTION 4.01. Payment of DIP Notes. The DIP Issuers, jointly and severally, shall promptly pay the principal of, premium, if any, and interest on the DIP Notes, on the dates and in the manner provided in the DIP Notes and in this DIP Indenture. An installment of principal or interest shall be considered paid on the date due if on such date the DIP Trustee or the Paying Agent holds as of 11:00 a.m., New York City time, money sufficient to pay all principal and cash interest then due and the DIP Trustee or the Paying Agent, as the case may be, is not prohibited from paying such money to the Holders on that date pursuant to the terms of this DIP Indenture.

The DIP Issuers shall pay interest on overdue principal at the rate specified therefor in the DIP Indenture and/or in the DIP Notes, and it shall pay interest on overdue installments of interest at the same rate borne by the DIP Notes to the extent lawful.

SECTION 4.02. Reports and Other Information.

(a) So long as any DIP Notes (including any Additional DIP Notes) are outstanding, the DIP Issuers will furnish to the DIP Trustee within 90 calendar days after the end of the fiscal year (including the fiscal year preceding the fiscal year in which the Initial Issue Date occurs), a consolidated balance sheet of Anagram LLC and its Subsidiaries as at the end of such fiscal year, and the related consolidated statements of income or operations, stockholders' equity and cash flows for such fiscal year, setting forth in each case in comparative form the figures for the previous fiscal year, all in reasonable detail and certified by a Responsible Officer of Anagram LLC as fairly presenting in all material respects the financial condition, results of operations, stockholders' equity and cash flows of Anagram LLC and its Subsidiaries in accordance with GAAP, subject to the absence of footnotes.

(b) So long as any DIP Notes (including any Additional DIP Notes) are outstanding, the DIP Issuers will furnish to the DIP Trustee within 45 calendar days after the end of each of the first three fiscal quarters of each fiscal year (including the fiscal quarter preceding the fiscal quarter in which the Initial Issue Date occurs), a consolidated balance sheet of Anagram LLC and its Subsidiaries as at the end of such fiscal quarter and in comparative format, the prior fiscal year-end and the related consolidated statements of income or operations for such fiscal quarter and the portion of the fiscal year then ended, setting forth in comparative form the figures for the corresponding fiscal quarter of the previous fiscal year and the corresponding portion of the previous fiscal year, and statements of stockholders' equity for the current fiscal quarter and consolidated statement of cash flows for the portion of the fiscal year then ended, setting forth in each case in comparative form the figures for the corresponding portion of the previous

fiscal year, all in reasonable detail and certified by a Responsible Officer of Anagram LLC as fairly presenting in all material respects the financial condition, results of operations, stockholders' equity and cash flows of Anagram LLC and its Subsidiaries in accordance with GAAP, subject only to normal year-end audit adjustments and the absence of footnotes.

(c) Delivery of such reports, information and documents to the DIP Trustee is for informational purposes only and the DIP Trustee's receipt of such shall not constitute constructive notice of any information contained therein or determinable from information contained therein, including the DIP Issuers' compliance with any of its covenants hereunder (as to which the DIP Trustee is entitled to rely exclusively on Officer's Certificates with respect thereto). The DIP Trustee shall have no responsibility for the filing, timeliness or content of such reports. Additionally, the DIP Trustee shall not be obligated to monitor or confirm, on a continuing basis or otherwise, the DIP Issuers' compliance with the covenants or with respect to any reports or other documents filed with the SEC or EDGAR or any website or datasite under this DIP Indenture.

(d) Notwithstanding anything to the contrary set forth above, if the DIP Issuers (or any direct or indirect parent of the DIP Issuers) has (i) made available through EDGAR or SEC filings the reports and information described in the preceding paragraphs with respect to the DIP Issuers or (ii) has delivered such information to the DIP Trustee and posted copies of such information to a website or online data system which shall require a confidentiality acknowledgment (which may be nonpublic and may be maintained by the DIP Issuers or a third party) to which access will be given to DIP Noteholders, prospective purchasers of the DIP Notes (which prospective purchasers will be limited to "qualified institutional buyers" (within the meaning of Rule 144A of the Securities Act) or non-U.S. persons (as defined under Regulation S of the Securities Act)), securities analysts and market making institutions that certify their status as such to the reasonable satisfaction of the Company, the DIP Issuers shall be deemed to be in compliance with the provisions of this Section 4.02.

(e) Each annual and quarterly report provided pursuant to Section 4.02(a) and Section 4.02(b) herein shall (a) separately break out the portion of sales made to Affiliates and the portion of sales made to non-Affiliates and (b) provide a narrative discussion of the comparability of the amount and nature of rebates, discounts and gross pricing applied to sales to Affiliates as compared to those applied to non-Affiliates.

(f) No later than the Thursday of each week after the Petition Date commencing on November [•]¹, 2023, the DIP Notes Parties shall provide to the DIP Trustee and the financial advisor to the DIP Noteholders an updated 13-week statement of the DIP Notes Parties anticipated cash receipts and disbursements in the form of the Initial DIP Budget (as defined in the Bankruptcy Court DIP Order) for the subsequent 13-week period (a "Proposed Budget"), which Proposed Budget shall modify and supersede any prior budget upon the approval of the Required DIP Noteholders in their sole and absolute discretion (such Proposed Budget upon such approval and including the Initial DIP Budget, an "Approved Budget") and include separate schedule covering any anticipated payments payable to any Affiliate of the DIP Notes Parties. Any determination of compliance with the Approved Budget (subject to any express Permitted Variance) shall be determined on a cumulative basis from the beginning of the period covered by the Initial DIP Budget to the date of such determination, except to the extent expressly tested by reference to the Budget Testing Period.

¹ NTD: To be the first Thursday after one full week after the Petition Date.

(g) No later than the Thursday of each week after the Petition Date commencing on November [•]², 2023, the DIP Notes Parties shall deliver to the DIP Trustee and the financial advisor to the DIP Noteholders:

(i) a liquidity report reflecting the aggregate amount of unrestricted cash of the DIP Notes Parties in form satisfactory to the Required DIP Noteholders;

(ii) an accounts payable aging report; and

(iii) information describing any events that have, or would be reasonably expected to result in a Material Adverse Effect.

(h) No later than Thursday of each week following the Thursday that is two full weeks after the Petition Date (prior to 5:00 p.m.), the DIP Issuers shall deliver to the DIP Trustee and the financial advisor to the DIP Noteholders a budget variance report in a form satisfactory to the Required DIP Noteholders (each, a “Variance Report”) describing in reasonable detail the cash receipts and cash disbursements of the DIP Issuers and DIP Guarantors, on an aggregate and line-item basis, during the relevant Budget Testing Period (or, prior to the completion of any Budget Testing Period, budgeted receipts or budgeted disbursements, as applicable, on an aggregate and line item basis, for each full fiscal week completed, and on a cumulative basis, after the Petition Date and prior to the date of such delivery) as compared to the projected cash receipts and cash disbursements, on an aggregate and line item basis, provided by the then-current Approved Budget for the same period.

(i) Every other week, at a time mutually agreed with the Required DIP Noteholders that is after the delivery of the information required pursuant to clause (h) above in any week, upon the request of the Required DIP Noteholders, the DIP Issuers’ financial advisor shall participate in one conference call for DIP Noteholders that are not “public-side DIP Noteholders” (i.e., DIP Noteholders that do not wish to receive material non-public information with respect to the DIP Issuers or their securities) to discuss the cash flows, liquidity position, financial condition and results of operations of the DIP Issuers and their Subsidiaries and the Approved Budget and the Variance Report during the preceding week.

(j) As soon as reasonably practicable in advance of, but no later than the earlier of (x) two (2) days prior to, or (y) contemporaneous delivery to any statutory committee appointed in the Chapter 11 Cases or the DIP Trustee, as the case may be, the DIP Issuers shall provide the DIP Trustee, Milbank LLP and any requesting counsel to a DIP Noteholder with any filing with the Bankruptcy Court, all proposed orders and pleadings related to the DIP Notes, the commitments under the DIP Note Purchase Agreement and the DIP Documents, any sale or other disposition of DIP Collateral outside the ordinary course, cash management, adequate protection, any Plan of Reorganization and/or any disclosure statement related thereto (except that, with respect to any emergency pleading or document for which, despite the DIP Notes Parties’ best efforts, such advance notice is impracticable, the DIP Notes Parties shall be required to furnish such documents as soon as reasonably practicable and in no event later than substantially concurrently with such filings or deliveries thereof, as applicable), including any monthly reporting by the DIP Secured Parties to the Bankruptcy Court and/or the DIP Trustee, Milbank LLP and any requesting counsel to a DIP Noteholder.

(k) At the reasonable request of the DIP Noteholders, at any time mutually agreed between the DIP Issuers and the DIP Noteholders, an officer of the DIP Issuers identified by the Required DIP Noteholders (or, at the request of the Required DIP Noteholders, the Consultants) and any Debtors’ Professional identified by the DIP Noteholders shall participate in a conference call with the DIP

² NTD: To be the first Thursday after one full week after the Petition Date.

Noteholders (which may include the DIP Trustee) to discuss the operations, financial position, results of operations, business plan and liquidity of the DIP Issuers and their Subsidiaries.

(l) The DIP Issuers shall permit the financial advisors of the DIP Noteholders to visit and inspect any of its, and its Subsidiaries', properties, to examine its corporate, financial and operating records, including, without limitation, historical records and information, and make copies thereof or abstracts therefrom and to discuss its affairs, finances, accounts, strategic planning, cash and liquidity management, and operational and restructuring activities, with its directors, officers and independent public accountants (subject to such accountants' customary policies and procedures), all at the reasonable expense of the DIP Issuers and at such reasonable times during normal business hours and as often as may be reasonably desired, upon reasonable advance notice to the DIP Issuers.

(m) Promptly after a Responsible Officer of the DIP Issuers or the DIP Guarantors has obtained knowledge thereof, notify the DIP Trustee in writing:

(i) of the occurrence of any Default;

(ii) of the filing or commencement of, or any threat or notice of intention of any person to file or commence, any action, suit, litigation or proceeding, whether at law or in equity by or before any Governmental Authority (other than the Chapter 11 Cases), (i) against any DIP Issuer or any DIP Guarantor, or any Subsidiary or Affiliate thereof, that would reasonably be expected to result in a Material Adverse Effect or (ii) with respect to any DIP Document or Prepetition Debt Document; and

(iii) the occurrence of any Notification Event, as defined in the DIP Note Purchase Agreement, that, alone or together with any other Notification Events that have occurred, would reasonably be expected to result in a Material Adverse Effect.

Each notice pursuant to this clause (m) shall be accompanied by a written statement of a Responsible Officer of the DIP Issuers (x) that such notice is being delivered pursuant to subclause (i), (ii) or (iii), as applicable, of this Section 4.02(m), setting forth details of the occurrence referred to therein and stating what action the DIP Issuers have taken and proposes to take with respect thereto.

SECTION 4.03. Limitation on Incurrence of Indebtedness and Issuance of Disqualified Stock and Preferred Stock.

(a) The DIP Issuers shall not, and shall not permit any of their Restricted Subsidiaries to, directly or indirectly, create, incur, issue, assume, guarantee or otherwise become directly or indirectly liable, contingently or otherwise (collectively, "incur" and collectively, an "incurrence") with respect to any Indebtedness (including Acquired Indebtedness) and the DIP Issuers shall not issue any shares of Disqualified Stock and shall not permit any Restricted Subsidiary to issue any shares of Disqualified Stock or Preferred Stock;

(b) Section 4.03(a) shall not apply to:

(i) Indebtedness incurred pursuant to the Prepetition ABL Facility or the ABL DIP Facility, as applicable, by a DIP Issuer or a DIP Guarantor; *provided* that immediately after giving effect to any such incurrence, the aggregate principal amount of all Indebtedness under the Prepetition ABL Facility and the ABL DIP Facility then outstanding, less the aggregate principal amount of DIP Notes repaid substantially concurrently with such incurrence, does not exceed \$10.0 million;

(ii) the incurrence by any DIP Issuer and any DIP Guarantor of (x) Indebtedness represented by the aggregate principal amount of DIP Notes issued to the DIP Noteholders and the DIP Guarantee related thereto, and (y) the Carve-Out;

(iii) Indebtedness of the DIP Issuers and their Restricted Subsidiaries in existence on the Initial Issue Date (other than Indebtedness described in clauses (i) and (ii) of this Section 4.03(b)) and listed on Schedule 1 hereto;

(iv) [Reserved];

(v) Indebtedness incurred by the DIP Issuers or any of their Restricted Subsidiaries constituting reimbursement obligations with respect to letters of credit, bank guarantees, bankers acceptances, warehouse receipts or similar instruments issued in the ordinary course of business, including, without limitation, letters of credit in respect of workers' compensation claims, health, disability or other employee benefits or property, casualty or liability insurance or self-insurance, unemployment insurance or other social security legislation or other Indebtedness with respect to reimbursement type obligations regarding workers' compensation claims; *provided, however*, that upon the drawing of such letters of credit or the incurrence of such Indebtedness, such obligations are reimbursed within 30 Business Days following such drawing or incurrence;

(vi) Indebtedness of a DIP Issuer to a DIP Guarantor; *provided* that any subsequent issuance or transfer of any Capital Stock or any other event which results in such DIP Guarantor ceasing to be a DIP Guarantor or any other subsequent transfer of any such Indebtedness (except to a DIP Issuer or another DIP Guarantor or any pledge of such Indebtedness constituting a Permitted Lien) shall be deemed, in each case, to be an incurrence of such Indebtedness not permitted by this clause (vi);

(vii) Indebtedness of a DIP Guarantor to a DIP Issuer or another DIP Guarantor; *provided* that any subsequent issuance or transfer of any Capital Stock or any other event which results in any such other DIP Guarantor ceasing to be a DIP Guarantor or any subsequent transfer of any such Indebtedness (except to a DIP Issuer or another DIP Guarantor or any pledge of such Indebtedness constituting a Permitted Lien) shall be deemed, in each case, to be an incurrence of such Indebtedness not permitted by this clause (vii);

(viii) [Reserved];

(ix) [Reserved];

(x) obligations (including reimbursement obligations with respect to letters of credit, bank guarantees or other similar instruments) in respect of performance, bid, appeal and surety bonds and performance and completion guarantees or obligations in respect of letters of credit related thereto provided by the DIP Issuers or any of their Restricted Subsidiaries in the ordinary course of business or consistent with past practice or industry practices;

(xi) [Reserved],

(xii) (1) Indebtedness arising from the honoring by a bank or other financial institution of a check, draft or similar instrument drawn against insufficient funds in the

ordinary course of business; *provided* that such Indebtedness is extinguished within five Business Days of its incurrence and (2) Indebtedness in respect of any agreement to provide cash management services, including treasury, depository, overdraft, credit or debit card, electronic funds transfer and other cash management arrangements entered into in the ordinary course of business;

(xiii) [Reserved];

(xiv) [Reserved];

(xv) Indebtedness of the DIP Issuers or any of their Restricted Subsidiaries consisting of (i) the financing of insurance premiums or (ii) take-or-pay obligations contained in supply arrangements, in each case incurred in the ordinary course of business;

(xvi) [Reserved];

(xvii) [Reserved];

(xviii) [Reserved];

(xix) [Reserved];

(xx) [Reserved]; and

(xxi) to the extent constituting Indebtedness, all premiums (if any), interest (including post-petition interest), fees, expenses, charges and additional or contingent interest on obligations described in clauses (i) through (xx) above.

Accrual of interest or dividends, the accretion of accreted value, the accretion or amortization of original issue discount and increases in the amount of Indebtedness outstanding solely as a result of fluctuations in the exchange rate of currencies will not be deemed to be an incurrence of Indebtedness or issuance of Disqualified Stock or Preferred Stock for purposes of this Section 4.03. DIP Guarantee of, or obligations in respect of letters of credit relating to, Indebtedness which is otherwise included in the determination of a particular amount of Indebtedness shall not be included in the determination of such amount of Indebtedness; *provided* that the incurrence of the Indebtedness represented by such guarantee or letter of credit, as the case may be, was in compliance with this Section 4.03.

For purposes of determining compliance with any U.S. dollar-denominated restriction on the incurrence of Indebtedness or issuance of Disqualified Stock or Preferred Stock, the U.S. dollar-equivalent principal amount or liquidation preference, as applicable, of Indebtedness, Disqualified Stock or Preferred Stock denominated in a foreign currency shall be calculated based on the relevant currency exchange rate in effect on the date such Indebtedness was incurred, in the case of term debt, or first committed or first incurred (whichever yields the lower U.S. dollar equivalent), in the case of revolving credit debt; *provided* that if such Indebtedness is incurred or Disqualified Stock or Preferred Stock is issued, to extend, replace, refund, refinance, renew or defease other Indebtedness, Disqualified Stock or Preferred Stock, as applicable, denominated in a foreign currency, and such extension, replacement, refunding, refinancing, renewal or defeasance would cause the applicable U.S. dollar denominated restriction to be exceeded if calculated at the relevant currency exchange rate in effect on the date of such extension, replacement, refunding, refinancing, renewal or defeasance, such U.S. dollar-denominated restriction shall be deemed not to have been exceeded so long as the principal amount or liquidation preference, as applicable, of such Disqualified Stock or Preferred Stock does not exceed (x) the principal amount or

liquidation preference, as applicable, of such Indebtedness, Disqualified Stock or Preferred Stock, as applicable, being extended replaced, refunded, refinanced, renewed or defeased plus (y) the aggregate amount of fees, underwriting discounts, premiums (including tender premiums) and other costs and expenses (including original issue discount, upfront fees or similar fees) incurred in connection with such refinancing.

The principal amount of any Indebtedness, Disqualified Stock or Preferred Stock incurred to refinance other Indebtedness, if incurred in a different currency from the Indebtedness, Disqualified Stock or Preferred Stock, as applicable, being refinanced, shall be calculated based on the currency exchange rate applicable to the currencies in which such respective Indebtedness, Disqualified Stock or Preferred Stock is denominated that is in effect on the date of such refinancing. The DIP Issuers shall not, and shall not permit any DIP Guarantor to, directly or indirectly, incur any Indebtedness (including Acquired Indebtedness) that is contractually subordinated or junior in right of payment to any Indebtedness of the DIP Issuers or such DIP Guarantor, as the case may be, unless such Indebtedness is expressly subordinated in right of payment to the DIP Notes or the DIP Guarantor's DIP Guarantee to the extent and in the same manner as such Indebtedness is subordinated to other Indebtedness of the DIP Issuers or such DIP Guarantor, as the case may be.

For purposes of this DIP Indenture, Indebtedness that is unsecured is not deemed to be subordinated or junior to Secured Indebtedness merely because it is unsecured, and senior indebtedness is not deemed to be subordinated or junior to any other senior indebtedness merely because it has a junior priority lien with respect to the same collateral or because it is secured by different collateral or issued or guaranteed by other obligors.

SECTION 4.04. Limitation on Restricted Payments.

(a) The DIP Issuers shall not, and shall not permit any of the Restricted Subsidiaries to, directly or indirectly (all such payments and other actions set forth in clauses (i) through (iv) below being collectively referred to as "Restricted Payments"):

(i) declare or pay any dividend or make any other payment or any distribution on account of the DIP Issuers' or any of their Restricted Subsidiaries' Equity Interests (in each case, solely in such Person's capacity as holder of such Equity Interests), including any dividend or distribution payable in connection with any merger or consolidation (other than: (A) dividends or distributions by the DIP Issuers payable solely in Equity Interests (other than Disqualified Stock) of the DIP Issuers or in options, warrants or other rights to purchase such Equity Interests (other than Disqualified Stock); or (B) dividends or distributions by a Restricted Subsidiary so long as, in the case of any dividend or distribution payable on or in respect of any class or series of securities issued by a Restricted Subsidiary other than a Wholly-Owned Subsidiary, the DIP Issuers or a Restricted Subsidiary receives at least its pro rata share of such dividend or distribution in accordance with its Equity Interests in such class or series of securities);

(ii) purchase, redeem, defease or otherwise acquire or retire for value any Equity Interests of the DIP Issuers, any direct or indirect parent of the DIP Issuers or any Subsidiaries, including in connection with any merger or consolidation, in each case held by Persons other than the DIP Issuers or a Restricted Subsidiary;

(iii) make any principal payment on, or redeem, repurchase, defease or otherwise acquire or retire for value, in each case prior to any scheduled repayment, sinking fund payment or maturity, any Subordinated Indebtedness or any Prepetition Secured

Obligations (or any obligation having an equal or lower lien priority with respect to any assets of the DIP Issuers or its Subsidiaries) of the DIP Issuers or any Restricted Subsidiary, other than (x) the payment, redemption, repurchase, defeasance, acquisition or retirement for value of existing indebtedness listed on Schedule 1 hereto that is Subordinated Indebtedness, with respect to the satisfaction of a sinking fund obligation, principal installment or final maturity, in each case due within one year of the date of such payment, redemption, repurchase, defeasance, acquisition or retirement and (y) pursuant to the Bankruptcy Court DIP Order; or

(iv) make any Restricted Investment.

(b) The amount of any Restricted Payments not in cash will be the Fair Market Value on the date of such Restricted Payment of the property, assets or securities proposed to be paid, transferred or issued by the DIP Issuers or the relevant Restricted Subsidiary, as the case may be, pursuant to such Restricted Payment.

SECTION 4.05. Dividend and Other Payment Restrictions Affecting Restricted Subsidiaries. The DIP Issuers shall not, and shall not permit any of their Restricted Subsidiaries that are not a DIP Guarantor to, directly or indirectly, create or otherwise cause or suffer to exist or become effective any consensual encumbrance or consensual restriction on the ability of any such Restricted Subsidiary to:

(a) (i) pay dividends or make any other distributions to the DIP Issuers or any of their Restricted Subsidiaries that is a DIP Guarantor on its Capital Stock or with respect to any other interest or participation in, or measured by, its profits; or (ii) pay any Indebtedness owed to the DIP Issuers, in the case of a Restricted Subsidiary that is not a DIP Guarantor, to any Restricted Subsidiary that is a DIP Guarantor;

(b) make loans or advances to the DIP Issuers or, in the case of a Restricted Subsidiary that is not a DIP Guarantor, to any Restricted Subsidiary that is a DIP Guarantor; or

(c) sell, lease or transfer any of its properties or assets to the DIP Issuers or, in the case of a Restricted Subsidiary that is not a DIP Guarantor, to any Restricted Subsidiary that is a DIP Guarantor;

except in each case for such encumbrances or restrictions existing under or by reason of:

(1) contractual encumbrances or restrictions in effect on the Initial Issue Date related to existing indebtedness listed on Schedule 1 attached hereto;

(2) this DIP Indenture, the DIP Notes, the related DIP Guarantee, the DIP Security Documents and the security documents in respect of the DIP Obligations;

(3) purchase money obligations for property acquired and Financing Lease Obligations in the ordinary course of business that impose restrictions of the nature discussed in clause (c) above on the property or assets so acquired;

(4) applicable law or any applicable rule, regulation or order;

(5) any agreement or other instrument of a Person acquired by the DIP Issuers or any of their Restricted Subsidiaries in existence at the time of such acquisition (but not created in contemplation thereof), which encumbrance or restriction is not applicable to any Person, or the properties or assets of any

Person, other than the Person so acquired and its Subsidiaries, or the property or assets of the Person so acquired and its Subsidiaries;

(6) contracts or agreements for the sale of assets, including any restrictions with respect to a Subsidiary of the DIP Issuers pursuant to an agreement that has been entered into for the sale or disposition of all or substantially all of the Capital Stock or assets of such Subsidiary, permitted under this DIP Indenture;

(7) [Reserved];

(8) restrictions on cash or other deposits or net worth imposed by customers under contracts entered into in the ordinary course of business;

(9) [Reserved];

(10) customary provisions contained in leases, subleases, licenses or sublicenses or asset sale agreements and other similar agreements, in each case, entered into in the ordinary course of business;

(11) any encumbrances or restrictions of the type referred to in Sections 4.05(a), (b) and (c) above imposed by any amendments, modifications, restatements, renewals, increases, supplements, refundings, replacements or refinancings of the contracts, instruments or obligations referred to in clauses (1) through (10) above; *provided* that such amendments, modifications, restatements, renewals, increases, supplements, refundings, replacements or refinancings are, in the good faith judgment of the DIP Issuers, no more restrictive in any material respect with respect to such encumbrances and other restrictions taken as a whole than those prior to such amendment, modification, restatement, renewal, increase, supplement, refunding, replacement or refinancing;

(12) customary provisions restricting assignment of any agreement entered into in the ordinary course of business;

(13) customary restrictions and conditions contained in any agreement relating to the sale, transfer, lease or other disposition of any asset permitted under Section 4.06 pending the consummation of such sale, transfer, lease or other disposition; and

(14) customary restrictions and conditions contained in the document relating to any Lien so long as (i) such Lien is a Permitted Lien and such restrictions or conditions relate only to the specific asset subject to such Lien and (ii) such restrictions and conditions are not created for the purpose of avoiding the restrictions imposed by this clause (14).

For purposes of determining compliance with this Section 4.05, (1) the priority of any Preferred Stock in receiving dividends or liquidating distributions prior to dividends or liquidating distributions being paid on common stock shall not be deemed a restriction on the ability to make distributions on Capital Stock and (2) the subordination of loans or advances made to the DIP Issuers or a Restricted Subsidiary to other Indebtedness incurred by the DIP Issuers or any such Restricted Subsidiary shall not be deemed a restriction on the ability to make loans or advances.

SECTION 4.06. Asset Sales.

(a) The DIP Issuers shall not, and shall not permit any of their Restricted Subsidiaries to, consummate an Asset Sale (including a Sale and Lease-Back Transaction), unless:

(i) the DIP Issuers or such Restricted Subsidiary, as the case may be, receives consideration at the time of such Asset Sale at least equal to the Fair Market Value of the assets sold or otherwise disposed of; and

(ii) 100% of the consideration therefor received by the DIP Issuers or a DIP Guarantor, as the case may be, is in the form of Cash Equivalents; *provided* that the amount of:

(1) any liabilities (as shown on the DIP Issuers' or such Restricted Subsidiary's most recent balance sheet or in the footnotes thereto or, if incurred or increased subsequent to the date of such balance sheet, such liabilities that would have been shown on the DIP Issuers' or such Restricted Subsidiary's balance sheet or in the footnotes thereto if such incurrence or increase had taken place on or prior to the date of such balance sheet, as determined by the DIP Issuers), contingent or otherwise, of the DIP Issuers or such Restricted Subsidiary, other than liabilities that are by their terms subordinated to the DIP Notes, that are assumed by the transferee of any such assets or that are otherwise cancelled or terminated in connection with the transaction with such transferee and for which the DIP Issuers and all of their Restricted Subsidiaries have been validly released by all creditors in writing, and

(2) any securities, notes or other obligations or assets received by the DIP Issuers or such Restricted Subsidiary from such transferee that are converted by the DIP Issuers or such Restricted Subsidiary into Cash Equivalents (to the extent of the Cash Equivalents received) within 30 days following the closing of such Asset Sale,

shall be deemed to be Cash Equivalents for the purposes of this Section 4.06(a); and

(iii) such Asset Sale does not include any intellectual property, permits or licenses (or any rights therein) that are material to the conduct of the business of the DIP Issuers or and their Restricted Subsidiaries, taken as a whole; and

(iv) such Asset Sale is in the ordinary course of business.

(b) Within 60 days after the receipt of Net Proceeds from any Asset Sale which cumulatively, with the Net Proceeds of any previous Assets Sales (excluding any Net Proceeds (i) voluntarily applied to redeem the DIP Notes or (ii) of ABL Priority Collateral that are required to be applied to repay outstanding Indebtedness in respect of the DIP ABL Obligations), exceeds \$1.0 million (the "Asset Sale Offer Threshold"), the DIP Issuers shall ratably redeem a ratable portion of the outstanding principal amount of DIP Notes, plus accrued and unpaid interest to, but not including, the date fixed for redemption, in accordance with the procedures set forth in this DIP Indenture. The DIP Issuers will commence such redemption by mailing an irrevocable notice of redemption, with a copy to the DIP Trustee.

To the extent that the aggregate amount of DIP Notes redeemed pursuant to this Section 4.06(b) is less than the Asset Sale Offer Threshold, the DIP Issuers may use such Net Proceeds for general corporate purposes, subject to compliance with other covenants contained in this DIP Indenture and such Net Proceeds shall no longer be included for purposes of determining the Asset Sale Offer Threshold. Pending the final application of any Net Proceeds, the Company shall deposit such Net Proceeds in an account in which the Collateral Agent has a perfected security interest for the benefit of the DIP Secured Parties.

SECTION 4.07. Transactions with Affiliates.

(a) The DIP Issuers shall not, and shall not permit any of their Restricted Subsidiaries to, make any payment to, or sell, lease, transfer or otherwise dispose of any of their properties or assets to, or purchase any property or assets from, or enter into or make or amend any transaction, contract, agreement, understanding, loan, advance or guarantee with, or for the benefit of, any Affiliate of the DIP Issuers.

(b) Section 4.07(a) shall not apply to the following:

(i) transactions between or among the DIP Issuers or any of their Restricted Subsidiaries otherwise permitted under this DIP Indenture;

(ii) Permitted Investments; *provided* that (x) with respect to a Permitted Investment or series of Permitted Investments involving an Affiliate that is not the DIP Issuers or their Subsidiaries and aggregate payments or consideration of less than \$500,000, in the good faith judgment of senior management of the DIP Issuers, as evidenced by an Officer's Certificate delivered to the DIP Trustee, such Permitted Investment is on terms that are not less favorable to the DIP Issuers or their relevant Restricted Subsidiary than those that would have been obtained in a comparable transaction by the DIP Issuers or such Restricted Subsidiary with an unrelated Person on an arm's-length basis and (y) with respect to transactions or series of transactions involving aggregate payments or consideration of \$500,000 or more, the DIP Issuers deliver to the DIP Trustee (A) a resolution adopted by the majority of the disinterested board of directors of Anagram LLC, in consultation with the Consultants, approving such Permitted Investment and a related Officer's Certificate certifying that such Permitted Investment is on terms that are not less favorable to the DIP Issuers or their relevant Restricted Subsidiary than those that would have been obtained in a comparable transaction by the DIP Issuers or such Restricted Subsidiary with an unrelated Person on an arm's-length basis or (B) if there are no disinterested members of the board of directors of Anagram LLC, a resolution adopted by all of the members of the board of directors of Anagram LLC approving such Permitted Investment and a related Officer's Certificate certifying that such Permitted Investment is on terms that are not less favorable to the DIP Issuers or their relevant Restricted Subsidiary than those that would have been obtained in a comparable transaction by the DIP Issuers or such Restricted Subsidiary with an unrelated Person on an arm's-length basis;

(iii) the payment of reasonable and customary fees and reimbursement of reasonable expenses and compensation paid to, and indemnities provided on behalf of or for the benefit of, future, present or former employee, officer, director, member of management or consultant (or the estate, heirs, family members, spouse, former spouse, domestic partner or former domestic partner of any of the foregoing) of the DIP Issuers or any of their Restricted Subsidiaries;

(iv) any agreement as in effect as of the Initial Issue Date and listed on Schedule 3 hereto, or any amendment thereto or replacement thereof approved, to the extent required pursuant to Section 4.24 or the Stalking Horse Asset Purchase Agreement, by each of the Consultants (so long as any such amendment or replacement is not disadvantageous to the Holders as compared to the applicable agreement as in effect on the Initial Issue Date) or the Required DIP Noteholders or any transaction contemplated thereby as determined in good faith by the DIP Issuers;

(v) transactions with customers, clients, suppliers, contractors, or purchasers or sellers of goods or services, or transactions otherwise relating to the purchase or sale of goods or services, in each case in the ordinary course of business or that are consistent with past practice and otherwise in compliance with the terms of this DIP Indenture which are fair to the DIP Issuers and their Restricted Subsidiaries, in the reasonable determination of the board of directors of the DIP Issuers and, with respect transaction pursuant to this clause (v) with an Affiliate that is not the DIP Issuers or their Subsidiaries and a value of \$500,000 or more, in consultation with the Consultants, or are on terms at least as favorable as would reasonably have been obtained at such time from an unaffiliated party on an arm's length basis;

(vi) [Reserved];

(vii) [Reserved];

(viii) The issuance of securities or other payments, awards or grants in cash, securities or otherwise pursuant to, or the funding of, employment arrangements, stock option and stock ownership plans or similar employee benefit plans approved by a majority of the disinterested members of the board of directors of the DIP Issuers in good faith, each in their sole discretion;

(ix) transactions undertaken in good faith (as certified by a responsible financial or accounting officer of the DIP Issuers in an Officer's Certificate) for the purposes of improving the consolidated tax efficiency of the DIP Issuers and their Subsidiaries and not for the purpose of circumventing any covenant set forth in this DIP Indenture; provided that such transaction has been undertaken after consultation with the Consultants and, with respect to any transaction described in this clause (ix) with PCHI or its Affiliates (other than the DIP Issuers and their Subsidiaries), with the written consent of the Required DIP Noteholders; and

(x) transactions pursuant to or required by the Intra-Company Agreements.

SECTION 4.08. [Reserved].

SECTION 4.09. Compliance Certificate.

(a) The DIP Issuers shall deliver to the DIP Trustee within 30 days after the end of each fiscal year of the DIP Issuers, beginning with the fiscal year ending on or about December 31, 2023, a certificate (the signer of which shall be the principal executive officer, the principal financial officer or the principal accounting officer of the DIP Issuers) stating that in the course of the performance by the signer of the signer's duties as an Officer of the DIP Issuers the signer would normally have knowledge of any Default and whether or not the signer knows of any Default that occurred during such period. If the signer does, the certificate shall describe the Default, its status and the action the DIP Issuers are taking or propose to take with respect thereto.

(b) The DIP Issuers shall, so long as any DIP Notes are outstanding, deliver to the DIP Trustee and the Collateral Agent, within one Business Day after any Default or Event of Default, an Officer's Certificate specifying such Default or Event of Default and what action the DIP Issuers are taking or propose to take with respect thereto.

(c) Together with the delivery of each officer's certificate delivered pursuant to Section 4.09(a) hereof, the DIP Issuers shall deliver to the Collateral Agent a Perfection Certificate Supplement (as defined in the Security Agreement), either confirming that there has been no change in the information contained in the Perfection Certificate (as defined in the Security Agreement) delivered on the Initial Issue Date, or the date on which the most recent Perfection Certificate Supplement was delivered to the Collateral Agent, or identifying changes to such information previously disclosed.

SECTION 4.10. Further Instruments and Acts. Upon request of the DIP Trustee, the DIP Issuers shall execute and deliver such further instruments and do such further acts as may be reasonably necessary or proper to carry out more effectively the purpose of this DIP Indenture.

SECTION 4.11. [Reserved]

SECTION 4.12. Liens. The DIP Issuers shall not, and shall not permit any Restricted Subsidiary to, directly or indirectly, create, incur, assume or suffer to exist any Lien (except Permitted Liens) that secures obligations under any Indebtedness or any related guarantee, on any asset or property of the DIP Issuers or any Restricted Subsidiary, or any income or profits therefrom, or assign or convey any right to receive income therefrom.

The expansion of Liens by virtue of accrual of interest, the accretion of accreted value, amortization of original issue discount and increases in the amount of Indebtedness outstanding solely as a result of fluctuations in the exchange rate of currencies will not be deemed to be an incurrence of Liens for purposes of this Section 4.12.

SECTION 4.13. Maintenance of Office or Agency.

(a) The DIP Issuers shall maintain an office or agency (which may be an office of the DIP Trustee or an affiliate of the DIP Trustee or Registrar) where DIP Notes may be surrendered for registration of transfer or for exchange and where notices and demands to or upon the DIP Issuers in respect of the DIP Notes and this DIP Indenture may be served. The DIP Issuers shall give prompt written notice to the DIP Trustee of the location, and any change in the location, of such office or agency. If at any time the DIP Issuers shall fail to maintain any such required office or agency or shall fail to furnish the DIP Trustee with the address thereof, such presentations, surrenders, notices and demands may be made or served at the corporate trust office of the DIP Trustee as set forth in Section 12.01; *provided* that no service of legal process may be made against the DIP Issuers at any office of the DIP Trustee.

(b) The DIP Issuers may also from time to time designate one or more other offices or agencies where the DIP Notes may be presented or surrendered for any or all such purposes and may from time to time rescind such designations; *provided, however*, that no such designation or rescission shall in any manner relieve the DIP Issuers of their obligation to maintain an office or agency for such purposes. The DIP Issuers shall give prompt written notice to the DIP Trustee of any such designation or rescission and of any change in the location of any such other office or agency.

(c) The DIP Issuers hereby designate the corporate trust office of the DIP Trustee or its agent as such office or agency of the DIP Issuers in accordance with Section 2.04.

SECTION 4.14. Minimum Liquidity. The DIP Issuers shall at all times maintain Unrestricted Cash on a consolidated basis of not less than U.S. \$1.0 million. The DIP Issuers shall deliver to the DIP Trustee not later than the applicable dates on which financial statements of the DIP Issuers relating to such period are due in accordance with this DIP Indenture an Officer's Certificate confirming compliance with this Section 4.14. The DIP Issuers shall deliver to the DIP Trustee and the Collateral

Agent, within five Business Days after any Default in compliance with this Section 4.14, an Officer's Certificate specifying such Default and what action the DIP Issuers are taking or propose to take with respect thereto. The DIP Trustee shall send to each Holder notice of such Default within five Business Days of the DIP Trustee's receipt of such written notice.

SECTION 4.15. Intra-Company Agreements. The Intra-Company Agreements shall not be amended, modified or otherwise changed, or the rights of the DIP Issuers or the obligations of the counterparties thereto waived, in each case, in any manner that is adverse in any material respect to the DIP Issuers or the Holders.

SECTION 4.16. Use of Proceeds. Subject to the following sentence, the proceeds of the DIP Notes shall be applied in accordance with the Approved Budget (subject to Permitted Variances) and the terms of the Bankruptcy Court DIP Order and the DIP Documents. No part of the Cash Collateral of the DIP Issuers or the DIP Guarantors, the proceeds of the DIP Notes, the DIP Collateral or the Carve-Out will be used, whether directly or indirectly:

(a) for any purpose that is prohibited under the Bankruptcy Code or the Bankruptcy Court DIP Orders;

(b) to finance or reimburse for expenses incurred or to be incurred, in both instances, directly or indirectly and in any way: (i) any adversary action, suit, arbitration, proceeding, application, motion or other litigation of any type adverse to the interests of any or all of the DIP Secured Parties or their respective rights and remedies under the DIP Documents or the Bankruptcy Court DIP Orders or, subject to the Bankruptcy Court DIP Orders, the Prepetition 1L Secured Parties or the Prepetition 2L Secured Parties, or (ii) any other action which with the giving of notice or passing of time would result in an Event of Default under the DIP Documents;

(c) for the payment of fees, expenses, interest, or principal under the Prepetition Secured Obligations (other than adequate protection and other payments permitted under the Bankruptcy Court DIP Orders);

(d) to make any distributions under a Plan of Reorganization in the Chapter 11 Cases that does not provide for the indefeasible payment of the DIP Notes in full and in cash; and

(e) except as permitted by the Approved Budget (including Permitted Variances) to make any payment in settlement of any claim, action or proceeding in excess of \$50,000 in the aggregate without the prior written consent of the DIP Trustee, acting at the written direction of the Required DIP Noteholders;

provided that, advisors to any creditor's committee appointed in the Chapter 11 Cases may investigate the liens granted pursuant to, or any claims under or causes of action with respect to, the DIP Documents, Prepetition 1L Obligations or Prepetition 2L Obligations at an aggregate expense for such investigation not to exceed \$100,000, provided that no portion of such amount may be used to prosecute any claims.

Nothing herein shall in any way prejudice or prevent the DIP Trustee or the DIP Noteholders from objecting, for any reason, to any requests, motions, or applications made in the Bankruptcy Court, including any application of final allowances of compensation for services rendered or reimbursement of expenses incurred under Sections 105(a), 330 or 331 of the Bankruptcy Code, by any party in interest (and each such order shall preserve the DIP Trustee's and the DIP Noteholders' right to review and object to any such requests, motions or applications).

SECTION 4.17. Budget and Variance Report. Each Budget shall be prepared in good faith based on assumptions believed by the DIP Notes Parties to be reasonable at the time made and upon information believed by the management of the DIP Issuers to have been accurate based upon the information available to the management of the DIP Issuers at the time such Budget was furnished. On and after the delivery of any Variance Report in accordance with this DIP Indenture, such Variance Report shall be complete and correct and fairly represent in all material respects the results of operations of the DIP Notes Parties and their Subsidiaries, on a consolidated basis, for the period covered thereby and in the detail to be covered thereby.

SECTION 4.18. Limitation on Anagram LLC Activities. Anagram LLC shall not (a) incur, directly or indirectly, any Indebtedness other than (i) the DIP Notes or (ii) other Indebtedness permitted under this DIP Indenture; (b) create or suffer to exist any Lien upon any property or assets now owned or hereafter acquired by it other than (i) the Liens created in connection with the issuance of the DIP Notes or the DIP Documents or (ii) Permitted Liens on the DIP Collateral; (c) engage in any business activity or own any material assets other than (i) holding 100.0% of the Capital Stock of the Company and, indirectly, any other Subsidiary of the Company, (ii) performing its DIP Obligations under this DIP Indenture, the Prepetition 1L Notes Documents, the Prepetition 2L Notes Documents and the Prepetition Debt Documents and other Indebtedness, Liens and Guarantees permitted hereunder, (iii) such activities necessary to maintain its corporate existence, and (iv) activities incidental to the foregoing clauses (c)(i) through (c)(iv); (d) form, acquire or own any Subsidiary (other than Anagram International or Anagram International Holdings, Inc.) or own any Equity Interests in any other entity, or make any Investment in any Person, other than Equity Interests and Investments existing on the Initial Issue Date and listed on Schedule 2 hereto; or (e) fail to hold itself out to the public as a legal entity separate and distinct from all other Persons.

SECTION 4.19. Further Assurances. Promptly upon reasonable request by the DIP Trustee or the Collateral Agent, in each case, at the written direction of the Required DIP Noteholders, (a) correct any material defect or error that may be discovered in the execution, acknowledgment, filing or recordation of any DIP Collateral Document or other document or instrument relating to any DIP Collateral, and (b) do, execute, acknowledge, deliver, record, re-record, file, re-file, register and re-register any and all such further acts, deeds, certificates, assurances and other instruments as the DIP Trustee may reasonably request from time to time in order to carry out more effectively the purposes of the DIP Collateral Documents, to the extent required pursuant to the DIP Collateral and Guarantee Requirement.

SECTION 4.20. Burdensome Agreements; Prepayments of Indebtedness.

(a) The DIP Issuers shall not, and shall not permit any Subsidiary to, (i) make any payment of principal or interest or otherwise on account of any Prepetition Secured Obligations or payables under the Prepetition Debt Documents other than (A) payments made in compliance in all material respects with the Approved Budget (subject to Permitted Variances), (B) payments agreed to in writing by the Required DIP Noteholders, (C) payments approved by the Bankruptcy Court DIP Order or, if necessary, authorized by the Bankruptcy Court (including any adequate protection payment) or (ii) amend or modify the terms of the Prepetition Debt Documents in a manner that is materially adverse to the DIP Trustee or the other DIP Secured Parties or their rights and remedies under the DIP Documents (including any such amendment or modification that would have a material and adverse impact on any material portion of the DIP Collateral) except as authorized by the Bankruptcy Court DIP Order; or

(b) Neither shall the DIP Issuers, nor shall the DIP Issuers permit any of their Subsidiaries to, permit any Subsidiary to enter into any agreement or instrument that by its terms restricts

the granting of Liens by such Subsidiary pursuant to the DIP Collateral Documents, in each case other than those arising under any DIP Document, except, in each case, restrictions existing by reason of:

- (i) restrictions imposed by applicable Law;
- (ii) [Reserved];
- (iii) customary provisions in joint venture agreements and other similar agreements applicable to joint ventures entered into in the ordinary course of business;
- (iv) any restrictions imposed by any agreement relating to secured Indebtedness permitted by this DIP Indenture to the extent that such restrictions apply only to the property or assets securing such Indebtedness;
- (v) customary provisions contained in leases or licenses of intellectual property and other similar agreements entered into in the ordinary course of business;
- (vi) customary provisions restricting subletting or assignment of any lease governing a leasehold interest;
- (vii) customary provisions restricting assignment of any agreement entered into in the ordinary course of business; or
- (viii) customary restrictions and conditions contained in any agreement relating to the sale of any asset permitted under Section 6.05 pending the consummation of such sale.

SECTION 4.21. Chapter 11 Modifications. Except as permitted pursuant to the terms of this DIP Indenture and the Bankruptcy Court DIP Order or otherwise consented to by the Required DIP Noteholders and the DIP Trustee at the direction of the Required DIP Noteholders, the DIP Issuers shall not, and shall not permit any of their Subsidiaries to:

- (a) make or permit to be made any change, amendment or modification, or any application or motion for any change, amendment or modification, to the Bankruptcy Court DIP Order;
- (b) incur, create, assume or suffer to exist or permit any other superpriority claim which is pari passu with or senior to the DIP Superpriority Claims of the DIP Trustee, the Collateral Agent and the DIP Noteholders hereunder, except for the Carve-Out; or
- (c) assert any right of subrogation or contribution against any other DIP Notes Party.

SECTION 4.22. Covenant to Guarantee DIP Obligations and Give Security. At the DIP Issuers' expense, subject to the provisions of the DIP Collateral and Guarantee Requirement and any applicable limitation in any DIP Collateral Document, the DIP Issuers shall take all action necessary or reasonably requested by the DIP Trustee or the Collateral Agent to ensure that the DIP Collateral and Guarantee Requirement continues to be satisfied, including upon the formation or acquisition of any new direct or indirect wholly owned Subsidiary by any DIP Notes Party, ensuring that such Subsidiary become a DIP Guarantor under the DIP Collateral and Guarantee Requirement.

SECTION 4.23. Other Covenants.

(a) Each DIP Notes Party shall comply in all respects with each order entered by the Bankruptcy Court in the Chapter 11 Cases.

(b) Absent the consent of the Required DIP Noteholders, the DIP Issuers shall not, and shall not permit any Restricted Subsidiary to, (i) assume or reject any executory contract or unexpired lease or (ii) consent to the termination or modification of the exclusive right of any DIP Notes Party to file a Chapter 11 plan pursuant to Section 1121 of the Bankruptcy Code.

(c) The DIP Notes Parties shall not, and shall cause their Subsidiaries not to, amend, modify or waive any of its rights under its certificate of incorporation, by-laws, operating, management or partnership agreement or other Organizational Documents to the extent any such amendment, modification or waiver would be adverse to the DIP Noteholders except as required by the Bankruptcy Code; provided that immaterial amendments, including amendments of an administrative, ministerial or technical nature, which are not adverse to the DIP Noteholders may be made.

(d) The DIP Notes Parties shall not file a motion seeking an order (i) approving payment of any prepetition claim other than (x) as provided for in the “first day” or “second day” orders, (y) contemplated by the Approved Budget (including Permitted Variances), or (z) otherwise consented to by the Required DIP Noteholders in writing, (ii) granting relief from the automatic stay under Section 362 of the Bankruptcy Code to any holder of any security interest to permit foreclosure on any assets having a book value in excess of \$50,000 in the aggregate, or (iii) except with respect to the Debtors’ stipulations as provided in the Bankruptcy Court DIP Order, approving any settlement or other stipulation in excess of \$50,000 in the aggregate not approved by the Required DIP Noteholders and not included in the Approved Budget with any secured creditor of any DIP Notes Party providing for payments as adequate protection or otherwise to such secured creditor.

(e) To the extent reasonably practicable, at least one (1) calendar day prior to issuance thereof (or such later time in light of exigent circumstances), the DIP Issuers shall provide the DIP Trustee and the DIP Noteholders drafts of any press releases or other public statements regarding the DIP Notes, the Chapter 11 Cases, or the Debtors’ businesses, which press releases or public statements, as the case may be, shall be revised by the DIP Issuers acting in good faith, to include all reasonable comments of the DIP Noteholders prior to release thereof.

SECTION 4.24. Consultants. With respect to the Consultants:

(a) Each Consultant shall (x) have full access to the DIP Notes Parties’ information and employees, including management, and (y) be included in discussions and consulted on all management decisions with respect to any material operational matters of the DIP Notes Parties; and

(b) the DIP Notes Parties will not (x) hire or terminate any members of the executive team, or (y) enter into any contract, agreement or commitment for aggregate liability for the DIP Notes Parties in excess of \$500,000, which has a term in excess of six months, in each case, without prior consultation of the Consultants.

ARTICLE 5

MERGER

SECTION 5.01. Merger, Consolidation or Sale of All or Substantially All Assets.

(a) The DIP Issuers shall not consolidate or merge with or into or wind up into (whether or not the DIP Issuers are the surviving corporations), or sell, assign, transfer, lease, convey or otherwise dispose of all or substantially all of their properties or assets, in one or more related transactions, to any Person without the consent of the Required DIP Noteholders, except the Approved Sale.

(b) No DIP Guarantor shall, and the DIP Issuers shall not permit any DIP Guarantor to, consolidate or merge with or into or wind up into (whether or not the DIP Issuers or DIP Guarantor is the surviving corporation), or sell, assign, transfer, lease, convey or otherwise dispose of all or substantially all of their properties or assets in one or more related transactions to, any Person unless:

(i) (A) such DIP Guarantor is the surviving Person or the Person formed by or surviving any such consolidation or merger (if other than such DIP Guarantor) or to which such sale, assignment, transfer, lease, conveyance or other disposition shall have been made is a corporation, partnership or limited liability company organized or existing under the laws of the jurisdiction of organization of such DIP Guarantor, as the case may be, or the laws of the United States, any state thereof, the District of Columbia or any territory thereof (such DIP Guarantor or such Person, as the case may be, being herein called the “Successor Person”), (B) the Successor Person (if other than such DIP Guarantor) expressly assumes all the obligations of such DIP Guarantor under this DIP Indenture and such DIP Guarantor’s DIP Guarantee pursuant to a supplemental indenture or other documents or instruments, (C) both immediately before and immediately after such transaction, no Default exists, and (D) the Successor Person shall have delivered to the DIP Trustee an Officer’s Certificate and an Opinion of Counsel, each stating that such consolidation, merger or transfer and such supplemental indentures, if any, comply with this DIP Indenture;

(ii) the Successor Person, if other than such DIP Guarantor, executes and delivers to the Collateral Agent a Grantor Supplement pursuant to which such Successor Person shall be subject to the terms of the applicable DIP Security Documents, and concurrently with the execution and delivery of such Grantor Supplement, the DIP Issuers shall deliver to the DIP Trustee an Opinion of Counsel and an Officer’s Certificate to the effect that such Grantor Supplement has been duly authorized, executed and delivered by such Successor Person and that, subject to the application of bankruptcy, insolvency, moratorium, fraudulent conveyance or transfer and other similar laws relating to creditors’ rights generally and to the principles of equity, whether considered in a proceeding at law or in equity, the security interest of such Successor Person is a valid and binding obligation of such Successor Person, enforceable against such Successor Person in accordance with its terms and/or to such other matters as the DIP Trustee may reasonably request; or

(iii) the transaction is otherwise permitted by this DIP Indenture, including any transaction consummated in compliance with clauses (i) and (ii) of Section 4.06(a) hereof.

Except as otherwise provided in this DIP Indenture, the Successor Person (if other than such DIP Guarantor) (x) will succeed to, and be substituted for, such DIP Guarantor under this DIP Indenture and such DIP Guarantor’s DIP Guarantee, and upon the satisfaction by the Successor Person of its obligations under clause (y) below such DIP Guarantor will automatically be released and discharged from its obligations under this DIP Indenture and such DIP Guarantor’s DIP Guarantee and (y) execute and deliver to the Collateral Agent a supplemental indenture in the form of Exhibit C pursuant to which such Successor Person shall guarantee the DIP Obligations, and concurrently with the execution and delivery of such supplemental indenture, the DIP Issuers shall deliver to the DIP Trustee an Opinion of Counsel in form and substance reasonably satisfactory to the DIP Trustee and an Officer’s Certificate to the effect that

such supplemental indenture has been duly authorized, executed and delivered by such Successor Person and/or to such other matters as the DIP Trustee may reasonably request. Notwithstanding the foregoing, a DIP Guarantor may consolidate with or merge with or into or wind up into or sell, assign, transfer, lease, convey or otherwise dispose of all or part of its properties and assets to another Guarantor or the DIP Issuers.

SECTION 5.02. Successor Corporation Substituted. Upon any consolidation or merger, or any sale, assignment, transfer, lease, conveyance or other disposition of all or substantially all of the assets of the DIP Issuers in accordance with Section 5.01 hereof, the successor corporation formed by such consolidation or into or with which the DIP Issuers are merged or to which such sale, assignment, transfer, lease, conveyance or other disposition is made shall succeed to, and be substituted for (so that from and after the date of such consolidation, merger, sale, lease, conveyance or other disposition, the provisions of this DIP Indenture referring to the DIP Issuers shall refer instead to the successor corporation and not to the DIP Issuers), and may exercise every right and power of the DIP Issuers under this DIP Indenture with the same effect as if such Successor Person had been named as the DIP Issuers herein; *provided* that the predecessor DIP Issuers shall not be relieved from the obligation to pay the principal of and interest on the Securities except in the case of a sale, assignment, transfer, lease, conveyance or other disposition of all of the DIP Issuers' assets that meets the requirements of Section 5.01 hereof.

ARTICLE 6

DEFAULTS AND REMEDIES

SECTION 6.01. Events of Default. An “Event of Default” with respect to the DIP Notes (including any Additional DIP Notes) occurs if:

- (a) there is a default in payment when due and payable, upon redemption, acceleration or otherwise, of principal of, or premium, if any, on the DIP Notes;
- (b) there is a default for 5 days or more in the payment when due of interest on or with respect to the DIP Notes;
- (c) failure by the DIP Issuers to comply with Section 5.01, or to redeem the DIP Notes, if required, upon an Asset Sale;
- (d) any DIP Issuer or any DIP Guarantor fails for 5 Business Days after receipt of written notice given by the DIP Trustee or the Holders of not less than 25% in principal amount of the DIP Notes (with a copy to the DIP Trustee) to comply with any of its obligations, covenants or agreements (other than a default referred to in clauses (a), (b), (c), (k), (l) and (m) of this Section 6.01) contained in this DIP Indenture, the DIP Notes or the DIP Security Documents;
- (e) there occurs any Change of Control;
- (f) the DIP Issuers or any Subsidiary, or any group of Restricted Subsidiaries that, taken together (as of the latest audited consolidated financial statements for the DIP Issuers), would constitute a Significant Subsidiary, fails to pay final judgments aggregating in excess of \$1.0 million (net of amounts covered by insurance policies issued by insurance companies), which final judgments remain unpaid, undischarged, unwaived and unstayed for a period of more than 60 days after such judgment becomes final, and in the event such judgment is covered by insurance, an enforcement proceeding has been commenced by any creditor upon such judgment or decree which is not promptly stayed;

(g) [Reserved];

(h) [Reserved];

(i) the DIP Guarantee of any Subsidiary, or any group of Restricted Subsidiaries that, taken together (as of the latest audited consolidated financial statements for the DIP Issuers), would constitute a Significant Subsidiary, shall for any reason cease to be in full force and effect (except as contemplated by the terms thereof) or any Responsible Officer of the DIP Guarantor that is a Significant Subsidiary, or any group of Restricted Subsidiaries that, taken together (as of the latest audited consolidated financial statements for the DIP Issuers), would constitute a Significant Subsidiary, as the case may be, denies that it has any further liability under its or their DIP Guarantee(s) or gives notice to such effect, other than by reason of the termination of this DIP Indenture or the release of any the DIP Guarantee in accordance with this DIP Indenture;

(j) except (a) as expressly permitted by this DIP Indenture and the applicable DIP Security Documents, (b) upon the Termination Date (as defined in the DIP Security Agreement) or the release of any such security interest in accordance with the terms of this DIP Indenture and the applicable DIP Security Documents, (c) to the extent that any loss of perfection or priority results from the failure of the Collateral Agent to maintain possession of certificates actually delivered to it representing securities pledged under the DIP Security Documents or to authorize any DIP Guarantor or the DIP Issuers to file Uniform Commercial Code amendments relating to any DIP Guarantor's or the DIP Issuers' change of name or jurisdiction of formation after the Collateral Agent having received prior written notice by the DIP Issuers of the same and (d) in accordance with the applicable DIP Security Document, if any material provision of the DIP Security Documents or the DIP Guarantee shall for any reason cease to be in full force and effect and such default continues for 30 days or the DIP Issuers shall so assert, or any security interest created, or purported to be created, by any of the DIP Security Documents shall cease to be enforceable with respect to any material portion of the DIP Collateral covered or purported to be covered thereby and such default continues for 30 days;

(k) there is a Default for four Business Days or more by the DIP Issuers in compliance with their obligations under Section 4.14;

(l) failure by the DIP Notes Parties to comply with Section 4.24 or the termination of one or both Consultants without the prior written consent of the Required DIP Noteholders;

(m) failure by the DIP Issuers to comply with Section 4.15;

(n) any DIP Notes Party shall file a motion in the Chapter 11 Cases without the express written consent of Required DIP Noteholders, to obtain additional financing from a party other than DIP Noteholders under Section 364(d) of the Bankruptcy Code that (i) is not permitted under Section 4.03 or (ii) does not provide for the payment of the DIP Obligations in full and in cash upon the incurrence of such additional financing;

(o) any DIP Notes Party shall file a motion seeking an order (i) approving payment of any prepetition claim other than (x) as provided for in the "first day" or "second day" orders, (y) contemplated by the Approved Budget (including Permitted Variances), or (z) otherwise consented to by the Required DIP Noteholders in writing, (ii) granting relief from the automatic stay under Section 362 of the Bankruptcy Code to any holder of any security interest to permit foreclosure on any assets having a book value in excess of \$50,000 in the aggregate, or (iii) except with respect to the Prepetition Secured Obligations as provided in the Bankruptcy Court DIP Order, approving any settlement or other stipulation not approved by the Required DIP Noteholders or not included in the Approved Budget with any secured

creditor of any DIP Notes Party providing for payments as adequate protection or otherwise to such secured creditor;

(p) an order is entered in any of the Chapter 11 Cases appointing, or any DIP Notes Party, or any Subsidiary of a DIP Notes Party shall file an application for an order seeking the appointment of, (i) a trustee under Section 1104, or (ii) an examiner with enlarged powers relating to the operation of the DIP Notes Parties' business (powers beyond those set forth in Section 1106(a)(3) and (4) of the Bankruptcy Code) under Section 1106(b) of the Bankruptcy Code;

(q) an order shall be entered by the Bankruptcy Court dismissing any of the Chapter 11 Cases or converting any of the Chapter 11 Cases to a case under Chapter 7 of the Bankruptcy Code, in each case, which does not contain a provision for termination of all commitments of the DIP Noteholders under the DIP Note Purchase Agreement, and payment in full in cash of all DIP Notes (including any Additional DIP Notes) (other than contingent indemnification obligations as to which no claim has been asserted) of the DIP Notes Parties hereunder and under the other DIP Documents upon entry thereof;

(r) an order is entered by the Bankruptcy Court in any of the Chapter 11 Cases without the express prior written consent of the Required DIP Noteholders and, with respect to any provisions that affect the rights and duties of the DIP Trustee, the DIP Trustee, (i) to revoke, reverse, stay, modify, supplement or amend the Bankruptcy Court DIP Order in a manner that is inconsistent with this DIP Indenture or (ii) to permit any administrative expense or any claim (now existing or hereafter arising, of any kind or nature whatsoever), in each case other than as set forth in the Bankruptcy Court DIP Order, to have administrative priority as to the DIP Notes Parties equal or superior to the priority of the DIP Superpriority Claim shall be entered by the Bankruptcy Court;

(s) any DIP Notes Party violates any term, provision or condition in the Interim DIP Order or Final DIP Order, as applicable, provided that in the event such violation is immaterial and such violation has been cured within three Business Days after receipt by the DIP Issuers of written notice thereof from the DIP Trustee at the direction of the Required DIP Noteholders, such violation shall not constitute an Event of Default;

(t) an application for any of the orders described in clauses 6.01 (o), (p), (q) and (r) shall be made by a Person other than the DIP Notes Parties and such application is not contested by the DIP Notes Parties in good faith and such Person actually obtains entry of a final, nonappealable, order under Section 506(c) of the Bankruptcy Code against the DIP Trustee or the Collateral Agent or obtains a final, nonappealable, order materially adverse to the DIP Trustee, the Collateral Agent or the DIP Noteholders or any of their respective rights and remedies under the DIP Documents or in the DIP Collateral;

(u) the entry of an order by the Bankruptcy Court terminating or modifying the exclusive right of any DIP Notes Party to file a Chapter 11 plan pursuant to Section 1121 of the Bankruptcy Code, without the prior written consent of the Required DIP Noteholders;

(v) (i) any DIP Notes Party shall attempt to invalidate, reduce or otherwise impair the Liens or security interests of the Collateral Agent, the DIP Trustee and/or the DIP Noteholders, claims or rights against such Person or to subject any DIP Collateral to assessment pursuant to Section 506(c) of the Bankruptcy Code, (ii) the Lien or security interest created by DIP Collateral Documents or the Bankruptcy Court DIP Orders with respect to the DIP Collateral shall, for any reason, on and after the entry of the Bankruptcy Court DIP Order, cease to be valid or (iii) any action is commenced by the DIP Notes Parties which contests the validity, perfection or enforceability of any of the Liens and security interests of the Collateral Agent, the DIP Trustee and/or the DIP Noteholders created by any of the Bankruptcy Court DIP Order, this DIP Indenture, or any DIP Collateral Document;

(w) any DIP Notes Party shall seek to, or shall support (in any such case by way of any motion or other pleading filed with the Bankruptcy Court or any other writing to another party-in-interest executed by or on behalf of such DIP Notes Party) any other Person's motion to, disallow in whole or in part the DIP Noteholders' claim in respect of the DIP Obligations or contest any material provision of any DIP Document or any material provision of any DIP Document shall cease to be effective (other than in accordance with its terms);

(x) any Plan of Reorganization or confirmation order is withdrawn, amended, supplemented or otherwise modified, pursuant to a pleading filed with the Bankruptcy Court that is not withdrawn within three Business Days, in a manner that materially adversely affects the rights and duties of the DIP Noteholders, the Collateral Agent and/or the DIP Trustee without the prior written consent of the Required DIP Noteholders, the Collateral Agent or the DIP Trustee, as applicable;

(y) the Bankruptcy Court denies confirmation of a Plan of Reorganization supported by the DIP Noteholders, provided, that if the DIP Notes Parties subsequently obtain an order of the Bankruptcy Court approving a plan of reorganization that either (i) proposes to repay all outstanding DIP Obligations in full, in cash, immediately upon the effectiveness thereof or (ii) otherwise is approved by the Required DIP Noteholders, an Event of Default shall not occur;

(z) the failure of the DIP Issuers or the Bankruptcy Court to timely satisfy any of the milestones on or before the following dates (or any later date approved by the Required DIP Noteholders in their sole discretion):

(i) no later than one (1) Business Day after the Petition Date, the Debtors shall have filed a motion to approve the bidding procedures with respect to a sale of their assets;

(ii) no later than four Business Days after the Petition Date, the Bankruptcy Court shall have entered the Interim DIP Order;

(iii) no later than 21 calendar days after the Petition Date, the Bankruptcy Court shall have entered an order, in form and substance satisfactory to the Required DIP Noteholders, approving the Debtors' bid procedures;

(iv) no later than 35 calendar days after the Petition Date, the Bankruptcy Court shall have entered the Final DIP Order;

(v) no later than January 15, 2024, the Bankruptcy Court shall have entered an order in form and substance satisfactory to the Required DIP Noteholders (i) approving the sale of the Debtors' assets and (ii) approving the sale of the Debtors' assets which provides for the payment in full of the DIP Obligations or which is the Stalking Horse Bid (the "Approved Sale"); and

(vi) no later than January 28, 2024, the sale of the Debtors' assets shall have been consummated.

(aa) there occurs any Budget Event;

(bb) the proceeds of any DIP Notes shall have been expended in a manner not in accordance with the Approved Budget (subject to Permitted Variances);

(cc) any DIP Collateral Document with respect to a material portion of the DIP Collateral for any reason (other than pursuant to the terms hereof or thereof including as a result of a transaction not prohibited under this DIP Indenture) ceases to create, a valid and perfected Lien with the priority required by the Bankruptcy Court DIP Order or the DIP Documents on and security interest in any material portion of the DIP Collateral purported to be covered thereby, subject to Liens permitted under Section 4.12, except to the extent that (i) any such perfection or priority is not required pursuant to the DIP Collateral and Guarantee Requirement or (ii) the loss thereof results from the failure of the DIP Trustee or the Collateral Agent to (a) maintain possession of DIP Collateral actually delivered to it and pledged under the DIP Collateral Documents or (b) file Uniform Commercial Code amendments relating to a DIP Notes Party's change of name or jurisdiction of formation (but solely to the extent that the DIP Issuers have timely provided the Collateral Agent written notice of such change of name or jurisdiction of formation thereof in accordance with the DIP Documents, and the Collateral Agent notifies the DIP Issuers that it will be responsible for filing such amendments) and continuation statements or to take any other action within its sole control with respect to the DIP Collateral and except as to DIP Collateral consisting of real property, to the extent that such losses are covered by a lender's title insurance policy and such insurer has not denied coverage;

(dd) a Material Adverse Effect arises due to restrictions on the ability of any of the DIP Notes Parties to access any material manufacturing facilities used in its business as of the DIP Order Entry Date and such restriction continues for 5 Business Days;

(ee) the Bankruptcy Court DIP Order is amended, supplemented, reversed, vacated, or otherwise modified without the prior written consent of the Required DIP Noteholders (and with respect to amendments, modifications or supplements that affect the rights or duties of the DIP Trustee, the DIP Trustee); or

(ff) except for the Approved Sale, the DIP Issuers attempts to consummate a sale of substantially all of its assets via a plan of reorganization or a 363 sale without consent of the Required DIP Noteholders.

In the event of any Event of Default specified in clause (d) above, such Event of Default and all consequences thereof (excluding any resulting payment default), other than as a result of acceleration of the DIP Notes (including any Additional DIP Notes) shall be annulled, waived and rescinded, automatically and without any action by the DIP Trustee or the Holders, if within 30 days after such Event of Default arose:

(i) the Indebtedness or guarantee that is the basis for such Event of Default has been discharged; or

(ii) the requisite number of holders thereof have rescinded or waived the acceleration, notice or action (as the case may be) giving rise to such Event of Default; or

(iii) the default that is the basis for such Event of Default has been cured, waived or is no longer continuing.

SECTION 6.02. Acceleration. If any Event of Default occurs and is continuing under this DIP Indenture, the DIP Trustee, at the written direction of the Required DIP Noteholders, or the Holders of at least 25% in principal amount of the then total outstanding DIP Notes by notice to the DIP Issuers (with a copy to the DIP Trustee if from the Holders) may declare, without duplication, the principal, premium, if any, and accrued but unpaid interest and any other monetary obligations on all

the then outstanding DIP Notes to be due and payable in cash immediately. Upon the effectiveness of such declaration, such principal and interest shall be due and payable in cash immediately.

The Holders of a majority in aggregate principal amount of the then outstanding DIP Notes by written notice to the DIP Trustee (with a copy to the DIP Issuers; *provided* that any rescission under this Section 6.02 shall be valid and binding notwithstanding the failure to provide a copy of such notice to the DIP Issuers) may on behalf of all of the Holders rescind an acceleration and its consequences:

- (a) if the rescission would not conflict with any judgment or decree;
- (b) if all existing Events of Default have been cured, waived, annulled or rescinded except nonpayment of principal or interest that has become due solely because of the acceleration;
- (c) to the extent the payment of such interest is lawful, interest on overdue installments of interest and overdue principal, which has become due otherwise than by such declaration of acceleration, has been paid; and
- (d) if the DIP Issuers have paid the DIP Trustee its reasonable compensation and reimbursed the DIP Trustee for its expenses, disbursements and advances.

SECTION 6.03. Other Remedies. If an Event of Default with respect to the DIP Notes occurs and is continuing, the DIP Trustee, at the written direction of the Required DIP Noteholders, may pursue any available remedy at law or in equity to collect the payment of principal of, premium, if any, or interest on the Securities or to enforce the performance of any provision of the DIP Notes or this DIP Indenture.

The DIP Trustee, at the written direction of Required DIP Noteholders, may maintain a proceeding even if it does not possess any of the DIP Notes or does not produce any of them in the proceeding. A delay or omission by the DIP Trustee or any Holder in exercising any right or remedy accruing upon an Event of Default shall not impair the right or remedy or constitute a waiver of or acquiescence in the Event of Default. No remedy is exclusive of any other remedy. To the extent permitted by law, all available remedies are cumulative.

SECTION 6.04. Waiver of Past Defaults. The Holders of not less than a majority in principal amount of the then outstanding DIP Notes by written notice to the DIP Trustee (with a copy to the DIP Issuers; *provided* that any waiver under this Section 6.04 shall be valid and binding notwithstanding the failure to provide a copy of such notice to the DIP Issuers) may on the behalf of all Holders waive an existing Default or Event of Default and its consequences, other than (a) a Default or Event of Default in the payment of the principal of, or premium, if any, or interest on, any DIP Notes, (b) [Reserved], or (c) any Default or Event of Default in respect of any provision of this DIP Indenture or the Securities which, under Section 9.02, cannot be modified or amended without the consent of the Holder of each outstanding Security affected. When a Default or Event of Default is so waived, it is deemed cured and the DIP Issuers, the DIP Trustee and the Holders will be restored to their former positions and rights under this DIP Indenture, but no such waiver shall extend to any subsequent or other Default or impair any consequent right.

SECTION 6.05. Control by Majority. The Holders of a majority in principal amount of the then outstanding DIP Notes may direct the time, method and place of conducting any proceeding for any remedy available to the DIP Trustee or of exercising any trust or power conferred on the DIP Trustee. However, the DIP Trustee may refuse to follow any direction that conflicts with law or

this DIP Indenture or, subject to Section 7.01, that the DIP Trustee determines is unduly prejudicial to the rights of any other Holder (it being understood that the DIP Trustee does not have an affirmative duty to ascertain whether or not such directions are unduly prejudicial to such Holder) or that would involve the DIP Trustee in personal liability. Prior to taking any action under this DIP Indenture, the DIP Trustee shall be entitled to indemnification satisfactory to it in its sole discretion against all losses and expenses caused by taking or not taking such action.

SECTION 6.06. Limitation on Suits.

(a) Except to enforce the right to receive payment of principal, premium (if any) or interest when due, no Holder may pursue any remedy with respect to this DIP Indenture or the DIP Notes unless:

(i) Such Holder has previously given the DIP Trustee written notice that an Event of Default is continuing;

(ii) Holders of at least 25% in principal amount of the total outstanding Securities have requested the DIP Trustee, in writing, to pursue the remedy;

(iii) Holders of the DIP Notes have offered the DIP Trustee security or indemnity satisfactory to the DIP Trustee in the DIP Trustee's reasonable discretion against any loss, liability or expense;

(iv) the DIP Trustee has not complied with such request within 60 days after the receipt thereof and the offer of security or indemnity; and

(v) Holders of a majority in principal amount of the total outstanding Securities have not given the DIP Trustee a written direction inconsistent with such request within such 60-day period.

(b) A Holder may not use this DIP Indenture to prejudice the rights of another Holder or to obtain a preference or priority over another Holder (it being understood that the DIP Trustee does not have an affirmative duty to ascertain whether or not such actions or forbearances are unduly prejudicial to such Holders).

SECTION 6.07. Rights of the Holders to Receive Payment. Notwithstanding any other provision of this DIP Indenture, the right of any Holder to receive payment of principal of, premium, if any, and interest on the DIP Notes held by such Holder, on or after the respective due dates expressed or provided for in the DIP Notes, or to bring suit for the enforcement of any such payment on or after such respective dates, shall be absolute and unconditional and such right shall not be impaired or affected without the consent of such Holder.

SECTION 6.08. Collection Suit by DIP Trustee. If an Event of Default specified in Section 6.01(a), (b) or (c) occurs and is continuing with respect to DIP Notes, the DIP Trustee may, at the direction of the Required DIP Noteholders, recover judgment in its own name and as trustee of an express trust against the DIP Issuers or any other obligor on the DIP Notes for the whole amount then due and owing (together with interest on overdue principal and (to the extent lawful) on any unpaid interest at the rate provided for in such DIP Notes) and the amounts provided for in Section 7.06.

SECTION 6.09. DIP Trustee May File Proofs of Claim. The DIP Trustee may file such proofs of claim and other papers or documents as may be necessary or advisable in order to have the

claims of the DIP Trustee (including any claim for reasonable compensation, expenses disbursements and advances of the DIP Trustee (including counsel, accountants, experts or such other professionals as the DIP Trustee deems necessary, advisable or appropriate)) and, at the written direction of the Required DIP Noteholders, the Holders of DIP Notes then outstanding allowed in any judicial proceedings relative to any DIP Issuer or any DIP Guarantor, its creditors or its property, shall be entitled to participate as a member, voting or otherwise, of any official committee of creditors appointed in such matters and, unless prohibited by law or applicable regulations, may vote on behalf of the Holders in any election of a trustee in bankruptcy or other Person performing similar functions, and any custodian in any such judicial proceeding is hereby authorized by each Holder to make payments to the DIP Trustee and, in the event that the DIP Trustee shall consent to the making of such payments directly to the Holders, to pay to the DIP Trustee any amount due it for the reasonable compensation, expenses, disbursements and advances of the DIP Trustee, its agents and its counsel, and any other amounts due the DIP Trustee under Section 7.06. Nothing in this DIP Indenture will be deemed to empower the DIP Trustee to authorize or consent to, or accept or adopt on behalf of any Holder, any plan of reorganization, arrangement, adjustment or composition affecting the DIP Notes or the rights of any Holder thereof, or to authorize the DIP Trustee to vote in respect of the claim of any Holder in any such proceeding.

SECTION 6.10. Priorities. If the DIP Trustee or the Collateral Agent collects any money or property pursuant to this Article 6, it shall pay out the money or property in the following order:

FIRST: to the DIP Trustee (acting in any capacity hereunder) for amounts due under Section 7.06;

SECOND: to the Holders for amounts due and unpaid on the Securities for principal, premium, if any, and interest, ratably, without preference or priority of any kind, according to the amounts due and payable on the DIP Notes for principal, premium, if any, interest and all other amounts owed to the Holders hereunder; and

THIRD: to the DIP Issuers or to whosoever may be lawfully entitled to receive the same, or as a court of competent jurisdiction may direct.

The DIP Trustee may fix a record date and payment date for any payment to the Holders pursuant to this Section. At least 15 days before such record date, the DIP Trustee shall send to each Holder and the DIP Issuers a notice that states the record date, the payment date and amount to be paid.

SECTION 6.11. Undertaking for Costs. In any suit for the enforcement of any right or remedy under this DIP Indenture or in any suit against the DIP Trustee for any action taken or omitted by it as DIP Trustee, a court in its discretion may require the filing by any party litigant in the suit of an undertaking to pay the costs of the suit, and the court in its discretion may assess reasonable costs, including reasonable attorneys' fees and expenses, against any party litigant in the suit, having due regard to the merits and good faith of the claims or defenses made by the party litigant. This Section does not apply to a suit by the DIP Trustee, a suit by a Holder pursuant to Section 6.07 or a suit by Holders of more than 10% in principal amount of the DIP Notes (including any Additional DIP Notes) then outstanding, and nothing in this Indenture or in the Trust Indenture Act shall be deemed to authorize any court to require such an undertaking or make such assessment in any suit by the DIP Trustee.

SECTION 6.12. Waiver of Stay or Extension Laws. Neither the DIP Issuers nor any DIP Guarantor (to the extent it may lawfully do so) shall at any time insist upon, or plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay or extension law wherever enacted, now or at any time hereafter in force, which may affect the covenants or the performance of this DIP Indenture; and the DIP Issuers and each DIP Guarantor (to the extent that it may lawfully do so) hereby

expressly waive all benefit or advantage of any such law, and shall not hinder, delay or impede the execution of any power herein granted to the DIP Trustee, but shall suffer and permit the execution of every such power as though no such law had been enacted.

ARTICLE 7

TRUSTEE

SECTION 7.01. Duties of DIP Trustee.

(a) If an Event of Default has occurred and is continuing, the DIP Trustee shall exercise the rights and powers vested in it by this DIP Indenture and use the same degree of care and skill in their exercise as a prudent person would exercise or use under the circumstances in the conduct of such person's own affairs (provided that, for the avoidance of doubt, the DIP Trustee may request written direction from the Required DIP Noteholders (or such smaller subset of DIP Noteholders as appropriate under the circumstances, prior to exercising or otherwise taking any right, power, undertaking or obligation of the DIP Trustee under this Indenture, including with respect to exercising any right, power, undertaking or obligation upon an Event of Default)).

(b) Except during the continuance of an Event of Default:

(i) the DIP Trustee undertakes to perform such duties and only such duties as are specifically set forth in this DIP Indenture and no implied covenants or obligations shall be read into this DIP Indenture against the DIP Trustee (it being agreed that the permissive right of the DIP Trustee to do things enumerated in this DIP Indenture shall not be construed as a duty); and

(ii) in the absence of gross negligence, willful misconduct or bad faith on its part (as finally adjudicated in a final, nonappealable order by a court of competent jurisdiction), the DIP Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates or opinions furnished to the DIP Trustee and conforming to the requirements of this DIP Indenture. However, in the case of certificates or opinions required by any provision hereof to be provided to it, the DIP Trustee shall examine the certificates and opinions to determine whether or not they conform to the requirements of this DIP Indenture (but need not confirm or investigate the accuracy of mathematical calculations or other facts stated therein).

(c) The DIP Trustee may not be relieved from liability for its own grossly negligent action (as finally adjudicated in a final, nonappealable order by a court of competent jurisdiction), its own grossly negligent failure to act or its own willful misconduct, except that:

(i) this paragraph does not limit the effect of paragraph (b) of this Section;

(ii) the DIP Trustee shall not be liable for any error of judgment made in good faith by a Trust Officer unless it is proved that the DIP Trustee was grossly negligent in ascertaining the pertinent facts (as finally adjudicated in a final, nonappealable order by a court of competent jurisdiction);

(iii) the DIP Trustee shall not be liable with respect to any action it takes or omits to take in good faith in accordance with a direction received by it pursuant to Section 6.05; and

(iv) no provision of this DIP Indenture, the DIP Notes shall require the DIP Trustee to expend or risk its own funds or otherwise incur financial liability in the performance of any of its duties hereunder or in the exercise of any of its rights, powers or duties unless the DIP Trustee receives adequate indemnity satisfactory to it against such risk or liability.

(d) [Reserved].

(e) The DIP Trustee shall not be liable for interest or investment income on any money received by it except as the DIP Trustee may agree in writing with the DIP Issuers.

(f) Money held in trust by the DIP Trustee need not be segregated from other funds except to the extent required by law.

(g) Every provision of this DIP Indenture relating to the conduct or affecting the liability of or affording protection to the DIP Trustee shall be subject to the provisions of this Section.

(h) Unless otherwise specifically provided in this DIP Indenture, any demand, request, direction or notice from the DIP Issuers will be sufficient if signed by an Officer of each DIP Issuer.

SECTION 7.02. Rights of DIP Trustee.

(a) The DIP Trustee may conclusively rely on any document believed by it to be genuine and to have been signed or presented by the proper person. The DIP Trustee need not investigate any fact or matter stated in the document.

(b) Before the DIP Trustee acts or refrains from acting upon any right, action or obligation under this indenture, it may require an Officer's Certificate or an Opinion of Counsel or both or otherwise require written direction from the Required DIP Noteholders (or such smaller subset of DIP Noteholders as applicable under the circumstances). The DIP Trustee shall not be liable for any action it takes or omits to take in good faith in reliance on the Officer's Certificate or Opinion of Counsel.

(c) The DIP Trustee may act through its attorneys and agents and shall not be responsible for the misconduct or negligence of any attorney or agent appointed with due care.

(d) The DIP Trustee shall not be liable for any action it takes or omits to take in good faith which it believes to be authorized or within its rights or powers conferred upon it by this DIP Indenture; *provided, however*, that the DIP Trustee's conduct does not constitute gross negligence, willful misconduct or bad faith as determined by a nonappealable order of a court of competent jurisdiction.

(e) The DIP Trustee may consult with counsel of its own selection and the advice or opinion of counsel with respect to legal matters relating to this DIP Indenture and the Securities shall be full and complete authorization and protection from liability in respect of any action taken, omitted or suffered by it hereunder in good faith and in accordance with the advice or opinion of such counsel.

(f) The DIP Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order, approval, bond, debenture, note or other paper or document unless requested in writing to do so by the Holders of not less than a majority in principal amount of the Securities at the time outstanding, but the DIP Trustee, in its discretion, may make such further inquiry or investigation into such facts or matters as it may see fit, and, if the DIP Trustee shall determine to make such further inquiry or investigation, it shall

be entitled to examine the books, records and premises of the DIP Issuers, personally or by agent or attorney, at the expense of the DIP Issuers and shall incur no liability of any kind by reason of such inquiry or investigation.

(g) The DIP Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this DIP Indenture at the request or direction of any of the Holders pursuant to this DIP Indenture, unless such Holders shall have offered to the DIP Trustee security or indemnity satisfactory to the DIP Trustee against the costs, expenses and liabilities which might be incurred by it in compliance with such request or direction.

(h) The rights, privileges, protections, immunities and benefits given to the DIP Trustee, including its right to be indemnified and its right to request direction from the Required DIP Noteholders (or such other subset of DIP Noteholders as applicable under the circumstances), are extended to, and shall be enforceable by, the DIP Trustee in each of its capacities hereunder (including as Collateral Agent, Paying Agent, Securities Custodian and Registrar), and each agent, custodian and other Person employed to act hereunder.

(i) The DIP Trustee shall not be liable for any action taken or omitted by it in good faith at the direction of the Holders of not less than a majority in principal amount of the outstanding Securities as to the time, method and place of conducting any proceedings for any remedy available to the DIP Trustee or the exercising of any power conferred by this DIP Indenture.

(j) Any action taken, or omitted to be taken, by the DIP Trustee in good faith pursuant to this DIP Indenture upon the request or authority or consent of any person who, at the time of making such request or giving such authority or consent, is the Holder of any DIP Notes shall be conclusive and binding upon future Holders of DIP Notes and upon DIP Notes executed and delivered in exchange therefor or in place thereof.

(k) In no event shall the DIP Trustee be responsible or liable for special, indirect, punitive or consequential loss or damage of any kind whatsoever (including, but not limited to, loss of profit) irrespective of whether the DIP Trustee has been advised of the likelihood of such loss or damage and regardless of the form of action.

(l) The DIP Trustee shall not be required to give any bond or surety in respect of the performance of its powers and duties hereunder.

(m) The DIP Trustee may request that the DIP Issuers deliver a certificate setting forth the names of individuals and/or titles of officers authorized at such time to take specified actions pursuant to this DIP Indenture and the DIP Notes.

(n) The DIP Trustee shall not be deemed to have knowledge of any fact or matter unless such fact or matter is known to a Trust Officer of the DIP Trustee.

(o) The permissive rights of the DIP Trustee under this DIP Indenture shall not be construed as duties.

(p) Each of the above described rights (a) through (o) hereof shall inure to the benefit of and be enforceable by the Collateral Agent (and Paying Agent, Securities Custodian and Registrar, as applicable) hereunder.

SECTION 7.03. Individual Rights of DIP Trustee. The DIP Trustee in its individual or any other capacity may become the owner or pledgee of Additional DIP Notes and may otherwise deal with the DIP Issuers or their Affiliates with the same rights it would have if it were not DIP Trustee. Any Paying Agent or Registrar may do the same with like rights. However, the DIP Trustee must comply with Section 7.09.

SECTION 7.04. DIP Trustee's Disclaimer. The DIP Trustee shall not be responsible for and makes no representation as to the validity or adequacy of this DIP Indenture, the DIP Guarantee or the DIP Notes, it shall not be accountable for the DIP Issuers' use of the proceeds from the DIP Notes, and it shall not be responsible for any statement of the DIP Issuers or any DIP Guarantor in this DIP Indenture or in any document issued in connection with the sale of the DIP Notes or in the DIP Notes other than the DIP Trustee's or its agent's certificate of authentication. The DIP Trustee shall not be charged with knowledge of any Default or Event of Default unless either (a) a Trust Officer shall have actual knowledge thereof or (b) the DIP Trustee shall have received written notice thereof in accordance with Section 12.01 hereof from any DIP Issuer, any DIP Guarantor or any Holder. In accepting the trust hereby created, the DIP Trustee acts solely as DIP Trustee for the Holders and not in its individual capacity and all persons, including without limitation the Holders of DIP Notes and the DIP Issuers having any claim against the DIP Trustee arising from this DIP Indenture shall look only to the funds and accounts held by the DIP Trustee hereunder for payment.

SECTION 7.05. Notice of Defaults. If a Default (other than a Default with respect to Section 4.14) occurs and is continuing and if it is actually known to a Trust Officer of the DIP Trustee, the DIP Trustee shall send to each Holder notice of the Default within the earlier of 90 days after it occurs or 30 days after written notice of it is received by the DIP Trustee, or promptly after discovery or obtaining notice if such discovery is made or notice is received 90 days after the Default occurs. Except in the case of a Default in the payment of principal of, premium (if any) or interest on any DIP Notes, the DIP Trustee may withhold the notice if and so long as it in good faith determines that withholding the notice is in the interests of the Holders.

SECTION 7.06. Compensation and Indemnity. The DIP Issuers, jointly and severally, shall pay to the DIP Trustee (acting in any capacity hereunder) and the Collateral Agent from time to time such compensation for its services as shall be agreed in writing between the DIP Issuers, the DIP Trustee and the Collateral Agent, including those fees and expenses set forth in that certain Agent Fee Letter, dated as of November 3, 2023, by and among the DIP Trustee, the Collateral Agent and the DIP Issuers. The DIP Trustee and the Collateral Agent's compensation shall not be limited by any law on compensation of a trustee of an express trust. The DIP Issuers, jointly and severally, shall reimburse the DIP Trustee and the Collateral Agent, as applicable, upon request for all reasonable out-of-pocket expenses incurred or made by it, including costs of collection, in addition to the compensation for its services, except any such disbursements, advances or expenses as may be attributable to its gross negligence, willful misconduct or bad faith as determined by a final nonappealable order of a court of competent jurisdiction. Such expenses shall include the reasonable compensation, fees and expenses, disbursements and advances of the DIP Trustee and the Collateral Agent's agents, counsel, accountants and experts. The DIP Issuers and each DIP Guarantor, jointly and severally, shall indemnify the DIP Trustee (acting in any capacity hereunder, including as Paying Agent, Securities Custodian and Registrar) and the Collateral Agent against any and all loss, liability, claim, damage or expense (including reasonable attorneys' fees and expenses) incurred by it arising out of or in connection with the acceptance or administration of this trust and the performance of its duties under this DIP Indenture, including the costs and expenses of enforcing this DIP Indenture or DIP Guarantee against the DIP Issuers or a DIP Guarantor (including this Section 7.06) and defending itself against or investigating any claim (whether asserted by any DIP Issuer, any DIP Guarantor, any Holder or any other Person) including any taxes required to be withheld or deducted from a payment to any Person entitled to payment hereunder, and

any reasonable expenses arising therefrom or with respect thereto. The obligation to pay such amounts shall survive the payment in full or defeasance of the Securities or the removal or resignation of the DIP Trustee or the Collateral Agent. The DIP Trustee and the Collateral Agent shall notify the DIP Issuers of any claim for which they may seek indemnity promptly upon obtaining actual knowledge thereof; *provided, however*, that any failure to so notify the DIP Issuers shall not relieve the DIP Issuers or any DIP Guarantor of its indemnity obligations hereunder. The DIP Issuers shall defend the claim and the indemnified party shall provide reasonable cooperation at the DIP Issuers' expense in the defense. Such indemnified parties may have separate counsel and the DIP Issuers and the DIP Guarantors, as applicable, shall pay the fees and expenses of such counsel; *provided, however*, that the DIP Issuers shall not be required to pay such fees and expenses if the DIP Issuers assume such indemnified parties' defense and, in such indemnified parties' reasonable judgment, there is no conflict of interest between the DIP Issuers and the DIP Guarantors, as applicable, and such parties in connection with such defense; *provided, further* that the DIP Issuers shall be required to pay the reasonable fees and expenses of such counsel in evaluating such conflict. The DIP Issuers need not reimburse any expense or indemnify against any loss, liability or expense incurred by an indemnified party through such party's own willful misconduct, gross negligence or bad faith as determined by a final nonappealable order of court of competent jurisdiction.

To secure the DIP Issuers' and the DIP Guarantors' payment obligations in this Section, the DIP Trustee and the Collateral Agent shall have a Lien prior to the Securities on all money or property held or collected by the DIP Trustee and the Collateral Agent other than money or property held in trust to pay principal of and interest on particular DIP Notes pursuant to Article 8 hereof or otherwise.

The DIP Issuers' and the DIP Guarantors' payment and indemnification obligations pursuant to this Section shall survive the satisfaction or discharge of this DIP Indenture, any rejection or termination of this DIP Indenture or the resignation or removal of the DIP Trustee or the Collateral Agent. Without prejudice to any other rights available to the DIP Trustee or the Collateral Agent under applicable law, the expenses herein shall constitute administrative expenses pursuant to Section 503 of the Bankruptcy Code in the Chapter 11 Cases, and the DIP Issuers and DIP Guarantors agree that the payment and indemnification obligations pursuant to this Section constitute actual, necessary costs and expenses of preserving the DIP Issuers' and DIP Guarantors' estates in the Chapter 11 Cases. The provisions of this Section shall survive the termination of this Indenture.

No provision of this DIP Indenture shall require the DIP Trustee or the Collateral Agent to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers, if adequate indemnity against such risk or liability is not assured to its satisfaction.

SECTION 7.07. Replacement of DIP Trustee or Collateral Agent.

(a) A resignation or removal of the DIP Trustee or Collateral Agent and appointment of a successor DIP Trustee or Collateral Agent, as applicable, will become effective only upon the applicable successor DIP Trustee's or Collateral Agent's acceptance of appointment as provided in this Section 7.07.

(b) The DIP Trustee or Collateral Agent, as applicable, may resign in writing at any time and be discharged from the trust hereby created by so notifying the DIP Issuers. The Holders of a majority in aggregate principal amount of the then outstanding DIP Notes may remove the DIP Trustee or Collateral Agent, as applicable, by so notifying the DIP Trustee or Collateral Agent, as applicable, and the DIP Issuers in writing, and may appoint a successor DIP Trustee or Collateral Agent, as applicable. The DIP Issuers may remove the DIP Trustee or Collateral Agent if:

(i) the DIP Trustee or Collateral Agent, as applicable, fails to comply with Section 7.09;

(ii) the DIP Trustee or Collateral Agent, as applicable, is adjudged bankrupt or insolvent, or an order for relief is entered with respect to the DIP Trustee or Collateral Agent under any Bankruptcy Law;

(iii) a receiver or other public officer takes charge of the DIP Trustee or Collateral Agent, as applicable, or its property; or

(iv) the DIP Trustee or Collateral Agent, as applicable, otherwise becomes incapable of acting.

(c) If the DIP Trustee or Collateral Agent resigns, is removed by the DIP Issuers or by the Holders of a majority in principal amount of the DIP Notes and such Holders do not reasonably promptly appoint a successor DIP Trustee or Collateral Agent, as applicable, or if a vacancy exists in the office of Trustee or Collateral Agent, as applicable, for any reason (the DIP Trustee or Collateral Agent, as applicable, in any such event being referred to herein as the retiring trustee or retiring Collateral Agent, as applicable), the DIP Issuers shall promptly appoint a successor DIP Trustee or Collateral Agent, as applicable.

(d) A successor DIP Trustee or Collateral Agent, as applicable, shall deliver a written acceptance of its appointment to the retiring trustee or Collateral Agent, as applicable, and to the DIP Issuers. Thereupon the resignation or removal of the retiring DIP Trustee or Collateral Agent, as applicable, shall become effective, and the successor DIP Trustee or Collateral Agent, as applicable, shall have all the rights, powers and duties of the DIP Trustee or Collateral Agent, as applicable, under this DIP Indenture. The successor DIP Trustee or Collateral Agent, as applicable, shall mail a notice of its succession to the Holders. The retiring DIP Trustee or Collateral Agent, as applicable, shall promptly transfer all property held by it as DIP Trustee or Collateral Agent, as applicable, to the successor DIP Trustee or Collateral Agent, as applicable, subject to the Lien provided for in Section 7.06. The retiring DIP Trustee or Collateral Agent, as applicable, shall have no responsibility or liability for any action or inaction of a successor DIP Trustee or Collateral Agent, as applicable.

(e) If a successor DIP Trustee or Collateral Agent, as applicable, does not take office within 30 days after the retiring trustee or Collateral Agent, as applicable, resigns or is removed, the retiring DIP Trustee or Collateral Agent, as applicable, or the Holders of at least 10% in aggregate principal amount of the then outstanding DIP Note shall petition at the expense of the DIP Issuers any court of competent jurisdiction for the appointment of a successor DIP Trustee or Collateral Agent, as applicable.

(f) If the DIP Trustee or Collateral Agent, as applicable, fails to comply with Section 7.09, any Holder who has been a bona fide holder of a DIP Notes for at least six months may petition any court of competent jurisdiction for the removal of the DIP Trustee or Collateral Agent, as applicable, and the appointment of a successor DIP Trustee or Collateral Agent, as applicable.

(g) Notwithstanding the replacement of the DIP Trustee or Collateral Agent, as applicable, pursuant to this Section, the DIP Issuers' obligations under Section 7.06 shall continue for the benefit of the retiring DIP Trustee.

SECTION 7.08. Successor DIP Trustee or Collateral Agent by Merger. If the DIP Trustee or Collateral Agent consolidates with, merges or converts into, or transfers all or substantially all its corporate trust business or assets to, another corporation, limited liability company or banking

association, the resulting, surviving or transferee corporation without any further act shall be the successor DIP Trustee or Collateral Agent, as applicable.

In case at the time such successor or successors by merger, conversion or consolidation to the DIP Trustee shall succeed to the trusts created by this DIP Indenture and any of the DIP Notes shall have been authenticated but not delivered, any such successor to the DIP Trustee may adopt the certificate of authentication of any predecessor trustee, and deliver such Securities so authenticated; and in case at that time any of the DIP Notes shall not have been authenticated, any successor to the DIP Trustee may authenticate such DIP Notes either in the name of any predecessor hereunder or in the name of the successor to the DIP Trustee; and in all such cases such certificates shall have the full force which it is anywhere in the Securities or in this DIP Indenture *provided* that the certificate of the DIP Trustee, as applicable, shall have.

SECTION 7.09. Eligibility; Disqualification. There will at all times be a Trustee hereunder that is organized and doing business under the laws of the United States of America or of any state thereof that is authorized under such laws to exercise corporate trustee power, that is subject to supervision or examination by U.S. federal or state authorities Act.

ARTICLE 8

DISCHARGE OF INDENTURE; DEFEASANCE

SECTION 8.01. Discharge of Liability on DIP Notes; Defeasance. This Indenture shall be discharged and shall cease to be of further effect as to all outstanding DIP Notes when either:

(1) (a) all DIP Notes theretofore authenticated and delivered, except lost, stolen or destroyed Securities which have been replaced or paid and DIP Notes for whose payment money has theretofore been deposited in trust or segregated and held in trust by the DIP Issuers and thereafter repaid to the DIP Issuers or discharged from trust, have been delivered to the DIP Trustee for cancellation; or

(b) (i) all DIP Notes not theretofore delivered to the DIP Trustee for cancellation have become due and payable by reason of the making of a notice of redemption or otherwise, will become due and payable within one year or are to be called for redemption within one year under arrangements satisfactory to the DIP Trustee, at the written direction of the Required DIP Noteholders, for the giving of notice of redemption by the DIP Trustee in the name, and at the expense, of the DIP Issuers and the DIP Issuers or any DIP Guarantor have irrevocably deposited or caused to be deposited with the DIP Trustee as trust funds in trust solely for the benefit of the Holders of the DIP Notes, cash in U.S. dollars, Government Securities, or a combination thereof, in such amounts as will be sufficient, without consideration of any reinvestment of interest to pay and discharge the entire indebtedness as determined by the DIP Issuers on the DIP Notes not theretofore delivered to the DIP Trustee for cancellation for principal, premium, if any, and accrued interest to, but not including, the date of maturity or redemption; (ii) the DIP Issuers and/or the DIP Guarantors have paid or caused to be paid all sums payable by it under this DIP Indenture; and (iii) the DIP Issuers have delivered irrevocable instructions to the DIP Trustee to apply the deposited money toward the payment of the DIP Notes at maturity or the redemption date, as the case may be;

(c) In addition, the DIP Issuers must deliver an Officer's Certificate and an Opinion of Counsel to the DIP Trustee stating that all conditions precedent to satisfaction and discharge have been satisfied.

(2) Subject to Section 8.02, the DIP Issuers may, at their option and at any time, elect to discharge (i) all of its obligations under the Securities and this DIP Indenture (“legal defeasance option”) or (ii) its obligations under Sections 4.02, 4.03, 4.04, 4.05, 4.06, 4.07, 4.09, 4.12, 4.14, 4.17, 4.18, 4.19 and 4.20 for the benefit of the Holders and the operation of Section 5.01 and Sections 6.01(d), 6.01(c), 6.01(f), 6.01(h) (with respect to Significant Subsidiaries of the DIP Issuers only) and 6.01(i) (“covenant defeasance option”) for the benefit of the Holders. The DIP Issuers may exercise their legal defeasance option notwithstanding their prior exercise of their covenant defeasance option. In the event that the DIP Issuers terminate all of their obligations under the DIP Notes and this DIP Indenture by exercising their legal defeasance option or their covenant defeasance option, the obligations of each DIP Guarantor under its DIP Guarantee of the DIP Notes shall be terminated simultaneously with the termination of such obligations so long as no DIP Notes are then outstanding.

(3) If the DIP Issuers exercise their legal defeasance option, payment of the DIP Notes so defeased may not be accelerated because of an Event of Default. If the DIP Issuers exercise their covenant defeasance option, payment of the Securities so defeased may not be accelerated because of an Event of Default specified in Section 6.01(d), 6.01(f), 6.01(h) (with respect to Significant Subsidiaries of the DIP Issuers only), 6.01(i) or 6.01(j).

(4) Upon satisfaction of the conditions set forth herein and upon request of the DIP Issuers, the DIP Trustee shall acknowledge in writing, at the direction in writing of the Required DIP Noteholders, the discharge of those obligations that the DIP Issuers terminates.

(5) Notwithstanding paragraph 2(i) above, the DIP Issuers’ obligations in Sections 2.04, 2.05, 2.06, 2.07, 2.08, 2.09, 4.15, 7.06, 7.07 and in this Article 8 shall survive until the Securities have been paid in full. Thereafter, the DIP Issuers’ obligations in Sections 7.06, 8.05 and 8.06 shall survive such satisfaction and discharge.

SECTION 8.02. Conditions to Defeasance.

(a) The DIP Issuers may exercise their legal defeasance option or their covenant defeasance option, in each case, with respect to the Securities only if:

(i) the DIP Issuers shall irrevocably deposit with the DIP Trustee, in trust, for the benefit of the Holders of the DIP Notes, cash in U.S. dollars, Government Securities, or a combination thereof, in such amounts as will be sufficient, in the opinion of a nationally recognized firm of independent public accountants, investment bank or appraisal firm, to pay the principal of, premium, if any, and interest due on the DIP Notes on [•]³ or on the redemption date, as the case may be, of such principal, premium, if any, or interest on such DIP Notes and the DIP Issuers must specify whether such DIP Notes are being defeased to maturity or to a particular redemption date;

(ii) in the case of the exercise of a legal defeasance option, the DIP Issuers shall have delivered to the DIP Trustee an Opinion of Counsel confirming that, subject to customary assumptions and exclusions, (a) the DIP Issuers have received from, or there has been published by, the United States Internal Revenue Service a ruling, or (b) since the issuance of the DIP Notes, there has been a change in the applicable U.S. federal income tax law,

³ Stated maturity (6-month anniversary of initial issue date)

in either case to the effect that, and based thereon such Opinion of Counsel shall confirm that, subject to customary assumptions and exclusions, the Holders of the DIP Notes will not recognize income, gain or loss for U.S. federal income tax purposes, as applicable, as a result of such exercise of a legal defeasance option and will be subject to U.S. federal income tax on the same amounts, in the same manner and at the same times as would have been the case if such exercise of a legal defeasance option had not occurred;

(iii) in the case of exercise of a covenant defeasance option, the DIP Issuers shall have delivered to the DIP Trustee an Opinion of Counsel confirming that, subject to customary assumptions and exclusions, the Holders of the Securities will not recognize income, gain or loss for U.S. federal income tax purposes as a result of such exercise of a covenant defeasance option and will be subject to such tax on the same amounts, in the same manner and at the same times as would have been the case if such exercise of a covenant defeasance option had not occurred;

(iv) no Default (other than that resulting from borrowing funds to be applied to make such deposit and the granting of Liens in connection therewith) shall have occurred and be continuing on the date of such deposit;

(v) such exercise of a legal defeasance option or exercise of a covenant defeasance option shall not result in a breach or violation of, or constitute a default under any material agreement or instrument (other than this DIP Indenture) to which the DIP Issuers or any DIP Guarantor is a party or by which the DIP Issuers or any DIP Guarantor is bound (other than that resulting from any borrowing of funds to be applied to make the deposit required to effect such exercise of a legal defeasance option or exercise of a covenant defeasance option and any similar and simultaneous deposit relating to other Indebtedness, and, in each case, the granting of Liens in connection therewith);

(vi) the DIP Issuers shall have delivered to the DIP Trustee an Officer's Certificate stating that the deposit was not made by the DIP Issuers with the intent of defeating, hindering, delaying or defrauding any creditors of the DIP Issuers or any DIP Guarantor or others; and

(vii) the DIP Issuers shall have delivered to the DIP Trustee an Officer's Certificate and an Opinion of Counsel (which Opinion of Counsel may be subject to customary assumptions and exclusions) each stating that all conditions precedent provided for or relating to the exercise of a legal defeasance option or the exercise of a covenant defeasance option, as the case may be, have been complied with.

Notwithstanding the foregoing, an Opinion of Counsel required by the immediately preceding paragraph with respect to legal defeasance need not be delivered if all of the Securities not theretofore delivered to the DIP Trustee for cancellation (x) have become due and payable or (y) will become due and payable within one year or are to be called for redemption within one year under arrangements satisfactory to the DIP Trustee for the giving of notice of redemption by the DIP Trustee in the name, and at the expense, of the DIP Issuers.

(b) Before or after a deposit, the DIP Issuers may make arrangements satisfactory to the DIP Trustee for the redemption of such Securities at a future date in accordance with Article 3.

SECTION 8.03. Application of Trust Money. The DIP Trustee shall hold in trust money or Government Securities (including proceeds thereof) deposited with it pursuant to this Article 8. It shall apply the deposited money and the money from Government Securities through each Paying

Agent and in accordance with this DIP Indenture to the payment of principal of, premium, if any, and interest on the DIP Notes so discharged or defeased.

SECTION 8.04. Repayment to DIP Issuers. Each of the DIP Trustee and each Paying Agent shall promptly turn over to the DIP Issuers upon written request any money or Government Securities held by it as provided in this Article 8 which, in the written opinion of a nationally recognized firm of independent public accountants delivered to the DIP Trustee (which delivery shall only be required if Government Securities have been so deposited), are in excess of the amount thereof which would then be required to be deposited to effect an equivalent discharge or defeasance in accordance with this Article 8.

Subject to any applicable abandoned property law, the DIP Trustee and each Paying Agent shall pay to the DIP Issuers upon written request any money held by them for the payment of principal or interest that remains unclaimed for two years, and, thereafter, Holders entitled to the money must look to the DIP Issuers for payment as general creditors, and the DIP Trustee and each Paying Agent shall have no further liability with respect to such monies.

SECTION 8.05. Indemnity for Government Securities. The DIP Issuers, jointly and severally, shall pay and shall indemnify the DIP Trustee against any tax, fee or other charge imposed on or assessed against deposited Government Securities or the principal and interest received on such Government Securities.

SECTION 8.06. Reinstatement. If the DIP Trustee or the Paying Agent is unable to apply any money or Government Securities in accordance with this Article 8 by reason of any legal proceeding or by reason of any order or judgment of any court or governmental authority enjoining, restraining or otherwise prohibiting such application, the DIP Issuers' obligations under this DIP Indenture and the DIP Notes so discharged or defeased shall be revived and reinstated as though no deposit had occurred pursuant to this Article 8 until such time as the DIP Trustee or any Paying Agent is permitted to apply all such money or Government Securities in accordance with this Article 8; *provided, however,* that, if the DIP Issuers have made any payment of principal of or interest on, any such Securities because of the reinstatement of its obligations, the DIP Issuers shall be subrogated to the rights of the Holders of such Securities to receive such payment from the money or Government Securities held by the DIP Trustee or any Paying Agent.

ARTICLE 9

AMENDMENTS AND WAIVERS

SECTION 9.01. Without Consent of the Holders. The DIP Issuers, the DIP Guarantors (with respect to the DIP Guarantee or this DIP Indenture to which it is a party), the DIP Trustee and/or the Collateral Agent may amend or supplement this DIP Indenture, the DIP Guarantee, the DIP Notes and the DIP Documents without the consent of any Holder (subject to Section 9.05):

- (i) to cure any ambiguity, omission, mistake, defect or inconsistency as provided to the DIP Trustee in an Officer's Certificate;
- (ii) to provide for uncertificated DIP Notes of such series in addition to or in place of certificated Securities;
- (iii) to comply with the provisions of Section 5.01 relating to mergers, consolidations and sales of assets;

(iv) to provide for the assumption of the DIP Issuers' or any DIP Guarantor's obligations to the Holders in a transaction that complies with Section 5.01;

(v) to make any change that would provide any additional rights or benefits to the Holders or that does not adversely affect in any material respect the rights of any Holder under this DIP Indenture;

(vi) to add covenants for the benefit of the Holders or to surrender any right or power conferred upon the DIP Issuers or any DIP Guarantor;

(vii) to add a DIP Guarantor under this DIP Indenture or to release a DIP Guarantor in accordance with the terms of this DIP Indenture;

(viii) to make any amendment to the provisions of this DIP Indenture relating to the transfer and legending of Securities as permitted by this DIP Indenture, including, without limitation to facilitate the issuance and administration of the DIP Notes; *provided, however*, that (i) compliance with this DIP Indenture as so amended would not result in DIP Notes being transferred in violation of the Securities Act or any applicable securities law and (ii) such amendment does not adversely affect the rights of Holders to transfer DIP Notes;

(ix) (A) to enter into additional or supplemental DIP Security Documents or otherwise add Collateral to further secure the DIP Notes or the DIP Guarantee or any other Obligations under this DIP Indenture or (B) to make, complete or confirm any grant of Collateral permitted or required by this DIP Indenture or any of the DIP Security Documents or any release, termination or discharge of all or any portion of the Collateral that becomes effective as set forth in this DIP Indenture or any of the DIP Security Documents;

(x) evidence and provide for the acceptance and appointment under this DIP Indenture of a successor DIP Trustee or successor Collateral Agent pursuant to the requirements thereof or to provide for the accession by the DIP Trustee or the Collateral Agent, as applicable, to this DIP Indenture or any DIP Security Document;

(xi) provide for the release of Collateral from the Lien, or the subordination of such Lien, permitted by the DIP Indenture and any DIP Security Documents; or

(xii) to supplement any schedules to any DIP Security Document to the extent permitted or required by the terms thereof or by the terms of this DIP Indenture.

After an amendment under this Section 9.01 becomes effective, the DIP Issuers shall mail or otherwise send in accordance with the procedures of the Depository to the Holders a notice briefly describing such amendment. The failure to give such notice to all Holders, or any defect therein, shall not impair or affect the validity of an amendment under this Section 9.01.

SECTION 9.02. With Consent of the Holders. Notwithstanding Section 9.01 of this DIP Indenture, the DIP Issuers, the DIP Guarantors, the DIP Trustee and the Collateral Agent may amend or supplement this DIP Indenture, the DIP Notes, the DIP Guarantee and any DIP Security Document with the written consent of the Holders of at least a majority in principal amount of the DIP Notes (including any Additional DIP Notes) then outstanding voting as a single class (including consents obtained in connection with a purchase of, tender offer or exchange offer for, the DIP Notes), and, subject

to Sections 6.04 and 6.07, any existing Default or Event of Default (other than a Default or Event of Default in the payment of the principal of, premium, if any, or interest on the DIP Notes, except a payment default resulting from an acceleration that has been rescinded) or compliance with any provision of this DIP Indenture, the DIP Notes, any DIP Security Documents or the DIP Guarantee may be waived with the consent of the Holders of a majority in aggregate principal amount of the then outstanding DIP Notes voting as a single class (including consents obtained in connection with the purchase of, or tender offer or exchange offer for, DIP Notes), other than the DIP Notes beneficially owned by the DIP Issuers or its Affiliates; Section 2.09 and Section 12.04 shall determine which DIP Notes are considered to be “outstanding” for the purposes of this Section 9.02. However, without the consent of each Holder of an outstanding DIP Note affected, an amendment, supplement, waiver or other modification may not:

- (i) reduce the principal amount of such DIP Notes;
- (ii) reduce the principal of or change the fixed final maturity of any such DIP Notes or alter or waive the provisions with respect to the redemption of such DIP Note (other than provisions relating to Sections 4.06); *provided*, that any amendment to the notice requirements may be made with the consent of the Holders of a majority in aggregate principal amount of then outstanding DIP Notes prior to giving of any notice;
- (iii) reduce the rate of or change the time for payment of interest on any DIP Notes;
- (iv) waive a Default in the payment of principal of or premium, if any, or interest on the DIP Notes, except a rescission of acceleration of the DIP Notes by the Holders of at least a majority in aggregate principal amount of the DIP Notes and a waiver of the payment default that resulted from such acceleration, or in respect of a covenant or provision contained in this DIP Indenture or the DIP Guarantee which cannot be amended or modified without the consent of all affected Holders;
- (v) make any DIP Notes payable in money other than that stated in such DIP Notes;
- (vi) make any change in the provisions of this DIP Indenture relating to waivers of past Defaults or the rights of Holders to receive payments of principal of or premium, if any, or interest on the DIP Notes;
- (vii) make any change to this Section 9.02 that is adverse to the Holders;
- (viii) impair the contractual right under this DIP Indenture of any Holder to receive payment of principal of, premium, if any, and interest on such Holder’s Securities on or after the due dates therefor or to institute suit for the enforcement of any payment on or with respect to such Holder’s DIP Notes;
- (ix) [Reserved];
- (x) except as expressly permitted by this DIP Indenture, modify the DIP Guarantee of any Subsidiary; or
- (xi) change any provision of this Section 9.02 or the definition of “Required DIP Noteholders” or any other provision specifying the number of DIP Noteholders or

portion of the DIP Notes and Commitments required to take any action under the DIP Documents, without the written consent of each DIP Noteholder.

Notwithstanding the foregoing, the Required DIP Noteholders may consent, on behalf of each Holder of an outstanding DIP Note and without the consent of each Holder of an outstanding DIP Note affected, to the ratable receipt among DIP Noteholders of “take-back” debt consideration or consideration in the form of other securities in connection with a credit bid pursuant to Section 2.17 of this Agreement. Such “take-back” debt or other securities may differ from the DIP Notes in any or all of the categories described in clauses (i) through (xi) above.

It shall not be necessary for the consent of the Holders under this Section 9.02 to approve the particular form of any proposed amendment, but it shall be sufficient if such consent approves the substance thereof.

After an amendment under this Section 9.02 becomes effective, the DIP Issuers shall promptly mail or otherwise send in accordance with the procedures of the Depositary to the Holders a notice briefly describing such amendment. The failure to give such notice to all Holders, or any defect therein, shall not impair or affect the validity of an amendment under this Section 9.02.

Notwithstanding anything herein to the contrary, without the consent of the Holders of at least 85.0% in principal amount of the DIP Notes then outstanding, no amendment, supplement or waiver may (i) release all or substantially all of the Collateral other than in accordance with this DIP Indenture and the DIP Security Documents, (ii) release all or substantially all of the DIP Guarantors from the DIP Guaranty or (iii) make any change to or modify the ranking of, or the priority of the Liens securing, the DIP Notes that would adversely affect the Holders.

SECTION 9.03. Revocation and Effect of Consents and Waivers.

(a) A consent to an amendment or a waiver by a Holder of a DIP Note shall bind the Holder and every subsequent Holder of that DIP Note or portion of the DIP Note that evidences the same debt as the consenting Holder’s DIP Note, even if notation of the consent or waiver is not made on the DIP Note. However, any such Holder or subsequent Holder may revoke the consent or waiver as to such Holder’s DIP Note or portion of the DIP Note if the DIP Trustee receives written notice of revocation delivered in accordance with Section 12.01 before the date on which the DIP Trustee receives an Officer’s Certificate from the DIP Issuers certifying that the requisite principal amount of Securities have consented. After an amendment or waiver becomes effective, it shall bind every Holder. An amendment or waiver becomes effective upon the (i) receipt by the DIP Issuers or the DIP Trustee of written consents by the Holders of the requisite principal amount of securities, (ii) satisfaction of conditions to effectiveness as set forth in this DIP Indenture and any indenture supplemental hereto containing such amendment or waiver and (iii) execution of such amendment or waiver (or supplemental indenture) by the DIP Issuers and the DIP Trustee.

(b) The DIP Issuers may, but shall not be obligated to, fix a record date for the purpose of determining the Holders entitled to give their consent or take any other action described above or required or permitted to be taken pursuant to this DIP Indenture. If a record date is fixed, then notwithstanding the immediately preceding paragraph, those Persons who were Holders at such record date (or their duly designated proxies), and only those Persons, shall be entitled to give such consent or to revoke any consent previously given or to take any such action, whether or not such Persons continue to be Holders after such record date. No such consent shall be valid or effective for more than 120 days after such record date.

SECTION 9.04. Notation on or Exchange of Securities. If an amendment, supplement or waiver made pursuant to this DIP Indenture changes the terms of a Security, the DIP Issuers may require the Holder to deliver it to the DIP Trustee. The DIP Trustee may place a notation on the Security regarding the changed terms and return it to the Holder. Alternatively, if the DIP Issuers so determine, the DIP Issuers in exchange for the Security shall issue and the DIP Trustee shall authenticate a new Security that reflects the changed terms. Failure to make a notation or to issue a new Security shall not affect the validity of such amendment, supplement or waiver.

SECTION 9.05. DIP Trustee to Sign Amendments. The DIP Trustee or the Collateral Agent, as applicable, shall sign any amendment, supplement or waiver authorized pursuant to this Article 9 if the amendment does not adversely affect the rights, duties, liabilities or immunities of the DIP Trustee or the Collateral Agent, as the case may be. If it does, the DIP Trustee or the Collateral Agent, as the case may be, may but need not sign it. In signing such amendment, the DIP Trustee or the Collateral Agent, as applicable, shall be entitled to receive indemnity satisfactory to it and shall be provided with, and (subject to Section 7.01) shall be fully protected in conclusively relying upon, an Officer's Certificate and an Opinion of Counsel stating that such amendment, supplement or waiver is authorized or permitted by this DIP Indenture and that such amendment, supplement or waiver is the legal, valid and binding obligation of the DIP Issuers and the DIP Guarantors, enforceable against them in accordance with its terms, subject to customary exceptions, and complies with the provisions hereof.

SECTION 9.06. Payment for Consent. Neither the DIP Issuers nor any Affiliate of the DIP Issuers shall, directly or indirectly, pay or cause to be paid any consideration, whether by way of interest, fee or otherwise, to any Holder for or as an inducement to any consent, waiver or amendment of any of the terms or provisions of this DIP Indenture or the DIP Notes unless such consideration is offered to all Holders and is paid to all Holders that so consent, waive or agree to amend in the time frame set forth in solicitation documents relating to such consent, waiver or agreement.

SECTION 9.07. Additional Voting and Consent Terms; Calculation of Principal Amount. Except as otherwise set forth herein, all DIP Notes issued under this DIP Indenture shall vote and consent separately on all matters as to which any of such DIP Notes may vote. Determinations as to whether Holders of the requisite aggregate principal amount of DIP Notes have concurred in any direction, waiver or consent shall be made in accordance with this Article 9 and Section 2.14. In this Agreement, when the Required DIP Noteholders have the right to approve or otherwise pass on the "form and substance" of a document, the DIP Noteholders and DIP Trustee may rely on an e-mail confirmation from Milbank LLP as evidence of such approval.

ARTICLE 10

GUARANTEE

SECTION 10.01. DIP Guarantee.

(a) Each DIP Guarantor hereby jointly and severally, irrevocably and unconditionally guarantees on a senior secured basis, as a primary obligor and not merely as a surety, to each Holder and the DIP Trustee (acting in any capacity hereunder, including as Collateral Agent) and their successors and assigns (i) the full and punctual payment when due, whether at maturity, by acceleration, by redemption or otherwise, of all obligations of the DIP Issuers under this DIP Indenture (including obligations and indemnification to the DIP Trustee) and the DIP Notes, whether for payment of principal of, premium, if any, or interest on the DIP and all other monetary obligations of the DIP Issuers under this DIP Indenture and the DIP Notes and (ii) the full and punctual performance within applicable grace periods of all other

obligations of the DIP Issuers whether for fees, expenses, indemnification or otherwise under this DIP Indenture and the DIP Notes, on the terms set forth in this DIP Indenture by executing this DIP Indenture.

On the Initial Issue Date and any subsequent issue date, the DIP Guarantors will jointly and severally, irrevocably and unconditionally guarantee on a senior basis the DIP Notes (the “Guaranteed Obligations”) by executing the DIP Indenture. Each DIP Guarantor further agrees that the Guaranteed Obligations may be extended or renewed, in whole or in part, without notice or further assent from each such Guarantor, and that each such Guarantor shall remain bound under this Article 10 notwithstanding any extension or renewal of any Guaranteed Obligation.

(b) Each DIP Guarantor waives presentation to, demand of payment from and protest to the DIP Issuers of any of the Guaranteed Obligations and also waives notice of protest for nonpayment. Each DIP Guarantor waives notice of any default under the DIP Notes or the Guaranteed Obligations.

(c) The obligations of each DIP Guarantor hereunder shall not be affected by (i) the failure of any Holder or the DIP Trustee to assert any claim or demand or to enforce any right or remedy against the DIP Issuers or any other Person under this DIP Indenture, the DIP Notes or any other agreement or otherwise; (ii) any extension or renewal of this DIP Indenture, the DIP Notes or any other agreement; (iii) any rescission, waiver, amendment or modification of any of the terms or provisions of this DIP Indenture, the DIP Notes or any other agreement; (iv) the release of any security held by any Holder or the DIP Trustee for the Guaranteed Obligations or any DIP Guarantor; (v) the failure of any Holder or DIP Trustee to exercise any right or remedy against any other guarantor of the Guaranteed Obligations; or (vi) any change in the ownership of such DIP Guarantor.

(d) The DIP Guarantor hereby waives any right to which it may be entitled to have the assets of any DIP Issuer first be used and depleted as payment of such DIP Issuers’ or such DIP Guarantor’s obligations hereunder prior to any amounts being claimed from or paid by such Guarantor hereunder. Each DIP Guarantor hereby waives any right to which it may be entitled to require that the DIP Issuers be sued prior to an action being initiated against such DIP Guarantor.

(e) Each DIP Guarantor further agrees that its DIP Guarantee herein constitutes a guarantee of payment, performance and compliance when due (and not a guarantee of collection) and waives any right to require that any resort be had by any Holder or the DIP Trustee to any security held for payment of the Guaranteed Obligations.

(f) Except as expressly set forth in Sections 8.01(1)(b), 10.02 and 10.06, the obligations of each DIP Guarantor hereunder shall not be subject to any reduction, limitation, impairment or termination for any reason, including any claim of waiver, release, surrender, alteration or compromise, and shall not be subject to any defense of setoff, counterclaim, recoupment or termination whatsoever or by reason of the invalidity, illegality or unenforceability of the Guaranteed Obligations or otherwise.

(g) Subject to Section 10.02 hereof, each DIP Guarantor agrees that its DIP Guarantee shall remain in full force and effect until payment in full of all the Guaranteed Obligations. Each DIP Guarantor further agrees that its DIP Guarantee herein shall continue to be effective or be reinstated, as the case may be, if at any time payment, or any part thereof, of principal of or interest on any Guaranteed Obligation is rescinded or must otherwise be restored by any Holder or the DIP Trustee in Chapter 11 Cases or otherwise.

(h) In furtherance of the foregoing and not in limitation of any other right which any Holder or the DIP Trustee has at law or in equity against any DIP Guarantor by virtue hereof, upon the failure of the DIP Issuers to pay the principal of or interest on any Guaranteed Obligation when and as the

same shall become due, whether at maturity, by acceleration, by redemption or otherwise, or to perform or comply with any other Guaranteed Obligation, each DIP Guarantor hereby promises to and shall, upon receipt of written demand by the DIP Trustee, forthwith pay, or cause to be paid, in cash, to the DIP Trustee an amount equal to the sum of (i) the unpaid principal amount of such Guaranteed Obligations, (ii) accrued and unpaid interest on such Guaranteed Obligations (but only to the extent not prohibited by applicable law) and (iii) all other monetary obligations of the DIP Issuers to the DIP Trustee.

(i) Each DIP Guarantor agrees that it shall not be entitled to any right of subrogation in relation to the DIP Trustee in respect of any Guaranteed Obligations guaranteed hereby until payment in full of all Guaranteed Obligations. Each DIP Guarantor further agrees that, as between it, on the one hand, and the DIP Trustee, on the other hand, (i) the maturity of the Guaranteed Obligations guaranteed hereby may be accelerated as provided in Article 6 for the purposes of the DIP Guarantee herein, notwithstanding any stay, injunction or other prohibition preventing such acceleration in respect of the Guaranteed Obligations guaranteed hereby, and (ii) in the event of any declaration of acceleration of such Guaranteed Obligations as provided in Article 6, such Guaranteed Obligations (whether or not due and payable) shall forthwith become due and payable by such DIP Guarantor for the purposes of this Section 10.01.

(j) Each DIP Guarantor also agrees to pay any and all costs and expenses (including reasonable attorneys' fees and expenses) incurred by the DIP Trustee or any Holder in enforcing any rights under this Section 10.01.

Upon request of the DIP Trustee, each DIP Guarantor shall promptly execute and deliver such further instruments and do such further acts as may be reasonably necessary or proper to carry out more effectively the purpose of this DIP Indenture.

SECTION 10.02. Limitation on Liability.

(a) Each DIP Guarantor, and by its acceptance of DIP Notes, each DIP Noteholder, hereby confirms that it is the intention of all such parties that the DIP Guarantee of such DIP Guarantor not constitute a fraudulent transfer or conveyance for purposes of Bankruptcy Law, the Uniform Fraudulent Conveyance Act, the Uniform Fraudulent Transfer Act or any similar federal or state law to the extent applicable to any DIP Guarantee. To effectuate the foregoing intention, the DIP Trustee, the Holders and the DIP Guarantors hereby irrevocably agree that, any term or provision of this DIP Indenture to the contrary notwithstanding, the maximum aggregate amount of the Guaranteed Obligations guaranteed hereunder by any DIP Guarantors shall not exceed the maximum amount that can be hereby guaranteed without rendering this DIP Indenture, as it relates to such DIP Guarantor, voidable under applicable law relating to fraudulent conveyance or fraudulent transfer or similar laws affecting the rights of creditors generally. Each DIP Guarantor that makes a payment under its DIP Guarantee shall be entitled upon payment in full of all Guaranteed Obligations under this DIP Indenture to a contribution from each other DIP Guarantor in an amount equal to such other DIP Guarantor's *pro rata* portion of such payment based on the respective net assets of all the DIP Guarantors at the time of such payment determined in accordance with GAAP.

(b) A DIP Guarantee as to any DIP Guarantor shall be automatically and unconditionally released and discharged upon:

(i) (A) any sale, exchange, disposition or transfer (including through consolidation, merger or otherwise) of (x) the Capital Stock of such Guarantor, after which the applicable DIP Guarantor is no longer a Subsidiary, or (y) all or substantially all the assets of such DIP Guarantor, which sale, exchange, disposition or transfer in each case is made in compliance with Section 4.06(a)(i) and (ii); (B) upon the consolidation or merger

of any DIP Guarantor with and into the DIP Issuers or another DIP Guarantor that is the surviving Person in such consolidation or merger, or upon the liquidation of such DIP Guarantor following the transfer of all of its assets to the DIP Issuers or another DIP Guarantor; or (C) the DIP Issuers exercising its legal defeasance option or covenant defeasance option as described under Article 8 or the DIP Issuers' obligations under this DIP Indenture being discharged in accordance with the terms of this DIP Indenture; and

(ii) the DIP Issuers delivering to the DIP Trustee an Officer's Certificate of such DIP Guarantor or the DIP Issuers and an Opinion of Counsel, each stating that all conditions precedent provided for in this DIP Indenture relating to such transaction have been complied with.

SECTION 10.03. Successors and Assigns. This Article 10 shall be binding upon each DIP Guarantor and its successors and assigns and shall inure to the benefit of the successors and assigns of the DIP Trustee and the Holders and, in the event of any transfer or assignment of rights by any Holder or the DIP Trustee, the rights and privileges conferred upon that party in this DIP Indenture and in the DIP Notes shall automatically extend to and be vested in such transferee or assignee, all subject to the terms and conditions of this DIP Indenture.

SECTION 10.04. No Waiver. Neither a failure nor a delay on the part of either the DIP Trustee or the Holders in exercising any right, power or privilege under this Article 10 shall operate as a waiver thereof, nor shall a single or partial exercise thereof preclude any other or further exercise of any right, power or privilege. The rights, remedies and benefits of the DIP Trustee and the Holders herein expressly specified are cumulative and not exclusive of any other rights, remedies or benefits which either may have under this Article 10 at law, in equity, by statute or otherwise.

SECTION 10.05. Modification. No modification, amendment or waiver of any provision of this Article 10, nor the consent to any departure by any DIP Guarantor therefrom, shall in any event be effective unless the same shall be in writing and signed by the DIP Trustee (at the written direction of the Required DIP Noteholders), and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. No notice to or demand on any DIP Guarantor in any case shall entitle such DIP Guarantor to any other or further notice or demand in the same, similar or other circumstances.

SECTION 10.06. Execution of Supplemental Indenture for Future DIP Guarantors. Each Subsidiary and other Person which is required to become a DIP Guarantor pursuant to Section 4.22, after the Initial Issue Date shall promptly (i) execute and deliver to the DIP Trustee a supplemental indenture in the form of Exhibit C hereto pursuant to which such Subsidiary or other Person shall become a DIP Guarantor under this Article 10 and shall guarantee the Guaranteed Obligations and (ii) execute and deliver to the Collateral Agent a Grantor Supplement pursuant to which such DIP Guarantor shall, subject to applicable legal limitations, be subject to the terms of the applicable DIP Security Documents. Concurrently with the execution and delivery of such supplemental indenture and Grantor Supplement, the DIP Issuers shall deliver to the DIP Trustee an Opinion of Counsel and an Officer's Certificate to the effect that such supplemental indenture and Grantor Supplement has been duly authorized, executed and delivered by such Subsidiary or other Person and that, subject to the application of bankruptcy, insolvency, moratorium, fraudulent conveyance or transfer and other similar laws relating to creditors' rights generally and to the principles of equity, whether considered in a proceeding at law or in equity, the DIP Guarantee of such DIP Guarantor is a valid and binding obligation of such DIP Guarantor, enforceable against such DIP Guarantor in accordance with its terms.

SECTION 10.07. Non-Impairment. The failure to endorse a DIP Guarantee on any Security shall not affect or impair the validity thereof.

SECTION 10.08. Benefits Acknowledged. Each DIP Guarantor acknowledges that it will receive direct and indirect benefits from the financing arrangements contemplated by this DIP Indenture and that the guarantee and waivers made by it pursuant to its DIP Guarantee are knowingly made in contemplation of such benefits.

ARTICLE 11

SECURITY

SECTION 11.01. Grant of Lien and Security Interests.

(a) Pursuant to, and otherwise subject to the terms of, the Bankruptcy Court DIP Order including the provisions set forth therein and in accordance with the terms thereof, subject to the Carve-Out, as security for the full and timely payment and performance of all of the DIP Obligations and subject to the limitations, reservations, restrictions, and qualifications contained in any DIP Collateral Document, the DIP Notes Parties hereby, pledge and grant to Collateral Agent for the benefit of the DIP Secured Parties, a security interest in and to a Lien on all of the DIP Collateral without duplication.

(b) Notwithstanding anything herein to the contrary all proceeds received by the Agents and the DIP Noteholders from the Collateral subject to the Liens granted in this Section 11.01 and in each other DIP Document and by the Bankruptcy Court DIP Order shall be subject in all respects to the Carve-Out.

SECTION 11.02. Grants, Rights and Remedies. The Liens and security interests granted pursuant to Section 11.01(a) hereof and the administrative priority and lien priority granted pursuant to the Bankruptcy Court DIP Order may be independently granted by the DIP Documents and by other DIP Documents hereafter entered into. This DIP Indenture, the Bankruptcy Court DIP Order and such other DIP Documents supplement each other, and the grants, priorities, rights and remedies of the Agents and the DIP Noteholders hereunder and thereunder are cumulative, provided that to the extent of conflict the Bankruptcy Court DIP Order controls.

SECTION 11.03. No Filings Required. The Liens and security interests referred to herein shall be deemed valid and perfected by entry of the Interim DIP Order or the Final DIP Order, as the case may be. Neither the DIP Trustee nor the Collateral Agent shall be required to file any financing statements, mortgages, notices of Lien or similar instruments in any jurisdiction or filing office, take possession or control of any Collateral, or take any other action in order to validate or perfect the Lien and security interest granted by or pursuant to this DIP Indenture, the Interim DIP Order or the Final DIP Order, as the case may be, or any other DIP Document.

SECTION 11.04. Survival. The Liens, lien priority, administrative priorities and other rights and remedies granted to the DIP Trustee, the Collateral Agent and the DIP Noteholders pursuant to this DIP Indenture, the Bankruptcy Court DIP Orders and the other DIP Documents (specifically including, but not limited to, the existence, perfection and priority of the Liens and security interests provided herein and therein, and the administrative priority provided herein and therein) shall not be modified, altered or impaired in any manner by any other financing or extension of credit or incurrence of Indebtedness by the DIP Issuers (pursuant to Section 364 of the Bankruptcy Code or otherwise), or by any dismissal or conversion of any of the Chapter 11 Cases, or by any other act or omission whatsoever. Without limitation, notwithstanding any such order, financing, extension,

incurrence, dismissal, conversion, act or omission, except with respect to the Carve-Out, no costs or expenses of administration which have been or may be incurred in the Chapter 11 Cases or any conversion of the same or in any other proceedings related thereto, and no priority claims, are or will be prior to or on parity with any claim of the DIP Trustee, the Collateral Agent and the DIP Noteholders against the DIP Issuers in respect of any DIP Obligation except as otherwise set forth in the Bankruptcy Court DIP Order.

SECTION 11.05. The Collateral Agent.

(a) The Collateral Agent will hold (directly or through co-agents), and is directed by each Holder to so hold, and will be entitled to enforce, on behalf of the Holders, all liens on the DIP Collateral created by the DIP Security Documents for their benefit and the benefit of the other DIP Secured Parties.

(b) Except as provided in this DIP Indenture and the DIP Security Documents, the Collateral Agent will not be obligated:

- (i) to act upon directions purported to be delivered to it by any Person;
- (ii) to foreclose upon or otherwise enforce any lien; or

(iii) to take any other action whatsoever with regard to any or all of the DIP Security Documents, the liens created thereby or the DIP Collateral.

SECTION 11.06. Co-Collateral Agent. At any time or times it shall be necessary or prudent in order to conform to any law of any jurisdiction in which any of the DIP Collateral shall be located, or the Collateral Agent shall be advised by counsel, satisfactory to it, that it is reasonably necessary in the interest of the DIP Secured Parties, or the Required DIP Noteholders shall in writing so request the Collateral Agent, or the Collateral Agent shall deem it desirable for its own protection in the performance of its duties hereunder, the Collateral Agent and the DIP Issuers shall, at the reasonable request of the Collateral Agent, execute and deliver all instruments and agreements necessary or proper to constitute another bank or trust company, or one or more persons approved by the Collateral Agent (or the Required DIP Noteholders) and the DIP Issuers, either to act as co-Collateral Agent or co-Collateral Agents of all or any of the DIP Collateral, jointly with the Collateral Agent originally named herein or any successor or successors, or to act as separate collateral trustee or collateral trustees of any such property. In case an Event of Default shall have occurred and be continuing, the Collateral Agent may act under the foregoing provisions of this Section 11.06 without the consent of the DIP Issuers, and each Holder hereby appoints the Collateral Agent as its agent and attorney to act under the foregoing provisions of this Section 11.06 in such case.

SECTION 11.07. Limitation of Liability of the Collateral Agent. The Collateral Agent will not be liable or responsible for any loss or diminution in the value of any of the Collateral by reason of the act or omission of any agent selected by the Collateral Agent in good faith. Collateral Agent will have no additional duty as to any Collateral in its possession or control or in the possession or control of any agent or bailee or any income thereon or as to preservation of rights against prior parties or any other rights pertaining thereto. The Collateral Agent is entering into this Agreement not in its individual capacity but solely in its capacity as Collateral Agent under the DIP Indenture and in entering into this DIP Indenture and acting hereunder. The permissive authorizations, entitlements, powers and rights granted to the Collateral Agent herein shall not be construed as duties. Any exercise of discretion on behalf of the Collateral Agent shall be exercised in accordance with the terms of this DIP Indenture. Notwithstanding anything herein to the contrary, the Collateral Agent shall have no

responsibility for the preparation, filing or recording of any instrument, document or financing statement or for the perfection or maintenance of any security interest created hereunder. None of the provisions in this DIP Indenture shall require the Collateral Agent to expend or risk its own funds or otherwise to incur any liability, financial or otherwise, in the performance of any of its duties, or in the exercise of any of its rights or powers if it shall have reasonable grounds for believing that repayment of such funds or indemnity satisfactory to it against such risk or liability is not assured to it. The Collateral Agent shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby that the Collateral Agent is required to exercise as directed in writing by the written instruction from the Holders of a majority in principal amount of the outstanding DIP Notes; provided, the Collateral Agent shall be entitled to refrain from any act or the taking of any action hereunder or the DIP Indenture or from the exercise of any power or authority vested in it hereunder or thereunder unless and until the Collateral Agent shall have received instructions from the Holders of a majority in principal amount of the outstanding DIP Notes, and if the Collateral Agent deems necessary, satisfactory indemnity, and shall not be liable for any such delay in acting. The Collateral Agent shall not be required to take any action that, in its opinion or the opinion of its counsel, may expose the Collateral Agent to liability or that is contrary to this Indenture or applicable law, including for the avoidance of doubt any action that may be in violation of the automatic stay under any bankruptcy or insolvency law. Notwithstanding the foregoing, the Collateral Agent shall be liable for any claims, damages and demands arising out of its own gross negligence or willful misconduct as determined by a nonappealable order of a court of competent jurisdiction. For purposes of clarity, phrases such as “satisfactory to the Collateral Agent”, “approved by the Collateral Agent”, “acceptable to the Collateral Agent”, “as determined by the Collateral Agent”, “in the Collateral Agent’s discretion”, “selected by the Collateral Agent”, “requested by the Collateral Agent” and phrases of similar import authorize and permit the Collateral Agent to approve, disapprove, determine, act or decline to act in its discretion.

ARTICLE 12

MISCELLANEOUS

SECTION 12.01. Notices.

(a) Any notice or communication by any DIP Issuer, any DIP Guarantor or the DIP Trustee to the others is duly given if in writing and delivered in person, via facsimile, electronic mail or other electronic transmission, mailed by first-class mail (registered or certified, return receipt requested) or overnight air courier guaranteeing next day delivery, to the addressed as follows:

if to the DIP Issuers or a DIP Guarantor:

Anagram International, Inc.
7700 Anagram Drive
Minneapolis, MN 55344
Attention: Christopher Wiles
Email: wilesc@anagramintl.com

With a copy to:

Simpson Thacher & Bartlett, LLP
425 Lexington Avenue

New York, New York 10017
Attention: Sunny Singh
Nicholas Baker
Email: sunny.singh@stblaw.com
nbaker@stblaw.com

if to the DIP Trustee:

GLAS Trust Company LLC
3 Second Street
Suite 206
Jersey City, NJ 07311
Attention: TMG
Email: TMGUS@glas.agency
Facsimile: 212-202-6246

With a copy to:

King & Spalding LLP
110 North Wacker Drive
Suite 3800
Chicago, IL 60606
Attention: Geoffrey M. King
Kevin E. Manz
Email: gking@kslaw.com
kmanz@kslaw.com

Any DIP Issuer, any DIP Guarantor or the DIP Trustee by notice to the others may designate additional or different addresses for subsequent notices or communications.

All notices and communications (other than those sent to Holders, DIP Trustee and Collateral Agent) will be deemed to have been duly given: at the time delivered by hand, if personally delivered; five calendar days after being deposited in the mail, first-class, postage prepaid, if mailed; when receipt acknowledged, if transmitted by facsimile; and the next Business Day after timely delivery to the courier, if sent by overnight air courier guaranteeing next day delivery. All notices given by publication or electronic delivery will be deemed given on the first date on which publication or electronic delivery is made. Any notice or communication delivered to the DIP Trustee or the Collateral Agent shall be deemed effective upon actual receipt thereof.

(b) Any notice or communication mailed to a Holder shall be mailed, first class mail (certified or registered, return receipt requested), by overnight air courier guaranteeing next day delivery or sent electronically to the Holder at the Holder's address as it appears on the registration books of the Registrar and shall be sufficiently given if so mailed or sent within the time prescribed.

(c) Failure to deliver a notice or communication to a Holder or any defect in it shall not affect its sufficiency with respect to other Holders. If a notice or communication is mailed or otherwise delivered in the manner provided above, it is duly given, whether or not the addressee receives it.

(d) Notwithstanding any other provision of this DIP Indenture or any DIP Notes, where this DIP Indenture or any DIP Note provides for notice of any event (including any notice of redemption) to a Holder of a Global Security (whether by mail or otherwise), such notice shall be sufficiently given if given to the Depository for such Security (or its designee) pursuant to the standing instructions from the Depository (or its designee), including by electronic mail in accordance with accepted practices at the Depository.

SECTION 12.02. Certificate and Opinion as to Conditions Precedent. Upon any request or application by the DIP Issuers to the DIP Trustee to take or refrain from taking any action under this DIP Indenture, the DIP Issuers shall furnish to the DIP Trustee:

(a) an Officer's Certificate in form reasonably satisfactory to the DIP Trustee stating that, in the opinion of the signers, all conditions precedent, if any, provided for in this DIP Indenture relating to the proposed action have been complied with; and

(b) an Opinion of Counsel in form reasonably satisfactory to the DIP Trustee stating that, in the opinion of such counsel, all such conditions precedent have been complied with.

SECTION 12.03. Statements Required in Certificate or Opinion. Each certificate or opinion with respect to compliance with a covenant or condition provided for in this DIP Indenture (other than pursuant to Section 4.09 hereof) shall include:

(a) a statement that the individual making such certificate or opinion has read such covenant or condition;

(b) a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained in such certificate or opinion are based;

(c) a statement that, in the opinion of such individual, he or she has made such examination or investigation as is necessary to enable him or her to express an informed opinion as to whether or not such covenant or condition has been complied with (and, in the case of an Opinion of Counsel, may be limited to reliance on an officer's certificate as to matters of fact); and

(d) a statement as to whether or not, in the opinion of such individual, such covenant or condition has been complied with; *provided, however*, that with respect to matters of fact an Opinion of Counsel may rely on an Officer's Certificate or certificates of public officials.

SECTION 12.04. When Securities Disregarded. In determining whether the Holders of the required principal amount of DIP Notes have concurred in any direction, waiver or consent, DIP Notes owned by any DIP Issuer, any DIP Guarantor or by any Person directly or indirectly controlling or controlled by or under direct or indirect common control with the DIP Issuers or any DIP Guarantor shall be disregarded and deemed not to be outstanding, except that, for the purpose of determining whether the DIP Trustee shall be protected in relying on any such direction, waiver or consent, only DIP Notes which a Trust Officer of the DIP Trustee actually knows are so owned shall be so disregarded. DIP Notes so owned which have been pledged in good faith shall not be disregarded if the pledgee establishes to the satisfaction of the DIP Trustee the pledgee's right to deliver any such direction, waiver or consent with respect to the DIP Notes and that the pledgee is not any DIP Issuer, any DIP Guarantor, or any Person directly or indirectly controlling or controlled by or under direct or indirect common control with the DIP Issuers or any DIP Guarantor. Subject to the foregoing, only DIP Notes outstanding at the time shall be considered in any such determination.

SECTION 12.05. Rules by DIP Trustee, Paying Agent and Registrar. The DIP Trustee may make reasonable rules for action by or a meeting of the Holders. The Registrar and the Paying Agent may make reasonable rules for their functions.

SECTION 12.06. Legal Holidays. If a payment date is not a Business Day, payment shall be made on the next succeeding day that is a Business Day, and no interest shall accrue on any amount that would have been otherwise payable on such payment date if it were a Business Day for the intervening period. If a regular record date is not a Business Day, the record date shall not be affected.

SECTION 12.07. GOVERNING LAW; WAIVER OF JURY TRIAL.

(a) EXCEPT TO THE EXTENT SUPERSEDED BY THE BANKRUPTCY CODE, THIS DIP INDENTURE, THE DIP NOTES AND THE DIP GUARANTEES SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW.

(b) **SUBJECT TO CLAUSE (v) OF THE FOLLOWING SENTENCE, ALL JUDICIAL PROCEEDINGS BROUGHT AGAINST ANY PARTY ARISING OUT OF OR RELATING HERETO OR ANY OTHER DIP DOCUMENTS, OR ANY OF THE OBLIGATIONS, SHALL BE BROUGHT IN THE BANKRUPTCY COURT, OR IF THE BANKRUPTCY COURT DOES NOT HAVE (OR ABSTAINS FROM) JURISDICTION, ANY FEDERAL COURT OF THE UNITED STATES OF AMERICA SITTING IN THE BOROUGH OF MANHATTAN OR, IF THAT COURT DOES NOT HAVE SUBJECT MATTER JURISDICTION, IN ANY STATE COURT LOCATED IN THE CITY AND COUNTY OF NEW YORK. BY EXECUTING AND DELIVERING THIS AGREEMENT, EACH DIP NOTES PARTY, FOR ITSELF AND IN CONNECTION WITH ITS PROPERTIES, IRREVOCABLY (i) ACCEPTS GENERALLY AND UNCONDITIONALLY THE EXCLUSIVE JURISDICTION AND VENUE OF SUCH COURTS (OTHER THAN WITH RESPECT TO ACTIONS BY ANY AGENT IN RESPECT OF RIGHTS UNDER ANY COLLATERAL DOCUMENTS GOVERNED BY LAWS OTHER THAN THE LAWS OF THE STATE OF NEW YORK OR WITH RESPECT TO ANY COLLATERAL SUBJECT THERETO); (ii) WAIVES ANY DEFENSE OF FORUM NON CONVENIENS; (iii) AGREES THAT SERVICE OF ALL PROCESS IN ANY SUCH PROCEEDING IN ANY SUCH COURT MAY BE MADE BY REGISTERED OR CERTIFIED MAIL, RETURN RECEIPT REQUESTED, TO THE APPLICABLE DIP NOTES PARTY AT ITS ADDRESS PROVIDED IN ACCORDANCE WITH SECTION 12.01; (iv) AGREES THAT SERVICE AS PROVIDED IN CLAUSE (iii) ABOVE IS SUFFICIENT TO CONFER PERSONAL JURISDICTION OVER THE APPLICABLE DIP NOTES PARTY IN ANY SUCH PROCEEDING IN ANY SUCH COURT, AND OTHERWISE CONSTITUTES EFFECTIVE AND BINDING SERVICE IN EVERY RESPECT AND (v) AGREES THAT AGENTS AND LENDERS RETAIN THE RIGHT TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY LAW OR TO BRING PROCEEDINGS AGAINST ANY DIP NOTES PARTY IN THE COURTS OF ANY OTHER JURISDICTION IN CONNECTION WITH THE EXERCISE OF ANY RIGHTS UNDER ANY COLLATERAL DOCUMENT OR THE ENFORCEMENT OF ANY JUDGMENT.**

(c) THE DIP NOTES PARTIES, THE DIP TRUSTEE EACH IRREVOCABLY AND UNCONDITIONALLY WAIVES, AND EACH DIP NOTEHOLDER BY PURCHASING DIP NOTES SHALL BE DEEMED TO IRREVOCABLY AND UNCONDITIONALLY WAIVE, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS DIP INDENTURE OR ANY OTHER DIP DOCUMENT IN ANY COURT REFERRED TO IN PARAGRAPH (b) OF THIS SECTION 12.07. EACH SUCH PARTY

HERETO HEREBY IRREVOCABLY WAIVES, OR IS DEEMED TO IRREVOCABLY WAIVE, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING IN ANY SUCH COURT.

SECTION 12.08. No Recourse Against Others. No past, present or future director, officer, employee, manager, incorporator, member, partner or stockholder of the DIP Issuers or any DIP Guarantor or any of their Subsidiaries shall have any liability for any obligations of the DIP Issuers or the DIP Guarantor under the Securities, the DIP Guarantee or this DIP Indenture or for any claim based on, in respect of, or by reason of such obligations or their creation. Each Holder of DIP Notes by accepting a DIP Note waives and releases all such liability. The waiver and release are part of the consideration for issuance of the DIP Notes.

SECTION 12.09. Successors. All agreements of the DIP Issuers and each DIP Guarantor in this DIP Indenture and the DIP Notes shall bind its successors. All agreements of the DIP Trustee in this DIP Indenture shall bind its successors.

SECTION 12.10. Multiple Originals. The parties may sign any number of copies of this DIP Indenture. Each signed copy shall be an original, but all of them together represent the same agreement. One signed copy is enough to prove this DIP Indenture. The exchange of copies of this DIP Indenture and of signature pages by facsimile or email (in PDF format or otherwise) transmission shall constitute effective execution and delivery of this DIP Indenture as to the parties hereto and may be used in lieu of the original DIP Indenture for all purposes. Signatures of the parties hereto transmitted by facsimile or email (in PDF format or otherwise) shall be deemed to be their original signatures for all purposes.

SECTION 12.11. Table of Contents; Headings. The table of contents and headings of the Articles and Sections of this DIP Indenture have been inserted for convenience of reference only, are not intended to be considered a part of this DIP Indenture and shall not modify or restrict any of the terms or provisions of this DIP Indenture.

SECTION 12.12. Conflicts. To the extent of any conflict between this Indenture and the Bankruptcy Court DIP Order, the Bankruptcy Court DIP Order shall prevail.

SECTION 12.13. Severability. In case any provision in this DIP Indenture shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby and such provision shall be ineffective only to the extent of such invalidity, illegality or unenforceability.

SECTION 12.14. Force Majeure. In no event shall the DIP Trustee be responsible or liable for any failure or delay in the performance of its obligations hereunder arising out of or caused by, directly or indirectly, forces beyond its control, including, without limitation, strikes, work stoppages, accidents, acts of war or terrorism, civil or military disturbances, nuclear or natural catastrophes or acts of God, and interruptions, loss or malfunctions of utilities, communications or computer (software and hardware) services; it being understood that the DIP Trustee shall use reasonable efforts which are consistent with accepted practices in the banking industry to resume performance as soon as practicable under the circumstances.

SECTION 12.15. U.S.A. Patriot Act. The parties hereto acknowledge that in accordance with Section 326 of the U.S.A. Patriot Act, the DIP Trustee, like all financial institutions and in order to help fight the funding of terrorism and money laundering, is required to obtain, verify, and

record information that identifies each person or legal entity that establishes a relationship or opens an account with the DIP Trustee. The parties to this DIP Indenture agree that they will provide the DIP Trustee with such information as it may request in order for the DIP Trustee to satisfy the requirements of the U.S.A. Patriot Act.

SECTION 12.16. No Adverse Interpretation of Other Agreements. This Indenture may not be used to interpret any other indenture, loan or debt agreement of the DIP Issuers or their Subsidiaries or of any other Person. Any such indenture, loan or debt agreement may not be used to interpret this DIP Indenture.

[Signature Pages Follow]

IN WITNESS WHEREOF, the parties have caused this DIP Indenture to be duly executed as of the date first written above.

Very truly yours,

ANAGRAM HOLDINGS, LLC

By: _____
Name: Christopher P. Wiles
Title: Vice President Finance

ANAGRAM INTERNATIONAL, INC.

By: _____
Name: Christopher P. Wiles
Title: Vice President Finance

ANAGRAM INTERNATIONAL HOLDINGS, INC.,
as DIP Guarantor

By: _____
Name: Christopher P. Wiles
Title: Vice President Finance

GLAS TRUST COMPANY LLC, as DIP Trustee and
Collateral Agent

By: _____
Name:
Title:

Exhibit 3**Priorities of Liens**

ABL Priority Collateral	Notes Priority Collateral	Unencumbered Property
1. Carve-Out	1. Carve-Out	1. Carve-Out
2. DIP ABL Liens	2. DIP Notes Liens	2. DIP Notes Liens
3. ABL Adequate Protection Liens	3. 1L Adequate Protection Liens	3. DIP ABL Liens
4. Prepetition ABL Liens	4. Prepetition 1L Notes Liens	4. ABL Adequate Protection Liens / 1L Adequate Protection Liens
5. DIP Notes Liens	5. 2L Adequate Protection Liens	5. 2L Adequate Protection Liens
6. 1L Adequate Protection Liens	6. Prepetition 2L Notes Liens	
7. Prepetition 1L Notes Liens	7. DIP ABL Liens	
8. 2L Adequate Protection Liens	8. ABL Adequate Protection Liens	
9. Prepetition 2L Notes Liens	9. Prepetition ABL Liens	

Priorities of Administrative Expense Claims

1. Carve-Out
2. DIP Superpriority Claims ⁷
3. ABL 507(b) Claim / 1L 507(b) Claim
4. 2L 507(b) Claim

⁷ The DIP Superpriority Claims granted to (x) the DIP ABL Secured Parties shall, at all times be in respect of any assets or property that constitute, or, but for the commencement of these chapter 11 cases, would have constituted, ABL Priority Collateral, senior to the DIP Superpriority Claims granted to the DIP Notes Secured Parties, (y) the DIP Notes Secured Parties shall, at all times be in respect of any assets or property that constitute, or, but for the commencement of these chapter 11 cases, would have constituted, Notes Priority Collateral, senior to the DIP Superpriority Claims granted to the DIP ABL Secured Parties and (z) the DIP ABL Secured Parties and the DIP Notes Secured Parties shall be *pari passu* in right of payment as to the proceeds of any assets not described in the foregoing clause (x) or (y) other than the DIP Notes Account and the amounts on deposit therein which shall only be for the benefit of the DIP Notes Secured Parties.

Exhibit 4

DIP ABL Termination Events⁸

Each of the following events shall constitute a DIP ABL Termination Event:

1. The occurrence and continuance of an Event of Default (as defined in the DIP Notes Indenture) that has not been waived or cured as provided by the DIP Notes Indenture within five (5) Business Days after its first occurrence;
2. The Debtors fail to make any payment to the Prepetition ABL Secured Parties or the DIP ABL Secured Parties when due pursuant to or in accordance with this Interim Order and such failure shall continue for two (2) Business Days.
3. Except as expressly granted by the Interim Order, the creation of, or the filing by the Debtors of any motion to create, any liens on DIP Collateral that are pari passu with or senior to the liens securing the DIP ABL Obligations or the Prepetition ABL Obligations;
4. The Debtors file a motion seeking use of Cash Collateral other than as set forth in this Interim Order or with the prior written consent of the DIP ABL Agent;
5. Without the prior written consent of the DIP ABL Agent, the Debtors file a motion seeking to sell all or substantially all of their assets, or any portion of the ABL Priority Collateral, that does not include a stalking horse bid that provides for the indefeasible payment in full in cash (or, with respect to any Bank Product Obligations, cash collateralization thereof in accordance with the terms of the DIP ABL Agreement) of all of the DIP ABL Obligations at the closing thereof;
6. An order reasonably acceptable to DIP ABL Agent is not entered, on or before December 10, 2023, approving the bidding procedure, stalking horse protections and related procedures sought pursuant to the *Emergency Motion of Debtors for Entry of an Order (I)(A) Approving the Bidding Procedures for Sale of Debtors' Assets, (B) Approving Stalking Horse Bid Protections, (C) Scheduling Certain Dates With Respect Thereto, (D) Approving Form and Manner of Notices Thereof and (E) Approving Contract Assumption and Assignment Procedures, (II)(A) Approving Sale of Debtors' Assets Free and Clear of Liens, Claims, Interests, and Encumbrances and (B) Authorizing Assumption and Assignment of Executory Contracts and Unexpired Leases and (III) Granting Related Relief*, filed contemporaneously with this Interim Order; it being understood that the relief and related order in connection with the foregoing motion is reasonably satisfactory to the DIP ABL Agent;
7. Without the prior written consent of the DIP ABL Agent, the closing of a sale or all or substantially all of the ABL Priority Collateral that does not provide for the indefeasible payment in full in cash (or, with respect to any Bank Product Obligations, cash

⁸ Capitalized terms used in this **Exhibit 4** that are not otherwise defined herein shall have the meanings given to them in the Prepetition ABL Credit Agreement.

collateralization thereof in accordance with the terms of the DIP ABL Agreement) of all of the DIP ABL Obligations at the closing thereof;

8. The Debtors amend or otherwise modify the bid procedures or the stalking horse purchase agreement approved by the bidding procedures order referenced in subsection 6 (the “Bidding Procedures Order”) to permit bids that do not include all or substantially all ABL Priority Collateral or do not provide by their terms that all DIP ABL Obligations will be paid in full in cash in accordance with the DIP ABL Agreement from the closing thereof (unless the DIP ABL Agent has agreed otherwise in writing);
9. The stalking horse purchase agreement is terminated for any reason other than the consummation of a higher and better bid in accordance with the Bidding Procedures Order.
10. The filing of any motion, plan, disclosure statement or any other pleading or document by the Debtors, or the Debtors support or do not object to a motion, plan, disclosure statement or any other pleading or documents, or the confirmation of any plan, that provides for treatment of the DIP ABL Obligations under a plan of reorganization in any manner other than payment in full in cash (or with respect to any letters of credit, cash collateralization thereof in accordance with their terms) on or before the effective date thereof;
11. After giving effect to applications of Cash Collateral (and all loan advances) during any applicable Cash Dominion Period, the Debtors fail to pay any amounts due and owing to the DIP ABL Secured Parties, the Prepetition ABL Secured Parties or their respective advisors retained under and as permitted by the DIP ABL Agreement, the Interim Order or the Final Order, as applicable, and such failure continues for five (5) Business Days;
12. The Debtors’ exclusivity period under Bankruptcy Code § 1121 is terminated or shortened;
13. The Debtors’ chapter 11 cases are converted, or the Debtors file or fail to timely contest a motion to convert these chapter 11 cases, to cases under chapter 7 of the Bankruptcy Code;
14. The dismissal of, or the Debtors file or fail to timely contest a motion to dismiss, these chapter 11 cases;
15. Parties in interest (other than the DIP ABL Agent or the other DIP ABL Secured Parties) receive relief from the automatic stay to exercise any remedies against the ABL Priority Collateral having a fair value in excess of \$250,000 in the aggregate;
16. A breach of the terms of the Interim Order or Final Order, as applicable, by the Debtors in a manner materially adverse to the DIP ABL Secured Parties or the Prepetition ABL Secured Parties that has not been cured within five (5) Business Days following the occurrence of such breach;
17. A Final Order substantially consistent with this Interim Order or otherwise acceptable to DIP ABL Agent is not entered on or before December 15, 2023;

18. This Interim Order or a Final Order is modified, amended, reversed, vacated or stayed in a manner materially adverse to the DIP ABL Secured Parties or the Prepetition ABL Secured Parties without the prior written consent of DIP ABL Agent;
19. A trustee or examiner is appointed or elected in any of these chapter 11 cases; and
20. If any warranty, representation or covenant contained in the first sentence of Sections 4.5 (Title to Assets; No Encumbrances) to the extent applicable to personal property, and subject to entry of the DIP Orders; Section 4.7 (Compliance with Laws); Section 4.13 (Patriot Act); Section 4.17 (Government Regulation); Section 4.18 (OFAC; Sanctions; Anti-Corruption Laws; Anti-Money Laundering Laws); Section 4.19 (Employee and Labor Matters); Section 4.26 (Inventory Records); Section 5.6 (Insurance); Section 5.7 (Inspection); and Section 5.15 (OFAC) of the Prepetition ABL Credit Agreement, each of which shall be deemed made at any time the Debtors request a borrowing under the DIP ABL Agreement, or in any certificate with respect to Section 4.22, or Section 4.23 or Section 4.26 of the Prepetition ABL Credit Agreement or any reporting delivered pursuant to Paragraph 36(b) of this Interim Order, proves to be untrue in any material respect as of the date of the making or deemed making of a borrowing under the DIP ABL Agreement; provided that the foregoing representations, warranties and covenants, when made or deemed made, shall (x) exclude the effect of the filing of these chapter 11 cases and the events and conditions leading thereto and resulting therefrom and (y) in the case of Sections 4.13 and 4.18 shall be subject to the knowledge of the Debtors.

Schedule 1**Initial DIP Budget**

(\$ in thousands)

	Week 1 Forecast 11/11/23	Week 2 Forecast 11/18/23	Week 3 Forecast 11/25/23	Week 4 Forecast 12/02/23	Week 5 Forecast 12/09/23	Week 6 Forecast 12/16/23	Week 7 Forecast 12/23/23	Week 8 Forecast 12/30/23	Week 9 Forecast 01/06/24	Week 10 Forecast 01/13/24	Week 11 Forecast 01/20/24	Week 12 Forecast 01/27/24	Week 13 Forecast 02/03/24	13-Week Total
1 Operating Receipts														
2 Wholesale Collections	1,394	1,220	1,391	1,457	1,578	1,629	1,746	1,997	1,739	1,801	2,085	1,551	940	20,529
3 Affiliate Collections	676	1,030	2,140	262	541	2,163	183	247	1,751	1,384	1,384	100	1,170	13,031
4 Subtotal - Operating Receipts	2,070	2,250	3,531	1,719	2,119	3,792	1,929	2,243	3,490	3,185	3,469	1,651	2,110	33,560
5 Merchandise Disbursements														
6 Merchandise / Raw Materials	(1,183)	(1,015)	(655)	(948)	(1,233)	(1,448)	(974)	(1,215)	(1,188)	(1,638)	(1,026)	(931)	(937)	(14,391)
7 Freight-Inbound and Duty	(16)	(16)	(16)	(12)	(12)	(12)	(12)	(12)	(19)	(19)	(19)	(19)	(16)	(202)
8 Subtotal - Merchandise Disbursements	(1,199)	(1,031)	(671)	(960)	(1,245)	(1,460)	(986)	(1,227)	(1,207)	(1,657)	(1,045)	(950)	(953)	(14,592)
9 Operating Disbursements														
10 Payroll	(690)	(1)	(690)	(1)	(690)	(1)	(690)	(1)	(690)	(1)	(690)	(1)	(690)	(4,836)
11 Benefits	(276)	(103)	(276)	(103)	(276)	(103)	(276)	(103)	(276)	(103)	(276)	(103)	(276)	(2,546)
12 Payroll Taxes	(399)	(0)	(309)	(0)	(309)	(0)	(309)	(0)	(309)	(0)	(309)	(0)	(309)	(2,255)
13 Royalty Payments	-	-	-	-	-	-	-	-	(646)	-	-	-	-	(646)
14 Freight-Outbound	(157)	(71)	(76)	(56)	(45)	(45)	(40)	(50)	(50)	(50)	(50)	(50)	(45)	(784)
15 Equipment	(21)	(21)	(21)	(17)	(17)	(17)	(17)	(17)	(22)	(22)	(22)	(22)	(22)	(256)
16 Facilities (incl. leases)	-	(99)	(96)	(341)	-	(149)	-	(350)	(406)	-	(151)	(99)	(406)	(2,099)
17 Taxes - Sales and Other	-	-	-	-	-	-	-	-	-	-	-	(20)	-	(20)
18 Other Manufacturing Disbursements	(321)	(243)	(225)	(330)	(180)	(180)	(180)	(290)	(225)	(225)	(225)	(225)	(225)	(3,075)
19 Subtotal - Operating Disbursements	(1,863)	(539)	(1,693)	(848)	(1,516)	(496)	(1,511)	(811)	(2,623)	(401)	(1,721)	(520)	(1,972)	(16,515)
20 Net Cash Flow from Operations	(992)	680	1,167	(89)	(642)	1,835	(568)	205	(339)	1,127	702	181	(814)	2,452
21 Non-Operating Disbursements														
22 ABL Debt Service	-	-	-	(59)	-	-	-	(59)	-	-	-	(59)	-	(177)
23 CapEx	-	-	(83)	(42)	(85)	(85)	(85)	(86)	(85)	(85)	(85)	(85)	(85)	(892)
24 Professional Fees / Restructuring Costs	(3,176)	(187)	(1,650)	(834)	(840)	(671)	(3,656)	(6,454)	(15)	(15)	(15)	(15)	(15)	(17,540)
25 Standup Costs	(425)	(120)	(85)	(1,152)	(1,938)	(18)	(859)	(18)	(890)	(60)	(215)	(60)	(245)	(6,087)
26 Subtotal - Non-Operating Disbursements	(3,601)	(306)	(1,818)	(2,087)	(2,862)	(774)	(4,600)	(6,618)	(990)	(160)	(315)	(219)	(345)	(24,696)
27 Total Disbursements	(6,664)	(1,877)	(4,182)	(3,895)	(5,624)	(2,730)	(7,098)	(8,656)	(4,819)	(2,218)	(3,081)	(1,689)	(3,269)	(55,803)
28 Net Cash Flow	(4,593)	373	(652)	(2,176)	(3,504)	1,061	(5,168)	(6,413)	(1,329)	967	388	(38)	(1,159)	(22,244)
29 Beginning Book Cash Balance	8,709	13,747	14,121	13,469	11,293	19,789	20,850	15,681	9,269	7,939	8,906	9,294	9,256	8,709
30 Net Cash Flow	(4,593)	373	(652)	(2,176)	(3,504)	1,061	(5,168)	(6,413)	(1,329)	967	388	(38)	(1,159)	(22,244)
31 ABL Draw (Repayment)	1,702	2,250	3,531	1,719	2,119	3,792	1,929	2,243	3,490	3,185	3,469	1,651	2,110	33,191
32 Sweep to Wells Fargo	(2,070)	(2,250)	(3,531)	(1,719)	(2,119)	(3,792)	(1,929)	(2,243)	(3,490)	(3,185)	(3,469)	(1,651)	(2,110)	(33,560)
33 DIP Proceeds	10,000	-	-	-	12,000	-	-	-	-	-	-	-	-	22,000
34 Ending Book Cash Balance	13,747	14,121	13,469	11,293	19,789	20,850	15,681	9,269	7,939	8,906	9,294	9,256	8,097	8,097
35 ABL Availability														
36 Borrowing Base	11,647	11,547	11,595	11,723	12,104	11,875	12,099	12,976	12,993	13,092	13,115	13,632	13,958	13,958
37 Minimum Excess Availability	(1,500)	(1,500)	(1,500)	(1,500)	(1,500)	(1,500)	(1,500)	(1,500)	(1,500)	(1,500)	(1,500)	(1,500)	(1,500)	(1,500)
38 Outstanding Loan Balance	(6,207)	(6,207)	(6,207)	(6,207)	(6,207)	(6,207)	(6,207)	(6,207)	(6,207)	(6,207)	(6,207)	(6,207)	(6,207)	(6,207)
39 Ending ABL Availability	3,940	3,840	3,888	4,016	4,398	4,169	4,392	5,269	5,286	5,386	5,409	5,925	6,251	6,251
40 (-) \$10M ABL Cap	-	(47)	(95)	(223)	(604)	(375)	(599)	(1,476)	(1,493)	(1,592)	(1,615)	(2,132)	(2,458)	(2,458)
41 Ending Capped ABL Availability	3,940	3,793	3,793	3,793	3,793	3,793	3,793	3,793	3,793	3,793	3,793	3,793	3,793	3,793
42 Total Liquidity	17,687	17,914	17,262	15,086	23,582	24,643	19,475	13,062	11,733	12,700	13,087	13,049	11,890	14,348