

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

	X	
In re:	:	Chapter 11
	:	
SEQUENTIAL BRANDS GROUP, INC., <i>et al.</i> , <sup>1</sup>	:	Case No. 21-11194 (JTD)
	:	
Debtors.	:	(Joint Administration Requested)

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**DEBTORS’ MOTION FOR ENTRY OF INTERIM AND FINAL ORDERS  
(I) AUTHORIZING THE DEBTORS TO OBTAIN POSTPETITION FINANCING  
(II) AUTHORIZING THE DEBTORS TO USE CASH COLLATERAL, (III) GRANTING  
LIENS AND PROVIDING SUPER-PRIORITY ADMINISTRATIVE EXPENSE STATUS,  
(IV) GRANTING ADEQUATE PROTECTION, (V) MODIFYING THE AUTOMATIC  
STAY, (VI) SCHEDULING A FINAL HEARING, AND  
(VII) GRANTING RELATED RELIEF**

Sequential Brands Group, Inc. and its debtor affiliates in the above-captioned chapter 11 cases (the “Chapter 11 Cases”), as debtors and debtors in possession (each, a “Debtor,” and collectively, the “Debtors”), respectfully represent as follows in support of this motion (the “Motion”):<sup>2</sup>

**Relief Requested**

1. By this Motion, pursuant to sections 105, 361, 362, 363(c)(2), 364(c)(1), 364(c)(2), 364(c)(3), 364(d)(1), and 364(e), 507, 507 and 552 of title 11 of the United States Code (the “Bankruptcy Code”), Rules 2002, 4001, 6003(b), 6004(a), 6004(h), and 9014 of the Federal Rules

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<sup>1</sup> The Debtors, along with the last four digits of each Debtor’s tax identification number, are: Sequential Brands Group, Inc. (2789), SQBG, Inc. (9546), Sequential Licensing, Inc. (7108), William Rast Licensing, LLC (4304), Heeling Sports Limited (0479), Brand Matter, LLC (1258), SBG FM, LLC (8013), Galaxy Brands LLC (9583), The Basketball Marketing Company, Inc. (7003), American Sporting Goods Corporation (1696), LNT Brands LLC (3923), Joe’s Holdings LLC (3085), Gaiam Brand Holdco, LLC (1581), Gaiam Americas, Inc. (8894), SBG-Gaiam Holdings, LLC (8923), SBG Universe Brands, LLC (4322), and GBT Promotions LLC (7003). The Debtors’ corporate headquarters and the mailing address for each Debtor is 1407 Broadway, 38th Floor, New York, NY 10018.

<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the respective meanings ascribed to such terms in the DIP Orders, the First Day Declaration (as defined herein), and the Miller Buckfire Declaration (as defined herein), as applicable.



of Bankruptcy Procedure (the “Bankruptcy Rules”), and Rules 2002-1, 4001-1, 4001-2 and 9013-1 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”), the Debtors seek entry of (i) an interim order, substantially in the form annexed hereto as Exhibit A (the “Interim Order”) and, (ii) following the Final Hearing (as defined herein), a final order (the “Final Order”) and, together with the Interim DIP Order, the “DIP Orders”):

- (a) authorizing Sequential Brands Group, Inc., in its capacity as borrower (the “Borrower”) to obtain postpetition financing, and for each of the other Credit Parties thereto (in each case, Debtors in the Chapter 11 Cases) to guarantee unconditionally on a joint and several basis, the Borrower’s obligations in connection with a senior secured, super priority term loan facility (the “DIP Facility”) consisting of an \$150,000,000.00 term loan credit facility (the “DIP Loans”), of which \$141,000,000.00 will be available immediately upon entry of the Interim Order, in accordance with the terms and conditions set forth in the DIP Credit Agreement (defined below), attached as Exhibit A to the Interim Order, an all other terms and conditions of the DIP Loan Documents (defined below);
- (b) authorizing the Debtors to enter into that certain *Superpriority Secured Debtor-in-Possession Credit Agreement*, attached hereto as Exhibit B, among the Borrower, the DIP Guarantors, the lenders from time to time party thereto (collectively, in such capacities, the “DIP Lenders”), and Wilmington Trust, National Association, as administrative agent (in such capacity, the “DIP Agent,” and together with the DIP Lenders, the “DIP Secured Parties”) (as the same may be amended, restated, supplemented, waiver, or otherwise modified from time to time, the “DIP Credit Agreement,” and all agreements, documents, instruments and amendments delivered or executed in connection therewith, the “DIP Loan Documents”);
- (c) approving the terms of, and authorizing the Debtors party thereto to execute and deliver, the DIP Loan Documents and authorizing the Debtors to perform their respective obligations thereunder and such other acts as may be necessary or desirable in connection with the DIP Loan Documents, including the DIP Obligations (as defined below);
- (d) authorizing the Debtors to use the proceeds of the DIP Loans and the Prepetition Collateral, including Cash Collateral, in accordance with the Budget (subject to permitted variances set forth in the DIP Orders and the DIP Credit Agreement) to (i) refinance all outstanding obligations and terminate all commitments under the Prepetition BAML Facility (as defined below) upon entry of the Interim Order and closing of the DIP Credit Facility, and (ii) provide working capital for, and other general corporate purposes of, the Debtors, including payment portions of the Adequate Protection Package and reasonable and documented transaction costs,

fees, and expenses incurred in connection with any transaction to be implemented through the Chapter 11 Cases, including the Sale Transactions;

- (e) granting the DIP Liens (as defined below) in and on any and all presently owned and hereafter acquired assets and real and personal property of the Debtors as set forth in the DIP Loan Documents (collectively, the “DIP Collateral”), including all property constituting “Cash Collateral” as defined in Section 363(a) of the Bankruptcy Code, and subject only to the (x) Carve Out (defined below), (y) certain liens permitted pursuant to the terms of the DIP Credit Agreement and (z) other valid, perfected and unavoidable liens, if any, existing as of the Petition Date (or perfected after the Petition Date to the extent permitted by section 546(b) of the Bankruptcy Code), in each case, that are senior in priority to the Prepetition First Lien Loan Liens, on the terms and conditions set forth in the DIP Orders and in the DIP Documents;
- (f) authorizing and directing the Debtors to pay the principal, interest, premiums, fees, expenses, and other amounts payable from time to time under the DIP Loan Documents as such become earned, due and payable, including commitment fees, upfront fees, fronting fees, backstop fees, closing fees, audit fees, appraisal fees, valuation fees, liquidator fees, structuring fees, administrative agent’s fees, the fees and disbursements of the DIP Agent and DIP Lenders’ attorneys, advisors, accountants, and other consultants, all to the extent provided in, and in accordance with, the DIP Loan Documents;
- (g) granting, in each case subject to the Carve Out (as defined below), allowed superpriority administrative expense claims against each of the Debtors’ estates (the “DIP Facility Super-Priority Claims”) to the DIP Agent and the DIP Lenders with respect to the DIP Obligations (as defined below) over any and all administrative expenses of any kind or nature subject and subordinate only to the payment of the Carve Out on the terms and conditions set forth in the DIP Orders and in the DIP Documents;
- (h) subject to entry of a Final Order and to the extent set forth therein, waiving the Debtors’ and the estates’ right to surcharge against the Prepetition Collateral pursuant to section 506(c) of the Bankruptcy Code
- (i) subject to entry of a Final Order and to the extent set forth therein, for the “equities of the case” exception under Bankruptcy Code section 552(b) to not apply to such parties with respect to the proceeds, products, offspring, or profits of any of the Prepetition Collateral or the DIP Collateral, as applicable;
- (j) authorizing the Debtors to use Cash Collateral within the meaning of sections 363(a) and 363(c) of the Bankruptcy Code;
- (k) approval of the form and manner of adequate protection to be provided to the Prepetition Term B Agent (as defined below), on behalf of and for the benefit of the Prepetition Term B Lenders (as defined below) and the Prepetition BAML Agent (as defined below), on behalf of and for the benefit of the Prepetition BAML Lenders (as defined below);

- (l) vacating and modifying the automatic stay imposed by section 362 of the Bankruptcy Code to the extent necessary to implement and effectuate the terms and provisions of the DIP Loan Documents and the Interim Order;
- (m) pursuant to Bankruptcy Rules 2002, 4001(b), (c) and (d) and all applicable Local Rules, holding an interim hearing (the “Interim Hearing”) on the Motion before this Court to consider entry of the Interim Order, among other things, (i) authorizing Debtors to, on an interim basis, borrow from the DIP Lenders a principal amount of up to \$141,000,000.00 in DIP Loans, (ii) authorizing the DIP Secured Parties to guaranty the DIP Obligations, (iii) authorizing the Debtors’ use of Prepetition Collateral (including Cash Collateral), (iv) granting the adequate protection described in this Interim Order, and (v) authorizing the Debtors to execute and deliver the DIP Documents to which they are a party and to perform their respective obligations thereunder and such other and further acts as may be necessary or appropriate in connection therewith;
- (n) scheduling a date for a hearing on this Motion to consider entry of the Final Order (the “Final Hearing”) no later than twenty-three (23) days after entry of the Interim Order; and
- (o) granting related relief.

2. In support of this Motion, the Debtors submit the *Declaration of James Doak in Support of Debtors’ Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to (A) Obtain Postpetition Financing and (B) Use Cash Collateral, (II) Granting Adequate Protection to Prepetition Secured Parties, (III) Granting Liens and Superpriority Claims, (IV) Modifying the Automatic Stay, (V) Scheduling a Final Hearing, and (VI) Granting Related Relief*, sworn to the date hereof (the “Miller Buckfire Declaration”), which has been filed contemporaneously herewith and is incorporated by reference herein; and the *Declaration of Lorraine DiSanto in Support of Debtors’ Chapter 11 Petitions and First Day Relief*, sworn to on the date hereof (the “First Day Declaration”), which has been filed with the Court contemporaneously herewith and is incorporated by reference herein.

### **Background**

3. On the date hereof (the “Petition Date”), the Debtors each commenced voluntary the Chapter 11 Cases for relief under chapter 11 of the Bankruptcy Code. The Debtors are

authorized to continue operating their businesses and managing their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee, examiner, or statutory committee has been appointed in the Chapter 11 Cases.

4. Contemporaneously herewith, the Debtors have filed a motion requesting joint administration of their chapter 11 cases pursuant to Bankruptcy Rule 1015(b) and Local Rule 1015-1.

5. Additional information regarding the Debtors' business and capital structure and the circumstances leading to the commencement of these Chapter 11 Cases is set forth in the First Day Declaration.

#### **Jurisdiction and Venue**

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

7. Pursuant to Local Rule 9013-1(f), the Debtors consent to the entry of a final order by the Court in connection with this Motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments consistent with Article III of the United States Constitution.

#### **Preliminary Statement**

8. The Debtors have secured a \$150,000,000.00 DIP Facility from the DIP Lenders that will provide the Debtors with the necessary liquidity to (a) refinance the Prepetition BAML Obligations in full, (b) operate their business in the Chapter 11 Cases while pursuing the various

asset sales required by them pursuant to the RSA (defined below), and (c) prosecute confirmation of a chapter 11 plan to conclude the Chapter 11 Cases expeditiously.

9. As of the Petition Date, the Debtors have approximately \$100,000 of cash on hand, which aside from being the Cash Collateral of the Prepetition Lenders, is insufficient for the Debtors to operate their business in the ordinary course during the Chapter 11 Cases, as well as satisfy their obligations under the RSA in connection with conducting the various asset sales contemplated therein. Thus, the Debtors require immediate access to the proceeds of the DIP Facility and authority to use Cash Collateral to ensure they have sufficient liquidity to operate their business as a going concern and to avoid immediate and irreparable harm to their estates.

10. The DIP Facility was the result of a fair process through good faith, arm's-length negotiations between the Debtors and the DIP Lenders. Indeed, over the course of multiple weeks, the Debtors, the Prepetition Term B Lenders (as defined below) and the Prepetition BAML Lenders (as defined below), and their respective legal and financial advisors, negotiated the terms and provisions of the DIP Facility. During that time, the Debtors and their advisors negotiated extensively on material terms proposed by the Prepetition Term B Lenders – including the amount of financing available, economics, and covenants – of the DIP Facility. The Debtors and the Prepetition Term B Lenders exchanged numerous term sheets and mark-ups and participated in several calls to finalize the DIP Credit Agreement. Throughout the negotiation process, the Debtors' restructuring professionals held numerous calls and briefings with the Debtors' management team and the Company's board of directors, each of which provided feedback and direction with respect to the terms of the DIP Facility.

11. As set forth in the Miller Buckfire Declaration, given the arm's-length negotiations that took place between the Debtors and the DIP Lenders, as well as the lack of any feasible

alternatives for financings, the DIP Facility represents the best postpetition financing option available to the Debtors under the circumstances. Specifically, the Debtors, after consultation with their advisors and in light of the feedback from third-party lenders and investors elicited through their prepetition marketing processes, have determined that no third party would be willing to provide financing to the Debtors other than on a priming basis. Furthermore, the Debtors believe that they have limited (or no) unencumbered assets and that there is limited (or no) equity cushion remaining in the collateral securing the Prepetition BAML Credit Facility and the Prepetition Term B Credit Facility, such that it would be difficult or impossible to prime the liens of the Prepetition Term B Parties without their consent (and, as discussed herein, the Prepetition BAML were unwilling to consent to a priming facility at all).

12. The DIP Facility is fair and reasonable. Of note, proceeds of the DIP Facility will be used, among other things, to refinance all of the Prepetition BAML Obligations. This feature is critical, as the Prepetition BAML Lenders were unwilling to be primed by the DIP Facility. In any event, the economics of the DIP Facility are such that the refinancing is at least cost-neutral to the estates (and may, in fact, provide savings to the Debtors' estate compared to a DIP Facility without refinancing mechanism), and obviates the need for a value-destructive and time-consuming priming fight with the Prepetition BAML Lenders. *See* Miller Buckfire Declaration ¶ 18. In addition, the Prepetition Term B Lenders also are fully supportive of the DIP Facility, including the imposition of priming liens associated therewith. The DIP Facility will allow the Debtors to conduct the asset sales contemplated in the RSA and expeditiously pursue confirmation of a chapter 11 plan. Accordingly, the Debtors respectfully request that the DIP Facility be approved.

**Prepetition Indebtedness**

13. The following chart set forth the Debtors' funded debt obligations as of the

Petition Date:

Debt Obligation	Original Principal Amount	Approximate Principal Amount Outstanding as of Petition Date	Maturity	Security Status
Revolving Loan	\$130 million	N/A	2023	Secured
First Lien Term Loan A	\$150 million	\$102.28 million	2023	Secured
First Lien Term Loan A-1	\$70 million	\$25.63 million	2023	Secured
Second Lien Term Loan	\$314 million <sup>3</sup>	\$298.50 million	2024	Secured

14. Prepetition BAML Facility. The Debtors have outstanding first-lien secured debt obligations under that certain Third Amended and Restated First Lien Credit Agreement, dated as of July 1, 2016 (as amended, supplemented, amended and restated or modified from time to time, the "Prepetition BAML Credit Agreement") and together, with all related Loan Documents (as defined in the Prepetition BAML Credit Agreement), the "Prepetition BAML Loan Documents", among (a) the Borrower (as defined in the Prepetition BAML Credit Agreement), (b) the other persons party thereto from time to time that are designated as "credit parties" (each, a "Prepetition BAML Guarantor"), (c) Bank of America, N.A., as administrative agent and collateral agent (in such capacities, the "Prepetition BAML Agent"), and (d) the lenders from time to time party thereto (each, a "Prepetition BAML Lender" and collectively, the "Prepetition BAML Lenders," and collectively with the Prepetition BAML Agent, and the other Secured Parties (as defined in the Prepetition BAML Credit Agreement), the "Prepetition BAML Parties"), which (as amended) consists of revolving and term loans (the "Prepetition BAML Facility"). As of the Petition Date, the aggregate principal amount outstanding under the Prepetition BAML Facility on account of

<sup>3</sup> As of the First Amendment Effective Date (as defined in the Wilmington Credit Agreement). The original principal amount was \$415,000,000.

the term loan was \$127,913,705 (the “Prepetition BAML Loans,” with such amounts on account of the Prepetition BAML Loans, together with any accrued and unpaid interest, fees, expenses and disbursements (including, without limitation, any attorneys’ fees, accountants’ fees, appraisers’ fees and financial advisors’ fees, and related expenses and disbursements), indemnification obligations, and other charges, amounts and costs of whatever nature owing, whether or not contingent, whenever arising, accrued, accruing, due, owing, or chargeable in respect of any of the Debtors’ obligations under the Prepetition BAML Facility, the “Prepetition BAML Obligations”).

15. Prepetition Term B Facility. The Debtors have outstanding second-lien term loan obligations under that certain Third Amended and Restated Credit Agreement (as amended, restated, supplemented, waived or otherwise modified from time to time, the “Prepetition Term B Credit Agreement” and, together with any other agreements and documents executed or delivered in connection therewith, each as may be amended, restated, supplemented, or otherwise modified from time to time, the “Prepetition Term B Loan Documents”; the Prepetition BAML Credit Agreement together with the Prepetition Term B Credit Agreement, the “Prepetition Agreements”; the Prepetition BAML Loan Documents together with the Prepetition Term B Loan Documents, the “Prepetition Documents”), among (a) the Borrower (as defined in the Prepetition Term B Credit Agreement), (b) the other persons party thereto from time to time that are designated as “credit parties” (each a “Prepetition Term B Guarantor”), (c) Wilmington Trust, National Association, as administrative agent and collateral agent (in such capacities, the “Prepetition Term B Agent” and, together with the Prepetition BAML Agent, the “Prepetition Agents”) and (d) the lenders from time to time party thereto (each, a “Prepetition Term B Lender” and collectively, the “Prepetition Term B Lenders,” and together with the Prepetition Term B Agent and the other Secured Parties (as defined the Prepetition Term B Credit Agreement), the

“Prepetition Term B Parties” and, together with the Prepetition BAML Lenders, the “Prepetition Lenders,” the Prepetition Term B Parties and the Prepetition BAML Parties, collectively with the Prepetition Agents, the “Prepetition Secured Parties”), which (as amended) consists of term loans and other financial accommodations (the “Prepetition Term B Facility,” and together with the Prepetition BAML Facility, the “Prepetition Secured Facilities”). As of the Petition Date, the aggregate principal amount outstanding under the Prepetition Term B Facility on account of term loans was not less than \$298,467,625 (the “Prepetition Term Loans,” with such amounts with such amounts on account of the Prepetition Term B Loans, together with any accrued and unpaid interest, fees, expenses and disbursements (including, without limitation, any attorneys’ fees, accountants’ fees, appraisers’ fees and financial advisors’ fees, and related expenses and disbursements), indemnification obligations, and other charges, amounts and costs of whatever nature owing, whether or not contingent, whenever arising, accrued, accruing, due, owing, or chargeable in respect of any of the Debtors’ obligations under the Prepetition Term B Facility, the “Prepetition Term B Obligations,” and together with the Prepetition BAML Obligations, the “Prepetition Secured Obligations.”).

16. Intercreditor Agreement. The relative contractual rights of the Prepetition Secured Parties are governed by that certain Amended and Restated Intercreditor Agreement, dated as of December 4, 2015 (as may be amended, restated, supplemented or otherwise modified from time to time, the “Intercreditor Agreement”), among the Prepetition Agents and acknowledged by the Borrower, the Prepetition BAML Guarantors and the Prepetition Term B Guarantors.

**Summary of Terms of DIP Financing**<sup>4</sup>

17. In accordance with Bankruptcy Rules 4001(b)–(d) and Local Rule 4001-2(a), the below chart summarizes the significant terms of the proposed Interim Order and the DIP Loan Documents.

<b>SUMMARY OF MATERIAL TERMS OF DIP FACILITY</b>		
<b>Borrower</b> Bankruptcy Rule 4001(c)(1)(B)	Sequential Brands Group, Inc. (the “ <u>Borrower</u> ”)	DIP Credit Agreement, Preamble.
<b>Guarantors</b> Bankruptcy Rule 4001(c)(1)(B)	Each of the Borrower’s existing and future direct and indirect subsidiaries that are guarantors under the Prepetition Term B Loan Documents	DIP Credit Agreement, Preamble.
<b>DIP Lenders</b> Bankruptcy Rule 4001(c)(1)(B)	Certain Prepetition Term B Lenders	DIP Credit Agreement, Preamble
<b>DIP Agent</b> Bankruptcy Rule 4001(c)(1)(B)	Wilmington Trust, National Association	DIP Credit Agreement, Preamble
<b>DIP Facility</b> Bankruptcy Rule 4001(c)(1)(B)	A senior secured, super-priority term loan facility in an aggregate principal amount of up to \$150 million	DIP Credit Agreement, Preamble
<b>Borrowing Limits</b> Bankruptcy Rule 4001(c)(1)(B)	Subject to limitations on borrowing under the DIP Loan Documents, the Borrower may borrow money pursuant to the DIP Credit Agreement in an aggregate principal or face amount not to exceed \$150 million	DIP Credit Agreement, Preamble
<b>Budget</b> Bankruptcy Rule 4001(c)(1)(B)	The initial Budget is attached hereto as <u>Exhibit C</u> .	<u>Exhibit C</u> .
<b>Interest Rate</b> Bankruptcy Rule 4001(c)(1)(B)	<u>Applicable Rate</u> : L + 5.00% (with 1% LIBOR floor)	DIP Credit Agreement, § 1.01

<sup>4</sup> This summary is qualified in its entirety by reference to the applicable provisions of the DIP Loan Documents. To the extent there exists any inconsistency between this summary and the provisions of the DIP Loan Documents or the DIP Orders, the provisions of the DIP Loan Documents or the DIP Orders, as applicable, shall control.

<b>SUMMARY OF MATERIAL TERMS OF DIP FACILITY</b>		
	<p>Interest shall be calculated on the basis of the actual number of days elapsed in a 360 day year.</p> <p><u>Default Interest Rate:</u> 2% per annum</p>	
<p><b>Expenses and Fees</b> Bankruptcy Rule 4001(c)(1)(B)</p>	<p><u>DIP Upfront Fee:</u> Upon entry of the Interim Order, 2.0% of the Commitments paid to the Administrative Agent (to be held for the DIP Lenders) to be allocated as follows:</p> <ul style="list-style-type: none"> <li>• 0.50% payable on the date the DIP Facility transaction closes</li> <li>• 1.50% payable on the Maturity Date</li> </ul> <p><u>Fees and Expenses:</u> The Debtors shall pay all reasonable and documented prepetition and postpetition fees and out-of-pocket expenses of the DIP Agent and the DIP Lenders in connection with the DIP Facility.</p>	<p>DIP Credit Agreement, § 2.08.</p>
<p><b>Maturity Date</b> Bankruptcy Rule 4001(c)(1)(B), Local Rule 4001-2(a)(ii)</p>	<p>All DIP Obligations (as defined herein) will be due and payable in full and in cash unless otherwise agreed to by the DIP Lenders 150 days after the Petition Date (the “<u>Maturity Date</u>”).</p> <p>Principal of, and accrued interest on, the DIP Loans and all other amounts owing to the DIP Agent and/or the DIP Lenders under the DIP Facility shall be payable on the Maturity Date.</p>	<p>DIP Credit Agreement, § 1.01</p>
<p><b>Collateral and Priority</b> Bankruptcy Rule 4001(c)(1)(B)(i), 4001(c)(1)(B)(ii)</p>	<p>All obligations of the Borrower and the Guarantors (as listed in the DIP Credit Agreement) to the DIP Agent and the DIP Lenders under the DIP Facility, including, without limitation, all principal and accrued interest, premiums (if any), costs, fees and expenses or any other amounts due, or any exposure of each DIP Lender and its affiliates in respect of cash management incurred on behalf of the Borrower or any Guarantor under the DIP Facility (collectively, the “<u>DIP Obligations</u>”), shall be secured by the following liens and security interests (the “<u>DIP Liens</u>”):</p> <p style="margin-left: 40px;">a. subject to the Carve Out and subject only to existing liens that under applicable law, are</p>	<p>Interim Order ¶ 5.</p>

SUMMARY OF MATERIAL TERMS OF DIP FACILITY		
	<p>senior to, and have not been subordinated to, the liens of the DIP Agent under the DIP Loan Documents, but only to the extent that such liens are valid, perfected, enforceable and non-avoidable liens as of the Petition Date or perfected following the Petition Date as permitted by section 546 of the Bankruptcy Code (collectively, the “<u>Permitted Prior Liens</u>”), pursuant to section 364(d)(1) of the Bankruptcy Code, a first priority perfected senior priming lien on, and security interest in the Prepetition Collateral (as defined in the Prepetition Documents) securing the Prepetition BAML Obligations and the Prepetition Term B Obligations, wherever located, that may be subject to a validly perfected security interest in existence on the Petition Date securing the Prepetition BAML Obligations and the Prepetition Term B Obligations under the Prepetition Documents (the “<u>Prepetition Liens</u>”), which Prepetition Liens shall be primed by, and made subject and subordinate to, the perfected first priority senior priming liens and security interests to be granted to the DIP Agent for the benefit of the DIP Lenders, which senior priming liens and security interests in favor of the DIP Agent for the benefit of the DIP Lenders shall also be senior to the Term B Adequate Protection Liens and the BAML Adequate Protection Liens; <i>provided, however</i>, that that DIP Liens shall, until the Prepetition BAML Agent’s receipt of the BAML Payoff Amount (the “<u>BAML Payoff Date</u>”), be subject to and junior to the Prepetition Liens securing the Prepetition BAML Obligations;</p> <p>b. subject to the Carve Out, pursuant to section 364(c)(2) of the Bankruptcy Code, a first priority perfected lien on, and security interest in, all present and after acquired property of the Debtors, wherever located, not subject to a lien or security interest on the date of commencement of the Chapter 11 Cases (collectively, the “<u>Unencumbered Property</u>”);</p>	

<b>SUMMARY OF MATERIAL TERMS OF DIP FACILITY</b>		
	<p>c. subject to the Carve Out, pursuant to section 364(c)(3) of the Bankruptcy Code, a junior perfected lien on, and security interest in, all present and after-acquired property of the Debtors, wherever located, that is subject to a Permitted Prior Lien on the Petition Date or subject to a Permitted Prior Lien in existence on the Petition Date that is perfected subsequent thereto as permitted by section 546(b) of the Bankruptcy Code; and</p> <p>d. subject to the Carve Out, a first priority perfected lien on, and security interest in, all funds on deposit in the Controlled Accounts.</p>	
<p><b>Covenants</b> Bankruptcy Rule 4001(c)(1)(B)</p>	<p><u>Affirmative and Negative Covenants:</u> Customary affirmative and negative covenants to be consistent with the Documentation Principles.<sup>5</sup></p> <p><u>Financial Reporting Requirements:</u></p> <ul style="list-style-type: none"> <li>• The Loan Parties shall be required to adhere to the Budget, subject to the below reporting and variance requirements: <ul style="list-style-type: none"> <li>a. monthly operating reports of the Debtors and their subsidiaries, within thirty (30) calendar days of month end, certified by the Debtors' chief financial officer;</li> <li>b. quarterly consolidated financial statements of the Debtors and their subsidiaries within forty-five (45) calendar days of fiscal quarter end, certified by the Borrower's chief financial officer;</li> </ul> </li> </ul>	<p>DIP Credit Agreement, Art. 6 and Art. 7</p>

<sup>5</sup> "Documentation Principles" refers to such modifications to the DIP Credit Agreement as are necessary to reflect the terms set forth in this DIP Term Sheet and the nature of the DIP Facility as a debtor-in-possession facility, including appropriate qualifications to reflect the commencement and continuation of the Chapter 11 Cases, the events leading up to the Chapter 11 Cases, the effect of the bankruptcy, the terms of the RSA, the conditions in the industry in which the Borrower operates in as existing on the Closing Date and/or the consummation of transactions contemplated by the Debtors' "first day" pleadings, and to reflect administrative agency and operational matters reasonably acceptable to the DIP Agent (acting at the direction of the Required DIP Lenders) and the Debtors and other modifications as may be reasonably agreed between DIP Agent (acting at the direction of the Required DIP Lenders) and the Debtors.

<b>SUMMARY OF MATERIAL TERMS OF DIP FACILITY</b>		
	<p>c. following delivery of the Budget on the Closing Date, by not later than 5:00 p.m. Eastern Time on the second Wednesday following the Closing Date and by not later than 5:00 p.m. Eastern Time on each Wednesday following the end of each Testing Period, the Debtors shall deliver to the DIP Agent (along with its professionals) an updated Budget, in each case, in form reasonably satisfactory to the DIP Agent at the direction of the Required DIP Lenders and in substance satisfactory to the DIP Agent at the direction of the Required DIP Lenders for the subsequent 13 week period consistent with the form of the Budget, and such updated Budget shall become the “Budget” for the purposes of the DIP Facility upon the DIP Agent’s acknowledgement at the direction of the Required DIP Lenders that the proposed updated Budget is substantially in the form of the Budget and in substance satisfactory to the DIP Agent at the direction of the Required DIP Lenders (provided, that, until a new Budget has been approved by the DIP Agent at the direction of the Required DIP Lenders, the most recently approved Budget shall govern); and</p> <p>d. beginning on the second Wednesday following the Closing Date (by not later than 5:00 p.m. Eastern Time), and on every Wednesday following the end of each Testing Period (by not later than 5:00 p.m. Eastern Time), the Debtors shall deliver to the DIP Agent (along with its advisors and professionals) a variance report (the “<u>Variance Report</u>”) setting forth actual cash receipts and disbursements and cash flows of the Debtors for the prior Testing Period and setting forth all the variances, on a line-item and aggregate basis, from the amount set forth for such period as compared to the applicable Budget delivered by the Debtors, in each case, for the applicable Testing Period (and each such Variance Report shall include</p>	

**SUMMARY OF MATERIAL TERMS OF DIP FACILITY**

	<p>explanations for all material variances and shall be certified by the Chief Financial Officer of the Debtors). The Borrower will promptly provide notice to the DIP Agent, for distribution to the DIP Lenders, of any Material Adverse Change.</p> <p>e. The term “<u>Permitted Variances</u>” shall mean, shall mean, for (x) the Petition Date through and including the two week period beginning on the second Wednesday following the Petition Date, (y) the three week period beginning on the third Wednesday following the Petition Date and (z) each rolling four-week period thereafter (each week commencing on the Wednesday of such week) (the applicable “<u>Testing Period</u>”) (a) all favorable variances, and (b) an unfavorable variance (other than disbursements for Professional Fees of the DIP Lender and DIP Agent and fees of the Office of the United States Trustee) of no more than (i) 15% for actual receipts and (ii) 15% for actual disbursements (on an aggregate basis) as compared to the budgeted receipts and disbursements, respectively, set forth in the Budget with respect to the applicable Testing Period; <i>provided</i>, that any disbursements in such Testing Period made from proceeds of favorable variances with respect to receipts in such Testing Period shall not be counted as disbursements for purposes of calculating unfavorable variances. The Permitted Variances with respect to each Testing Period shall be determined and reported to the DIP Agent (and its advisors), the Required DIP Lenders (and their advisors) and the Prepetition Term B Parties (and their respective advisors), not later than 5:00 p.m. Eastern Time on each Wednesday immediately following the end of each such Testing Period. Additional variances, if any, from the Budget, and any proposed changes to the Budget, shall be subject to the approval of the DIP Agent (acting at the direction of the Required DIP</p>	
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<b>SUMMARY OF MATERIAL TERMS OF DIP FACILITY</b>		
	Lenders) and the Prepetition Term B Agent (acting at the direction of the Required Lenders).	
<b>Events of Default</b> Bankruptcy Rule 4001(c)(1)(B)	Usual and customary events of default for financings of this type and other events of default deemed by the DIP Lenders appropriate to the transactions contemplated by the DIP Credit Agreement (each, an “ <u>Event of Default</u> ”).	DIP Credit Agreement, Art. 8
<b>Milestones</b> Bankruptcy Rule 4001(c)(1)(B)(vi)	<ul style="list-style-type: none"> <li>• No later than three (3) business days following the Petition Date, the Debtors shall file a motion (the “<u>Sale Motion</u>”) requesting (i) an order from the Court (the “<u>Bid Procedures Order</u>”) (x) approving of the Bid Procedures (as defined in the Sale Motion) and (y) authorization of bidding protections for the Stalking Horse Bidder(s) (as defined in the Sale Motion); and (ii) an order from the Court (the “<u>Sale Order</u>”) approving the sale of the Stalking Horse Assets to the Stalking Horse Bidder (as defined in the Sale Motion) or such other higher or better bidder determined in accordance with the Bid Procedures.</li> <li>• No later than the date upon which the Bid Procedures Order is approved by the Court, the Court shall have entered the Final Order;</li> <li>• The Debtors shall establish a date that is no later than fifty-five (55) calendar days after the Petition Date as the deadline for the submission of binding bids with respect to their assets;</li> <li>• No later than sixty (60) calendar days after the Petition Date, the Debtors shall complete an auction for substantially all of its assets;</li> <li>• No later than sixty-five (65) calendar days after the Petition Date, the Court shall have entered the Sale Order(s) approving each of the winning bid(s) resulting from the auction; and</li> <li>• No later than seventy-five (75) calendar days after the Petition Date, the Debtors shall have</li> </ul>	Interim Order ¶ 31.

<b>SUMMARY OF MATERIAL TERMS OF DIP FACILITY</b>		
	<p>consummated the sale(s) of its assets to the winning bidder(s) at the auction.</p>	
<p><b>Carve-Out</b> Bankruptcy Rule 4001(b)(1)(B)(iii)</p>	<p>“<b>Carve-Out</b>” means the sum of (i) all fees required to be paid to the Clerk of the Court and to the Office of the United States Trustee under Section 1930(a) of title 28 of the United States Code plus interest at the statutory rate (without regard to the notice set forth in (iii) below); (ii) fees and expenses up to \$50,000 incurred by a trustee under Section 726(b) of the Bankruptcy Code (without regard to the notice set forth in (iii) below); (iii) to the extent allowed at any time, whether by interim or final compensation order, all unpaid fees and expenses in an amount not to exceed, in each case, the fees and expenses set forth in the Budget (or otherwise pursuant to the Permitted Variances) for each of the Professional Persons (as defined below), incurred by persons or firms retained by the Debtors pursuant to Sections 327, 328 or 363 of the Bankruptcy Code (collectively, the “<b>Debtor Professionals</b>”) and the Creditors’ Committee, if any (the “<b>Committee Professionals</b>” and, together with the Debtor Professionals, the “<b>Professional Persons</b>”), appointed in the Chapter 11 Cases pursuant to Section 1103 of the Bankruptcy Code (all such unpaid fees and expenses of the Professional Persons, the “<b>Professional Fees</b>”) at any time before or on the first Business Day after delivery by the DIP Agent of a Carve-Out Trigger Notice (as defined below), whether allowed by the Court prior to or after delivery of a Carve-Out Trigger Notice; and (iv) Professional Fees incurred after the first Business Day following delivery by the DIP Agent of the Carve-Out Trigger Notice, to the extent allowed at any time, whether by interim order, procedural order or otherwise 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 “<b>Post-Carve-Out Trigger Notice Cap</b>”).</p> <p>The Carve Out shall be senior to all liens and claims securing the DIP Facility, the adequate protection liens and claims, and all other forms of adequate protection, liens, or claims securing the DIP Obligations or the Prepetition Secured Obligations.</p>	<p>Interim Order ¶ 39.</p>

<b>SUMMARY OF MATERIAL TERMS OF DIP FACILITY</b>		
	<p>Subject to entry of a final order, notwithstanding anything to the contrary herein, any fees, expenses or costs incurred by the Committee Professionals, if any, in excess of the Investigation Budget Cap or in excess of the amount budgeted for the Professional Persons set forth in the Budget shall not constitute an allowed administrative expense claim, including for purposes of section 1129(a)(9)(A) of the Bankruptcy Code.</p>	
<p><b>Prepayments</b> Bankruptcy Rule 4001(c)(1)(B)</p>	<p><u>Voluntary Prepayments</u>: shall be permitted at any time, without premium or penalty.</p> <p><u>Mandatory Prepayments</u>: The DIP Loan Documents contain customary mandatory prepayment events for financings of this type consistent with the Documentation Principles and others agreed to by the DIP Lenders and the Borrower (the “<u>Mandatory Prepayments</u>”), including, without limitation, prepayments from proceeds of (i) insurance and condemnation proceeds, (ii) equity or debt issuances, (iii) extraordinary receipts, (iv) any cash or cash equivalents cash collateralizing any letter of that is returned to the Borrower or any Guarantor for its own account and (v) any cash or cash equivalents returned to the Borrower or any Guarantor from rent reserves or security deposits returned to the Borrower or any Guarantor upon the assignment of a lease or otherwise, in each case, received by the Borrower or any of the Guarantors and subject to exceptions to be agreed. Mandatory Prepayments will result in a permanent reduction of the DIP Facility.</p>	<p>DIP Credit Agreement, § 2.04</p>
<p><b>Conditions to Closing of DIP Facility</b> Bankruptcy Rule 4001(c)(1)(B)</p>	<p>Usual and customary for financings of this type including, among other things (a) execution and delivery of the DIP Credit Agreement and the other DIP Loan Documents; (b) payment of all reasonable and documented out-of-pocket fees as of the closing date of (i) the DIP Agent (limited, in the case of counsel, to all reasonable and documented out-of-pocket fees, costs, disbursements and expenses of the DIP Agent’s outside counsel, James-Bates-Brannan-Groover LLP and Morris, Nichols Arsht &amp; Tunnell LLP, and any successor counsel, and, to the extent necessary, one firm of local counsel engaged by the</p>	<p>DIP Credit Agreement, § 4.01</p>

<b>SUMMARY OF MATERIAL TERMS OF DIP FACILITY</b>		
	<p>DIP Agent in connection with the Debtors' Chapter 11 Cases), (ii) the DIP Lenders (limited, in the case of counsel, to all reasonable and documented out-of-pocket fees, costs, disbursements and expenses of the DIP Lenders' outside counsel, K&amp;S, and, to the extent necessary, one firm of local counsel engaged by the DIP Lenders in connection with the Debtors' Chapter 11 Cases), (iii) Province Inc. and (iv) any other professional advisors retained by the DIP Agent at the direction of the Required DIP Lenders in their reasonable discretion; (c) delivery of a Budget to the DIP Agent and the DIP Lenders; (d) entry of the "first day" orders, and (e) entry of the Interim Order within three (3) business days following the Petition Date.</p>	
<p><b>DIP Credit Facility Super-Priority Claims</b> Bankruptcy Rule 4001(c)(1)(B)(i)</p>	<p>All DIP Claims shall be entitled to the benefits of section 364(c)(1) of the Bankruptcy Code, having superpriority over any and all administrative expenses of the kind that are specified in sections 105, 326, 328, 330, 331, 503(b), 506(c), 507(a), 507(b), 546(c), 726, 1114 or any other provisions of the Bankruptcy Code, subject only to the Carve Out.</p> <p>The DIP Claims will, at all times during the period that the DIP Loans remain outstanding, remain, in right of payment, senior in priority to all other claims or administrative expenses (including, without limitation, (a) any claims allowed pursuant to the obligations under the Prepetition Documents, (b) any administrative expense claims provided as adequate protection to the Prepetition Term B Parties or any other party and (c) the Prepetition Term B Lender Super-Priority Claims), subject only to the Carve Out; <i>provided, however</i>, that the DIP Claims shall be subject to and junior to the claims of the Prepetition BAML Agent and the Prepetition BAML Lender until the BAML Payoff Date.</p>	<p>Interim Order ¶ 7.</p>
<p><b>Parties with an Interest in Cash Collateral</b> Bankruptcy Rule 4001(b)(1)(B)(i)</p>	<p>Prepetition Lenders</p>	<p>Interim Order ¶ D.</p>

<b>SUMMARY OF MATERIAL TERMS OF DIP FACILITY</b>		
<p><b>Liens, Cash Payments or Adequate Protection Provided for Use of Cash Collateral Bankruptcy Rule 4001(b)(1)(B)(iv)</b></p>	<p>As adequate protection for the use of the collateral securing the Prepetition Secured Obligations (the “<u>Prepetition Collateral</u>”), the Prepetition BAML Agent, on behalf of and for the benefit for the Prepetition BAML Lenders, and the Prepetition BAML Lenders, shall receive, in each case subject to the Carve-Out:</p> <p style="margin-left: 40px;">a. until the Prepetition BAML Payoff Date, (i) current payment of interest (at the non-default rate) due under the Prepetition BAML Documents and (ii) current payment of all reasonable and documented (in summary form) out-of-pocket fees, costs and expenses of advisors to the Prepetition BAML Agent (the “<u>Prepetition BAML Advisors</u>”), (limited, in the case of counsel, to all reasonable and documented out-of-pocket fees, costs, disbursements and expenses of Morgan Lewis &amp; Bockius LLP, as counsel, and Robinson &amp; Cole LLP, as local counsel (collectively, the “<u>BAML Adequate Protection Payments</u>”);</p> <p style="margin-left: 40px;">b. until the applicable Prepetition Secured Obligations are Paid in Full<sup>6</sup>, replacement liens to the extent of any postpetition diminution in value of the Prepetition BAML Parties’ interest in the Prepetition Collateral resulting from the use, sale or lease by the Debtors of such Prepetition Collateral and/or the imposition of the</p>	<p>Interim Order ¶ 15-23.</p>

<sup>6</sup> “**Paid in Full**” or “**Payment in Full**” means the indefeasible payment in full in cash of all obligations (including principal, interest, premium fees, expenses, indemnities) under the applicable credit facility, the cash collateralization of all treasury and cash management obligations, hedging obligations, and bank product obligations, and the cancelation, replacement, backing, or cash collateralization of letters of credit, in each case, in accordance with the applicable credit facility. No facility shall be deemed to have been Paid in Full until such time as, with respect to the applicable facility, (a) the commitments to lend thereunder have been terminated; (b) solely with respect to the Prepetition Secured Facilities (i) the Challenge Period (as defined below) shall have expired without the timely commencement of a Challenge (as defined below) or (ii) if a Challenge is timely asserted prior to the expiration of the Challenge Period, upon the final, non-appealable disposition of such Challenge; and (c) either the applicable Prepetition Agent or the DIP Agent has received (i) a countersigned payoff letter in form and substance satisfactory to such agent and (ii) releases from the Debtors (including any liquidator acting on behalf of any of the Debtors or their estates, if applicable) in form and substance satisfactory to such agent, as applicable, each in its sole discretion.

**SUMMARY OF MATERIAL TERMS OF DIP FACILITY**

	<p>automatic stay, including replacement liens on all Unencumbered Property of the Debtors, which liens (the “<u>BAML Adequate Protection Liens</u>”) will be junior only to (i) the Permitted Prior Liens, (2) the DIP Liens, (3) the Carve-Out, and (4) solely with respect to the KKR Priority Collateral, the Prepetition Term B Liens and the Term B Adequate Protection Liens;</p> <p>c. superpriority administrative expense claims to the extent of any postpetition diminution in value of the Prepetition BAML Lenders’ interest in the Prepetition Collateral resulting from the use, sale or lease by the Debtors of such Prepetition Collateral and/or the imposition of the automatic stay (the “<u>BAML Adequate Protection Super-Priority Claims</u>”), which claims will be junior to the DIP Credit Facility Super-Priority Claims, the DIP Obligations, the Carve-Out and other amounts secured by Permitted Prior Liens, and be payable from and have recourse to all assets and property of the Debtors;</p> <p>(the foregoing clauses (a)-(c), the “<u>BAML Adequate Protection Package</u>”).</p> <p>As adequate protection for the use of the Prepetition Collateral, the Prepetition Term B Agent, on behalf of and for the benefit of the Prepetition Term B Lenders, and the Prepetition Term B Lenders, shall receive, in each case subject to the Carve Out:</p> <p>a. current payment of all reasonable and documented (in summary form) out-of-pocket fees, costs and expenses of (x) the Prepetition Term B Agent (limited, in the case of counsel, to all reasonable and documented out-of-pocket fees, costs, disbursements and expenses of James Bates Brannan Groover LLP as its counsel and Morris, Nichols Arsht &amp; Tunnell LLP as its local counsel) and (y) the Prepetition</p>	
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<b>SUMMARY OF MATERIAL TERMS OF DIP FACILITY</b>		
	<p>Term B Lenders (limited, in the case of counsel, to all reasonable and documented out-of-pocket fees, costs, disbursements and expenses of Province Inc. and of K&amp;S as its counsel, and any successor counsel, and one local counsel) (collectively, the “<u>Term B Adequate Protection Payments,</u>” and together with the BAML Adequate Protection Payments, the “<u>Adequate Protection Payments</u>”);</p> <p>b. replacement liens to the extent of any postpetition diminution in value of the Prepetition Term B Lenders’ interest in the Prepetition Collateral resulting from the use, sale or lease by the Debtors of such Prepetition Collateral and/or the imposition of the automatic stay, including replacement liens on all Unencumbered Property of the Debtors, which liens will be junior to DIP Liens (the “<u>Term B Lender Adequate Protection Liens</u>”) and senior to Prepetition Liens;</p> <p>c. superpriority administrative expense claims to the extent of any postpetition diminution in value of the Prepetition Term B Lenders’ interest in the Prepetition Collateral resulting from the use, sale or lease by the Debtors of such Prepetition Collateral and/or the imposition of the automatic stay (the “<u>Term B Adequate Protection Super-Priority Claims,</u>” and together with the BAML Adequate Protection Super-Priority Claims, the “<u>Adequate Protection Super-Priority Claims</u>”), which claims will be junior to the DIP Credit Facility Super-Priority Claims, the DIP Obligations, the Carve-Out and other amounts secured by Permitted Prior Liens, and be payable from and have recourse to all assets and property of the Debtors;</p>	

<b>SUMMARY OF MATERIAL TERMS OF DIP FACILITY</b>		
	<p>d. reasonable access to the Debtors' books and records and such financial reports as are provided to the DIP Agent pursuant to provisions (i) through (iii) above of the Financial Reporting Requirements section.</p> <p>(the foregoing clauses (a)-(d), the "<u>Term B Adequate Protection Package</u>," and together with the BAML Adequate Protection Package, the "<u>Adequate Protection Package</u>").</p>	
<p><b>Determination Regarding Prepetition Claims</b> Bankruptcy Rule 4001(c)(1)(B)(iii)</p>	<p>The Interim Order contains stipulations of fact by the Debtors, including those related to the validity and enforceability of the Debtors' Prepetition Secured Obligations.</p>	<p>Interim Order ¶ D(vi).</p>
<p><b>Liens on Avoidance Actions</b> Bankruptcy Rule 4001(c)(1)(B)(xi)</p>	<p>Upon entry of the Interim Order, the DIP Lenders will receive a lien on any proceeds or property recovered, unencumbered or otherwise from the Debtors' claims and causes of action under Sections 502(d), 544, 545, 547, 548, 549, 550 of the Bankruptcy Code and under any applicable state Uniform Voidable Transactions Act, Uniform Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act, and similar statutes or common law (collectively, the "<u>Avoidance Actions</u>").</p> <p>Upon entry of the Final Order, Avoidance Actions will constitute DIP Collateral.</p>	<p>Interim Order ¶ 5.</p>
<p><b>Effect of Debtors' Stipulations on Third Parties</b> Bankruptcy Rule 4001(c)(1)(B)(iii), (viii)</p>	<p>The Committee (to the extent appointed), and any other party in interest with standing, shall have the lesser of (x) sixty (60) calendar days from the date of its appointment and, to the extent a Committee is not appointed, any party in interest (other than the Debtors) shall have a maximum of seventy-five (75) calendar days from the entry of the Interim Order for any other party in interest with requisite standing or (y) two Business Days prior to the sale hearing approving the sale of all or substantially all of the Debtors' assets (the "<u>Investigation Period</u>") to investigate and commence an adversary proceeding or contested matter, as required by the applicable Federal Rules of Bankruptcy Procedure, and challenge (each, a</p>	<p>Interim Order ¶ 41.</p>

<b>SUMMARY OF MATERIAL TERMS OF DIP FACILITY</b>		
	<p>“<u>Challenge</u>”) the findings, the Debtors’ stipulations, or any other stipulations contained in the Interim Order and the Final Order, including, without limitation, any challenge to the validity, priority or enforceability of the liens securing the obligations under the Prepetition Documents, or to assert any claim or cause of action against the Prepetition Agents or the Prepetition Lenders arising under or in connection with the Prepetition Documents or the Prepetition Secured Obligations, as the case may be, whether in the nature of a setoff, counterclaim or defense of Prepetition Secured Obligations, or otherwise.</p> <p>The Investigation Period may only be extended with the prior written consent of the Prepetition Agents (acting at the direction of the Required Lenders), or pursuant to an order of the Bankruptcy Court.</p>	
<p><b>Waiver or Modification of the Automatic Stay</b> Bankruptcy Rule 4001(c)(1)(B)(iv)</p>	<p>The automatic stay is modified as necessary to effectuate the terms and provisions of the Interim Order, including, without limitation, to (i) permit the Debtors to grant the DIP Liens, the Term B Adequate Protection Liens, the DIP Credit Facility Super-Priority Claims and the Term B Adequate Protection Super-Priority Claims; (ii) permit the Debtors to perform such acts as the DIP Agent, the Prepetition BAML Agent and the Prepetition Term B Agent may request to assure the perfection and priority of the liens granted herein; (iii) permit the Debtors to incur all liabilities and obligations to the DIP Secured Parties and the Prepetition Secured Parties under the DIP Loan Documents; the DIP Credit Facility and this Interim Order; and (iv) authorize the Debtors to pay, and the DIP Secured Parties and the Prepetition Secured Parties to retain and apply, payments made in accordance with the terms of this Interim Order, the DIP Loan Documents and the Budget.</p>	<p>Interim Order ¶ 22.</p>
<p><b>Waiver or Modification of Applicability of Non-Bankruptcy Law Relating to the Perfection or</b></p>	<p>The Debtors stipulate that the Prepetition Liens on the Prepetition Collateral were valid, binding, enforceable, non-avoidable, and properly perfected, and were granted to, or for the benefit of, the Prepetition Secured Parties for fair consideration and reasonably equivalent value</p>	<p>Interim Order ¶ D(vi), 5.</p>

<b>SUMMARY OF MATERIAL TERMS OF DIP FACILITY</b>		
<p><b>Enforcement of a Lien</b> Bankruptcy Rule 4001(c)(1)(B)(vii)</p>	<p>The DIP Liens are valid, binding, enforceable, non-avoidable, and automatically and properly perfected.</p>	
<p><b>Release, Waivers or Limitation on any Claim or Cause of Action</b> Bankruptcy Rule 4001(c)(1)(B)(viii)</p>	<p>Upon entry of the Interim Order, the Debtors, each in their own right and on behalf of their bankruptcy estates, and on behalf of all their successors, assigns, subsidiaries and any affiliates and any person acting for and on behalf of, or claiming through them, hereby fully, finally and forever release and discharge the Prepetition Secured Parties and all of their respective officers, directors, servants, agents, advisors, attorneys, assigns, heirs, parents, subsidiaries, and each person acting for or on behalf of any of them of and from any and all actions, causes of action, demands, suits, claims, liabilities, liens, lawsuits, adverse consequences, amounts paid in settlement, costs, damages, debts, deficiencies, diminution in value, disbursements, expenses, losses and other obligations of any kind or nature whatsoever, in each case, existing at the time of entry of the Interim Order and, if applicable, the Final Order, whether in law, equity or otherwise (including, without limitation, any so-called “lender liability” or equitable subordination or recharacterization claims or defenses, any and all claims and causes of action with respect to the validity, priority, perfection, or avoidability of the liens or claims of the Prepetition Agents and the Prepetition Secured Parties, those arising under Sections 541 through 550 of the Bankruptcy Code and interest or other carrying costs, penalties, legal, accounting and other professional costs, and incidental, consequential and punitive damages payable to third parties), directly or indirectly arising out of, connected with or relating to the DIP Loan Documents, the Prepetition Documents, the Prepetition Liens, the Interim Order, the Final Order, if applicable, and/or the transactions contemplated hereunder or thereunder, and all other agreements, certificates, instruments and other documents and statements (whether written or oral) related to any of the foregoing.</p>	<p>Interim Order ¶ D(viii).</p>

<b>SUMMARY OF MATERIAL TERMS OF DIP FACILITY</b>		
<b>Indemnification</b> Bankruptcy Rule 4001(c)(1)(B)(ix)	The Debtors shall jointly and severally indemnify and hold harmless the DIP Secured Parties and the Prepetition Secured Parties (and each of the respective officers, directors, employees, controlling persons, agents, advisors, attorneys and representatives) in accordance with the terms and conditions of the DIP Credit Loan Documents and Prepetition Documents.	Interim Order ¶ 37.
<b>Section 506(c)</b> <b>Waiver and</b> <b>Section 552(b)</b> <b>Waiver</b> Bankruptcy Rule 4001(c)(1)(B)(x)	<p>Effective upon entry of the Final Order, the DIP Agent, the DIP Lenders, the Prepetition BAML Agent, the Prepetition BAML Lenders, the Prepetition Term B Agent, and the Prepetition Term B Lenders shall not be subject to the equitable doctrine of “marshalling” or any similar doctrine with respect to the DIP Collateral or the Prepetition Collateral, as applicable, and all proceeds shall be received and applied pursuant to the Final Order and the DIP Loan Documents notwithstanding any other agreement or provision to the contrary.</p> <p>Effective upon entry of the Final Order, the Debtors (on behalf of themselves and their estates) shall waive, and shall not assert in the Chapter 11 Cases or any successor cases, (i) any surcharge claim under sections 105(a) and/or 506(c) of the Bankruptcy Code or otherwise for any costs and expenses incurred in connection with the preservation, protection or enhancement of, or realization by the DIP Agent, the DIP Lenders, the Prepetition BAML Agent, the Prepetition BAML Lenders, the Prepetition Term B Agent, and the Prepetition Term B Lenders, upon the DIP Collateral, or the Prepetition Collateral and (ii) the DIP Agent, the DIP Lenders, the Prepetition BAML Agent, the Prepetition BAML Lenders, the Prepetition Term B Agent, and the Prepetition Term B Lenders shall each 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 DIP Agent, the DIP Lenders, the Prepetition BAML Agent, the Prepetition BAML Lenders, the Prepetition Term B Agent, and the Prepetition Term B Lenders with respect to proceeds, product, offspring or profits of any of the Prepetition Collateral or DIP Collateral.</p>	Interim Order ¶¶ 43-45.

**Provisions to Be Highlighted Pursuant to Local Rule 4001-2**

18. The Debtors believe the following provisions of the DIP Credit Agreement must be highlighted pursuant to Local Rule 4001-2:

- (a) Cross-Collateralization (Local Rule 4001-2(a)(i)(A)). Not applicable.
- (b) Binding the Estate to Validity, Perfection or Amount of Secured Debt (Local Rule 4001-2(a)(i)(B)). Paragraph D of the proposed Interim Order contain customary stipulations of the Debtors regarding the validity, perfection, priority and amount of prepetition liens and claims. Paragraph 39 of the Proposed Interim Order provides for up to \$50,000 to a Committee, if appointed, to inquire into and investigate such matters, and paragraph 41 provides for a customary Challenge period for a Committee or other parties in interest to challenge such liens and claims. *See* Proposed Interim Order ¶¶ 39, 41.
- (c) Provisions that Seek to Waive, Without Notice, Rights Under Section 506(c) (Local Rule 4001-2(a)(i)(C)). The proposed Interim Order contains a customary 506(c) waiver, subject to entry of the Final Order. *See* Proposed Interim Order ¶¶ 43-44.
- (d) Liens on Avoidance Actions (Local Rule 4001-2(a)(i)(D)). The proposed Interim Order grants liens on Avoidance Actions and proceeds thereof, subject to entry of the Final Order. *See* Interim Order ¶ 5.
- (e) Provisions That Deem Prepetition Debt to Be Postpetition Debt (Local Rule 4001-2(a)(i)(E)). There is no roll-up of prepetition debt under the proposed DIP Facility; however, the proceeds of the DIP Facility will be used to, among other things, repay the Prepetition BAML Obligations in full upon entry of the Interim Order. *See* Interim Order ¶ 10.
- (f) Provisions that Provide Disparate Treatment of Professionals Retained by a Creditors' Committee (Local Rule 4001-2(a)(i)(F)). Not applicable.
- (g) Provisions that Prime any Secured Liens Without Consent of the Lienholder (Local Rule 4001-2(a)(i)(G)). Not applicable. The Prepetition BAML Obligations are being paid off in full and the Prepetition Term B Agent, on behalf of the Prepetition Term B Lenders, has provided its consent to any priming of the Prepetition Term B Lenders' respective liens and the use of their respective Cash Collateral.
- (h) Provisions that Affect the Court's Power to Consider the Equities of the Case under Section 552(b)(1) (Local Rule 4001-2(a)(i)(H)). The proposed Interim Order contains a finding that, the DIP Secured Parties and, subject to entry of the Final Order, the Prepetition Secured Parties are each entitled to all of the rights and benefits of section 552(b) of the Bankruptcy Code, and, the "equities of the case" exception shall not apply to such parties. *See* Interim Order ¶ 45.

**RELIEF REQUESTED SHOULD BE GRANTED**

**A. Entry into the DIP Facility is an Exercise of the Debtors' Sound Business Judgment**

19. The Court should authorize the Debtors, as an exercise of their sound business judgment, to enter into the DIP Loan Documents, obtain access to the proceeds of the DIP Facility, and use Cash Collateral. Section 364 of the Bankruptcy Code authorizes a debtor to obtain secured or superpriority financing under certain circumstances discussed in detail below. Courts grant debtors considerable deference in acting in accordance with their business judgment in obtaining postpetition secured credit, so long as the agreement to obtain such credit does not run afoul of the provisions of, and policies underlying, the Bankruptcy Code. *See, e.g., In re L.A. Dodgers LLC*, 457 B.R. 308, 313 (Bankr. D. Del. 2011) (“[C]ourts will almost always defer to the business judgment of a debtor in the selection of the lender.”); *In re Barbara K. Enters., Inc.*, No. 08-11474 (MG), 2008 WL 2439649, at \*14 (Bankr. S.D.N.Y. June 16, 2008) (explaining that courts defer to a debtor’s business judgment “so long as a request for financing does not ‘leverage the bankruptcy process’ and unfairly cede control of the reorganization to one party in interest”); *In re Farmland Indus., Inc.*, 294 B.R. 855, 881 (Bankr. W.D. Mo. 2003) (noting that approval of postpetition financing requires, among other things, an exercise of “sound and reasonable business judgment”); *In re Trans World Airlines, Inc.*, 163 B.R. 964, 974 (Bankr. D. Del. 1994) (approving a postpetition loan and receivables facility because such facility “reflect[ed] sound and prudent business judgment”); *In re Ames Dep’t Stores, Inc.*, 115 B.R. 34, 40 (Bankr. S.D.N.Y. 1990) (“[C]ases consistently reflect that the court’s discretion under section 364 [of the Bankruptcy Code] is to be utilized on grounds that permit [a debtor’s] reasonable business judgment to be exercised so long as the financing agreement does not contain terms that leverage the bankruptcy process and powers or its purpose is not so much to benefit the estate as it is to benefit a party-in-interest.”).

20. Bankruptcy courts generally will not second-guess a debtor's business decisions when those decisions involve "a business judgment made in good faith, upon a reasonable basis, and within the scope of [its] authority under the [Bankruptcy] Code." *In re Curlew Valley Assocs.*, 14 B.R. 506, 513-514 (Bankr. D. Utah. Oct 8, 1981) (noting that courts should not second guess a debtor's business decision when that decision involves "a business judgment made in good faith, upon a reasonable basis, and within the scope of [the debtor's] authority under the [Bankruptcy] Code"). To determine whether the business judgment test is met, "the court 'is required to examine whether a reasonable business person would make a similar decision under similar circumstances.'" *In re Dura Auto. Sys. Inc.*, No. 06-11202 (KJC), 2007 WL 7728109, at \*97 (Bankr. D. Del. Aug. 15, 2007) (citation omitted).

21. In determining whether the Debtors have exercised sound business judgment in entering into the DIP Loan Documents, the Court should consider the economic terms of the DIP Financing under the totality of circumstances. *See* Hr'g Tr. at 734-35:24, *In re Lyondell Chem. Co.*, No. 09-10023 (Bankr. S.D.N.Y. February 27, 2009) (recognizing that "the terms that are now available for DIP financing in the current economic environment aren't as desirable" as they once were previously); *In re Elingsen McLean Oil Co., Inc.*, 65 B.R. 358, 365 n.7 (W.D. Mich. 1986) (recognizing that a debtor may have to enter into "hard" bargains to acquire funds for its reorganization). Moreover, the Court may appropriately take into consideration noneconomic benefits to the Debtors offered under the proposed postpetition facility. For example, in *In re ION Media Networks, Inc.*, the Bankruptcy Court for the Southern District of New York held that:

Although all parties, including the Debtors and the Committee, are naturally motivated to obtain financing on the best possible terms, a business decision to obtain credit from a particular lender is almost never based purely on economic terms. Relevant features of the financing must be evaluated, including non-economic elements such as the timing and certainty of closing, the impact on creditor constituencies and the likelihood of a

successful reorganization. This is particularly true in a bankruptcy setting where cooperation and established allegiances with creditor groups can be a vital part of building support for a restructuring that ultimately may lead to a confirmable reorganization plan. That which helps foster consensus may be preferable to a notionally better transaction that carries the risk of promoting unwanted conflict.

No. 09-13125 (JMP), 2009 WL 2902568, at \*4 (Bankr. S.D.N.Y. July 6, 2009).

22. The Debtors' decision to enter into the DIP Facility is an exercise of their sound business judgment. As further discussed in the Miller Buckfire Declaration, the DIP Facility was market tested and was the product of arm's-length negotiations. Keeping in mind the advantages and disadvantages of the proposed DIP Facility, the Debtors ultimately decided that moving forward with the proposed DIP Facility was appropriate and in the Debtors' best interests. Put simply, the DIP Facility represents the only financing available to the Debtors given the Debtors' current cash position, capital structure, and the lack of alternatives despite significant outreach to third parties. The Debtors and their advisors determined that entry into the DIP Facility was the best path forward under the totality of circumstances, and the Debtors believe that they have obtained the best terms currently available under the circumstances.

23. Accordingly, the Debtors submit that entry into the DIP Facility is in the best interests of the Debtors' estates, is necessary to preserve the value of estate assets and is a reasonable exercise of their business judgment.

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

24. The Debtors propose to obtain financing under the DIP Facility by providing security interests and liens as set forth in the DIP Loan Documents and described above. The Debtors satisfy the requirements for relief under section 364 of the Bankruptcy Code, which authorizes a debtor to incur secured or superpriority debt under certain circumstances. Specifically, section 364(c) of the Bankruptcy Code provides that:

If the trustee is unable to obtain unsecured credit allowable under section 503(b)(1) of this title as an administrative expense, the court, after notice and a hearing, may authorize the obtaining of credit or the incurring of debt—

(1) with priority over any or all administrative expenses of the kind specified in section 503(b) or 507(b) of this title;

(2) secured by a lien on property of the estate that is not otherwise subject to a lien; or

(3) secured by a junior lien on property of the estate that is subject to a lien.

11 U.S.C. § 364(c).

25. To satisfy the requirements of section 364(c) of the Bankruptcy Code, a debtor need only demonstrate “by a good faith effort that credit was not available” to the debtor on an unsecured or administrative expense basis. *In re Crouse Grp., Inc.*, 71 B.R. 544, 549 (Bankr. E.D. Pa. 1987) (finding that secured credit under section 364(c) of the Bankruptcy Code is authorized, after notice and hearing, upon a showing that unsecured credit cannot be obtained). “The statute imposes no duty to seek credit from every possible lender before concluding that such credit is unavailable.” *Bray v. Shenandoah Fed. Savs. & Loan Ass’n (In re Snowshoe Co.)*, 789 F.2d 1085, 1088 (4th Cir. 1986); *see also Pearl-Phil GMT (Far East) Ltd. v. Caldor Corp.*, 266 B.R. 575, 584 (S.D.N.Y. 2001) (finding that superpriority administrative expenses should be authorized where debtor could not obtain credit as an administrative expense). When few lenders are likely to be willing to extend the necessary credit to a debtor, “it would be unrealistic and unnecessary to require [the debtor] to conduct such an exhaustive search for financing.” *In re Sky Valley, Inc.*, 100 B.R. 107, 113 (Bankr. N.D. Ga. 1988); *see also In re Snowshoe Co.*, 789 F.2d at 1088 (finding that credit was unavailable absent a senior priming lien because the debtor had made unsuccessful contact with other financial institutions in the relevant geographic area); *In re Stanley Hotel, Inc.*, 15 B.R. 660, 663 (D. Colo. 1981) (finding that the fact that two national banks refused to grant

unsecured loans was sufficient to support the conclusion that the requirements of section 364 were met); *In re Ames Dep't Stores*, 115 B.R. at 40 (approving financing facility and finding that debtor made reasonable efforts to satisfy the requirements of section 364(c) by approaching four lending institutions, two of which refused to provide financing, and selecting the most favorable of the two offers it received).

26. Courts have articulated a three-part test to determine whether a debtor is entitled to enter into financing under section 364(c) of the Bankruptcy Code. Specifically, courts look to whether:

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

*See In re Aqua Assocs.*, 123 B.R. 192, 195–96 (Bankr. E.D. Pa. 1991); *In re Ames Dep't Stores*, 115 B.R. at 37–40; *In re St. Mary Hosp.*, 86 B.R. 393, 401–02 (Bankr. E.D. Pa. 1988); *Crouse Grp.*, 71 B.R. at 549.

27. In the event that a debtor is unable to obtain unsecured credit allowable as an administrative expense under section 503(b)(1) of the Bankruptcy Code, section 364(c) provides that a court “may authorize the obtaining of credit or the incurring of debt (1) with priority over any or all administrative expenses of the kind specified in section 503(b) or 507(b) of [the Bankruptcy Code]; (2) secured by a lien on property of the estate that is not otherwise subject to a lien; or (3) secured by a junior lien on property of the estate that is subject to a lien.” 11 U.S.C. § 364(c). As described above and in the Miller Buckfire Declaration, the Debtors are unable to obtain credit without the protections afforded by section 364(c) of the Bankruptcy Code. Thus, the Debtors determined that the DIP Facility provided the best opportunity available to the Debtors

under the circumstances to fund the Chapter 11 Cases. Therefore, approving superpriority claims in favor of the DIP Lenders is reasonable and appropriate.

28. Further, section 364(d) provides that a debtor may obtain credit secured by a senior or equal lien on property of the estate already subject to a lien, after notice and a hearing, where the debtor is “unable to obtain such credit otherwise” and “there is adequate protection of the interest of the holder of the lien on the property of the estate on which such senior or equal lien is proposed to be granted.” 11 U.S.C. § 364(d)(1). Consent of the secured creditors to liens priming their interests in collateral obviates the need to show adequate protection. *See Anchor Savs. Bank FSB v. Sky Valley, Inc.*, 99 B.R. 117, 122 (N.D. Ga. 1989) (“[B]y tacitly consenting to the superpriority lien, those [undersecured] creditors relieved the debtor of having to demonstrate that they were adequately protected.”). Accordingly, the Debtors may incur “priming” liens under the DIP Facility if either (a) the Prepetition Lenders consent to the priming or (b) the Prepetition Lenders’ interests in collateral are adequately protected.

**C. Interests of Prepetition Lenders Are Adequately Protected**

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

is to protect a secured creditor from the diminution in the value of its interest in the particular collateral during the period of use. *See In re Swedeland Dev. Group, Inc.*, 16 F.3d 552, 564 (3d Cir. 1994) (“The whole purpose of adequate protection for a creditor is to insure that the creditor receives the value for which he bargained prebankruptcy.”) (internal citations omitted).

30. The Adequate Protection Package provided to the Prepetition Secured Lenders, as described above, is consensual and appropriately safeguards the Prepetition Secured Lenders from the diminution in the value (if any) of their interests in the Prepetition Collateral. The Debtors submit that their provision of adequate protection to the Prepetition Secured Lenders is fair and reasonable and is sufficient to satisfy the requirements of section 364(d)(1)(B) of the Bankruptcy Code.

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

31. For the reasons set forth herein and as described in the Miller Buckfire Declaration, the Debtors require immediate use of the Cash Collateral for working capital for general corporate purposes and to fund the Chapter 11 Cases so they can pursue a value-maximizing sale process. Section 363(c) of the Bankruptcy Code governs a debtor’s use of a secured creditor’s cash collateral. Section 363(c) provides, in pertinent part, that:

The trustee may not use, sell, or lease cash collateral . . . unless—  
 (A) each entity that has an interest in such cash collateral consents; or  
 (B) the court, after notice and a hearing, authorizes such use, sale, or lease  
 in accordance with the provisions of this section [363].

11 U.S.C. § 363(c)(2).

32. Further, section 363(e) provides that “on request of an entity that has an interest in property . . . proposed to be used, sold or leased, by the trustee, the court, with or without a hearing, shall prohibit or condition such use, sale, or lease as is necessary to provide adequate protection of such interest.” 11 U.S.C. § 363(e). 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. *In re Swedeland Dev. Grp., Inc.*, 16 F.3d 552, 564 (3d Cir. 1994); *In re Satcon Tech. Corp.*, No. 12-12869 (KG), 2012 WL 6091160, at \*6 (Bankr. D. Del. Dec. 7, 2012); *In re N.J. Affordable Homes Corp.*, No. 05-60442 (DHS), 2006 WL 2128624, at \*14 (Bankr. D.N.J. June 29, 2006); *In re Columbia Gas Sys., Inc.*, Nos. 91-803, 91-804, 1992 WL 79323, at \*2 (Bankr. D. Del. Feb. 18, 1992); *see also In re Dynaco Corp.*, 162 B.R. 389, 394 (Bankr. D.N.H. 1993) (citing 2 Collier on Bankruptcy ¶ 361.01[1] at 361–66 (15th ed. 1993) (explaining that adequate protection can take many forms and “must be determined based upon equitable considerations arising from the particular facts of each proceeding”)).

33. As noted above, the Prepetition Lenders have, or are deemed to have, consented to the use of Cash Collateral, and the Debtors are providing the Prepetition Lenders with adequate protection that (i) is fair and reasonable and (ii) adequately protects the Prepetition Lenders' interests in the Prepetition Collateral. Accordingly, the Court should authorize the Debtors to use the Cash Collateral under section 363(c)(2) of the Bankruptcy Code.

**E. The Debtors' Proposed Repayment of the Prepetition BAML Obligations Should be Approved**

34. Section 363(b) of the Bankruptcy Code permits a debtor to use, sell or lease property, other than in the ordinary course of business, with court approval. It is well settled in the Third Circuit that such transactions should be approved when they are supported by a sound business purposes. *See In re Abbots Dairies, Inc.*, 788 F.2d 143 (3d Cir. 1986) (holding that in the Third Circuit, a debtor's use of assets outside the ordinary course of business under section 363(b)

should be approved if the debtor can demonstrate a sound business justification for the proposed transaction). The business judgment rule shields a debtor's management from judicial second guessing. *In re Johns-Manville Corp.*, 60 B.R. 612, 615-16 (Bankr. S.D.N.Y. 1986) (“[T]he [Bankruptcy] Code favors the continued operation of a business by a debtor and a presumption of reasonableness attaches to a debtor's management decisions.”). Repayment of prepetition debt is a common feature in debtor-in-possession financing arrangements.

35. As set forth above, the DIP Credit Agreement provides that upon entry of the Interim Order, the Debtors shall be authorized to use proceeds from the DIP Facility in an aggregate principal amount of \$141,000,000 to refinance the outstanding Prepetition BAML Obligations.

36. The proposed refinancing of the Prepetition BAML Obligations is justified because it (a) is a sound exercise of the Debtors' business judgment, (b) is a material component of the structure of the DIP Facility, (c) was required by the Prepetition BAML Lenders as a condition to their agreement to allow the priming of the Prepetition BAML Liens and (d) is at least net neutral to the Debtors' estates and, by some metrics, provides approximately \$20,000 in savings to the Debtors' estates compared with a DIP facility without the refinancing. *See* Miller Buckfire Declaration ¶ 18.

37. The Debtors are entering the Chapter 11 Cases with limited liquidity. The commencement of the Chapter 11 Cases will only increase demands on that liquidity due to, among other things, the costs of administering the Chapter 11 Cases. Access to the DIP Facility is therefore critically necessary to ensure a smooth transition into the Chapter 11 Cases and will enable the Debtors to maintain the going-concern value of the Debtors' assets until consummation of the proposed sale transactions set forth in the RSA.

38. Second, as described in greater detail in the Miller Buckfire Declaration, the Debtors engaged in an extensive marketing process, and ultimately determined that the DIP Lenders offered the best option for obtaining the DIP financing that the Debtors require. *See* Miller Buckfire Declaration ¶ 21. Because no third party was willing to provide DIP financing to the Debtors other than on a priming basis, the refusal of the Prepetition BAML Lenders to provide financing or be primed, the Debtors have not been able to obtain financing on equal or better terms from the DIP Lenders, or any other source. *See* Miller Buckfire Declaration ¶ 18.

39. Ultimately, the DIP Facility provides the Debtors with the best path for a smooth transition into chapter 11 and the consummation of the sale transactions as contemplated by the RSA. Absent the Prepetition BAML Lenders' support, the first month of the Chapter 11 Cases would likely devolve into a costly priming fight or result in a total lack of liquidity. And, as discussed above, refinancing of the Prepetition BAML Lenders is cost-neutral to the Debtors' estates and, by some metrics, may result in an overall savings to the Debtors' estates. Therefore, the refinancing is the best option for the Company in order to move the Chapter 11 Cases forward and consummate the sale transactions.

40. Given these circumstances, repayment of all outstanding Prepetition BAML Obligations with proceeds of the DIP Facility, as set forth in the DIP Credit Agreement and the Interim Order, is reasonable, appropriate, and a sound exercise of the Debtors' business judgment.

**F. The Carve Out is Appropriate**

41. The Carve Out shall be senior to all liens and claims securing the DIP Facility, the adequate protection liens and claims and all other forms of adequate protections, liens, or claims securing the DIP Obligations or the Prepetition Secured Obligations; *provided, however*, that

upon the BAML Payoff Date, the Prepetition BAML Agent and the Prepetition BAML Lenders shall be released from any and all liability or subordination to the Carve Out.

42. Without the Carve Out, the Debtors' estates may be deprived of possible rights and powers if the services for which professionals may be compensated is restricted. *See In re Ames Dep't Stores*, 115 B.R. 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 these cases by ensuring that assets remain for the payment of U.S. Trustee fees and professional fees, notwithstanding the grant of superpriority claims and replacement liens as part of the adequate protection of the Prepetition Term B Lenders' interests in the Prepetition Collateral.

**G. Debtors Should Be Authorized to Pay Fees Required by the DIP Loan Documents**

43. In addition to the payments that are part of the Adequate Protection Package as well as other reimbursement obligations, in each case, as specified under the DIP Loan Documents, the Debtors have agreed, subject to Court approval, to pay certain fees and other payments to the DIP Agent and the DIP Lenders. In particular, as noted above, the Debtors have agreed to pay, upon entry of the Final Order, the Closing Fee to the DIP Agent (for distribution to the DIP Lenders on a *pro rata* basis).

44. The Debtors considered the fees when determining in their sound business judgment whether entry into the DIP Facility constituted the best path forward for the Company, and the Debtors determined that paying these fees in order to obtain the financing under the DIP Facility is in the best interests of the Debtors' estates. Accordingly, the Court should authorize the Debtors to pay the fees under the DIP Facility.

**H. DIP Lenders Should Be Deemed Good Faith Lenders under Section 364(e)**

45. 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).

46. Here, and as explained in the Miller Buckfire Declaration and the First Day Declaration, the DIP Loan Documents are the result of (i) the Debtors' reasonable judgment that the DIP Lenders provided the best (and only) postpetition financing alternative available under the circumstances and (b) extended arm's length, good-faith negotiations between the Debtors and the DIP Lenders. Under the circumstances, the terms and conditions of the DIP Loan Documents are fair and reasonable, and the proceeds of the DIP Facility will be used only for purposes that are permissible under the Bankruptcy Code, in accordance with the DIP Orders and the DIP Loan Documents and in accordance with the Budget (subject to the Permitted Variances). Accordingly, the Court should find that the DIP Lenders are "good faith" lenders within the meaning of section 364(e) of the Bankruptcy Code and that the DIP Lenders thus are entitled to all of the protections afforded by that section.

**I. Modification of Automatic Stay is Warranted**

47. The relief requested herein contemplates a modification and vacation of the automatic stay to permit the DIP Agent and the DIP Lenders to exercise, upon the occurrence and during the continuance of any Event of Default under their respective DIP Loan Documents, all rights and remedies provided for in the DIP Loan Documents. However, the DIP Agent and the DIP Lenders must provide the Debtors with three (3) business days' written notice (which may be by email) before exercising any enforcement rights or remedies; provided, that, neither the Debtors, the Committee nor any other party-in-interest shall have the right to contest the enforcement of any remedies set forth in the DIP Orders and the DIP Loan Documents on any basis other than an assertion that an Event of Default has not occurred or has been cured within the cure periods expressly set forth in the applicable DIP Loan Documents.

48. The relief requested herein further contemplates a modification and vacation of the automatic stay to permit the Debtors to, among other things, (a) grant the security interests, liens, and superpriority claims described above and to perform such acts as may be requested to assure the perfection and priority of such security interests and liens; and (b) implement the terms of the proposed DIP Orders, including payment of all amounts referred to in the DIP Loan Documents.

49. Stay modifications of this kind are ordinary and standard features of postpetition financing facilities and, in the Debtors' business judgment, are appropriate under the present circumstances. Accordingly, the Debtors request that the Court modify the automatic stay solely to the extent contemplated by the DIP Credit Agreement and the DIP Orders.

**J. Debtors Require Immediate Access to Cash Collateral and DIP Financing**

50. The Court may grant interim relief in respect of a motion filed pursuant to section 363(c) or 364 of the Bankruptcy Code if, as here, interim relief is “necessary to avoid immediate and irreparable harm to the estate pending a final hearing.” Fed. R. Bankr. P. 4001(b)(2), (c)(2). In examining requests for interim relief under this rule, Courts generally apply the same business judgment standard applicable to other business decisions. *See Ames Dep’t Stores*, 115 B.R. at 36.

51. As described in the First Day Declaration, as of the Petition Date, the Debtors will only have approximately \$100,000 in cash on hand. Absent authority to enter into and access the proceeds of the DIP Facility, even for a limited period of time, the Debtors will be unable to continue operating their business, resulting in a deterioration of value and immediate and irreparable harm to the Debtors’ estates. Thus, the Debtors require immediate access to the proceeds of the DIP Facility, as well as access to Cash Collateral, to finance their operations and continue operating as a going concern during the pendency of the Chapter 11 Cases.

**K. Request for Final Hearing**

52. As stated above, the Court may grant interim relief in respect of a motion filed pursuant to section 363(c) or 364 of the Bankruptcy Code if, as here, interim relief is “necessary to avoid immediate and irreparable harm to the estate pending a final hearing.” Fed. R. Bankr. P. 4001(b)(2), (c)(2). The DIP Credit Agreement requires that a Final Order approving the Motion be entered within twenty-three (23) days after the Petition Date. As such, pursuant to Bankruptcy Rules 4001(b)(2) and 4001(c)(2), the Debtors request that the Court set a date for a Final Hearing that is as soon as practicable, but in no event later than twenty-three (23) days

following the Petition Date, and fix the time and date before the Final Hearing for parties to file objections to the Motion.

**BANKRUPTCY RULE 6003(B) HAS BEEN SATISFIED**

53. Bankruptcy Rule 6003(b) provides that, to the extent relief is necessary to avoid immediate and irreparable harm, a bankruptcy court may issue an order granting “a motion to use, sell, lease, or otherwise incur an obligation regarding property of the estate, including a motion to pay all or part of a claim that arose before the filing of the petition” prior to 21 days after the Petition Date. Fed. R. Bankr. P. 6003(b). As explained above and in the First Day Declaration, the Debtors would suffer immediate and irreparable harm if the relief sought herein were not promptly granted and if the Debtors were therefore unable to access the DIP Facility or use Cash Collateral. Absent immediate access to the proceeds of the DIP Facility and the Cash Collateral, the Debtors would lack, among other things, (a) sufficient working capital to operate their business and to administer their estates, (b) the ability to timely pay administrative expenses incurred during these Chapter 11 Cases, and (c) the ability to consummate the sale transactions as contemplated by the RSA and any related pleadings. Accordingly, the Debtors submit that the relief requested herein is necessary to avoid immediate and irreparable harm, and, therefore, Bankruptcy Rule 6003 is satisfied.

**REQUEST FOR BANKRUPTCY RULE 6004(A) AND (H) WAIVERS**

54. To implement the foregoing successfully, the Debtors seek waivers of the notice requirements under Bankruptcy Rule 6004(a) and the 14-day stay of an order authorizing the use, sale, or lease of property under Bankruptcy Rule 6004(h). As explained above and in the First Day Declaration, the relief requested herein is necessary to avoid immediate and irreparable harm to the Debtors. Accordingly, ample cause exists to justify the waiver of the notice

requirements under Bankruptcy Rule 6004(a) and the 14-day stay imposed by Bankruptcy Rule 6004(h), to the extent such notice requirements and such stay apply.

**RESERVATION OF RIGHTS**

55. Nothing contained herein is intended to be or shall be construed as (a) an admission as to the validity of any claim against the Debtors or any liens against the Debtors' property, (b) an agreement or obligation to pay any claims, (c) a waiver of any claims or causes of action that may exist against any creditor or interest holder, (d) a waiver of the Debtors' or any appropriate party in interest's rights to dispute any claim, (e) an approval, assumption, or rejection of any agreement, contract, program, policy, or lease under section 365 of the Bankruptcy Code, (f) a limitation on the Debtors' rights under section 365 of the Bankruptcy Code to assume or reject any executory contract with any party subject to the DIP Orders once entered. Likewise, if the Court grants the relief sought herein, any payment made pursuant to the Court's order is not intended to be and should not be construed as an admission to the validity of any claim or a waiver of the Debtors' rights to dispute such claim subsequently. Nothing contained in the DIP Orders will be deemed to increase, reclassify, elevate to an administrative expense status, or otherwise affect any claim to the extent it is not paid.

**NOTICE**

56. The Debtors will provide notice of this motion to: (a) the Office of the U.S. Trustee for the District of Delaware; (b) the holders of the 30 largest unsecured claims against the Debtors (on a consolidated basis); (c) the United States Attorney's Office for the District of Delaware; (d) the Internal Revenue Service; (e) the Securities and Exchange Commission; (f) counsel to the Prepetition BAML Agent, (i) Morgan, Lewis & Bockius, One Federal Street, Boston, MA 02110 (Attn: Marjorie Crider, Esq. (marjorie.crider@morganlewis.com)); Julie

Frost-Davies, Esq. (julia.frost-davies@morganlewis.com); and Christopher L. Carter); and (ii) Robinson & Cole LLP, 1201 N. Market Street, Suite 1406, Wilmington, DE 19801 (Attn: Rachel J. Mauceri (rmauceri@rc.com)); (g) counsel to the DIP Agent, James-Bates-Brannan-Groover LLP (Attn: Sara Kate Rumsey (skrumsey@jamesbatesllp.com) and Doroteya Wozniak (dwozniak@jamesbatesllp.com)) and Morris, Nichols, Arsht & Tunnell LLP; (h) counsel to the Required Lenders, (i) King & Spalding LLP, 1185 Avenue of the Americas, New York, NY 10036 (Attn: Roger Schwartz, Esq. (rschwartz@kslaw.com); Peter Montoni, Esq. (pmontoni@kslaw.com); Timothy Fesenmyer, Esq. (tfesenmyer@kslaw.com)); and (ii) Morris, Nichols, Arsht & Tunnell LLP, 1201 N. Market Street, Suite 1600, Wilmington, DE 19801, (Attn: Robert J. Dehney (rdehney@morrisnichols.com)), and (i) any party that has requested notice pursuant to Bankruptcy Rule 2002.

**NO PRIOR REQUEST**

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

WHEREFORE the Debtors respectfully request entry of the DIP Orders granting the relief requested herein and such other and further relief as the Court may deem just and appropriate.

Dated: August 31, 2021

**PACHULSKI STANG ZIEHL & JONES LLP**

/s/ Laura Davis Jones

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*Proposed Counsel to the Debtors and Debtors in Possession*

**EXHIBIT A**

**INTERIM ORDER**

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE**

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<b>In re:</b>	:	<b>Chapter 11</b>
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<b>SEQUENTIAL BRANDS GROUP, INC., et al.,</b>	:	<b>Case No. 21-11194 (JTD)</b>
	:	
<b>Debtors.<sup>1</sup></b>	:	<b>Jointly Administered</b>
	:	
	:	<b>Re: Docket No. ___</b>

**INTERIM ORDER (I) AUTHORIZING THE DEBTORS TO OBTAIN POSTPETITION FINANCING, (II) AUTHORIZING THE DEBTORS TO USE CASH COLLATERAL, (III) GRANTING LIENS AND PROVIDING SUPER-PRIORITY ADMINISTRATIVE EXPENSE STATUS, (IV) GRANTING ADEQUATE PROTECTION, (V) MODIFYING THE AUTOMATIC STAY, (VI) SCHEDULING A FINAL HEARING, AND (VII) GRANTING RELATED RELIEF**

This matter having come before the Court on the above-captioned debtors’ (collectively, the “**Debtors**”) motion (the “**Motion**”)<sup>2</sup> seeking, pursuant to Sections 105, 361, 362, 363, 364, 506, 507 and 552 of title 11 of the United States Code (the “**Bankruptcy Code**”), Rules 2002, 4001, 6003, 6004, and 9014 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), and Rule 4001-2 of the Local Rules for the United States Bankruptcy Court, District of Delaware (the “**Local Rules**”) entry of interim and final orders (this “**Interim Order**”) for approval of, among other things, the following:

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<sup>1</sup> The Debtors, along with the last four digits of each Debtor’s tax identification number, are: Sequential Brands Group, Inc. (2789), SQBG, Inc. (9546), Sequential Licensing, Inc. (7108), William Rast Licensing, LLC (4304), Heeling Sports Limited (0479), Brand Matter, LLC (1258), SBG FM, LLC (8013), Galaxy Brands LLC (9583), The Basketball Marketing Company, Inc. (7003), American Sporting Goods Corporation (1696), LNT Brands LLC (3923), Joe’s Holdings LLC (3085), Gaiam Brand Holdco, LLC (1581), Gaiam Americas, Inc. (8894), SBG-Gaiam Holdings, LLC (8923), SBG Universe Brands, LLC (4322), and GBT Promotions LLC (7003). The Debtors’ corporate headquarters and the mailing address for each Debtor is 1407 Broadway, 38th Floor, New York, NY 10018.

<sup>2</sup> Capitalized terms used but not defined herein have the meanings given to them in the Motion or the First Day Declaration, as applicable

(i) authorizing the Debtors to obtain senior secured postpetition financing in the form of a senior secured, super priority multiple draw term loan facility (the “**DIP Credit Facility**”; and the financial institutions party thereto from time to time as lenders, as provided in the DIP Credit Agreement (as defined below), the “**DIP Lenders**”) in an aggregate principal amount of up to \$150,000,000 million pursuant to the terms and conditions of that certain *Super-Priority Secured Debtor-in-Possession Credit Agreement* (as the same may be amended, restated, supplemented, or otherwise modified from time to time in accordance with the terms thereof, the “**DIP Credit Agreement**,” together with the schedules and exhibits attached thereto, and all agreements, documents, instruments and amendments executed and delivered in connection therewith, the “**DIP Loan Documents**”), by and among Sequential Brands Group, Inc., a Delaware corporation (the “**Borrower**”) and the other Credit Parties party thereto (the Borrower, and the other Credit Parties which are, in each case, Debtors in these chapter 11 cases (the “**Chapter 11 Cases**”), the DIP Agent (as defined below), and DIP Lenders, collectively, the “**DIP Parties**”), and Wilmington Trust, National Association, as administrative agent and collateral agent (in either such capacity and together with any successor thereto, the “**DIP Agent**”), for and on behalf of itself and the DIP Lenders, substantially in the form of **Exhibit B**, attached to the Motion;

(ii) approving the terms of, and authorizing the Debtors party thereto to execute and deliver, the DIP Loan Documents and authorizing the Debtors to perform their respective obligations thereunder and such other acts as may be necessary or desirable in connection with the DIP Loan Documents, including, without limitation, the payment of all principal, interest, fees, expenses and other amounts payable under the DIP Loan Documents (collectively, and including all “Obligations” as described in the DIP Credit Agreement, the “**DIP Obligations**”);

(iii) authorizing the Debtors to grant security interests, liens and super-priority claims (including a super-priority administrative claim pursuant to Section 364(c)(1) of the Bankruptcy Code, liens pursuant to Sections 364(c)(2) and 364(c)(3) of the Bankruptcy Code and priming liens pursuant to Section 364(d) of the Bankruptcy Code) on all of the DIP Collateral (defined below) to the DIP Agent for the benefit of the DIP Lenders, including, without limitation, all property constituting “Cash Collateral” as defined in Section 363(a) of the Bankruptcy Code and as more specifically defined below, which liens shall be subject to the priorities set forth below;

(iv) authorizing and directing the Debtors to make non-refundable, irrevocable, and final payments on account of the principal, interest, fees, expenses and other amounts payable under the DIP Loan Documents as such become due, all to the extent provided in, and in accordance with, this Interim Order and the applicable DIP Loan Documents;

(v) authorizing the Debtors’ use, on the terms described below, of the Prepetition Collateral, including the Cash Collateral (each as defined below) of the Prepetition Secured Parties under the Prepetition Documents (each as defined below), and providing adequate protection to the Prepetition Secured Parties for any Diminution in Value (as defined below) of their interests in the Prepetition Collateral, including the Cash Collateral from and after the Petition Date;

(vi) approving the stipulations by the Debtors below with respect to the Prepetition Documents and the liens and security interests arising therefrom;

(vii) authorizing the Debtors to use the proceeds of the DIP Credit Facility and the Cash Collateral in accordance with both the Budget (as defined below) and the DIP Credit Agreement, including the payment of the Prepetition BAML Payoff Amount (as defined below)

to the Prepetition BAML Agent (as defined below) upon entry of the Interim Order and the closing and interim funding of the DIP Credit Facility;

(viii) modifying the automatic stay imposed by Section 362 of the Bankruptcy Code to the extent necessary to implement and effectuate the terms and provisions of the DIP Loan Documents and this Interim Order;

(ix) scheduling a final hearing on the Motion (the “**Final Hearing**”) to be held no later than twenty-three (23) calendar days after the Petition Date to consider entry of a final order that grants the relief requested in the Motion on a final basis, which final order shall be in form and substance (including with respect to any subsequent modifications to the form or substance made in response to objections of other creditors or this Court) acceptable to the DIP Agent (acting at the direction of the requisite consenting lenders), the Prepetition BAML Agent and the Prepetition Term B Agent (as defined below) (acting at the direction of Required Lenders (as defined below)) (the “**Final Order**”); and

(x) providing for the immediate effectiveness of this Interim Order and waiving any applicable stay (including under Bankruptcy Rule 6004) to permit such immediate effectiveness.

The Court having considered the Motion, the exhibits attached thereto, the First Day Declaration, and the evidence submitted and arguments made at the interim hearing (the “**Interim Hearing**”); and notice of the Interim Hearing having been given in accordance with Bankruptcy Rules 2002, 4001(b), (c) and (d), and all applicable Local Rules; and the Interim Hearing having been held and concluded; and all objections, if any, to the interim relief requested in the Motion having been withdrawn, resolved or overruled by the Court; and it appearing that approval of the interim relief requested in the Motion is necessary to avoid immediate and irreparable harm to the Debtors and their estates, and otherwise is fair and

reasonable and in the best interests of the Debtors, their estates and all parties-in-interest, and is essential for the continued operation of the Debtors' businesses and the preservation of the value of the Debtors' assets; and the Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and it appearing that the Debtors' entry into the DIP Credit 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.

**THE COURT HEREBY FINDS AND CONCLUDES AS FOLLOWS:<sup>3</sup>**

A. **Commencement of the Chapter 11 Cases.** On August 31, 2021 (the "**Petition Date**"), each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code with the United States Bankruptcy Court for the District of Delaware (the "**Court**"). 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. No trustee or examiner has been appointed in the Chapter 11 Cases.

B. **Jurisdiction and Venue.** This Court has jurisdiction over the Chapter 11 Cases, the Motion and the parties and property affected hereby pursuant to 28 U.S.C. §§ 157(b) and 1334. The Court's consideration of the Motion constitutes a core proceeding pursuant to 28 U.S.C. § 157(b)(2). This Court may enter a final order consistent with Article III of the United States Constitution. Venue for the Chapter 11 Cases and the proceedings on the Motion is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409. The bases for the relief sought in the

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

Motion and granted in this Interim Order are Sections 105, 361, 362, 363, 364, 506, 507 and 552 of the Bankruptcy Code, Bankruptcy Rules 2002, 4001, 6004 and 9014 and the Local Rules.

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

D. **Debtors' Stipulations.** After consultation with their attorneys and financial advisors, and without prejudice to the rights of parties in interest as set forth in Paragraph 41 below, the Debtors, on their behalf and on behalf of their estates, admit, stipulate, acknowledge and agree as follows (Paragraphs D(i) through D(ix) below are referred to herein, collectively, as the "**Debtors' Stipulations**"):

(i) *Prepetition BAML Facility.* Pursuant to that certain Third Amended and Restated First Lien Credit Agreement, dated as of July 1, 2016 (as amended, restated, supplemented, or otherwise modified from time to time, the "**Prepetition BAML Credit Agreement**"; and collectively with the Loan Documents (as defined in the Prepetition BAML Credit Agreement) and any other agreements and documents executed or delivered in connection therewith, each as may be amended, restated, supplemented, waived or otherwise modified from time to time, the "**Prepetition BAML Loan Documents**") among (a) the Borrower (as defined in the Prepetition BAML Credit Agreement), (b) the other persons party thereto from time to time that are designated as "Loan Parties" (each, a "**Prepetition BAML Guarantor**"), (c) Bank of America, N.A., as administrative agent and collateral agent (in such capacities,

the “**Prepetition BAML Agent**”), and (d) the lenders from time to time party thereto (the “**Prepetition BAML Lenders**,” and collectively with the Prepetition BAML Agent, and the other Secured Parties (as defined in the Prepetition BAML Credit Agreement), the “**Prepetition BAML Parties**”), the Prepetition BAML Parties provided revolving and term loans to, issued letters of credit for the account of, and provided other financial accommodations to the Borrowers pursuant to the Prepetition BAML Loan Documents (the “**Prepetition BAML Facility**”).

(ii) *Prepetition Term B Facility.* Pursuant to that certain Term B Credit Agreement, dated as of July 1, 2016 (as amended, restated, supplemented, waived or otherwise modified from time to time, the “**Prepetition Term B Credit Agreement**,” and collectively with any other agreements and documents executed or delivered in connection therewith, each as may be amended, restated, supplemented, or otherwise modified from time to time, the “**Prepetition Term B Loan Documents**”; the Prepetition BAML Credit Agreement and the Prepetition Term B Credit Agreement shall collectively be referred to as the “**Prepetition Agreements**,” and the Prepetition Term B Loan Documents collectively with the Prepetition BAML Documents and the Intercreditor Agreement (as defined below), the “**Prepetition Documents**”) among (a) the Borrower (as defined in the Prepetition Term B Credit Agreement), (b) the other persons party thereto from time to time that are designated as “credit parties” (each a “**Prepetition Term B Guarantor**”), (c) Wilmington Trust, National Association, as administrative agent and collateral agent (in such capacities, the “**Prepetition Term B Agent**,” together with the Prepetition BAML Agent, the “**Prepetition Agents**”) and (d) the lenders from time to time party thereto (the “**Prepetition Term B Lenders**,” and together with the Prepetition Term B Agent, and the other Secured Parties (as defined in the Prepetition Term B Agreement), the “**Prepetition Term**

**B Parties,**” and together with the Prepetition BAML Lenders, the “**Prepetition Lenders**”) (the Prepetition Term B Parties and Prepetition BAML Parties, collectively with the Prepetition Agents, the “**Prepetition Secured Parties**”), the Prepetition Term B Parties provided term loans, and other financial accommodations to, the Borrowers pursuant to the Prepetition Term B Loan Documents (the “**Prepetition Term B Facility,**” and together with the Prepetition BAML Facility, the “**Prepetition Secured Facilities**”).

(iii) *Prepetition Secured Obligations.* Under the Prepetition BAML Facility, the Prepetition BAML Lenders provided to the Debtors party thereto commitments in respect of (a) revolving loans in the aggregate principal amount of up to \$80,000,000 and (b) term loans in the aggregate principal amount of up to \$150,631,330. Under the Prepetition Term B Facility, the Prepetition Term B Lenders provided to the Debtors party thereto commitments in respect of term loans in the aggregate principal amount of up to \$415,000,000. Immediately prior to the Petition Date, (1) the aggregate principal amount outstanding under the Prepetition BAML Facility on account of (a) revolving loans was not less than \$0.00 (the “**Prepetition BAML Revolving Loans**”) and (b) term loans was not less than \$127,913,705 (the “**Prepetition BAML Term Loans,**” and together with the Prepetition BAML Revolving Loans, the “**Prepetition BAML Loans**”) and (2) the aggregate principal amount outstanding under the Prepetition Term B Facility on account of term loans was not less than \$ 298,467,625 (the “**Prepetition Term B Term Loans**”) (such amounts on account of the Prepetition BAML Loans and the Prepetition Term B Term Loans, together with any accrued and unpaid interest, fees, expenses and disbursements (including, without limitation, any attorneys’ fees, accountants’ fees, appraisers’ fees and financial advisors’ fees, and related expenses and disbursements), indemnification obligations, and other charges, amounts and costs of whatever nature owing, whether or not

contingent, whenever arising, accrued, accruing, due, owing, or chargeable in respect of any of the Debtors' obligations under the Prepetition Secured Facilities, respectively, the "**Prepetition BAML Obligations**"<sup>4</sup> and the "**Prepetition Term B Obligations**" and, together, the "**Prepetition Secured Obligations**").

(iv) *Prepetition Liens and Prepetition Collateral.*

(a) *Prepetition BAML Liens.* Pursuant to (i) that certain Guaranty Agreement dated as of August 15, 2014, as amended, restated, supplemented or otherwise modified from time to time prior to the date hereof, the Borrower (as defined in the Prepetition BAML Credit Agreement) and each Prepetition BAML Guarantor jointly and severally guaranteed all of the Prepetition BAML Obligations and (ii) that certain Amended and Restated Security Agreement, dated as of August 15, 2014, as amended, restated, supplemented or otherwise modified from time to time prior to the date hereof, the Borrower (as defined in the Prepetition BAML Credit Agreement) and each Prepetition BAML Guarantor granted to the Prepetition BAML Agent, for the benefit of itself and the other Prepetition BAML Parties, a lien on, and security interest in, all of its right, title and interest in (the "**Prepetition BAML Liens**") substantially all of their respective assets, including a first priority security interest in, and continuing lien on, the BofA

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<sup>4</sup> As of the Petition Date, certain of the Prepetition BAML Parties and the Debtors were parties to certain interest rate swaps (the "**Swaps**"), and as a result of the filing, an Event of Default occurred and the Swaps will be terminated with an effective date of the first business day following the Petition Date or otherwise as provided in the termination notice provided by the Swap parties. The parties estimate that as of the termination, the Debtors owed the Prepetition BAML Parties approximately \$2,800,000 on account of the Swaps (the "**Swap Termination Liability**"). The figure provided is an indicative estimate based on the market to market value of the Swaps as of August 23, 2021 obtained for purposes of this Interim Order. The actual Swap Termination Liability cannot be determined prior to the Early Termination Date (as defined in the Swap documents) and may differ due to the application of the specific close-out mechanics set out in the swap documentation and any market movements before the Early Termination Date. The Swaps is secured by the same collateral that secures other Prepetition BAML Obligations. The Swap Termination Liability, which will accrue interest at the default rate in accordance with the applicable Swap documents, shall constitute a Prepetition BAML Obligation and will be paid in accordance with the Prepetition BAML Payoff Letter on the Prepetition BAML Payoff Date (each as defined below).

Facility Priority Collateral (as defined in the Intercreditor Agreement and as used in this Interim Order, the “**Prepetition BAML Collateral**”); and

(b) *Prepetition Term B Liens.* Pursuant to (i) that certain Guaranty Agreement dated as of August 15, 2014, as amended, restated, supplemented or otherwise modified from time to time prior to the date hereof, the Borrower (as defined in the Prepetition Term B Credit Agreement) and each Prepetition Term B Guarantor (collectively, the “**Prepetition Term B Credit Parties**”) jointly and severally guaranteed all of the Prepetition Term B Obligations and (ii) that certain Security Agreement, dated as August 15, 2014, as amended, restated, supplemented or otherwise modified from time to time prior to the date hereof, the Borrower (as defined in the Prepetition Term B Credit Agreement) and each Prepetition Term B Guarantor granted to the Prepetition Term B Agent, for the benefit of itself and the other Prepetition Term B Parties, a lien on, and security interest in, all of its right, title and interest in (the “**Prepetition Term B Liens**,” and together with the Prepetition BAML Liens, the “**Prepetition Liens**”) substantially all of their respective assets, including a first priority security interest in, and continuing lien on, the KKR Priority Collateral (as defined in the Intercreditor Agreement and as used in this Interim Order, the “**Prepetition Term B Collateral**”); collectively, with the Prepetition BAML Collateral, the “**Prepetition Collateral**”).

(v) *Priority of Prepetition Liens; Intercreditor Agreement.* The Prepetition BAML Agent and the Prepetition Term B Agent entered into that certain Intercreditor Agreement, dated as of December 4, 2015 (as amended, restated, supplemented, or otherwise modified from time to time prior to the date hereof, the “**Intercreditor Agreement**”) to govern the respective rights, interests, obligations, priority and positions of the Prepetition Secured

Obligations with respect to the Prepetition Collateral. Each of the Debtors under the Prepetition Documents acknowledged and agreed to the Intercreditor Agreement.

(vi) *Validity, Perfection and Priority of Prepetition Liens and Prepetition Secured Obligations.* As of the Petition Date (a) the Prepetition Liens were senior in priority over any and all other liens on the Prepetition Collateral, subject only to the relative priorities among the Prepetition Secured Parties set forth in the Prepetition Documents, certain liens otherwise permitted by the Prepetition Documents and any other lien arising as a matter of law (in each case, to the extent that such existing liens were valid, properly perfected, non-avoidable and senior in priority to the Prepetition Liens as of the Petition Date or were valid non-avoidable senior liens that are perfected subsequent to the Petition Date as permitted by Section 546(b) of the Bankruptcy Code, the “**Permitted Prior Liens**”)<sup>5</sup>; (b) the Prepetition Liens on the Prepetition Collateral were valid, binding, enforceable, non-avoidable and properly perfected and were granted to, or for the benefit of, the Prepetition Secured Parties for fair consideration and reasonably equivalent value; (c) the Prepetition Secured Obligations constitute legal, valid, binding, and non- avoidable obligations of the Prepetition Credit Parties enforceable in accordance with the terms of the respective Prepetition Secured Documents; (d) no offsets, recoupments, challenges, objections, defenses, claims or counterclaims of any kind or nature to any of the Prepetition Liens or Prepetition Secured Obligations exist, and no portion of the Prepetition Liens or Prepetition Secured Obligations is subject to any challenge or defense including, without limitation, avoidance, disallowance, disgorgement, recharacterization, or

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<sup>5</sup> Nothing herein shall constitute a finding or ruling by this Court that any such Permitted Prior Lien is valid, senior, enforceable, prior, perfected or non-avoidable. Moreover, nothing shall prejudice the rights of any party-in-interest, including, but not limited to the Debtors, the Prepetition Secured Parties, or a Creditors’ Committee, if appointed, to challenge the validity, priority, enforceability, seniority, avoidability, perfection or extent of any alleged Permitted Prior Lien and/or security interests. The right of a seller of goods to reclaim such goods under Section 546(c) of the Bankruptcy Code is not a Permitted Prior Lien and is expressly subject to the Prepetition Liens.

subordination (equitable or otherwise) pursuant to the Bankruptcy Code or applicable non-bankruptcy law; (e) the Debtors and their estates have no claims, objections, challenges, causes of action, and/or choses in action, including, without limitation, avoidance claims under Chapter 5 of the Bankruptcy Code or applicable state law equivalents or actions for recovery or disgorgement, against any of the Prepetition Secured Parties, or any of their respective affiliates, agents, attorneys, advisors, professionals, officers, consultants, directors, and employees arising out of, based upon or related to the Prepetition Secured Facilities; (f) the Debtors hereby waive, discharge and release any right to challenge any of the Prepetition Secured Obligations, the priority of the Debtors' obligations thereunder, and the validity, extent and priority of the liens securing the Prepetition Secured Obligations (for the avoidance of doubt, subject and without prejudice to, the rights of parties-in-interest, including any official committee of unsecured creditors (the "**Creditors' Committee**") that may be appointed in the Chapter 11 Cases, as set forth in Paragraph J.41 below); and (g) the Prepetition Secured Obligations constitute allowed, secured claims within the meaning of Sections 502 and 506 of the Bankruptcy Code.

(vii) *No Control.* None of the DIP Agent, the DIP Lenders or the Prepetition Secured Parties controls the Debtors or their properties or operations, has authority to determine the manner in which any of the Debtors' operations are conducted or is a control person or insider of the Debtors or any of their affiliates by virtue of any of the actions taken with respect to, in connection with, related to, or arising from this Interim Order, the DIP Credit Facility, the DIP Loan Documents, the Prepetition Secured Facilities and/or the Prepetition Documents.

(viii) *Release.* Upon entry of this Interim Order, the Debtors, each in their own right and on behalf of their bankruptcy estates, and on behalf of all their successors, assigns, subsidiaries and any affiliates and any person acting for and on behalf of, or claiming through

them, hereby fully, finally and forever release and discharge the Prepetition Secured Parties and all of their respective officers, directors, servants, agents, advisors, attorneys, assigns, heirs, parents, subsidiaries, and each person acting for or on behalf of any of them of and from any and all actions, causes of action, demands, suits, claims, liabilities, liens, lawsuits, adverse consequences, amounts paid in settlement, costs, damages, debts, deficiencies, diminution in value, disbursements, expenses, losses and other obligations of any kind or nature whatsoever, in each case, existing at the time of entry of this Interim Order and, if applicable, the Final Order, whether in law, equity or otherwise (including, without limitation, any so-called “lender liability” or equitable subordination or recharacterization claims or defenses, any and all claims and causes of action with respect to the validity, priority, perfection, or avoidability of the liens or claims of the Prepetition Agents and the Prepetition Secured Parties, those arising under Sections 541 through 550 of the Bankruptcy Code and interest or other carrying costs, penalties, legal, accounting and other professional costs, and incidental, consequential and punitive damages payable to third parties), directly or indirectly arising out of, connected with or relating to the DIP Loan Documents, the Prepetition Documents, the Prepetition Liens, this Interim Order, the Final Order, if applicable, and/or the transactions contemplated hereunder or thereunder, and all other agreements, certificates, instruments and other documents and statements (whether written or oral) related to any of the foregoing.

(ix) *Cash Collateral.* All of the Debtors’ cash and cash equivalents, including cash on deposit in any account or accounts as of the Petition Date, securities or other cash equivalents, wherever located, whether subject to control agreements or otherwise, whether as original collateral or proceeds of other Prepetition Collateral, constitutes “Cash Collateral” of the applicable Prepetition Secured Parties within the meaning of Section 363(a) of the Bankruptcy

Code (the “**Cash Collateral**”) and are subject to valid, perfected, enforceable, first-priority liens under the Prepetition Documents and applicable law, for the benefit of the Prepetition Secured Parties.

**E. Findings Regarding Postpetition Financing**

(i) *Need for Postpetition Financing and Use of Cash Collateral.* The Debtors have an immediate and critical need to obtain the financing contemplated under the DIP Credit Facility and to continue to use the Prepetition Collateral (including Cash Collateral) in order to, among other things, (a) allow the Debtors’ to finance their collective business operations as a going concern, (b) refinance all the Prepetition BAML Obligations and terminate all commitments under the Prepetition BAML Facility upon entry of the Interim Order and the closing of the DIP Credit Facility, (c) pay the fees, costs and other expenses incurred in connection with the administration of the Chapter 11 Cases and (d) make adequate protection payments as set forth herein. The Debtors’ ability to access sufficient working capital and liquidity through the use of Cash Collateral and other Prepetition Collateral, the incurrence of new indebtedness under the DIP Loan Documents and the other financial accommodations provided under the DIP Loan Documents is necessary and vital to the preservation and maintenance of the Debtors’ value as a going concern. The Debtors and their estates will suffer immediate and irreparable harm if immediate financing is not obtained and permission to use Cash Collateral is not granted. The terms of the DIP Credit Facility are fair and reasonable, reflect each Loan Party’s exercise of prudent business judgment, and are supported by reasonably equivalent value and fair consideration. The adequate protection provided in this Interim Order and other benefits and privileges contained herein are consistent with, and authorized by, the Bankruptcy Code.

(ii) *No Credit Available on More Favorable Terms.* The DIP Credit Facility is the best source of debtor-in-possession financing available to the Debtors. Given their current financial condition, financing arrangements, capital structure, and the circumstances of these Chapter 11 Cases, the Debtors have been, and continue to be, unable to obtain financing from sources other than the DIP Lenders on terms more favorable than the DIP Credit Facility. Further, the Prepetition Secured Parties would not consent to the Debtors incurring debtor-in-possession financing, the priming of their Prepetition Liens or the use of Cash Collateral without the DIP Lenders' willingness to provide the DIP Credit Facility on the terms contained therein. The Debtors are unable to obtain unsecured credit allowable under Bankruptcy Code Section 503(b)(1) as an administrative expense. The Debtors have also been unable to obtain (a) unsecured credit having priority over that of administrative expenses of the kind specified in Sections 503(b), 507(a) and 507(b) of the Bankruptcy Code; (b) credit secured solely by a lien on property of the Debtors and their estates that is not otherwise subject to a lien; or (c) credit secured solely by a junior lien on property of the Debtors and their estates that is subject to a lien. Financing on a postpetition basis is not otherwise available without (x) granting the DIP Agent, for the benefit of itself and the DIP Lenders (1) perfected security interests in, and liens on (each as provided below), all of the Debtors' existing and after-acquired assets with the priorities set forth below, (2) super-priority claims and liens and (3) the other protections set forth in this Interim Order and (y) refinancing all of the Prepetition BAML Obligations in accordance with this Interim Order and the Prepetition BAML Payoff Letter.

(iii) *Priming of the Prepetition Liens.* The priming of the Prepetition Liens on the Prepetition Collateral under Section 364(d) of the Bankruptcy Code (as required under the DIP Credit Facility) will enable the Debtors to continue operating their businesses on a

postpetition basis and maintain the Debtors' going-concern value for the benefit of the Debtors' estates, creditors and other constituents. The Prepetition Term B Lenders have consented to the priming of the Prepetition Liens and the terms of this Interim Order, which consent would not have been provided absent the restructuring transactions contemplated in the Restructuring Support Agreement and the terms of this Interim Order and the DIP Loan Documents, including, without limitation, the Adequate Protection Payments, Adequate Protection Super-Priority Claims and Adequate Protection Liens set forth below. Subject to the occurrence of the Prepetition BAML Payoff Date (as defined below), the Prepetition BAML Parties have consented to the priming of the Prepetition BAML Liens, which consent would not have been provided absent the terms of this Interim Order, including, without limitation, receipt of the Prepetition BAML Payoff Amount and the adequate protections set forth in this Interim Order.

(iv) *Use of Proceeds of the DIP Credit Facility and Cash Collateral.* As a condition to entry into the DIP Loan Documents, the extension of credit under the DIP Credit Facility and the authorization to use Cash Collateral, the DIP Agent, the DIP Lenders, and the Prepetition Secured Parties require, and the Debtors have agreed, that proceeds of the DIP Credit Facility shall be used, in each case in a manner consistent with the terms and conditions of this Interim Order, the DIP Loan Documents and in accordance with the Budget (as the same may be modified from time to time consistent with the terms of the DIP Loan Documents and with the consent of the DIP Lenders holding in excess of fifty percent (50%) of the outstanding loans under the DIP Credit Facility (the "**Required DIP Lenders**") and the "Required Lenders" (as such term is defined in the Prepetition Term B Agreement, the "**Required Lenders**"), the "**Budget**"). The repayment of the Prepetition BAML Obligations in accordance with this Interim Order and the Prepetition BAML Payoff Letter (as defined below) is a necessary

condition of the Prepetition BAML Parties consenting to the use of Prepetition Collateral and to the subordination of the Prepetition BAML Liens (to the extent not released upon entry of this Interim Order and subject in all respects to the occurrence of the Prepetition BAML Payoff Date) and the Prepetition BAML Adequate Protection Liens to the DIP Liens as provided in this Interim Order.

(v) *Application of Proceeds of Collateral.* As a condition to entry into the DIP Loan Documents, the extension of credit under the DIP Credit Facility and authorization to use Cash Collateral, the Debtors, the DIP Parties (as to DIP Agent, at the direction of the Applicable Lenders (as defined in the DIP Credit Agreement)), and the Prepetition Secured Parties (as to Term B Prepetition Agent, at the direction of the Applicable Lenders (as defined in the Prepetition Term B Credit Agreement)) have agreed that, as of and commencing on the date of entry of this Interim Order, the Debtors shall apply the proceeds of DIP Collateral in accordance with this Interim Order and the DIP Loan Documents, including to repay in full in cash the Prepetition BAML Obligations in accordance with the Prepetition BAML Payoff Letter. The extension of the DIP Credit Facility and the repayment of the Prepetition BAML Obligations are part of an integrated transaction.

F. **Adequate Protection.** Until the applicable Prepetition Secured Obligations are Paid in Full,<sup>6</sup> the Prepetition Secured Parties are entitled to receive adequate protection as set

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<sup>6</sup> **“Paid in Full”** or **“Payment in Full”** means the indefeasible payment in full in cash of all obligations (including principal, interest, premium fees, expenses, indemnities) under the applicable credit facility, the cash collateralization of all treasury and cash management obligations, hedging obligations, and bank product obligations, and the cancelation, replacement, backing, or cash collateralization of letters of credit, in each case, in accordance with the applicable credit facility. No facility shall be deemed to have been Paid in Full until such time as, with respect to the applicable facility, (a) the commitments to lend thereunder have been terminated; (b) solely with respect to the Prepetition Secured Facilities (i) the Challenge Period (as defined below) shall have expired without the timely commencement of a Challenge (as defined below) or (ii) if a Challenge is timely asserted prior to the expiration of the Challenge Period, upon the final, non-appealable disposition of such Challenge; and (c) either the applicable Prepetition Agent or the DIP Agent has received (i) a countersigned payoff letter in form and substance satisfactory to such agent and (ii) releases from the Debtors (including any liquidator acting on behalf of

forth in this Interim Order pursuant to Sections 361, 363, 364 and 507(b) of the Bankruptcy Code, for any diminution in the value (“**Diminution in Value**”) of their respective interests in the Prepetition Collateral (including Cash Collateral) from and after the Petition Date. The Prepetition Secured Parties are each entitled to receive the adequate protection provided in this Interim Order as and to the extent set forth below pursuant to Sections 361, 363, 364 and 507(b) of the Bankruptcy Code.

G. **Sections 506(c) and 552(b).** In light of (i) the DIP Agent’s and the DIP Lenders’ agreement that their liens and super-priority claims shall be subject to the Carve-Out; (ii) the Prepetition Term B Parties’ agreement that, with respect to the Prepetition Collateral, their liens shall be subject to the Carve-Out and subordinate to the DIP Liens; and (iii) the Prepetition BAML Parties’ agreement that, with respect to the Prepetition Collateral, their liens shall be (following the occurrence of the Prepetition BAML Payoff Date) subject to the Carve-Out and subordinate to the DIP Liens, (x) subject to entry of the Final Order, the Prepetition Term B Parties are each entitled to a waiver of any “equities of the case” exception under Section 552(b) of the Bankruptcy Code and the equitable doctrine of “marshaling” or any other similar doctrine; and (y) subject to entry of a Final Order, the DIP Parties and Prepetition Secured Parties are each entitled to a waiver of the provisions of Section 506(c) of the Bankruptcy Code.

H. **Good Faith of the DIP Agent and Lenders.**

(i) *Willingness to Provide Financing.* The DIP Lenders have committed to provide financing to the Debtors subject to, among other things, (a) entry of this Interim Order and the Final Order; (b) approval of the terms and conditions of the DIP Credit Facility and the DIP Loan Documents; (c) satisfaction of the closing conditions set forth in the DIP Loan

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any of the Debtors or their estates, if applicable) in form and substance satisfactory to such agent, as applicable, each in its sole discretion.

Documents; and (d) findings by this Court that the DIP Credit Facility is essential to the Debtors' estates, that the DIP Lenders are extending credit to the Debtors pursuant to the DIP Loan Documents in good faith, and that the DIP Agent's and DIP Lenders' claims, super-priority claims, security interests and liens and other protections granted pursuant to this Interim Order and the DIP Loan Documents will have the protections provided by Section 364(e) of the Bankruptcy Code.

(ii) *Business Judgment.* Based on the Motion, the declarations filed in support of the Motion, and the record presented to the Court at the Interim Hearing, (a) the terms of the financing embodied in the DIP Credit Facility, including the fees, expenses and other charges paid and to be paid thereunder or in connection therewith, (b) the adequate protection authorized by this Interim Order and (c) the terms on which the Debtors may continue to use the Prepetition Collateral (including Cash Collateral), in each case pursuant to this Interim Order and the DIP Loan Documents, (1) are all fair and reasonable, (2) reflect the Debtors' exercise of prudent business judgment in a manner consistent with the Debtors' fiduciary duties, (3) constitute reasonably equivalent value and fair consideration and (4) represent the best financing (and terms) available under the circumstances.

(iii) *Good Faith Pursuant to Section 364(e).* The terms and conditions of the DIP Credit Facility and the use of Cash Collateral were negotiated in good faith and at arms' length among the Debtors, the DIP Parties, and certain of the Prepetition Secured Parties, each with the assistance and counsel of their respective advisors. The Debtors' use of Cash Collateral and credit to be extended by the DIP Lenders, and the Prepetition Secured Parties (as applicable) under the DIP Credit Facility shall be deemed to have been allowed, advanced, made or extended

in good faith, and for valid business purposes and uses, within the meaning of Section 364(e) of the Bankruptcy Code.

I. **Notice of Interim Hearing.** The Debtors have provided notice of the Interim Hearing and the relief requested in the Motion, whether by facsimile, electronic mail, overnight courier or hand delivery, to certain parties-in-interest, including, among others: (i) the U.S. Trustee; (ii) the holders of the twenty (20) largest unsecured claims against the Debtors on a consolidated basis; (iii) James-Bates-Brannan-Groover LLP and Morris, Nichols, Arsht & Tunnell LLP, as counsel to the Prepetition Term B Agent, and King & Spalding LLP and Morris, Nichols, Arsht & Tunnell LLP, as counsel to the Required Lenders; (iv) Morgan, Lewis & Bockius LLP, as counsel to the agent under the Debtors' Prepetition BAML Facility; (v) all other holders of other debt instruments issued by the Debtors; (vi) all parties asserting liens against the Debtors' assets; (vii) the state attorneys general for all states in which the Debtors operate; (viii) the U.S. Attorney's Office for the District of Delaware; (ix) the United States Securities and Exchange Commission; (x) the Internal Revenue Service; (xi) any party that requests service pursuant to Bankruptcy Rule 2002; and (xii) any such other party entitled to notice under the Bankruptcy Rules and Local Rules. The Debtors have made reasonable efforts to afford the best notice possible under the circumstances and such notice is good and sufficient to permit the interim relief set forth in this Interim Order, and no other or further notice is, or shall be, required.

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

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

**IT IS HEREBY ORDERED THAT:**

1. **Interim DIP Financing Approved.** The Motion is granted on an interim basis, entry into the DIP Credit Facility and other DIP Loan Documents is authorized and approved, and the use of Cash Collateral on an interim basis is authorized, in each case, subject to the terms and conditions set forth in this Interim Order and in the DIP Loan Documents. All objections to this Interim Order to the extent not withdrawn, waived, settled or resolved, and all reservations of rights included therein, are hereby denied and overruled on the merits. This Interim Order shall become effective immediately upon its entry. Unless terminated earlier pursuant to the DIP Loan Documents and this Interim Order, the DIP Credit Facility will terminate on a date that is 24 days after entry of this Interim Order absent the Court's entry of a Final Order in a form and substance satisfactory to the DIP Agent, the Required DIP Lenders, the Prepetition BAML Agent, the Prepetition Term B Agent and the Required Lenders.

**DIP Credit Facility Authorization**

2. **Authorization of the DIP Financing.** The Debtors are expressly and immediately authorized and empowered to (a) execute and deliver the DIP Loan Documents, (b) incur and to perform the DIP Obligations in accordance with, and subject to, the terms of this Interim Order and the DIP Loan Documents, (c) execute, deliver and perform under all instruments, certificates, agreements, and documents that may be required or necessary for the

Debtors' performance under the DIP Loan Documents and the creation and perfection of the DIP Liens (as defined below) described in, and provided for by, this Interim Order and the DIP Loan Documents and (d) repay the Prepetition BAML Obligations in accordance with the Prepetition BAML Payoff Letter upon entry of this Interim Order and the closing of the DIP Credit Facility. The Debtors are hereby authorized and directed to pay, in accordance with this Interim Order, the principal, interest, fees, expenses and other amounts described in the DIP Loan Documents and all other documents comprising the DIP Credit Facility as such becomes due, including, without limitation, any fees due and payable thereunder, the DIP Agent's fees, and the reasonable and documented fees and disbursements of the DIP Parties' attorneys, advisors, accountants and other consultants, whether or not such fees arose before, on or after the Petition Date, whether or not the transactions contemplated hereby are consummated, and to take any other actions that may be necessary or appropriate, all to the extent provided in this Interim Order or the DIP Loan Documents; *provided, however*, that the payment of the fees and expenses of the Lender Professionals (as defined below) shall be subject to the provisions of Paragraph 35. All collections, consideration and proceeds, whether from ordinary course collections, asset sales (including, without limitation, sales consummated pursuant to the Stalking Horse Agreements (as defined in the Sale Motion (as defined below)), debt or equity issuances, insurance recoveries, condemnations or otherwise, will be deposited and applied as required by this Interim Order and the DIP Loan Documents. Upon execution and delivery, the DIP Loan Documents shall represent legal, valid and binding obligations of the Debtors, enforceable against each of the Debtors and their estates in accordance with their terms. Each officer of a Debtor acting individually is hereby authorized to execute and deliver each of the DIP Loan Documents, such execution and delivery to be conclusive evidence of such officer's respective authority to act in

the name of and on behalf of the Debtors. Upon the Debtors' payment in satisfaction of the Prepetition BAML Obligations in accordance with the Prepetition BAML Payoff Letter, the Prepetition BAML Agent shall be authorized to make distributions to the Prepetition BAML Parties in accordance with the Prepetition BAML Documents, and any and all of the Prepetition BAML Liens on the Prepetition Collateral (but not, for the avoidance of doubt, the Prepetition BAML Adequate Protection Liens until the Prepetition BAML Obligations are Paid in Full) shall be irrevocably terminated, released and discharged in full on such date, subject to Paragraph 41 below.

3. Authorization to Borrow. To prevent immediate and irreparable harm to the Debtors' estates, subject to the terms, conditions, limitations on availability and reserves set forth in the DIP Loan Documents and this Interim Order, the Debtors are hereby authorized to borrow money pursuant to the DIP Credit Agreement in an aggregate principal or face amount not to exceed \$141 million, together with applicable interest, expenses, fees and other charges payable in connection with the DIP Credit Facility, subject in each case to any limitations on borrowing under the DIP Loan Documents, which borrowings shall be used for all purposes permitted under, and in accordance with, the DIP Loan Documents, this Interim Order and the Budget, including, without limitation, (a) to pay the Prepetition BAML Payoff Amount, (b) to provide working capital and for other general corporate purposes of the Debtors, (c) to fund the costs of the administration of the Chapter 11 Cases (including Professional Fees (as defined below)) and (d) fund interest, fees, and other payments contemplated in respect of the DIP Credit Facility.

4. DIP Obligations. The DIP Loan Documents and this Interim Order shall constitute and evidence the validity and binding effect of the Debtors' DIP Obligations, which

DIP Obligations shall be enforceable against the Debtors, their estates and any successors thereto, including, without limitation, any trustee appointed in the Chapter 11 Cases, or in any case under Chapter 7 of the Bankruptcy Code upon the conversion of any of the Chapter 11 Cases, or in any other proceedings superseding or related to any of the foregoing (collectively, the “**Successor Cases**”). Upon entry of this Interim Order, the DIP Obligations will 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 Debtors to the DIP Agent or any of the DIP Lenders, including, without limitation, all principal, accrued interest, costs, charges, fees, expenses, obligations in respect of indemnity claims (contingent or otherwise) and other amounts under the DIP Loan Documents. The Debtors shall be jointly and severally liable for the DIP Obligations. The DIP Obligations shall be due and payable, without notice or demand, and the use of Cash Collateral shall automatically cease on the Termination Date, except as provided in Paragraph 33 below. No obligation, payment, transfer, or grant of collateral security hereunder or under the DIP Loan Documents (including any DIP Obligation or DIP Liens), and subject to Paragraph 41, including in connection with any adequate protection provided to the Prepetition Secured Parties hereunder, shall be stayed, restrained, voidable, avoidable or recoverable, under the Bankruptcy Code or under any applicable law (including, without limitation, under Sections 502(d), 544, and 547 to 550 of the Bankruptcy Code or under any applicable state Uniform Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act, or similar statute or common law), or be subject to any avoidance, reduction, setoff, recoupment, offset, recharacterization, subordination (whether equitable, contractual, or otherwise), counterclaim, cross-claim, defense, or any other challenge under the Bankruptcy Code or any applicable law or regulation by any person or entity.

5. DIP Collateral. In order to secure the DIP Obligations, effective immediately upon entry of this Interim Order, pursuant to Sections 361, 362, 364(c)(2), 364(c)(3), and 364(d) of the Bankruptcy Code, the DIP Agent, for the benefit of itself and the DIP Lenders, is hereby granted continuing, valid, binding, enforceable, non-avoidable, and automatically and properly perfected postpetition first priority security interests in, and liens on (collectively, the “**DIP Liens**”), any and all presently owned and hereafter acquired assets and real and personal property of the Debtors as set forth in the DIP Loan Documents (collectively, the “**DIP Collateral**”), including, without limitation, any and all tangible and intangible pre- and post-petition property of the Debtors, whether existing before, on or after the Petition Date, together with any proceeds thereof, including, without limitation, any and all cash, cash equivalents and any investment of such cash or cash equivalents, inventory, goods, accounts, accounts receivable, other rights to payment whether arising before or after the Petition Date, contracts, properties, plants, fixtures, machinery, equipment, general intangibles, payment intangibles, documents, instruments, securities, chattel paper, interests in leaseholds (*provided, however*, that solely to the extent that any lease prohibits the granting of a lien thereon, or otherwise prohibits hypothecation of the leasehold interest, then in such event there shall only be a lien on the economic value of, proceeds of sale or other disposition of, and any other proceeds and products of such leasehold interests unless the applicable provision is rendered ineffective by applicable non-bankruptcy law or the Bankruptcy Code), real property, deposit accounts (except for any account created to hold an adequate assurance deposit for utility providers, pursuant to separate order of this Court), securities accounts, investment property, letters of credit, letter-of- credit rights, patents, copyrights, trademarks, trade names, rights under license agreements and other intellectual property, commercial tort claims, capital stock of subsidiaries,

wherever located, and the proceeds, products, rents, accession and profits of the foregoing; *provided*, that upon entry of (a) this Interim Order, any proceeds or property recovered, unencumbered or otherwise from all of the Debtors' claims and causes of action under Sections 502(d), 544, 545, 547, 548, 549, and 550 of the Bankruptcy Code and under any applicable state Uniform Voidable Transactions Act, Uniform Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act, and similar statutes or common law (collectively, "**Avoidance Actions**"), shall constitute DIP Collateral and (b) the Final Order, Avoidance Actions shall constitute DIP Collateral.

6. DIP Lien Priority.

(i) The DIP Liens securing the DIP Obligations are valid, automatically perfected, non-avoidable, senior in priority and, other than with respect to the Carve-Out and Permitted Prior Liens, superior to any security, mortgage, collateral interest, lien or claim to, or on any of the DIP Collateral (including, without limitation, the Prepetition Liens); *provided, however*, that the DIP Liens on the Prepetition BAML Collateral and the proceeds thereof (collectively, the "**BAML Priority Collateral**") shall be subject to and junior to the Prepetition BAML Liens until the Prepetition BAML Payoff Date. Other than as set forth below or in the DIP Loan Documents, the DIP Liens shall not be made subject to or *pari passu* with any lien or security interest heretofore or hereinafter granted in these Chapter 11 Cases or any Successor Cases, and shall be valid and enforceable against any trustee appointed in the Chapter 11 Cases or any Successor Cases, upon the conversion of any of the Chapter 11 Cases to a case under Chapter 7 of the Bankruptcy Code (or in any other Successor Case), and/or upon the dismissal of any of the Chapter 11 Cases or Successor Cases. The DIP Liens shall not be subject to Sections 510, 549 or 550 of the Bankruptcy Code. No lien or interest avoided and preserved

for the benefit of the estate pursuant to Section 551 of the Bankruptcy Code shall be *pari passu* with or senior to the DIP Liens.

7. DIP Credit Facility Super-Priority Claims. Upon entry of this Interim Order, but subject in all respects to the Carve Out, the DIP Agent and the DIP Lenders are hereby granted, pursuant to Section 364(c)(1) of the Bankruptcy Code, allowed super-priority administrative expense claims in each of the Chapter 11 Cases and any Successor Cases (collectively, the “**DIP Credit Facility Super-Priority Claims**”) for all DIP Obligations with priority over any and all administrative expense claims, (including, without limitation, any administrative expense claims provided as adequate protection to the Prepetition Term B Parties or any other party), priority and other unsecured claims against the Debtors or their estates in any of the Chapter 11 Cases and any Successor Cases, at any time existing or arising, of any kind or nature whatsoever, including, without limitation, administrative expenses of the kinds specified in or ordered pursuant to Bankruptcy Code Sections 105, 326, 328, 330, 331, 364, 503(a), 503(b), 507(a), 507(b), 546(c), 546(d), 726, 1113 and 1114, and any other provision of the Bankruptcy Code, as provided under Section 364(c)(1) of the Bankruptcy Code.

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

9. Use of DIP Credit Facility Proceeds. From and after the Petition Date, the Debtors shall use advances of credit under the DIP Credit Facility only for the purposes

specifically set forth in this Interim Order and the DIP Loan Documents, and in compliance with the Budget and the terms and conditions in this Interim Order and the DIP Loan Documents.

10. Repayment of Prepetition BAML Obligations. Upon entry of this Interim Order, without any further action by the Debtors or any other party, the repayment of the Prepetition BAML Obligations in accordance with the Prepetition BAML Payoff Letter is approved. The Debtors are authorized and directed to (a) execute and deliver the Prepetition BAML Payoff Letter (as defined below); (b) use the proceeds of the DIP Credit Facility to pay in full in cash all outstanding Prepetition BAML Obligations, including, without limitation, all principal, interest, fees and expenses due and chargeable under the Prepetition BAML Facility through the date of payment (including, without limitation, the payment in cash or provision for the cash collateralization of the Bank Products and the Swap Termination Liability in an amount and on terms acceptable to the Prepetition BAML Agent); (c) pay such other reasonable amounts in respect of or related to the Prepetition BAML Facility, as more fully set out in the Prepetition BAML Payoff Letter; and (d) fund for the benefit of the Prepetition BAML Agent and the other Prepetition BAML Parties the amount of \$250,000 (the “**Prepetition BAML Indemnity Reserve**”) into a non-interest bearing account maintained with and held by the Prepetition BAML Agent to secure contingent indemnification, reimbursement or similar continuing obligations arising under or related to the Prepetition BAML Documents. The amounts in clauses (a)–(d) of this Paragraph 10 shall be referred to in this Interim Order as, collectively, the “**Prepetition BAML Payoff Amount**”, and the date of the satisfaction of the Prepetition BAML Payoff Amount, shall be referred to as the “**Prepetition BAML Payoff Date**”. At least one (1) Business Day prior to the anticipated Prepetition BAML Payoff Date, the Prepetition BAML Agent shall deliver to the Debtors a letter (including any documents related thereto, each of

which shall be in form and substance acceptable to the Prepetition BAML Agent, the “**Prepetition BAML Payoff Letter**”) which shall set forth the calculation of the Prepetition BAML Payoff Amount. For the avoidance of doubt, nothing in this Interim Order shall otherwise impair or modify the provisions of the Prepetition Term B Credit Agreement relating to the Prepetition Term B Facility. The Prepetition BAML Indemnity Reserve shall not constitute DIP Collateral but shall secure all costs, expenses, and other amounts (including reasonable and documented attorneys’ fees) owed to or incurred by the Prepetition BAML Agent in connection with the Prepetition BAML Documents, this Interim Order and the Final Order. The Prepetition BAML Indemnity Reserve shall not be subject to the Carve-Out, DIP Liens, Term B Adequate Protection Liens or Prepetition Term B Liens; *provided, however*, that funds remaining in the Prepetition BAML Indemnity Reserve shall be released to the Debtors (and shall become DIP Collateral) upon Payment in Full of the Prepetition BAML Obligations.

11. No Monitoring Obligation. No DIP Lender or DIP Agent shall have any obligation or responsibility to monitor any DIP Party’s use of the DIP Credit Facility, and each DIP Lender and the DIP Agent may rely upon each DIP Party’s representation that the use of the DIP Credit Facility at any time is in accordance with the requirements of this Interim Order and the DIP Loan Documents.

#### **Use of Cash Collateral**

12. Authorization to Use Cash Collateral. Subject to the terms and conditions of this Interim Order, the DIP Credit Facility and the other DIP Loan Documents and in accordance with the Budget, and subject to the occurrence of the Prepetition BAML Payoff Date, the Debtors are authorized to use Cash Collateral until the Termination Date. Nothing in this Interim Order shall authorize the disposition of any assets of the Debtors outside the ordinary

course of business, or any Debtor's use of any Cash Collateral or other proceeds resulting therefrom, except as permitted by this Interim Order, the DIP Credit Facility, the DIP Loan Documents, and in accordance with the Budget, as applicable. For the avoidance of doubt, any asset sale outside of the ordinary course authorized by the DIP Agent (with the consent of the Required DIP Lenders) and the Prepetition Term B Agent (with the consent of the Required Lenders) and approved by the Court shall be expressly permitted hereunder.

13. Budget Maintenance. The use of proceeds from the DIP Credit Facility and use of Cash Collateral under this Interim Order shall be in accordance with the Budget, subject to Permitted Variances (as defined below) and the terms and conditions set forth in the DIP Loan Documents and this Interim Order. The Budget shall consist of a 13-week operating budget setting forth all forecasted receipts and disbursements on a weekly basis for such 13-week period beginning as of the week of the Petition Date, broken down by week, including line item detail of the anticipated weekly uses of Cash Collateral for such period, which shall include, among other things, available cash, cash flow, trade payables and ordinary course expenses, total expenses and capital expenditures, fees and expenses related to the Chapter 11 Cases (including Professional Fees), and working capital and other general corporate needs. The Budget and any modification to, or amendment or update of, the Budget shall be subject to the approval of, and in form and substance acceptable to, the DIP Agent (acting at the direction of the Required DIP Lenders) and the Prepetition Term B Agent (acting at the direction of the Required Lenders).

14. Budget Compliance.

(i) By not later than 5:00 p.m. Eastern Time on the second Wednesday following the Petition Date and by not later than 5:00 p.m. Eastern Time on each Wednesday following the end of each Testing Period (as defined below), the Debtors shall deliver to the DIP

Agent (along with its professionals), the Required DIP Lenders and the Prepetition Term B Parties, an updated Budget, in each case, in form satisfactory to the DIP Agent (acting at the direction of the Required DIP Lenders) and the Prepetition Term B Agent (acting at the direction of the Required Lenders) and in substance satisfactory to the DIP Agent (acting at the direction of the Required DIP Lenders) and the Prepetition Term B Agent (acting at the direction of the Required Lenders) for the subsequent 13-week period consistent with the form of the Budget, and such updated Budget shall become the “Budget” for the purposes of this Interim Order upon the DIP Agent (acting at the direction of the Required DIP Lenders) and the Prepetition Term B Agent (acting at the direction of the Required Lenders) notifying the Debtors in writing that the proposed updated Budget is substantially in the form of the Budget and in substance satisfactory to the DIP Agent (acting at the direction of the Required DIP Lenders) and the Prepetition Term B Agent (acting at the direction of the Required Lenders); *provided*, that, until a new Budget has been approved by the DIP Agent (acting at the direction of the Required DIP Lenders) and the Prepetition Term B Agent (acting at the direction of the Required Lenders), the most recently approved Budget shall govern.

(ii) Beginning on the second Wednesday following the Petition Date (by not later than 5:00 p.m. Eastern Time), and on every Wednesday following the end of each Testing Period (as defined below) (by not later than 5:00 p.m. Eastern Time), the Debtors shall deliver to the DIP Agent (along with its advisors and professionals), the Required DIP Lenders (along with their respective advisors), and the Prepetition Term B Parties (along with their respective advisors) an updated Budget, a variance report (the “**Variance Report**”) setting forth actual cash receipts and disbursements and cash flows of the Debtors for the prior Testing Period and setting forth all the variances, on a line-item and aggregate basis, from the amount set forth

for such period as compared to the applicable Budget delivered by the Debtors, in each case, for the applicable Testing Period (and each such Variance Report shall include explanations for all material variances and shall be certified by the Chief Financial Officer of the Debtors).

(iii) For purposes hereof, the term “**Permitted Variances**” shall mean, for (x) the Petition Date through and including the two week period beginning on the second Wednesday following the Petition Date, (y) the three week period beginning on the third Wednesday following the Petition Date and (z) each rolling four-week period thereafter (each week commencing on the Wednesday of such week) (the applicable “**Testing Period**”) (a) all favorable variances, and (b) an unfavorable variance (other than disbursements for Professional Fees of the DIP Lender and DIP Agent and fees of the Office of the United States Trustee) of no more than (i) 15% for actual receipts and (ii) 15% for actual disbursements (on an aggregate basis) as compared to the budgeted receipts and disbursements, respectively, set forth in the Budget with respect to the applicable Testing Period; *provided*, that any disbursements in such Testing Period made from proceeds of favorable variances with respect to receipts in such Testing Period shall not be counted as disbursements for purposes of calculating unfavorable variances. The Permitted Variances with respect to each Testing Period shall be determined and reported to the DIP Agent (and its advisors), the Required DIP Lenders (and their advisors) and the Prepetition Term B Parties (and their respective advisors), not later than 5:00 p.m. Eastern Time on each Wednesday immediately following the end of each such Testing Period. Additional variances, if any, from the Budget, and any proposed changes to the Budget, shall be subject to the approval of the DIP Agent (acting at the direction of the Required DIP Lenders) and the Prepetition Term B Agent (acting at the direction of the Required Lenders).

(iv) The use of Cash Collateral under this Interim Order shall be in accordance with the Budget, the DIP Loan Documents and this Interim Order; *provided, however*; that, notwithstanding anything to the contrary herein, in the case of the fees, costs and expenses of the Lender Professionals, the Debtors shall pay such amounts in accordance with this Interim Order without regard to any limitations set forth in the Budget.

**Prepetition Secured Parties' Adequate Protection**

15. Prepetition Secured Parties' Adequate Protection Liens.

(i) *Prepetition BAML Parties' Adequate Protection Liens.* To the extent of any Diminution in Value of the Prepetition BAML Parties' interests in the Prepetition Collateral from and after the Petition Date, as adequate protection of such interests, the Debtors, subject to Paragraph 41, hereby grant to the Prepetition BAML Agent, for the benefit of itself and the Prepetition BAML Lenders, until such time as the Prepetition BAML Obligations are Paid in Full, continuing valid, binding, enforceable non-avoidable and automatically and properly perfected security interests in, and liens on, the DIP Collateral (the "**BAML Adequate Protection Liens**").

(ii) *Prepetition Term B Parties' Adequate Protection Liens.* To the extent of any Diminution in Value of the Prepetition Term B Parties' interests in the Prepetition Collateral from and after the Petition Date, as adequate protection of such interests, the Debtors, subject to Paragraph 41, hereby grant to the Prepetition Term B Agent, for the benefit of itself and the Prepetition Term B Lenders, continuing valid, binding, enforceable, non-avoidable and automatically and properly perfected security interests in, and liens on, the DIP Collateral (the "**Term B Adequate Protection Liens**," and together with the BAML Adequate Protection Liens, the "**Adequate Protection Liens**").

16. Priority of Adequate Protection Liens

(i) *Priority of the BAML Adequate Protection Liens.* The BAML Adequate Protection Liens shall be junior only to: (A) the Permitted Prior Liens, (B) the Carve-Out, (C) the DIP Liens, and (D) solely with respect to the Prepetition Term B Collateral, the Prepetition Term B Liens and the Term B Adequate Protection Liens. Except as provided herein, the BAML Adequate Protection Liens shall not be made subject to, or *pari passu* with, any lien or security interest heretofore or hereinafter granted in the Chapter 11 Cases or any Successor Cases, and shall be valid and enforceable against any trustee appointed in any of the Chapter 11 Cases or any Successor Cases, or upon the dismissal of any of the Chapter 11 Cases or Successor Cases. The BAML Adequate Protection Liens shall not be subject to Sections 510, 549, or 550 of the Bankruptcy Code. No lien or interest avoided and preserved for the benefit of the estate pursuant to Section 551 of the Bankruptcy Code shall be *pari passu* with or senior to the BAML Adequate Protection Liens.

(ii) *Priority of Term Loan B Adequate Protection Liens.* The Term B Adequate Protection Liens shall be junior only to (A) the Permitted Prior Liens, (2) the Carve-Out, (C) the DIP Liens, and (D) solely with respect to the BAML Priority Collateral, the Prepetition BAML Liens and the BAML Adequate Protection Liens. Except as provided herein, the Term B Adequate Protection Liens shall not be made subject to, or *pari passu* with, any lien or security interest heretofore or hereinafter granted in the Chapter 11 Cases or any Successor Cases, and shall be valid and enforceable against any trustee appointed in any of the Chapter 11 Cases or any Successor Cases, or upon the dismissal of any of the Chapter 11 Cases or Successor Cases. The Term B Adequate Protection Liens shall not be subject to Sections 510, 549, or 550 of the Bankruptcy Code. No lien or interest avoided and preserved for the benefit of the estate

pursuant to Section 551 of the Bankruptcy Code shall be *pari passu* with or senior to the Term B Adequate Protection Liens.

17. Adequate Protection Super-Priority Claims.

(i) *BAML Adequate Protection Super-Priority Claims.* As further adequate protection of the interests of the Prepetition BAML Agent and the Prepetition BAML Parties in the Prepetition Collateral against any Diminution in Value of such interests in the Prepetition Collateral from and after the Petition Date, the Prepetition BAML Agent, for the benefit of itself and the Prepetition BAML Parties, is hereby granted as, and to the extent provided by Section 507(b) of the Bankruptcy Code, an allowed super-priority administrative expense claim in each of the Chapter 11 Cases and any Successor Cases (the “**BAML Adequate Protection Super-Priority Claims**”).

(ii) *Term B Adequate Protection Super-Priority Claims.* As further adequate protection of the interests of the Prepetition Term B Agent and the Prepetition Term B Lenders in the Prepetition Collateral against any Diminution in Value of such interests in the Prepetition Collateral from and after the Petition Date, the Prepetition Term B Agent, for the benefit of itself and the Prepetition Term B Lenders, is hereby granted as, and to the extent provided by Section 507(b) of the Bankruptcy Code, an allowed super-priority administrative expense claim in each of the Chapter 11 Cases and any Successor Cases (the “**Term B Adequate Protection Super-Priority Claims,**” and together with the BAML Adequate Protection Super-Priority Claims, the “**Adequate Protection Super-Priority Claims**”).

18. Priority of the Adequate Protection Super-Priority Claims. The Adequate Protection Super-Priority Claims shall have priority over all other administrative expense claims and unsecured claims (other than the DIP Credit Facility Super-Priority Claims) against the

Debtors or their estates, now existing or hereafter arising, of any kind or nature whatsoever, including, without limitation, administrative expenses of the kinds specified in, or ordered pursuant to, Sections 105, 326, 328, 330, 331, 503(a), 503(b), 506(c) (subject to entry of the Final Order granting such relief), 507(a), 507(b), 546(c), 546(d), 726 (to the extent permitted by law), 1113 and 1114 of the Bankruptcy Code. The Adequate Protection Super-Priority Claims shall be payable from, and have recourse to, all pre- and post-petition property of the Debtors and all proceeds thereof, subject only to the Payment in Full of the DIP Credit Facility Super-Priority Claims, the DIP Obligations, the Carve-Out and other amounts secured by Permitted Prior Liens.

19. Adequate Protection Payments and Protections for Prepetition Secured Parties. As further adequate protection (the “**Adequate Protection Payments**”), the Debtors are authorized to pay in cash, (a) until the Prepetition BAML Payoff Date, current payment of interest (at the non-default rate) due under the Prepetition BAML Documents, and (b) in accordance with Paragraph 35, but without the need for the filing of formal fee applications, any unpaid fees, costs and expenses accrued on, prior to or after the Petition Date of (i) advisors to the Prepetition BAML Agent (the “**Prepetition BAML Advisors**”), Morgan, Lewis & Bockius LLP, as counsel, and Robinson & Cole LLP, as local counsel; (ii) advisors to Prepetition Term B Agent, James-Bates-Brannan-Groover-LLP and Morris, Nichols, Arsht & Tunnell LLP as counsel to the Prepetition Term B Agent; and (ii) advisors to the Required Lenders, King & Spalding LLP, as counsel, Morris, Nichols, Arsht & Tunnell LLP, as local counsel, and Province, Inc., as financial advisor (the foregoing (ii) and (iii), collectively, the “**Prepetition Term B Advisors**”).

20. Adequate Protection Reservation. Nothing herein shall impair or modify the application of Section 507(b) of the Bankruptcy Code in the event that the adequate protection provided to the Prepetition Secured Parties hereunder is insufficient to compensate for any Diminution in Value of their respective interests in the Prepetition Collateral during the Chapter 11 Cases or any Successor Cases. The receipt by the Prepetition Secured Parties of the adequate protection provided herein shall not be deemed an admission that the interests of the Prepetition Secured Parties are adequately protected. Further, this Interim Order shall not prejudice or limit the rights of the Prepetition Secured Parties to seek additional relief with respect to the use of Cash Collateral or for additional adequate protection in a manner consistent with the Prepetition Documents.

**Provisions Common to DIP Financing and Use of Cash Collateral**

21. Amendment of the DIP Loan Documents. The Debtors are authorized and empowered, without further notice and hearing or approval of this Court, to amend, modify, supplement, or waive any provision of the DIP Loan Documents in accordance with the provisions thereof, in each case unless such amendment, modification, supplement, or waiver (i) increases the interest rate or other fees payable under the DIP Loan Documents (other than as a result of the imposition of the default rate), (ii) increases the aggregate lending commitments of all of the DIP Lenders in respect of the DIP Credit Facility, (iii) shortens the Maturity Date, (iv) adds or amends any Event of Default, prepayment provision, termination provision, case milestone or provision relating to asset sales that, in each case, is in a manner unfavorable to the Debtors, or (v) increases existing fees or adds new fees, *provided, however*, that notice of any proposed modification or amendment to the DIP Loan Documents pursuant to provisions (i) through (v) above shall be provided to counsel for the Creditors' Committee, if any, and the

U.S. Trustee, each of whom shall have three (3) days from the date of such notice within which to object, in writing, to such modification or amendment. If the Creditors' Committee, if any, or the U.S. Trustee timely objects to any modification or amendment to the DIP Loan Documents, such modification or amendment shall only be permitted pursuant to an order of the Court. No waiver, modification or amendment of any of the provisions of the DIP Loan Documents shall be effective unless set forth in writing, signed by or on behalf of all the Debtors and the DIP Agent (after having obtained the approval of the Required DIP Lenders under the DIP Credit Agreement) and, to the extent required herein, approved by this Court.

22. Modification of Automatic Stay. The automatic stay imposed under Section 362(a)(2) of the Bankruptcy Code is hereby modified as necessary to effectuate the terms and provisions of this Interim Order, including, without limitation, to (a) permit the Debtors to grant the DIP Liens, the Adequate Protection Liens, the DIP Credit Facility Super-Priority Claims and the Adequate Protection Super-Priority Claims; (b) permit the Debtors to perform such acts as the DIP Agent, the Prepetition BAML Agent and the Prepetition Term B Agent may 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 Parties and the Prepetition Secured Parties under the DIP Loan Documents, the DIP Credit Facility and this Interim Order; and (d) authorize the Debtors to pay, and the DIP Parties and the Prepetition Secured Parties to retain and apply, payments made in accordance with the terms of this Interim Order, the DIP Loan Documents and the Budget.

23. Perfection of DIP Liens and Adequate Protection Liens. This Interim Order shall be sufficient and conclusive evidence of the creation, validity, perfection, and priority of all liens granted herein, including the DIP Liens and the Adequate Protection Liens, without

the necessity of filing or recording any financing statement, mortgage, deed of trust, notice, or other instrument or document which may otherwise be required under the law or regulation of any jurisdiction or the taking of any other action (including, for the avoidance of doubt, entering into any deposit account control agreement) to validate or perfect (in accordance with applicable non-bankruptcy law) the DIP Liens and the Adequate Protection Liens or to entitle the DIP Agent, the DIP Lenders and the Prepetition Secured Parties to the priorities granted herein. Notwithstanding the foregoing, the DIP Agent, the Prepetition BAML Agent and the Prepetition Term B Agent are authorized (but shall have no obligation to) to file, as each deems necessary or advisable, such financing statements, security agreements, mortgages, notices of liens and other similar documents to perfect in accordance with applicable non-bankruptcy law or to otherwise evidence the DIP Liens and the Adequate Protection Liens, respectively, and all such financing statements, mortgages, notices and other documents shall be deemed to have been filed or recorded as of the Petition Date; *provided, however*, that no such filing or recordation shall be necessary or required in order to create or perfect the DIP Liens or the Adequate Protection Liens. The Debtors are authorized and directed to execute and deliver promptly upon demand to the DIP Agent, the Prepetition BAML Agent and the Prepetition Term B Agent all such financing statements, mortgages, notices and other documents as the DIP Agent, the Prepetition BAML Agent and the Prepetition Term B Agent may request. The DIP Agent, the Prepetition BAML Agent and the Prepetition Term B Agent, each in its discretion, may file a photocopy of this Interim Order as a financing statement with any filing or recording office or with any registry of deeds or similar office in addition to or in lieu of such financing statements, notices of lien or similar instruments. To the extent that either of the Prepetition Agents are the secured party under any security agreement, mortgage, leasehold mortgage, landlord waiver, credit card

processor notices or agreements, bailee letters, custom broker agreements, financing statement, account control agreements or any other Prepetition Documents or are listed as loss payee, lenders' loss payee or additional insured under any of the Debtors' insurance policies, the DIP Agent shall also be, and be deemed to be, the secured party or mortgagee, as applicable, under such documents or to be the loss payee or additional insured, as applicable. The automatic stay of Section 362(a) of the Bankruptcy Code shall be modified to the extent necessary to permit the DIP Agent, the Prepetition BAML Agent and/or the Prepetition Term B Agent to take all actions, as applicable, referenced in this Paragraph 23.

24. Application of Proceeds of Collateral. As a condition to the entry of the DIP Loan Documents, the extension of credit under the DIP Credit Facility and the authorization to use Cash Collateral, the Debtors have agreed that as of and commencing on the date of entry of the Interim Order, the Debtors shall apply all proceeds of dispositions of DIP Collateral in accordance with the terms of the DIP Credit Agreement and this Interim Order; until the DIP Obligations are Paid in Full, and then apply all such proceeds to the Prepetition Term B Obligations until such obligations are Paid in Full.

25. Protections of Rights of DIP Agent, DIP Lenders and Prepetition Secured Parties.

(i) Unless (a) the DIP Agent (acting at the direction of the Required DIP Lenders), (b) the Prepetition BAML Agent and (c) the Prepetition Term B Agent (acting at the direction of the Required Lenders) shall have provided their prior written consent or all DIP Obligations and all Prepetition Secured Obligations have been Paid in Full, and all commitments thereunder are terminated, in any of these Chapter 11 Cases or any Successor Cases, the Debtors shall neither seek entry of, nor support any motion or application seeking entry of, and otherwise

shall object to any motion or application seeking entry of, any order (including, without limitation, an order confirming any plan of reorganization or liquidation) that authorizes any of the following: (1) the obtaining of credit or the incurring of indebtedness that is secured by a security, mortgage or collateral interest or other Lien on all or any portion of the DIP Collateral or Prepetition Collateral that, in each case, is entitled to priority status superior to, or *pari passu* with, the DIP Liens (unless expressly permitted under the DIP Loan Documents or the Interim Order), the Adequate Protection Liens or the Prepetition Liens; (2) the obtaining of credit or the incurring of indebtedness with priority over the DIP Credit Facility Super-Priority Claims (unless expressly permitted under the DIP Loan Documents or this Interim Order) or the Adequate Protection Super-Priority Claims; (3) the use of Cash Collateral for any purpose other than as permitted in the DIP Loan Documents, this Interim Order and the Budget; or (4) any modification of any of the DIP Parties', or the Prepetition Secured Parties' rights under this Interim Order, the DIP Loan Documents or the Prepetition Documents with respect to any DIP Obligations or Prepetition Secured Obligations. It shall be an Event of Default under this Interim Order if, in any of these Chapter 11 Cases or any Successor Cases, any order is entered granting any of the relief enumerated in provisions (1) through (4) of the previous sentence.

(ii) The Debtors will (a) maintain books, records and accounts to the extent, and as required by, the DIP Loan Documents, (b) cooperate with, consult with, and provide to the DIP Agent, the Required DIP Lenders, the Prepetition Term B Agent and the Required Lenders, all such information and documents that any or all of the Debtors are obligated to provide under the DIP Loan Documents or the provisions of this Interim Order or as otherwise requested by the DIP Agent (acting at the direction of the Required DIP Lenders) or the Prepetition Term B Agent (acting at the direction of the Required Lenders), (c) permit

consultants, advisors and other representatives (including third party representatives) of the DIP Agent, the Required DIP Lenders, the Prepetition Term B Agent or the Required Lenders (as applicable), to visit and inspect any of the Debtors' respective properties, to examine and make abstracts or copies from any of their respective books and records, to tour the Debtors' business premises and other properties, and to discuss, and provide advice with respect to, their respective affairs, finances, properties, business operations and accounts with their respective officers, employees, independent public accountants and other professional advisors as, and to the extent required by, the DIP Loan Documents or the Prepetition Documents, (d) permit the DIP Agent, Required DIP Lenders, the Prepetition Term B Agent, the Required Lenders and their respective consultants, advisors and other representatives, to consult with the Debtors' management and advisors on matters concerning the Debtors' businesses, financial condition, operations and assets, and (e) permit the DIP Agent or the Prepetition Term B Agent to conduct, at their reasonable direction and at the Debtors' cost and expense, field audits, collateral examinations, liquidation valuations and inventory appraisals in respect of any or all of the DIP Collateral and the Prepetition Collateral, in each case, in accordance with the DIP Loan Documents and the applicable Prepetition Documents.

(iii) No Debtor shall object to the DIP Agent (acting at the direction of the Required DIP Lenders), the Prepetition BAML Agent or the Prepetition Term B Agent's (acting at the direction of the Required Lenders) (or any of the DIP Agent's, Prepetition BAML Agent's or Prepetition Term B Agent's respective designees, affiliates or assignees) submission of a credit bid up to the full amount of the applicable outstanding DIP Obligations or Prepetition Obligations, in each case, including, without limitation, any accrued interest and expenses, in a sale of any DIP Collateral or Prepetition Collateral, as applicable, and whether such sale is

effectuated through Sections 363 or 1129 of the Bankruptcy Code, by a Chapter 7 trustee under Section 725 of the Bankruptcy Code, or otherwise, subject, in each case, to the provision of consideration sufficient to pay in full in cash any Permitted Prior Liens on any collateral that is subject to the credit bid.

26. Proceeds of Subsequent Financing. If the Debtors, any trustee, any examiner with expanded powers, or any responsible officer subsequently appointed in these Chapter 11 Cases or any Successor Cases, shall obtain credit or incur debt pursuant to Bankruptcy Code Sections 364(b), 364(c) or 364(d) or in violation of the DIP Loan Documents at any time prior to the Payment in Full of all DIP Obligations and the termination of the DIP Agent's and DIP Lenders' obligation to extend credit under the DIP Credit Facility, including subsequent to the confirmation of any plan with respect to any or all of the Debtors and the Debtors' estates, and such facilities are secured by any DIP Collateral, then all cash proceeds derived from such credit or debt shall immediately be turned over to the DIP Agent to be applied in accordance with this Interim Order and the DIP Loan Documents.

27. Cash Collection. From and after the date of the entry of this Interim Order and the closing of the DIP Credit Facility, the Debtors shall maintain cash management in accordance with the DIP Loan Documents and the Cash Management Order (as defined below). Unless authorized by the Interim Order or otherwise agreed to in writing by the DIP Agent (acting at the direction of the Required DIP Lenders) and the Prepetition Term B Agent (acting at the direction of the Required Lenders), the Debtors shall maintain no accounts except those identified in any interim and/or final order granting the *Motion of Debtors for Interim and Final Orders (A) Authorizing Continued Use of Existing Cash Management System, Including Maintenance of Existing Bank Accounts, Checks and Business Forms; (B) Authorizing*

*Continuation of Existing Deposit Practices; (C) Waiving Certain U.S. Trustee Guidelines; (D) Authorizing Continuation of Intercompany Transactions; (E) Granting Priority Status to Postpetition Intercompany Claims; (F) Authorizing the debtors to Open and Close Bank Accounts and (G) Granting Related Relief [D.I. [●]]* (the “**Cash Management Order**”). Subject to this Interim Order, the Debtors and the financial institutions where the Debtors’ maintain deposit accounts (as identified in the Cash Management Order), are authorized and directed to remit, without offset or deduction, funds in such deposit accounts upon receipt of any direction to that effect from the DIP Agent (acting at the direction of the Required DIP Lenders) in accordance with the DIP Loan Documents.

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

29. Disposition of DIP Collateral. The Debtors shall not sell, transfer, lease, encumber or otherwise dispose of any portion of the DIP Collateral or Prepetition Collateral other than in the ordinary course of business without the prior written consent of the DIP Agent (acting at the direction of the Required DIP Lenders) and the Prepetition Term B Agent (acting at the direction of the Required Lenders), it being understood that no such consent shall be implied, from any other action, inaction or acquiescence by any DIP Party or any Prepetition Secured Party), except as otherwise provided for in the DIP Loan Documents.

30. Termination Date. On the applicable Termination Date (defined below) and except as otherwise provided in accordance with this Interim Order, (a) all applicable DIP Obligations shall be immediately due and payable, all commitments to extend credit under the applicable DIP Credit Facility will terminate, and (b) all authority to use Cash Collateral shall cease.

31. Milestones. As a condition to the use of the DIP Credit Facility and Cash Collateral, and as further adequate protection to the DIP Parties and the Prepetition Secured Parties, the Debtor shall comply with the following milestones (the “**Case Milestones**”):

(a) No later than three (3) Business Days following the Petition Date, the Debtors shall file a motion (the “**Sale Motion**”), in form and substance acceptable to the Required DIP Lenders and the Required Lenders, requesting (i) an order from the Court (the “**Bid Procedures Order**”) (x) approving the proposed bidding procedures attached to the Sale Motion related to the sale of all, or substantially all, the Debtors’ assets, including the Stalking Horse Assets (as defined in the Sale Motion) (the “**Bidding Procedures**”), and (y) authorizing the Debtors to provide the Stalking Horse Bidder(s) (as defined in the Sale Motion) with the bidding protections set forth in the Stalking Horse Agreement(s), and (ii) an order(s) from the Court (the “**Sale Order**”), in form and substance acceptable to the Required DIP Lenders and the Required Lenders, approving the sale(s) of the Stalking Horse Assets to the Stalking Horse Bidder(s) or such other higher or better bidder determined in accordance with the Bid Procedures Order.

(b) No later than twenty-three (23) calendar days following the Petition Date, the Court shall have entered the Final Order, in form and substance satisfactory to the Required

DIP Lenders, the Prepetition BAML Agent, the DIP Agent, the Prepetition Term B Agent, and the Required Lenders.

(c) The Debtors shall establish a date that is no later than fifty-five (55) calendar days after the Petition Date as the deadline for the submission of binding bids with respect to the sale(s) under the Sale Motion.

(d) No later than sixty (60) calendar days after the Petition Date, the Debtors shall complete an auction for substantially all of their assets, including the Stalking Horse Assets, in accordance with the Bid Procedures Order; *provided*, that if there is no higher or better offer submitted in comparison to the Stalking Horse Bid(s) (as defined in the Sale Motion), no auction shall be held. The Debtors shall declare a “winning bidder” and a “back-up bidder” for its assets in consultation with the Required DIP Lenders and the Required Lenders (*provided*, that, so long as the Required DIP Lenders and Required Lenders, as applicable, are partners in, or a financing party to any bids, such consultation right shall not be in effect). The terms of each “winning bid” and “back-up” bid shall be acceptable to the Required DIP Lenders and the Required Lenders and shall, among other things, provide for proceeds from the sale(s) in a minimum amount and in forms of consideration satisfactory to the Required DIP Lenders and the Required Lenders.

(e) No later than sixty-five (65) calendar days after the Petition Date, the Court shall have entered the Sale Order(s) approving the winning bid(s) resulting from the auction.

(f) No later than seventy-five (75) calendar days after the Petition Date, the Debtors shall have consummated the sale(s) of its assets to the winning bidder(s) at the auction.

32. Events of Default. Until the DIP Obligations and all the Prepetition Secured Obligations are Paid in Full, the occurrence of any of the following events, unless

waived by the DIP Agent (acting at the direction of the Required DIP Lenders) and the Prepetition Term B Agent (acting at the direction of the Required Lenders) or, solely with respect to provisions related to the Prepetition BAML Obligations, the Prepetition BAML Agent, in writing, shall constitute an event of default (collectively, the “**Events of Default**”), in all circumstances upon written notice to the Debtors: (a) the failure of the Debtors to perform any of the terms, provisions, conditions, covenants or obligations under this Interim Order, including, without limitation, failure to make any payment under this Interim Order when due; or (b) the occurrence and continuation of an “Event of Default” under, and as defined in, the DIP Credit Agreement. For the avoidance of doubt, the failure to comply with the Case Milestones set forth in Paragraph 31 shall constitute an Event of Default under this Interim Order.

33. Rights and Remedies Upon Event of Default. Immediately upon the occurrence and during the continuation of an Event of Default, notwithstanding the provisions of Section 362 of the Bankruptcy Code, without any application, motion or notice to, hearing before, or order from the Court, but subject to the terms of this Interim Order (a) the DIP Agent and/or the Prepetition Term B Agent may (or shall at the request of the Required DIP Lenders or the Required Lenders, as applicable) declare (any such declaration shall be referred to herein as a “**Termination Notice**”) (1) all DIP Obligations owing under the DIP Loan Documents to be immediately due and payable, (2) the termination, reduction or restriction of any further commitment to extend credit to the Debtors to the extent any such commitment remains under the DIP Credit Facility, (3) the termination of the DIP Credit Facility and the DIP Loan Documents as to any future liability or obligation of the DIP Agent and DIP Lenders, but without affecting any of the DIP Liens or the DIP Obligations, (4) that the application of the Carve-Out has occurred following delivery of the Carve-Out Trigger Notice to the Borrower and (5) the

termination of the Debtors' ability to use Cash Collateral (subject to the procedures set forth below); and (b) interest, including, where applicable, default interest, shall accrue and be paid as set forth in the DIP Loan Documents (the date which is the earliest to occur of any date a Termination Notice is delivered by the DIP Agent and/or the Prepetition Term B Agent shall be referred to herein as the "**Termination Date**"). The Termination Notice shall be given by electronic mail (or other electronic means) to counsel to the Debtors, counsel to the Creditors' Committee, if appointed, and the U.S. Trustee. The automatic stay in the Chapter 11 Cases otherwise applicable to the DIP Parties and the Prepetition Term B Parties is hereby modified so that, absent the cure or waiver of an Event of Default or the Debtors' obtaining a judicial determination that an asserted Event of Default has not occurred, in each case, on or before three (3) Business Days after the DIP Agent's and/or the Prepetition Term B Agent's delivery of a Termination Notice (such three (3) Business Day period, the "**Remedies Notice Period**"), the DIP Agent (acting at the direction of the Required DIP Lenders) and/or the Prepetition Term B agent (acting at the direction of the Required Lenders) may (i) terminate the use of Cash Collateral; and (ii) exercise any available remedies (including, without limitation, the repossession or foreclosure of any DIP Collateral and/or Prepetition Collateral) without obtaining an order from this Court authorizing such activity. Prior to the expiration of the Remedies Notice Period, (a) the Debtors shall be entitled to continue to use Cash Collateral in accordance with the Budget; and (b) the Debtors or the Creditors' Committee, if any, may request an expedited hearing before the Court to contest whether an Event of Default has occurred.

34. Good Faith Under Section 364(e) of the Bankruptcy Code; No Modification or Stay of this Interim Order. The DIP Parties and the Prepetition Secured Parties

have acted at arms' length in good faith in connection with this Interim Order and are entitled to rely upon the protections granted herein and by Section 364(e) of the Bankruptcy Code. Based on the findings set forth in this Interim Order and the record made during the Interim Hearing, in the event any or all of the provisions of this Interim Order are hereafter modified, amended or vacated by a subsequent order of this Court or any other court, the DIP Parties and the Prepetition Secured Parties are entitled to the protections provided in Section 364(e) of the Bankruptcy Code. Any such modification, amendment or vacatur shall not affect the validity and enforceability of any advances previously made or made hereunder, or lien, claim or priority authorized or created hereby.

35. Fees and Expenses. The Debtors are authorized and directed to pay all reasonable and documented fees and expenses of (x) the DIP Agent and the DIP Lenders in connection with the DIP Credit Facility, as provided in the DIP Loan Documents and this Interim Order, whether or not the transactions contemplated hereby are consummated, and (y) the Prepetition Agents and the Required Lenders as provided in this Interim Order. Any and all fees, costs, and expenses paid prior to the Petition Date by any of the Debtors to (x) the DIP Agent or the DIP Lenders in connection with, or with respect to, the DIP Credit Facility, or (y) the Prepetition Secured Parties in connection with, or with respect to, the Prepetition Secured Facilities, are, in each case, hereby approved in full and any amounts held by such parties may be applied to payment of fees and expenses in accordance with this Paragraph 35. Professionals for the DIP Agent, the Prepetition Term B Agent, the DIP Lenders and the Prepetition BAML Advisors and the Prepetition Term B Advisors (collectively, the "**Lender Professionals**") shall not be required to comply with the United States Trustee fee guidelines or submit invoices to this Court, the U.S. Trustee, Creditors' Committee or any other party in interest. The Lender

Professionals shall forward copies of summary invoices submitted to the Debtors to the U.S. Trustee, counsel for the Creditors' Committee, if any, and such other parties as this Court may direct. The summary invoices shall be sufficiently detailed to enable a determination as to the reasonableness of such fees and expenses; *provided, however*, that such summary invoices shall not be required to contain time entries and may be redacted 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, and the provision of such summary invoices shall not constitute any waiver of the attorney-client privilege or of any benefits of the attorney work product doctrine or other applicable privilege. If the Debtors, U.S. Trustee or the Creditors' Committee, if any, object to the reasonableness of the fees and expenses of any of the Lender Professionals and cannot resolve such objection within five (5) Business Days of receipt of such invoices (the "**Review Period**"), then the Debtors, United States Trustee, or the Creditors' Committee, as the case may be, shall file with this Court and serve on such Lender Professional an objection (the "**Fee Objection**"), and any failure by any such party to file a Fee Objection within the Review Period shall constitute a waiver of any right of such party to object to the applicable invoice. Notwithstanding any provision herein to the contrary, any objection to, and any hearing on an objection to, payment of any fees, costs, and expenses set forth in a professional fee invoice in respect of Lender Professionals shall be limited to the reasonableness of the particular items or categories of the fees, costs, and expenses that are the subject of such objection. If no written objection is received by 12 p.m., prevailing Eastern Time, on the end date of the Review Period, the Debtors shall pay such invoices promptly. If an objection to a Lender Professional's invoice is received within the Review Period, the Debtors shall promptly

pay the undisputed amount of the invoice and the Court shall have jurisdiction to determine the disputed portion of such invoice if the parties are unable to resolve the dispute consensually.

36. Budget. The Budget is approved on an interim basis and the proceeds of the DIP Credit Facility and Cash Collateral under this Interim Order shall be used by the Debtors in accordance with the Budget, the Prepetition BAML Payoff Letter, this Interim Order and the DIP Loan Documents. None of the DIP Lenders', DIP Agent's, the Prepetition Term B Agent's or the Prepetition Term B Lenders' consent, if any, to, or acknowledgement of, the Budget shall be construed as consent to use the proceeds of the DIP Credit Facility or Cash Collateral beyond the Termination Date, regardless of whether the aggregate funds shown on the Budget have been expended.

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

38. Proofs of Claim. Notwithstanding any order entered by this Court in relation to the establishment of a bar date in any of the Chapter 11 Cases or any Successor Cases to the contrary, the DIP Agent, the DIP Lenders and the Prepetition Secured Parties will not be required to file proofs of claim in any of the Chapter 11 Cases or Successor Cases for any claims arising under, or in connection with, the DIP Loan Documents, the Prepetition Documents or this Interim Order. The Debtors' stipulations, admissions, and acknowledgments and the provisions of this Interim Order shall be deemed to constitute a timely filed proof of claim for the DIP Parties and the Prepetition Secured Parties with regard to all claims arising under the DIP Loan Documents or the Prepetition Documents.

39. Carve-Out. Each of the DIP Liens, the DIP Credit Facility Super-Priority Claims, the Prepetition Liens, the Adequate Protection Liens and the Adequate Protection Super-Priority Claims shall be subject and subordinate to payment of the Carve-Out.

(i) Carve-Out. “**Carve-Out**” means the sum of (i) all fees required to be paid to the Clerk of the Court and to the Office of the United States Trustee under Section 1930(a) of title 28 of the United States Code plus interest at the statutory rate (without regard to the notice set forth in (iii) below); (ii) fees and expenses up to \$50,000 incurred by a trustee under Section 726(b) of the Bankruptcy Code (without regard to the notice set forth in (iii) below); (iii) to the extent allowed at any time, whether by interim or final compensation order, all unpaid fees and expenses in an amount not to exceed, in each case, the fees and expenses set forth in the Budget (or otherwise pursuant to the Permitted Variances) for each of the Professional Persons (as defined below), incurred by persons or firms retained by the Debtors pursuant to Sections 327, 328 or 363 of the Bankruptcy Code (collectively, the “**Debtor Professionals**”) and the Creditors’ Committee, if any (the “**Committee Professionals**” and, together with the Debtor Professionals, the “**Professional Persons**”), appointed in the Chapter 11 Cases pursuant to Section 1103 of the Bankruptcy Code (all such unpaid fees and expenses of the Professional Persons, the “**Professional Fees**”) at any time before or on the first Business Day after delivery by the DIP Agent of a Carve-Out Trigger Notice (as defined below), whether allowed by the Court prior to or after delivery of a Carve-Out Trigger Notice; and (iv) Professional Fees incurred after the first Business Day following delivery by the DIP Agent of the Carve-Out Trigger Notice, to the extent allowed at any time, whether by interim order, procedural order or otherwise 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**). For purposes of the foregoing, “**Carve-Out Trigger Notice**” shall mean a written notice delivered by email (or other electronic means) by the DIP Agent (acting at the direction of the Required DIP Lenders) or the Prepetition Term B Agent (acting at the direction of the Required lenders), as applicable, to the Debtors, their lead restructuring counsel, the U.S. Trustee and lead counsel to Creditors’ Committee, if any, which notice may be delivered following the Termination Date and expiration of the Remedies Notice Period, stating that the Post-Carve-Out Trigger Notice Cap has been invoked and that the Debtors’ ability to pay Professional Fees is subject to and limited by the Carve-Out. Proceeds from the DIP Credit Facility and/or Cash Collateral not to exceed \$50,000 in the aggregate (the “**Investigation Budget Cap**”) may be used on account of Professional Fees incurred by Committee Professionals, if any, in connection with the investigation of Avoidance Actions or any other claims or causes of action (but not the prosecution of such actions) on account of the Prepetition Secured Facilities (but not the DIP Credit Facility), which obligations will benefit from the Carve-Out in an amount not to exceed the Investigation Budget Cap to the extent unpaid as of delivery of a Carve-Out Trigger Notice. Subject to entry of a final order, notwithstanding anything to the contrary herein, any fees, expenses or costs incurred by the Committee Professionals, if any, in excess of the Investigation Budget Cap or in excess of the amount budgeted for the Professional Persons set forth in the Budget shall not constitute an allowed administrative expense claim, including for purposes of section 1129(a)(9)(A) of the Bankruptcy Code.

(ii) No Direct Obligation to Pay Professional Fees; No Waiver of Right to Object to Fees. The DIP Parties and the Prepetition Secured Parties shall not be responsible for the direct payment or reimbursement of any fees or disbursements of any of the Professional Persons incurred in connection with the Chapter 11 Cases or any Successor Cases under any

chapter of the Bankruptcy Code. Nothing in this Interim Order or otherwise shall be construed to obligate any DIP Party or Prepetition Secured Party in any way to pay compensation to, or to reimburse expenses of, any of the Professional Persons, or to guarantee that the Debtors or their estates have sufficient funds to pay such compensation or reimbursement. Notwithstanding any provision in this Paragraph 39 to the contrary, no portion of the Carve-Out, any Cash Collateral, any DIP Collateral or any proceeds of the DIP Credit Facility (including any disbursements set forth in the Budget or obligations benefitting from the Carve-Out) shall be utilized for the payment of professional fees and disbursements to the extent restricted under Paragraph 40 hereof. Nothing herein shall be construed as consent to the allowance of any professional fees or expenses of any of the Debtors, the Creditors' Committee, any other official or unofficial committee in these Chapter 11 Cases or any Successor Cases, or of any other person or entity, or shall affect the right of any DIP Party or any Prepetition Secured Party to object to the allowance and payment of any such fees and expenses.

40. Limitations on Use of DIP Proceeds, Cash Collateral and Carve-Out.

Except as otherwise permitted in this Interim Order or the DIP Loan Documents, no DIP Collateral, proceeds of the DIP Credit Facility, Prepetition Collateral, Cash Collateral or any portion of the Carve-Out may be used directly or indirectly by any of the Debtors, the Creditors' Committee, if any, or any trustee or other estate representative appointed in the Chapter 11 Cases (or any Successor Cases) or any other person or entity (or to pay any professional fees, disbursements, costs or expenses incurred in connection therewith) (a) to seek authorization to obtain liens or security interests that are senior to or *pari passu* with the DIP Liens or the Prepetition Liens or (b) to investigate (including by way of examinations or discovery proceedings), prepare, assert, join, commence, support or prosecute any action for any claim,

counter-claim, action, proceeding, application, motion, objection, defense, or other contested matter seeking any order, judgment, determination or similar relief against, or adverse to the interests of, in any capacity, any of the DIP Agent, the DIP Lenders or the Prepetition Secured Parties, and each of their respective officers, directors, controlling persons, employees, agents, attorneys, affiliates, assigns, or successors of each of the foregoing (all in their capacities as such), with respect to any transaction, occurrence, omission, action or other matter (including formal discovery proceedings in anticipation thereof), including, without limitation, (i) any claims or causes of action arising under Chapter 5 of the Bankruptcy Code, (ii) any so-called “lender liability” claims and causes of action, (iii) any action with respect to the validity, enforceability, priority and extent of, or asserting any defense, counterclaim, or offset to, the DIP Obligations, the DIP Credit Facility Super-Priority Claims, the DIP Liens, the DIP Loan Documents, the Adequate Protection Liens, the Adequate Protection Super-Priority Claims, the Prepetition Liens, the Prepetition Documents or the Prepetition Secured Obligations, (iv) any action seeking to invalidate, modify, set aside, avoid or subordinate, in whole or in part, the DIP Obligations or the Prepetition Secured Obligations, (v) any action seeking to modify any of the rights, remedies, priorities, privileges, protections and benefits granted to either (A) the DIP Agent, the DIP Lenders or the Prepetition Secured Parties under any of the DIP Loan Documents or this Interim Order, or (B) the Prepetition Agents or any other Prepetition Secured Party under any of the Prepetition Documents or this Interim Order (in each case, including, without limitation, claims, proceedings or actions that might prevent, hinder or delay any of the DIP Agent’s, the DIP Lenders’ or the Prepetition Secured Parties’ assertions, enforcements, realizations or remedies on or against the DIP Collateral or the Prepetition Collateral, as applicable, in accordance with the DIP Loan Documents or the Prepetition Documents, as

applicable, and this Interim Order), or (vi) objecting to, contesting, or interfering with, in any way, the DIP Agent's, the DIP Lenders' or the Prepetition Secured Parties' enforcement or realization upon any of the DIP Collateral or the Prepetition Collateral, as applicable, once an Event of Default has occurred; *provided*, that the foregoing restrictions shall not apply to challenging the validity of a Termination Notice and/or seeking a determination that an Event of Default has not occurred or is not continuing.

41. Effect of Stipulations on Third Parties. The Debtors' Stipulations shall be binding upon the Debtors in all circumstances upon entry of this Interim Order. The Debtors' Stipulations shall be binding upon the Debtors' estates, any subsequent trustee, responsible person, examiner with expanded powers, any other estate representative, and all creditors and parties in interest and all of their successors in interest and assigns, including, without limitation, the Creditors' Committee, if any, except to the extent and only to the extent such Creditors' Committee or any other party in interest with standing (including any chapter 11 trustee) other than the Debtors (or if the Chapter 11 Cases are converted to cases under chapter 7 prior to the expiration of the Challenge Period (as defined below), the chapter 7 trustee in such Successor Case), first, commences, by the earliest of (a)(i) with respect to the Creditors' Committee, sixty (60) calendar days after the formation of the Creditors' Committee or (ii) with respect to other parties-in-interest with requisite standing other than the Debtors or the Creditors' Committee, seventy-five (75) calendar days following the date of entry of the Interim Order or (b) two (2) Business Days prior to the sale hearing approving the sale of all, or substantially all, of the Debtors' assets (such time period established by the earliest of clauses (a) or (b), as the same may be extended in accordance with this Paragraph 41, shall be referred to as the "**Challenge Period**," and the date that is the next calendar day after the termination of the Challenge Period

in the event that either (i) no Challenge is properly raised during the Challenge Period or (ii) with respect only to those parties who properly file a Challenge, such Challenge is fully and finally adjudicated, shall be referred to as the “**Challenge Period Termination Date**”), a contested matter, adversary proceeding, or other matter challenging or otherwise objecting to the admissions, stipulations, findings, or releases included in the Debtors’ Stipulations (each, a “**Challenge**”), and second, obtains a final, non-appealable order in favor of such party-in-interest sustaining any such Challenge in any such timely-filed contested matter, adversary proceeding, or other action (any such Challenge timely brought for which such a final and non-appealable order is so obtained, a “**Successful Challenge**”). If a chapter 7 trustee or a chapter 11 trustee is appointed or elected during the Challenge Period, then the Challenge Period Termination Date with respect to such trustee only, shall be the later of (i) the last day of the Challenge Period and (ii) the date that is twenty (20) calendar days after the date on which such trustee is appointed or elected. Except as otherwise expressly provided herein, from and after the Challenge Period Termination Date and for all purposes in these Chapter 11 Cases and any Successor Cases (and after the dismissal of these Chapter 11 Cases or any Successor Cases), (i) any and all payments made to or for the benefit of the Prepetition Secured Parties or otherwise authorized by this Interim Order (whether made prior to, on, or after the Petition Date) shall be indefeasible and not be subject to counterclaim, set-off, subordination, recharacterization, defense, disallowance, recovery or avoidance, (ii) any and all such Challenges by any party-in-interest shall be deemed to be forever released, waived, and barred, (iii) all of the Prepetition Secured Obligations shall be deemed to be fully allowed claims within the meaning of section 506 of the Bankruptcy Code, and (iv) the Debtors’ Stipulations shall be binding on all parties in interest in these Chapter 11 Cases or any Successor Cases, including any Committee or chapter

11 or chapter 7 trustee. Notwithstanding the foregoing, to the extent any Challenge is timely asserted, the Debtors' Stipulations and the other provisions in clauses (i) through (iv) in the immediately preceding sentence shall nonetheless remain binding and preclusive on any Creditors' Committee and on any other party-in-interest from and after the Challenge Period Termination Date, except to the extent that such Debtors' Stipulations or the other provisions in clauses (i) through (iv) of the immediately preceding sentence were expressly challenged in such Challenge and such Challenge becomes a Successful Challenge. The Challenge Period may be extended only (i) with respect to the Prepetition Term B Facility, with the consent of the Prepetition Term B Agent (acting at the direction of the Required Lenders), (ii) with respect to the Prepetition BAML Facility, with the consent of the Prepetition BAML Agent or (iii) by order of the Court for good cause shown. Notwithstanding any provision to the contrary herein, nothing in this Interim Order shall be construed to grant standing on any party in interest, including the Creditors' Committee, to bring any Challenge on behalf of the Debtors' estates. The failure of any party in interest, including the Creditors' Committee, to obtain an order of this Court prior to the Challenge Period Termination Date granting standing to bring any Challenge on behalf of the Debtors' estates shall not be a defense to failing to commence a Challenge prior to the Challenge Period Termination Date as required under this Paragraph 41 or to require or permit an extension of the Challenge Period Termination Date.

42. No Third-Party Rights. Except as explicitly provided for herein or in any of the DIP Loan Documents, this Interim Order does not create any rights for the benefit of any third party, creditor, equity holder, or direct, indirect, or incidental beneficiary. In determining to make any loan (whether under the DIP Credit Agreement or otherwise) or to permit the use of Cash Collateral or in exercising any rights or remedies as and when permitted pursuant to this

Interim Order or the DIP Loan Documents, the DIP Parties and the Prepetition Secured Parties shall not (i) be deemed to be in control of the operations of the Debtors or to be acting as a “responsible person” or “owner or operator” with respect to the operation or management of the Debtors (as such terms, or any similar terms, are used in the United States Comprehensive Environmental Response, Compensation and Liability Act, as amended, or any similar federal, state or local statute or regulation) or (ii) owe any fiduciary duty to the Debtors, their respective creditors, shareholders, or estates.

43. Section 506(c) Claims. Subject to entry of a Final Order and as a further condition of the DIP Credit Facility and any obligation of the DIP Parties to make credit extensions pursuant to the DIP Loan Documents (and the consent of the DIP Parties to the payment of the Carve-Out to the extent provided herein and the consent of the Prepetition Secured Parties of the priming of the Prepetition Liens by the DIP Credit Facility and the use of Cash Collateral) (a) no costs or expenses of administration of the Chapter 11 Cases or any Successor Cases shall be charged against or recovered from or against any or all of the DIP Parties or the Prepetition Secured Parties with respect to the DIP Collateral or the Prepetition Collateral, in each case pursuant to Section 105 or Section 506(c) of the Bankruptcy Code or otherwise, without the prior written consent of the DIP Parties or the Prepetition Secured Parties, as applicable and (b) no such consent shall be implied from any other action, inaction, or acquiescence of any or all of the DIP Parties or the Prepetition Secured Parties.

44. No Marshaling. Subject to entry of a Final Order, the DIP Parties, and Prepetition Secured Parties shall not be subject to the equitable doctrine of “marshaling” or any other similar doctrine with respect to any of the DIP Collateral or the Prepetition Collateral, as applicable.

45. Section 552(b). Subject to entry of a Final Order, the Prepetition Secured Parties shall each 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.

46. Access to DIP Collateral. Notwithstanding anything contained herein to the contrary and without limiting any other rights or remedies of the DIP Agent, exercisable on behalf of the DIP Lenders, subject to the terms of the DIP Loan Documents, upon written notice to the landlord of any leased premises that a Termination Date has occurred and is continuing, the DIP Agent may (or shall at the direction of the Required DIP Lenders), subject to the applicable notice provisions in this Interim Order and any separate applicable agreement by and between such landlord and the DIP Agent, enter upon any leased premises of the Debtors or any other party for the purpose of exercising any remedy with respect to DIP Collateral located thereon and shall be entitled to all of the Debtors’ rights and privileges as lessee under such lease without interference from the landlord thereunder, *provided*, that the DIP Agent shall be obligated only to pay rent of the Debtors that first accrues after the written notice referenced above is delivered and that is payable during the period of such occupancy by the DIP Agent, calculated on a daily per diem basis. Upon the Payment in Full of the DIP Obligations, the Prepetition Term B Agent shall inure to all rights provided under this Paragraph 46. Nothing contained herein shall require the DIP Agent or any other DIP Party to assume any lease as a condition to the rights afforded in this paragraph.

47. Exculpation. Nothing in this Interim Order or the DIP Loan Documents shall in any way be construed or interpreted to impose or allow the imposition upon any DIP

Party or Prepetition Secured Party any liability for any claims arising from the prepetition or postpetition activities of the Debtors, including with respect to the operation of their businesses, in connection with their restructuring efforts or administration of these Chapter 11 Cases. In addition, (a) the DIP Parties shall not in any way or manner be liable or responsible for (i) the safe-keeping of the DIP Collateral, (ii) any loss or damage thereto occurring or arising in any manner or fashion from any cause, (iii) any Diminution in Value thereof, or (iv) any act or default of any carrier, servicer, bailee, custodian, forwarding agency or other person, and (b) all risk of loss, damage, or destruction of the DIP Collateral shall be borne by the Debtors.

48. Insurance Proceeds and Policies. Upon entry of this Interim Order and to the fullest extent provided by applicable law, the DIP Agent, for the benefit of itself and the DIP Lenders, and the Prepetition Agents, for the benefit of themselves and the applicable Prepetition Secured Parties, shall be, and shall be deemed to be, without any further action or notice, named as additional insured and loss payee on each insurance policy maintained by the Debtors that in any way relates to the DIP Collateral and/or the Prepetition Collateral.

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

50. Rights Preserved. The entry of this Interim Order is without prejudice to, and does not constitute a waiver of, expressly or implicitly: (a) the right of any party (including, but not limited to, the DIP Parties and the Prepetition Secured Parties) to object to the allowance of any professional fees or expenses of any Professional Person, which rights are expressly preserved, (b) the DIP Parties' and Prepetition Secured Parties' right to seek any other or

supplemental relief in respect of the Debtors; (c) any of the rights of any of the DIP Parties and the Prepetition Secured Parties under the Bankruptcy Code or under applicable non-bankruptcy law, including, without limitation, the right to (i) request modification of the automatic stay of section 362 of the Bankruptcy Code, (ii) request dismissal of any of the Chapter 11 Cases or Successor Cases, conversion of any of the Chapter 11 Cases to cases under Chapter 7, or appointment of a Chapter 11 trustee or examiner with expanded powers or (iii) propose, subject to the provisions of section 1121 of the Bankruptcy Code, a Chapter 11 plan or plans; or (d) any other rights, claims or privileges (whether legal, equitable or otherwise) of any of the DIP Parties or Prepetition Secured Parties. The entry of this Interim Order is without prejudice to, and does not constitute an express or implicit waiver of, the Debtors', the Creditors' Committee's, if appointed, or any party-in-interest's right to oppose any of the relief requested in accordance with the immediately preceding sentence except as expressly prohibited in this Interim Order.

51. No Waiver by Failure to Seek Relief. The failure of the DIP Parties or Prepetition Secured Parties to seek relief or otherwise exercise their rights and remedies under this Interim Order, the DIP Loan Documents, the Prepetition Documents or applicable law, as the case may be, shall not constitute a waiver of any of the rights hereunder, thereunder, or otherwise.

52. Binding Effect of Interim Order. Immediately upon entry of this Interim Order by this Court, the terms and provisions of this Interim Order shall become valid and binding upon and inure to the benefit of the Debtors, the DIP Parties, the Prepetition Secured Parties, all other creditors of any of the Debtors, the Creditors' Committee, if any, and all other parties-in-interest and their respective successors and assigns, including any trustee or other fiduciary hereafter appointed in any of the Chapter 11 Cases, any Successor Cases, or upon

dismissal of any Chapter 11 Case or Successor Case; *provided*, that neither the DIP Parties nor the Prepetition Secured Parties shall have an obligation to permit the use of DIP Collateral or Prepetition Collateral (including Cash Collateral) or to extend any financing to any chapter 7 trustee, chapter 11 trustee or similar responsible person appointed for the Debtors' estates.

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

54. Continuing Effect of Intercreditor Agreement. The Intercreditor Agreement (i) shall remain in full force and effect, (ii) shall continue to govern the relative priorities, rights and remedies of the Prepetition Secured Parties the relative priorities, rights and remedies of such parties with respect to the replacement liens and administrative expense claims and super-priority administrative expense claims granted, or amounts payable, by the Debtors under this Interim Order or otherwise), and (iii) shall not be deemed to be amended, altered or modified by the terms of this Interim Order unless expressly set forth herein. The Prepetition Secured Parties have each agreed that they shall be bound by, and in all respects the Prepetition Collateral shall be governed by, and be subject to, all the terms, provisions and restrictions of the Intercreditor Agreement, except as may be expressly modified by this Interim Order.

55. Interim Order Controls. In the event of any inconsistency between the terms and conditions of the DIP Loan Documents, the Prepetition Documents and this Interim Order, the provisions of this Interim Order shall govern and control.

56. Discharge. The DIP Obligations and the obligations of the Debtors with respect to the adequate protection provided herein shall not be discharged by the entry of an order confirming any plan of reorganization in any of the Chapter 11 Cases, notwithstanding the provisions of section 1141(d) of the Bankruptcy Code, unless such obligations have been Paid in Full, on or before the effective date of such confirmed plan of reorganization, or each of the DIP Agent, DIP Lenders and each of the Prepetition Agents, as applicable, has otherwise agreed in writing.

57. Survival. The provisions of this Interim Order and any actions taken pursuant hereto shall survive entry of any order which may be entered: (a) confirming any plan of reorganization in any of the Chapter 11 Cases; (b) converting any of the Chapter 11 Cases to a case under Chapter 7 of the Bankruptcy Code; (c) dismissing any of the Chapter 11 Cases or any Successor Cases; or (d) pursuant to which this Court abstains from hearing any of the Chapter 11 Cases or Successor Cases. The terms and provisions of this Interim Order, including the claims, liens, security interests and other protections granted to the DIP Parties and the Prepetition Secured Parties pursuant to this Interim Order and the DIP Loan Documents, shall continue in the Chapter 11 Cases, in any Successor Cases, or following dismissal of the Chapter 11 Cases or any Successor Cases, and shall maintain their priority as provided by this Interim Order until: (i) in respect of the DIP Credit Facility, all the DIP Obligations, pursuant to the DIP Loan Documents and this Interim Order, have been Paid in Full (such payment being without prejudice to any terms or provisions contained in the DIP Credit Facility which survive such discharge by

their terms), and all commitments to extend credit under the DIP Credit Facility are terminated; and (ii) in respect of the Prepetition Secured Facilities, all of the Prepetition Secured Obligations pursuant to the Prepetition Documents and this Interim Order, have been Paid in Full. If any or all of the provisions of this Interim Order are hereafter reversed, modified, vacated or stayed, such reversal, modification, vacation or stay shall not affect: (i) the validity, priority or enforceability of any Adequate Protection Payments incurred prior to the effective date of such reversal, modification, vacation or stay; or (ii) the validity, priority or enforceability of the DIP Credit Facility Adequate Protection Liens, the DIP Credit Facility Super-Priority Claims, the Adequate Protection Liens and the Adequate Protection Super-Priority Claims. Notwithstanding any such reversal, modification, vacation or stay of any use of Cash Collateral, any Adequate Protection Payments made by the Debtors prior to the effective date of such reversal, modification, vacation or stay shall be governed in all respects by the original provisions of this Interim Order, and the Prepetition Secured Parties shall be entitled to all the rights, remedies, privileges and benefits granted herein.

58. Payments Free and Clear. Any and all payments or proceeds remitted to the Prepetition BAML Agent, the Prepetition Term B Agent or any of the other Prepetition Secured Parties pursuant to the provisions of this Interim Order shall be irrevocable, received free and clear of any claim, charge, assessment or other liability, including, subject to entry of the Final Order, any such claim or charge arising out of or based on, directly or indirectly, Sections 506(c) and 552(b) of the Bankruptcy Code (whether asserted or asserted by, through or on behalf of the Debtors).

59. Final Hearing. The Final Hearing to consider entry of the Final Order and approval of the DIP Credit Facility and continued use of Cash Collateral is scheduled for [\_\_\_],

**2021, at \_\_\_ .m. (Eastern Standard Time)** before the Honorable United States Bankruptcy Judge [\_\_\_\_], at the United States Bankruptcy Court for the District of Delaware. On or before \_\_\_\_\_, 2021, the Debtors shall serve, by United States mail, first-class postage prepaid, notice of the entry of this Interim Order and of the Final Hearing (the “**Final Hearing Notice**”), together with copies of this Interim Order and the Motion, on: (a) the parties that were provided notice of the Interim Hearing; (b) any party that has filed prior to such date a request for notices with this Court; and (c) counsel for a Creditors’ Committee, if appointed. The Final Hearing Notice shall state that any party in interest objecting to the entry of the proposed Final Order shall file written objections with the Clerk of the Court no later than on \_\_\_\_\_, **2021**, which objections shall be served so as to be received on or before such date by: (i) counsel to the Debtors, Gibson, Dunn & Crutcher LLP, 200 Park Avenue, New York, NY 10166-0193 USA, Attn: Scott J. Greenberg and Joshua K. Brody, and (b) Pachulski Stang Ziehl & Jones LLP, 919 N. Market Street #1700, Wilmington, DE 19801, Attn: Laura Davis Jones and Timothy P. Cairns; (ii) counsel to the Prepetition Term B Agent, (a) James-Bates-Brannan-Groover-LLP, 3399 Peachtree Road NE, Suite 1700, Atlanta, Georgia 30326, Attn: Sara Kate Rumsey and Doroteya Wozniak, and (b) Morris, Nichols, Arsht & Tunnell LLP, 1201 N. Market Street, Suite 1600, Wilmington, Delaware 19801, Attn: Derek Abbott and Curtis Miller; (iii) counsel to the Required Lenders, (a) King & Spalding LLP, 1185 Avenue of the Americas, New York, NY 10036, Attn: Roger Schwartz and Peter Montoni and (b) Morris, Nichols, Arsht & Tunnell LLP, 1201 N. Market Street, Suite 1600, Wilmington, Delaware 19801, Attn: Robert J. Dehney; (iv) counsel to the Prepetition BAML Parties, (a) Morgan, Lewis & Bockius LLP, One Federal Street, Boston, Massachusetts 02110, Attn: Julia Frost-Davies, Marjorie S. Crider and Christopher L. Carter and (b) Robinson & Cole LLP, 1201 N. Market Street, Suite 1406,, Wilmington, DE 19801, Attn:

Rachel J. Mauceri; and (v) the Office of the U.S. Trustee for region 3, 844 King Street, Suite 3307, Wilmington, DE 19801, Attn: Richard Schepacarter.

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

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

62. Nunc Pro Tunc Effect of this Interim Order; Enforceability. This Interim Order shall constitute findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052 and shall take effect and be enforceable *nunc pro tunc* to the Petition Date immediately upon entry thereof. Notwithstanding Bankruptcy Rules 4001(a)(3), 6004(h), 6006(d), 7062 or 9014 of the Bankruptcy Rules, any applicable Local Rules, 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.

63. Retention of Jurisdiction. This Court has and will retain jurisdiction to enforce this Interim Order according to its terms.

DATED: \_\_\_\_\_, 2021  
Wilmington, Delaware

\_\_\_\_\_  
United States Bankruptcy Judge



**EXHIBIT B**

**DIP CREDIT AGREEMENT**

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

Dated as of [\_\_\_\_], 2021

among

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**SEQUENTIAL BRANDS GROUP, INC.,**  
as the Borrower

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The Guarantors Named Herein

**WILMINGTON TRUST, NATIONAL ASSOCIATION,**  
as Administrative Agent and Collateral Agent

and

The Lenders Party Hereto

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## TABLE OF CONTENTS

	Page
ARTICLE I DEFINITIONS AND ACCOUNTING TERMS .....	2
<b>1.01 Defined Terms</b> .....	2
<b>1.02 Other Interpretive Provisions</b> .....	29
<b>1.03 Accounting Terms</b> .....	30
<b>1.04 Rounding</b> .....	30
<b>1.05 Times of Day</b> .....	30
ARTICLE II THE COMMITMENTS AND LOANS .....	30
<b>2.01 Loans</b> .....	30
<b>2.02 Disbursement of Loans</b> .....	31
<b>2.03 Payment of Loans</b> .....	31
<b>2.04 Prepayments of Loans</b> .....	31
<b>2.05 Making the Loans</b> .....	32
<b>2.06 <u>No Discharge; Survival of Claims</u></b> . Until indefeasible payment in full (other than contingent obligations not yet due and payable) in cash of the Loans and all other Obligations, each of the Borrower and the Guarantors agrees that (a) the Obligations hereunder shall not be discharged by the entry of an order confirming a plan of reorganization or liquidation in any Chapter 11 Case (and each of the Borrower and the Guarantors, pursuant to Section 1141(d)(4) of the Bankruptcy Code, hereby waives any such discharge) and (b) the DIP Credit Facility Super-Priority Claims and the DIP Liens granted to the Agent pursuant to the DIP Orders and described in <u>Section 2.13</u> shall not be affected in any manner by the entry of an order confirming a plan of reorganization or liquidation in any Chapter 11 Case, and such claims and Liens shall be paid in full in cash by any such plan. ....	33
<b>2.07 Interest</b> .....	33
<b>2.08 Fees</b> .....	33
<b>2.09 Computation of Interest and Fees</b> .....	34
<b>2.10 Evidence of Debt</b> .....	34
<b>2.11 Payments Generally; Agent’s Clawback</b> .....	34
<b>2.12 Sharing of Payments by Lenders</b> .....	35
<b>2.13 Super Priority Nature of Obligations and Lenders’ DIP Liens</b> .....	36
<b>2.14 Release</b> .....	36
<b>2.15 Waiver of Certain Rights</b> .....	37
<b>2.16 Grant of Security; Security for Obligations; Debtors Remain Liable</b> .....	38
ARTICLE III TAXES, YIELD PROTECTION AND ILLEGALITY .....	40
<b>3.01 Taxes</b> .....	40

3.02	<b>Illegality</b> .....	45
3.03	<b>Inability to Determine Rates</b> .....	45
3.04	<b>Increased Costs; Reserves on LIBOR Rate Loans.</b> .....	47
3.05	<b>Compensation for Losses</b> .....	48
3.06	<b>Mitigation Obligations; Replacement of Lenders.</b> .....	49
3.07	<b>Survival</b> .....	50
<b>ARTICLE IV CONDITIONS PRECEDENT</b> .....		50
4.01	<b>Conditions to Closing Date</b> .....	50
4.02	<b>Conditions to Extensions of Loans</b> .....	52
<b>ARTICLE V REPRESENTATIONS AND WARRANTIES</b> .....		54
5.01	<b>Existence, Qualification and Power</b> .....	54
5.02	<b>Authorization; No Contravention</b> .....	54
5.03	<b>Governmental Authorization; Other Consents</b> .....	54
5.04	<b>Binding Effect</b> .....	55
5.05	<b>Financial Statements; Budget; No Material Adverse Effect.</b> .....	55
5.06	<b>Litigation</b> .....	55
5.07	<b>No Default</b> .....	55
5.08	<b>Ownership of Property; Liens.</b> .....	55
5.09	<b>Environmental Compliance.</b> .....	56
5.10	<b>Insurance</b> .....	57
5.11	<b>Taxes</b> .....	57
5.12	<b>ERISA Compliance</b> .....	57
5.13	<b>Subsidiaries; Equity Interests</b> .....	58
5.14	<b>Margin Regulations; Investment Company Act.</b> .....	58
5.15	<b>Disclosure</b> .....	59
5.16	<b>Compliance with Laws</b> .....	59
5.17	<b>Intellectual Property; Licenses, Etc.</b> .....	59
5.18	<b>[Reserved]</b> .....	60
5.19	<b>Security Interest</b> .....	60
5.20	<b>Chapter 11 Cases</b> .....	60
5.21	<b>Deposit Accounts</b> .....	60
5.22	<b>DIP Orders</b> .....	60
5.23	<b>Material Contracts</b> .....	60
5.24	<b>Sanctions Concerns and Anti-Corruption Laws</b> .....	60

**5.25 Beneficial Ownership Certification.** As of the Petition Date, the information included in the Beneficial Ownership Certification, if applicable, is true and correct in all respects..... 61

**5.26 Excluded Subsidiaries.** No Subsidiary constitutes an Excluded Subsidiary and no Loan Party shall form or otherwise acquire any Excluded Subsidiary..... 61

ARTICLE VI AFFIRMATIVE COVENANTS ..... 61

**6.01 Financial Statements**..... 61

**6.02 Certificates; Other Information** ..... 62

**6.03 Notices** ..... 64

**6.04 Payment of Obligations** ..... 65

**6.05 Preservation of Existence, Etc.** ..... 65

**6.06 Maintenance of Properties; Material Intellectual Property** ..... 65

**6.07 Maintenance of Insurance**..... 66

**6.08 Compliance with Laws** ..... 67

**6.09 Books and Records; Accountants**..... 67

**6.10 Inspection Rights; Appraisals of Intellectual Property**..... 67

**6.11 Additional Loan Parties** ..... 68

**6.12 Cash Management.** ..... 68

**6.13 Information Regarding the Collateral** ..... 69

**6.14 Environmental Laws**..... 69

**6.15 Further Assurances**..... 69

**6.16 Material Contracts**..... 70

**6.17 Board Packages.** ..... 70

**6.18 Lender Meetings**..... 70

**6.19** During the continuance of the Chapter 11 Cases, the Loan Parties shall cause their senior management and their advisors (including any investment banker and/or financial advisor) to make themselves available each Monday (or, in the event that such day is not a Business Day then on the Business Day immediately following), for a conference call with the Lenders and their representatives for purposes of discussing (x) any information contained in any Budget and any other report delivered pursuant to Section 6.01 or 6.02, including the Permitted Variances, and (y) any other information regarding the Loan Parties’ and their estates’ business results and operations reasonably requested by the KKR Representative or the Lenders..... 70

**6.19 Milestones.** Each of the Borrower and the Guarantors covenants and agrees with each Lender that, so long as this Agreement shall remain in effect and until the Commitments have been terminated and the principal of and interest on each Loan, all fees and all other expenses or amounts payable under any Loan Document have been paid in full in cash (other than contingent obligations not yet due and payable), each of the Borrower and the Guarantors shall and shall cause each of the Subsidiaries to ensure that each of the Milestones set forth in the

DIP Orders is achieved in accordance with the applicable timing referred to therein (or such later dates as may be approved in writing by the Required Lenders in their sole discretion). . 70

**6.20 Bankruptcy Covenants** ..... 70

**6.21 Chapter 11 Cases**..... 70

**6.22 Budget Matters**..... 71

ARTICLE VII NEGATIVE COVENANTS..... 71

**7.01 Liens** ..... 72

**7.02 Investments** ..... 72

**7.03 Indebtedness; Disqualified Stock; Equity Issuances.** ..... 72

**7.04 Fundamental Changes** ..... 72

**7.05 Dispositions**..... 73

**7.06 Restricted Payments** ..... 73

**7.07 Prepayments of Indebtedness** ..... 73

**7.08 Change in Nature of Business** ..... 74

**7.09 Transactions with Affiliates** ..... 74

**7.10 Burdensome Agreements**..... 74

**7.11 Use of Proceeds**..... 74

**7.12 Amendment of Material Documents; Material Licenses.** ..... 75

**7.13 Fiscal Year** ..... 76

**7.14 Deposit Accounts.** Open new Deposit Accounts (other than the Excluded Account) unless in accordance with the Cash Management Order or the Loan Parties shall have delivered to the Agent appropriate Blocked Account Agreements as requested pursuant to Section 6.12 and otherwise satisfactory to the KKR Representative..... 76

**7.15 Permitted Variances** ..... 76

**7.16 Sanctions.** Directly or indirectly, use any Loan or the proceeds of any Loan, or lend, contribute or otherwise make available such Loan or the proceeds of any Loan to any Person, to fund any activities of or business with any Person, or in any Designated Jurisdiction, that, at the time of such funding, is the subject of Sanctions, or in any other manner that will result in a violation by any Person (including any Person participating in the transaction, whether as Lender, the Agent, or otherwise) of Sanctions. .... 76

**7.17 Anti-Corruption Laws.** Directly or indirectly, use any Loan or the proceeds of any Loan for any purpose which would breach the United States Foreign Corrupt Practices Act of 1977, the UK Bribery Act 2010 and other similar anti-corruption legislation in other jurisdictions..... 76

**7.18 Employees Payments.** Make any cash bonus payment to any executive officers or employees of the Borrower or any of its Subsidiaries unless in accordance with the Budget, or otherwise acceptable to the Required Lenders..... 76

ARTICLE VIII EVENTS OF DEFAULT AND REMEDIES ..... 76

8.01	Events of Default.....	76
8.02	Remedies Upon Event of Default.....	82
8.03	Application of Funds.....	83
ARTICLE IX THE AGENT .....		83
9.01	Appointment and Authority.....	83
9.02	Rights as a Lender .....	84
9.03	Exculpatory Provisions.....	84
9.04	Reliance by Agent .....	86
9.05	Delegation of Duties .....	86
9.06	Resignation or Replacement of Agent.....	86
9.07	Non-Reliance on Agent and Other Lenders .....	87
9.08	Agent May File Proofs of Claim .....	87
9.09	Collateral and Guaranty Matters; Credit Bid .....	88
9.10	Notice of Transfer .....	90
9.11	Reports and Financial Statements.....	90
9.12	Agency for Perfection .....	91
9.13	Indemnification of Agent.....	91
9.14	Relation among Lenders.....	91
9.15	<b>Force Majeure.</b> The Agent shall not be responsible or liable for any failure or delay in the performance of the Agent’s obligations under this Agreement arising out of or caused, directly or indirectly, by circumstances beyond the Agent’s control, including, without limitation, any act or provision of any present or future law or regulation or governmental authority; acts of God; earthquakes; fires; floods; wars; terrorism; civil or military disturbances; sabotage; epidemics; riots; interruptions, loss or malfunctions of utilities, computer (hardware or software) or communications service; accidents; labor disputes; acts of civil or military authority or governmental actions; or the unavailability of the Federal Reserve Bank wire or telex or other wire or communication facility.....	91
ARTICLE X MISCELLANEOUS .....		91
10.01	Amendments, Etc. ....	91
10.02	Notices; Effectiveness; Electronic Communications.....	93
10.03	No Waiver; Cumulative Remedies .....	95
10.04	Expenses; Indemnity; Damage Waiver.....	95
10.05	Payments Set Aside .....	97
10.06	Successors and Assigns.....	97
10.07	Treatment of Certain Information; Confidentiality .....	101
10.08	Right of Setoff.....	102

<b>10.09</b>	<b>Interest Rate Limitation</b> .....	102
<b>10.10</b>	<b>Counterparts; Integration; Effectiveness</b> .....	102
<b>10.11</b>	<b>Survival</b> .....	103
<b>10.12</b>	<b>Severability</b> .....	103
<b>10.13</b>	<b>Replacement of Lenders</b> .....	103
<b>10.14</b>	<b>Governing Law; Jurisdiction; Etc.</b> .....	104
<b>10.15</b>	<b>Waiver of Jury Trial</b> .....	105
<b>10.16</b>	<b>No Advisory or Fiduciary Responsibility</b> .....	105
<b>10.17</b>	<b>USA PATRIOT Act Notice</b> .....	106
<b>10.18</b>	<b>Foreign Assets Control Regulations</b> .....	106
<b>10.19</b>	<b>Time of the Essence</b> .....	107
<b>10.20</b>	<b>Press Releases</b> .....	107
<b>10.21</b>	<b>Additional Waivers</b> .....	107
<b>10.22</b>	<b>No Strict Construction</b> .....	109
<b>10.23</b>	<b>Attachments</b> .....	109
<b>10.24</b>	<b>Electronic Execution of Assignments and Certain Other Documents</b> .....	109
<b>10.25</b>	<b>[Reserved]</b> .....	109
<b>10.26</b>	<b>California Judicial Reference</b> .....	109
<b>10.27</b>	<b>[Reserved]</b> .....	110
<b>10.28</b>	<b>Conflict; Control</b> .....	110
<b>10.29</b>	<b>Bankruptcy Matters</b> .....	110

<b>SIGNATURES</b> .....	<b>S-1</b>
-------------------------	------------

## **SCHEDULES**

1.01	Non-Guarantor Subsidiaries
2.01	Commitments; Applicable Percentages
5.01	Loan Parties Organizational Information
5.06	Litigation
5.08(b)(1)	Owned Real Estate
5.08(b)(2)	Leased Real Estate
5.10	Insurance
5.13	Subsidiaries; Other Equity Investments
5.17	Material Intellectual Property; Material Licenses
5.21	Deposit Accounts
5.23	Material Contracts
7.01	Existing Liens
7.02	Existing Investments
7.03	Existing Indebtedness
10.02	Agent's Office; Certain Addresses for Notices

## **EXHIBITS**

Form of

A	Initial Budget
B	Term Note
C	Compliance Certificate
D	Assignment and Assumption
E-1	U.S. Tax Compliance Certificate
E-2	U.S. Tax Compliance Certificate
E-3	U.S. Tax Compliance Certificate
E-4	U.S. Tax Compliance Certificate
E-F	Borrowing Request

SUPERPRIORITY SECURED DEBTOR-IN-POSSESSION CREDIT AGREEMENT

This SUPERPRIORITY SECURED DEBTOR-IN-POSSESSION CREDIT AGREEMENT (this “*Agreement*”) is entered into as of [\_\_\_\_], 2021 among SEQUENTIAL BRANDS GROUP, INC., a Delaware corporation (the “*Borrower*”); the Guarantors; each lender from time to time party hereto (collectively, the “*Lenders*” and individually, a “*Lender*”); and WILMINGTON TRUST, NATIONAL ASSOCIATION, as Administrative Agent and Collateral Agent (collectively, with any successor thereto, the “*Agent*”).

W I T N E S S E T H:

**WHEREAS**, on [\_\_\_\_], 2021 (the “*Petition Date*”), the Borrower and the other Loan Parties (collectively, the “*Debtors*” and, each individually, a “*Debtor*”) each commenced a chapter 11 case, which are being jointly administered under Case No. 21-[\_\_\_\_] (each a “*Chapter 11 Case*” and collectively, the “*Chapter 11 Cases*”), by filing separate voluntary petitions for reorganization under Chapter 11 of Title 11 of the U.S. Code, 11 U.S.C. 101 et seq. (the “*Bankruptcy Code*”), with the United States Bankruptcy Court for the District of Delaware (together with any other court having jurisdiction over the Chapter 11 Cases or any proceeding therein from time to time, the “*Bankruptcy Court*”); and each Debtor continues to operate its businesses and manage its properties as a debtor and debtor in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code;

**WHEREAS**, prior to the Petition Date, certain of the Lenders and/or certain of their affiliates or controlled funds provided financing to the Borrower pursuant to that certain Third Amended and Restated Credit Agreement, dated as of July 1, 2016, among the Borrower, the guarantors from time to time party thereto, the lenders party thereto from time to time, and Wilmington Trust, National Association, as the administrative agent and collateral agent thereunder (as amended from time to time, and as may be further amended, restated, supplemented or otherwise modified through the Petition Date, the “*Prepetition Term B Credit Agreement*”);

**WHEREAS**, prior to the Petition Date, the Borrower and the other Debtors were party to that certain Third Amended and Restated First Lien Credit Agreement dated as of July 1, 2016, among the Borrower, the guarantors from time to time party thereto, the lenders from time to time party thereto, and Bank of America, N.A. (in such capacity, “*BoA Agent*”), as administrative agent and collateral agent for the lenders from time to time party thereto (as amended from time to time, and as may be further amended, restated, supplemented or otherwise modified through the Petition Date, the “*BoA Credit Agreement*”);

**WHEREAS**, the Borrower has requested that the Lenders provide a senior secured, superpriority debtor-in-possession term loan facility to the Borrower in the maximum aggregate principal amount of \$150,000,000 (the “*DIP Facility*”) as further set forth herein, including, without limitation, to repay in full the obligations outstanding under the BoA Credit Agreement and fund the costs of the Chapter 11 Cases and other purposes set forth in Section 7.11;

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

**WHEREAS**, in order to secure the Obligations of the Borrower and the other Guarantors under the Loan Documents, the Borrower and the Guarantors will grant to the Agent, for the benefit

of Agent and all other DIP Secured Parties, a security interest in and DIP Lien upon substantially all of the now existing and hereafter acquired personal and real property of the Borrower and the Guarantors;

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

**WHEREAS**, the Borrower and the other Loan Parties will provide to the prepetition lenders and other prepetition secured parties under the Prepetition Term B Credit Agreement and the other Prepetition Term B Loan Documents, adequate protection in accordance with the DIP Orders; and

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

**NOW, THEREFORE**, in consideration of the mutual conditions and agreements set forth in this Agreement, and for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Lenders are willing to extend such credit to the Borrower on the terms and conditions set forth herein, and accordingly the undersigned hereby agree as follows:

## **ARTICLE I DEFINITIONS AND ACCOUNTING TERMS**

**1.01 Defined Terms.** As used in this Agreement, the following terms shall have the meanings set forth below:

***“Accommodation Payment”*** has the meaning specified in Section 10.21(c).

***“Acquisition”*** means, with respect to any Person (a) a purchase of a Controlling interest in the Equity Interests of any other Person, (b) a purchase or other acquisition of all or substantially all of the assets or properties of, another Person or of any business unit of another Person, or (c) any merger or consolidation of such Person with any other Person or other transaction or series of transactions resulting in the acquisition of all or substantially all of the assets, or a Controlling interest in the Equity Interests, of any Person, in each case in any transaction or group of transactions which are part of a common plan.

***“Act”*** has the meaning provided in Section 10.17.

***“Adjusted LIBOR Rate”*** means, with respect to any LIBOR Rate Loan for any Interest Period, an interest rate per annum (rounded upwards, if necessary, to the next 1/16 of one percent (1%)) equal to the LIBOR Rate for such Interest Period multiplied by the Statutory Reserve Rate. The Adjusted LIBOR Rate will be adjusted automatically as to all LIBOR Rate Loans then outstanding as of the effective date of any change in the Statutory Reserve Rate.

***“Affiliate”*** means, with respect to any Person, any other Person that directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, such Person. For purposes of this definition, “control” of a Person means the power, directly or

indirectly, to direct or cause the direction of the management and policies of such Person whether by contract or otherwise; provided that, solely for purposes of Section 7.09, “control” of a Person shall also mean the power, directly or indirectly, to vote 10% or more of the Equity Interests having ordinary voting power for the election of members of the board of directors of such Person or such equivalent governing body. Notwithstanding anything herein to the contrary, in no event shall the Agent or any Lender be considered an “Affiliate” of any Loan Party.

“**Agent**” has the meaning ascribed to it in the Preamble.

“**Agent’s Office**” means the Agent’s address and, as appropriate, account as set forth on Schedule 10.02, or such other address or account as the Agent may from time to time notify the Borrower and the Lenders.

“**Aggregate Commitments**” means the Commitments of all Lenders.

“**Agreement**” means this Superpriority Secured Debtor-in-Possession Credit Agreement.

“**Allocable Amount**” has the meaning provided in Section 10.21(c).

“**Applicable Lenders**” means the Required Lenders, all affected Lenders, or all Lenders, as the context may require.

“**Applicable Margin**” means (i) in the case of LIBOR Rate Loans, 5.00% and (ii) in the case of Base Rate Loans, 4.00%.

“**Applicable Percentage**” means with respect to all of the Obligations due to any Lender at any time, the percentage (carried out to the ninth decimal place) of the outstanding amount of the aggregate Loans held by such Lender at such time as set forth opposite the name of such Lender on Schedule 2.01 or in the Assignment and Assumption pursuant to which such Lender becomes a party hereto, as applicable.

“**Approved Fund**” means (a) a KKR Credit Entity, or (b) any Person (other than a natural Person) that is (or will be) engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course of its business and that is administered, managed, underwritten or sub-advised by (i) a Lender, (ii) an Affiliate of a Lender or (iii) an entity or an Affiliate of an entity that administers, manages or sub-advises a Lender.

“**Assignee Group**” means two (2) or more Eligible Assignees that are Affiliates of one another or two (2) or more Approved Funds managed by the same investment advisor.

“**Assignment and Assumption**” means an assignment and assumption entered into by a Lender and an Eligible Assignee (with the consent of any party whose consent is required by Section 10.06(b)), and accepted by the Agent, in substantially the form of Exhibit D or any other form approved by the KKR Representative and the Agent.

“**Attributable Indebtedness**” means, on any date, in respect of any Capital Lease Obligation of any Person, the capitalized amount thereof that would appear on a balance sheet of such Person prepared as of such date in accordance with GAAP.

“**Automatic Stay**” shall mean the automatic stay imposed under Section 362 of the Bankruptcy Code.

“**Bankruptcy Code**” has the meaning assigned to such term in the recitals hereto.

“**Bankruptcy Court**” has the meaning assigned to such term in the recitals hereto.

“**Base Rate**” means for any day a fluctuating rate per annum equal to the highest of (a) the rate of interest in effect for such day as published by *The Wall Street Journal* as the “prime rate”; (b) the Federal Funds Rate for such day, plus 0.50%; and (c) the LIBOR Rate for a one (1) month interest period as determined on such day, plus 1.00% (but for the avoidance of doubt, not less than one percent (1.00%) per annum).

“**Base Rate Loan**” means a Loan that bears interest based on the Base Rate.

“**Beneficial Ownership Certification**” means a certification regarding beneficial ownership required by the Beneficial Ownership Regulation.

“**Beneficial Ownership Regulation**” means 31 C.F.R. § 1010.230.

“**Blocked Account**” has the meaning provided in Section 6.12(a).

“**Blocked Account Agreement**” means with respect to an account established by a Loan Party (other than Excluded Accounts), an agreement, in form and substance reasonably satisfactory to the KKR Representative, establishing control (as defined in the UCC) of such account by the Agent and whereby the Blocked Account Bank agrees, upon the occurrence and during the continuance of an Event of Default, to comply only with the instructions originated by the Agent without the further consent of any Loan Party.

“**Blocked Account Bank**” means each bank with whom Deposit Accounts are maintained and with whom a Blocked Account Agreement has been, or is required to be, executed in accordance with the terms hereof.

“**BoA Agent**” has the meaning set forth in the recitals hereto.

“**BoA Credit Agreement**” has the meaning set forth in the recitals hereto.

“**Borrower**” has the meaning provided in the introductory paragraph hereto.

“**Borrowing**” means the making of Loans on the Closing Date or applicable DIP Loan Funding Date.

“**Budget**” means the Initial Budget, as amended and supplemented by any Budget Update delivered in accordance with Section 6.01(c) and approved by the Agent at the direction of the Required Lenders in accordance with Section 6.01(c).

“**Budget Update**” has the meaning set forth in Section 6.22.

“**Business Day**” means any day other than a Saturday, Sunday or other day on which commercial banks are authorized to close under the Laws of, or are in fact closed in, New York, New York and, if such day relates to any LIBOR Rate Loan, means any such day on which dealings in Dollar deposits are conducted by and between banks in the London interbank market (a “**London Banking Day**”).

“**Capital Lease Obligations**” means, with respect to any Person for any period, the obligations of such Person to pay rent or other amounts under any lease of (or other arrangement conveying the right to use) real or personal property, or a combination thereof, which obligations are required to be classified and accounted for as liabilities on a balance sheet of such Person under GAAP and the amount of which obligations shall be the capitalized amount thereof determined in accordance with GAAP.

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

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

“**CERCLIS**” means the Comprehensive Environmental Response, Compensation, and Liability Information System maintained by the United States Environmental Protection Agency.

“**CFC**” means (a) any Person that is treated as a controlled foreign corporation under Section 957 of the Code, (b) any Person substantially all of the assets of which consist, directly or indirectly, of Equity Interests or Indebtedness of Persons described in clause (a) of this definition, (c) any Person treated as disregarded for U.S. federal income tax purposes that owns more than 65% of the voting stock of a Person described in clauses (a) or (b) of this definition and (d) any subsidiary of a Person described in clauses (a), (b) or (c) of this definition.

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

“**Change of Control**” means an event or series of events by which:

(a) any “person” or “group” (as such terms are used in Sections 13(d) and 14(d) of the Securities Exchange Act of 1934, but excluding any employee benefit plan of such person or its subsidiaries, and any person or entity acting in its capacity as trustee, agent or other fiduciary or administrator of any such plan), other than any Permitted Holder, becomes the “beneficial owner” (as defined in Rules 13d-3 and 13d-5 under the Securities Exchange Act of 1934, except that a person or group shall be deemed to have

“beneficial ownership” of all securities that such person or group has the right to acquire, whether such right is exercisable immediately or only after the passage of time (such right, an “option right”), directly or indirectly, of 25% or more of the Equity Interests of the Borrower entitled to vote for members of the board of directors or equivalent governing body of the Borrower on a fully-diluted basis (and taking into account all such Equity Interests that such “person” or “group” has the right to acquire pursuant to any option right); or

(b) during any period of 12 consecutive months, a majority of the members of the board of directors or other equivalent governing body of the Borrower cease to be composed of individuals (i) who were members of that board or equivalent governing body on the first day of such period, (ii) whose election or nomination to that board or equivalent governing body was approved by individuals referred to in clause (i) above constituting at the time of such election or nomination at least a majority of that board or equivalent governing body or (iii) whose election or nomination to that board or other equivalent governing body was approved by individuals referred to in clauses (i) and (ii) above constituting at the time of such election or nomination at least a majority of that board or equivalent governing body; or

(c) any “change in control” or similar event as defined in any Material License or any document governing Material Indebtedness of any Loan Party; or

(d) the Borrower fails at any time to own, directly or indirectly, 100% of the Equity Interests of each other Loan Party, free and clear of all Liens (other than Liens in favor of Agent and Permitted Prior Liens), except where such failure is as a result of a transaction not prohibited by the Loan Documents; or

(e) the Borrower fails at any time to own, directly or indirectly, 62.5% of the Equity Interests of With You, free and clear of all Liens (other than Liens in favor of Agent and Permitted Prior Liens), except where such failure is as a result of a transaction not prohibited by the Loan Documents.

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

“*Closing Date*” means the date on which all the conditions precedent in Section 4.01 are satisfied or waived in accordance with Section 10.01.

“*Code*” means the Internal Revenue Code of 1986, and the regulations promulgated thereunder, as amended and in effect.

“*Commitment*” means, as to each Lender, such Lender’s Interim DIP Loan Commitment and Final DIP Loan Commitment.

“*Commitment Expiration Date*” means the earliest to occur of (i) the date on which the entire amount of the Aggregate Commitments have been drawn, (ii) the date on which the Aggregate Commitments have been terminated pursuant to this Agreement and the DIP Orders and (iii) the date that is ten (10) days prior to the Maturity Date.

“**Committee**” has the meaning set forth in the then applicable DIP Order.

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

“**Compliance Certificate**” means a certificate substantially in the form of Exhibit C.

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

“**Consent**” means actual consent given by a Lender from whom such consent is sought.

“**Consolidated**” means, when used to modify a financial term, test, statement, or report of a Person, the application or preparation of such term, test, statement or report (as applicable) based upon the consolidation, in accordance with GAAP, of the financial condition or operating results of such Person and its Subsidiaries.

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

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

“**Convert**”, “**Conversion**” and “**Converted**” each refers to a conversion of Loans of one Type into Loans of the other Type.

“**Credit Party**” or “**Credit Parties**” means (a) individually, (i) each Lender and its Affiliates, (ii) the Agent, (iii) the KKR Entities, (iv) each beneficiary of each indemnification obligation undertaken by any Loan Party under any Loan Document, (v) any other Person to whom Obligations under this Agreement and other Loan Documents are owing, and (vi) the successors and assigns of each of the foregoing, and (b) collectively, all of the foregoing.

“**Credit Party Expenses**” means all reasonable and documented (in summary form) out-of-pocket fees, costs, disbursements and expenses of the Agent (including (and limited, in the case of counsel, to) all reasonable and documented out-of-pocket fees, costs, disbursements and expenses of JBBG (and any successor counsel) as outside counsel to the Agent (and any successor counsel), and any firm of local counsel engaged by Agent in each relevant jurisdiction, and any successor counsel to such primary counsel and local counsel) and (y) all reasonable and documented (in summary form) out-of-pocket fees, costs, disbursements and expenses of the Lenders (including (and limited, in the case of counsel, to) all reasonable and documented out-of-pocket fees, costs, disbursements and expenses of Province and K&S (and any successor counsel) as outside counsel to the Required Lenders (and any successor counsel), and, to the extent necessary, one firm of local counsel engaged by the Required Lenders in each relevant jurisdiction, and any successor counsel to such primary counsel and local counsel, in each case of the foregoing, in connection with (i) the negotiations, preparation, execution and delivery of the Loan Documents and the

funding of all Loans, including, without limitation, all due diligence, transportation, computer, duplication, messenger, audit, insurance, appraisal, valuation and consultant costs and expenses, and all search, filing and recording fees, incurred or sustained by the Agent or Lenders and their respective counsel and professional advisors in connection with the Loan Documents or the transactions contemplated thereby, the administration of this Agreement and any amendment or waiver of any provision of the Loan Documents, and, without duplication, (ii) (A) the enforcement of any rights and remedies under the Loan Documents, (B) the Chapter 11 Cases, including attendance at all hearings in respect of the Chapter 11 Cases; and (C) defending and prosecuting any actions or proceedings arising out of or relating to the Prepetition Term B Obligations, the Obligations, the Liens securing the Prepetition Term B Obligations and the Obligations, or any transaction related to or arising in connection with the Prepetition Term B Loan Documents, this Agreement or the other Loan Documents (in the case of the Prepetition Term B Obligations and the Liens securing the Prepetition Term B Obligations, to the extent provided in the Prepetition Term B Loan Documents).

**“Debtor Relief Laws”** means the Bankruptcy Code, 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.

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

**“Default”** means any event or condition that constitutes an Event of Default or that, with the giving of any notice, the passage of time, or both, would be an Event of Default.

**“Default Rate”** means with respect to any Loan and the other Obligations, an interest rate equal to the interest rate otherwise applicable to such Loan and other Obligations, as applicable, plus two percent (2%) per annum (and, in the case of Obligations not bearing interest, such Obligations shall bear interest at the Base Rate plus the Applicable Margin for the Base Rate Loans plus two percent (2%) per annum).

**“Deposit Account”** means each checking, savings or other demand deposit account maintained by any of the Loan Parties. All funds in each Deposit Account shall be conclusively presumed to be DIP Collateral and proceeds of DIP Collateral and the Agent and the Lenders shall have no duty to inquire as to the source of the amounts on deposit in any Deposit Account.

**“Designated Jurisdiction”** means any country or territory to the extent that such country or territory is the subject of any Sanction.

**“DIP Collateral”** means all of the “DIP Collateral” as defined in Section 2.16, and assets and interests in assets and proceeds thereof now owned or hereafter acquired by any Loan Party in or upon which a DIP Lien is granted or purported to be granted by such Person in favor of the Agent, for the benefit of itself and the other DIP Secured Parties, under any of the Loan Documents. For the avoidance of doubt, the DIP Collateral shall not include (and the DIP Liens shall not extend to) assets scheduled and held by the Debtors in trust.

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

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

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

“**DIP Loan Funding Date**” has the meaning provided in Section 4.02.

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

“**DIP Proceeds**” shall mean the proceeds received by the Borrower from the Loans.

“**DIP Secured Parties**” means, collectively, the Agent, the Lenders and each Indemnified Party, and their respective successors and assigns.

“**DIP Termination Date**” shall mean the date that all Obligations will be due and payable in full in cash unless otherwise agreed to by the Lenders on the earliest of (i) the Maturity Date, (ii) if the Final DIP Order has not been entered, twenty-three (23) calendar days after the Petition Date, (iii) the acceleration of the Loans and the termination of the Commitments hereunder, (iv) the effective date of any plan of reorganization, (v) the date the Bankruptcy Court converts any of the Chapter 11 Cases to a case under chapter 7 of the Bankruptcy Code, (vi) the date the Bankruptcy Court dismisses any of the Chapter 11 Cases, (vii) any Event of Default (as defined in the DIP Orders) and (viii) the date an order is entered in any Bankruptcy Case appointing a Chapter 11 trustee or examiner with enlarged powers.

“**Disposition**” or “**Dispose**” means the sale, transfer, license, lease or other disposition (including any sale and leaseback transaction), whether in one transaction or in a series of transactions, of any property (including, without limitation, any Equity Interests other than Equity Interests of the Borrower) by any Person (or the granting of any option or other right to do any of the foregoing), including any sale, assignment, transfer or other disposal, with or without recourse, of any notes or accounts receivable or any rights and claims associated therewith.

“**Disqualified Stock**” means any Equity Interest that, by its terms (or by the terms of any security into which it is convertible, or for which it is exchangeable, in each case at the option of the holder thereof), or upon the happening of any event, matures or is mandatorily redeemable, pursuant to a sinking fund obligation or otherwise, or redeemable at the option of the holder thereof, in whole or in part, on or prior to the date that is ninety-one (91) days after the date on which the Loans mature. The amount of Disqualified Stock deemed to be outstanding at any time for purposes of this Agreement will be the maximum amount that the Borrower and its Subsidiaries may become obligated to pay upon maturity of, or pursuant to any mandatory redemption provisions of, such Disqualified Stock or portion thereof, plus accrued dividends.

“**Dollars**” and “**\$**” mean lawful money of the United States.

“**Eligible Assignee**” means (a) a Credit Party which is a Credit Party on the Closing Date or becomes a Credit Party pursuant to any of clauses (b) through (d) below, or any of its Affiliates; (b) a bank, insurance company, or company engaged in the business of making commercial loans, which Person, together with its Affiliates, has a combined capital and surplus in excess of \$250,000,000; (c) an Approved Fund; and (d) any other Person (other than a natural Person)

satisfying the requirements of Section 10.06(b) hereof; provided that notwithstanding the foregoing, “Eligible Assignee” shall not include a Loan Party or any of their respective Affiliates or Subsidiaries.

“**Environmental Laws**” means any and all applicable Federal, state, local, and foreign statutes, laws, regulations, ordinances, rules, judgments, orders, decrees, permits, or governmental restrictions relating to pollution and the protection of the environment or the release of any materials into the environment, including those related to Hazardous Materials.

“**Environmental Liability**” means any liability, obligation, damage, loss, claim, action, suit, judgment, order, fine, penalty, fee, expense, or cost, contingent or otherwise (including any liability for damages, costs of environmental remediation, fines, penalties or indemnities), of the Borrower, any other Loan Party or any of their respective Subsidiaries directly or indirectly resulting from or based upon (a) violation of any Environmental Law, (b) the generation, use, handling, transportation, storage, treatment or disposal or presence of any Hazardous Materials, (c) exposure to any Hazardous Materials, (d) the release or threatened release of any Hazardous Materials into the environment or (e) any contract, agreement or other consensual arrangement pursuant to which liability is assumed or imposed with respect to any of the foregoing.

“**Equity Interests**” means, with respect to any Person, all of the shares of capital stock of (or other ownership or profit interests in) such Person, all of the warrants, options or other rights for the purchase or acquisition from such Person of shares of capital stock of (or other ownership or profit interests in) such Person, all of the securities convertible into or exchangeable for shares of capital stock of (or other ownership or profit interests in) such Person or warrants, rights or options for the purchase or acquisition from such Person of such shares (or such other interests), and all of the other ownership or profit interests in such Person (including partnership, member or trust interests therein), whether voting or non-voting, and whether or not such shares, warrants, options, rights or other interests are outstanding on any date of determination.

“**ERISA**” means the Employee Retirement Income Security Act of 1974, as amended, and the rule and regulations promulgated thereunder.

“**ERISA Affiliate**” means any trade or business (whether or not incorporated) under common control with the Borrower within the meaning of Section 414(b) or (c) of the Code (and Sections 414(m) and (o) of the Code for purposes of provisions relating to Section 412 of the Code).

“**ERISA Event**” means (a) a Reportable Event with respect to a Pension Plan; (b) the withdrawal of the Borrower or any ERISA Affiliate from a Pension Plan subject to Section 4063 of ERISA during a plan year in which such entity was a “substantial employer” as defined in Section 4001(a)(2) of ERISA or a cessation of operations that is treated as such a withdrawal under Section 4062(e) of ERISA; (c) a complete or partial withdrawal by the Borrower or any ERISA Affiliate from a Multiemployer Plan or notification that a Multiemployer Plan is in reorganization; (d) the filing of a notice of intent to terminate, the treatment of a Pension Plan amendment as a termination under Section 4041 or 4041A of ERISA; (e) the institution by the PBGC of proceedings to terminate a Pension Plan; (f) any event or condition which constitutes grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer,

any Pension Plan; (g) the determination that any Pension Plan is considered an at-risk plan or a plan in endangered or critical status within the meaning of Sections 430, 431 and 432 of the Code or Sections 303, 304 and 305 of ERISA; or (h) the imposition of any liability under Title IV of ERISA, other than for PBGC premiums due but not delinquent under Section 4007 of ERISA, upon the Borrower or any ERISA Affiliate.

**“Eurocurrency Liabilities”** has the meaning provided in Section 3.04(e).

**“Event of Default”** has the meaning provided in Section 8.01. An Event of Default shall be deemed to be continuing unless and until that Event of Default has been duly waived as provided in Section 10.01 hereof.

**“Excluded Account”** means (i) any Deposit Account established solely for payroll purposes and (ii) other Deposit Accounts holding less than \$250,000 in the aggregate at any time.<sup>1</sup>

**“Excluded Property”** means any assets held by the Debtors in trust for a third party and Excluded Accounts.

**“Excluded Subsidiary”** means any Subsidiary that is not a Guarantor or Debtor as of the Petition Date.

**“Excluded Taxes”** means any of the following Taxes imposed on or with respect to any Recipient or required to be withheld or deducted from a payment to a Recipient, (a) Taxes imposed on or measured by net income (however denominated), franchise Taxes, and branch profits Taxes, in each case, (i) imposed as a result of such Recipient being organized under the laws of, or having its principal office or, in the case of any Lender, its Lending Office located in, the jurisdiction imposing such Tax (or any political subdivision thereof) or (ii) that are Other Connection Taxes, (b) in the case of a Lender, U.S. federal withholding Taxes imposed on amounts payable to or for the account of such Lender with respect to an applicable interest in a Loan pursuant to a law in effect on the date on which (i) such Lender acquires such interest in a Loan (other than pursuant to an assignment request by the Borrower under Section 10.13) or (ii) such Lender changes its Lending Office, except in each case to the extent that, pursuant to Section 3.01(a)(ii) or Section 3.01(c), amounts with respect to such Taxes were payable either to such Lender’s assignor immediately before such Lender became a party hereto or to such Lender immediately before it changed its Lending Office, (c) Taxes attributable to such Recipient’s failure to comply with Section 3.01(e) and (d) any withholding Taxes imposed pursuant to or in connection with FATCA.

**“Executive Order”** has the meaning provided in Section 10.18.

**“Extraordinary Receipts”** means (i) proceeds of insurance (other than to the extent such insurance proceeds are (1) immediately payable to a Person that is not Borrower or any of its Subsidiaries in accordance with applicable Requirements of Law or with Contractual Obligations entered into in the ordinary course of business or (2) received by Borrower or any of its Subsidiaries as reimbursement for any out-of-pocket costs incurred or made by such Person prior to the receipt thereof directly related to the event resulting from the payment of such proceeds, (ii) judgments, proceeds of settlements or other consideration of any kind in connection with any cause

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<sup>1</sup> NTD: Discuss inclusion of p-card and BAML indemnity account to the extent agreed between the parties.

of action, (iii) condemnation awards (and payments in lieu thereof) and (iv) any cash received by Borrower or any of its Subsidiaries not in the ordinary course of business, including, without limitation, (a) foreign, United States, state or local tax refunds, (b) pension plan reversions, and (c) indemnity payments (other than to the extent such indemnity payments are (1) immediately payable to a Person that is not an Affiliate of Borrower or any of its Subsidiaries, or (2) received by Borrower or any of its Subsidiaries as reimbursement for any costs previously incurred or any payment previously made by such Person); provided, that, in each case, “Extraordinary Receipts” shall exclude (x) any cash not otherwise constituting Extraordinary Receipts received by a Loan Party from any other Loan Party and (y) any purchase price adjustment received in connection with any purchase agreement.

“**Facility Guaranty**” means any Guarantee made by the Guarantors in favor of the Agent and the other Credit Parties, in form reasonably satisfactory to the KKR Representative.

“**FATCA**” means Sections 1471 through 1474 of the Code, as in effect on the Closing Date (or any amended or successor provision that is substantively comparable and not materially more onerous to comply with), any current or future regulations or official interpretations thereof and any agreements entered into pursuant to Section 1471(b)(1) of the Code and any intergovernmental agreements (and related legislation or official administrative guidance) implementing the foregoing.

“**Federal Funds Rate**” means, for any day, the rate per annum equal to the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers on such day, as published by the Federal Reserve Bank of New York on the Business Day next succeeding such day; provided that if such day is not a Business Day, the Federal Funds Rate for such day shall be such rate on such transactions on the next preceding Business Day as so published on the next succeeding Business Day.

“**Fee Letters**” and each a “**Fee Letter**” means (x) the letter agreement, dated [ ], 2021, between the Borrower and the Agent and (y) the letter agreement, dated [ ], 2021, between the Borrower and KKR Credit.

“**Final DIP Loan Commitment**” means, with respect to each Lender holding a Final DIP Loan Commitment, the commitment of such Lender to make a Final DIP Loan, which commitment is in the amount set forth opposite such Lender’s name on Schedule 2.01(b) under the caption “Final DIP Loan Commitment”. The aggregate amount of the Final DIP Loan Commitments shall be the lesser of (a) the DIP Facility in excess of the Interim DIP Loans and (b) such amount as approved by the Bankruptcy Court for funding pursuant to the Final DIP Order.

“**Final DIP Loans**” means the term loans to be made from time to time on and after the Final DIP Closing Date and until the Commitment Expiration Date, in one or more drawings (but not to exceed one draw per weekly period) in an aggregate principal amount not to exceed such Lender’s Final DIP Loan Commitment.

“**Final DIP Order**” means an order entered by the Bankruptcy Court in the Chapter 11 Cases substantially in the form of the Interim DIP Order (with only such modifications thereto as are necessary to convert the Interim DIP Order to a final order and other modifications as are

satisfactory in form and substance to the Agent (with respect to matters relevant to or affecting the Agent and Collateral Agent) and the Required Lenders in their sole discretion).

“**Final DIP Closing Date**” means the date on which the conditions under Section 4.02 are first satisfied or waived as determined by the Administrative Agent and the Required Lenders.

“**Fiscal Month**” means any fiscal month of any Fiscal Year, which month shall generally end on the last day of each calendar month in accordance with the fiscal accounting calendar of the Borrower.

“**Fiscal Quarter**” means any fiscal quarter of any Fiscal Year, which quarters shall generally end on the last day of each March, June, September and December of such Fiscal Year in accordance with the fiscal accounting calendar of the Borrower.

“**Fiscal Year**” means any period of twelve consecutive months ending on December 31 of any calendar year.

“**Foreign Assets Control Regulations**” has the meaning provided in Section 10.18.

“**Foreign Lender**” means any Lender that is not a U.S. Person.

“**FRB**” means the Board of Governors of the Federal Reserve System of the United States.

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

“**GAAP**” means generally accepted accounting principles in the United States provided in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or such other principles as may be approved by a significant segment of the accounting profession in the United States, that are applicable to the circumstances as of the date of determination, consistently applied.

“**Good Faith Deposit**” has the meaning specified therefor in the Bid Procedures (as defined in the RSA).

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

“**Guarantee**” means, as to any Person, (a) any obligation, contingent or otherwise, of such Person guaranteeing or having the economic effect of guaranteeing any Indebtedness or other obligation payable or performable by another Person (the “primary obligor”) in any manner, whether directly or indirectly, and including any obligation of such Person, direct or indirect, (i)

to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or other obligation, (ii) to purchase or lease property, securities or services for the purpose of assuring the obligee in respect of such Indebtedness or other obligation of the payment or performance of such Indebtedness or other obligation, (iii) to maintain working capital, equity capital or any other financial statement condition or liquidity or level of income or cash flow of the primary obligor so as to enable the primary obligor to pay such Indebtedness or other obligation, or (iv) entered into for the purpose of assuring in any other manner the obligee in respect of such Indebtedness or other obligation of the payment or performance thereof or to protect such obligee against loss in respect thereof (in whole or in part), or (b) any Lien on any assets of such Person securing any Indebtedness or other obligation of any other Person, whether or not such Indebtedness or other obligation is assumed by such Person (or any right, contingent or otherwise, of any holder of such Indebtedness to obtain any such Lien). The amount of any Guarantee shall be deemed to be an amount equal to the stated or determinable amount of the related primary obligation, or portion thereof, in respect of which such Guarantee is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof. The term "Guarantee" as a verb has a corresponding meaning.

**"Guarantor"** means (i) each domestic Subsidiary of the Borrower existing on the Closing Date, other than the Subsidiaries set forth on Schedule 1.01 hereto and (ii) each other Subsidiary of the Borrower that is required to execute and deliver a Facility Guaranty pursuant to Section 6.11.

**"Hazardous Materials"** means all explosive or radioactive substances or wastes and all hazardous or toxic substances, wastes or other pollutants, including petroleum or petroleum distillates, asbestos or asbestos-containing materials, polychlorinated biphenyls, radon gas, and all other substances or wastes of any nature regulated pursuant to any Environmental Law.

**"Indebtedness"** means, as to any Person at a particular time, without duplication, all of the following, whether or not included as indebtedness or liabilities in accordance with GAAP:

(a) all obligations of such Person for borrowed money and all obligations of such Person evidenced by bonds, debentures, notes, loan agreements or other similar instruments;

(b) the maximum amount of all direct or contingent obligations of such Person arising under letters of credit (including standby and commercial), bankers' acceptances, bank guaranties, surety bonds and similar instruments;

(c) [reserved];

(d) all obligations of such Person to pay the deferred purchase price of property or services (other than trade accounts payable in the ordinary course of business and, in each case, not past due for more than 60 days after the date on which such trade account payable was created);

(e) indebtedness (excluding prepaid interest thereon) secured by a Lien on property owned or being purchased by such Person (including indebtedness arising

under conditional sales or other title retention agreements), whether or not such indebtedness shall have been assumed by such Person or is limited in recourse;

(f) all Attributable Indebtedness of such Person;

(g) all obligations of such Person to purchase, redeem, retire, defease or otherwise make any payment in respect of any Equity Interest in such Person or any other Person (including, without limitation, Disqualified Stock), or any warrant, right or option to acquire such Equity Interest, valued, in the case of a redeemable preferred interest, at the greater of its voluntary or involuntary liquidation preference plus accrued and unpaid dividends; and

(h) all Guarantees of such Person in respect of any of the foregoing.

provided, however, that notwithstanding the foregoing, Indebtedness shall be deemed not to include (1) contingent obligations incurred in the ordinary course of business and not in respect of borrowed money, (2) deferred or prepaid revenues, (3) purchase price holdbacks in respect of a portion of the purchase price of an asset to satisfy warranty or other unperformed obligations of the respective seller, or (4) any royalty, licensing, revenue and/or profit sharing arrangements, in each case, characterized as such and arising expressly out of purchase and sale contracts, development contracts or licensing arrangements.

For all purposes hereof, the Indebtedness of any Person shall include the Indebtedness of any partnership or joint venture (other than a joint venture that is itself a corporation or limited liability company) in which such Person is a general partner or a joint venturer, unless such Indebtedness is expressly made non-recourse to such Person.

**“Indemnified Party”** has the meaning assigned to such term in Section 10.04(b) hereof.

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

**“Information”** has the meaning provided in Section 10.07.

**“Initial Budget”** shall mean a 13-week operating budget setting forth all forecasted receipts and disbursements on a weekly basis for such 13-week period beginning the week prior to the Petition Date, broken down by week, including the line item details for and anticipated weekly uses of the DIP Proceeds for such period (and draws under this Agreement), which shall include, among other things, available cash, cash flow, trade payables and ordinary course expenses and total expenses, fees and expenses relating to this Agreement, fees and expenses related to the Chapter 11 Cases (including professional fees), and working capital and other general corporate needs, which forecast shall be in form and substance satisfactory to the Agent at the direction of the Required Lenders. Such Initial Budget shall be in the form set forth in Exhibit A hereto and also attached as an exhibit to the Interim DIP Order. Until supplemented pursuant to Section 6.01(c) and approved by the Agent at the direction of the Required Lenders in accordance hereof, the Initial Budget shall constitute the Budget.

**“Intellectual Property”** shall mean:

(a) any copyright rights to any published or unpublished works of authorship or other copyrightable subject matter owned by any Loan Party, including in computer programs and software (whether in object code or source code), computer data bases, drawings and writings, and all copyright registrations and applications for registration that have been or may hereafter be issued or applied for thereon in the United States and any state thereof;

(b) all patents and patent applications and rights and interests in patents and patent applications owned or held by a Loan Party and all re-issues, divisions, continuations, renewals, extensions and continuations-in-part thereof and all issued patents and applications for issuance of patents that have been or may hereafter be issued or applied for thereon in the United States;

(c) all trademarks, service marks, designs, logos, indicia of origin, trade names, trade dress, corporate names, company names, business names, fictitious business names, trade styles and/or other source and/or business identifiers and applications pertaining thereto, owned by a Loan Party, or hereafter adopted and used, in its business, including all goodwill therein or arising therefrom, all trademark registrations and applications for trademark registration that have been or may hereafter be issued or applied for thereon in the United States or any state thereof;

(d) all trade secrets, trade secret rights, know-how, customer lists, processes of production, ideas, confidential business information, techniques, processes, formulas, and all other proprietary information, and all other intellectual property and similar rights;

(e) all rights to sue at law or in equity for any past, present, and future infringement, dilution, misappropriation, or other violation or impairment of any of the foregoing, including, without limitation, license fees, royalties, income, payments, claims, damages and proceeds of suit, now or hereafter due and/or payable with respect thereto and all agreements related to the license, ownership, development, use or disclosure of any of the foregoing; and

(f) all proceeds of any of the foregoing.

**“Interest Payment Date”** means, (a) as to any LIBOR Rate Loan, the last day of each Interest Period applicable to such Loan and the Maturity Date; and (b) as to any Base Rate Loan, the first Business Day of each Fiscal Month and the Maturity Date.

**“Interest Period”** means, as to each LIBOR Rate Loan,

(a) initially, the period commencing on the date such LIBOR Rate Loan is disbursed and ending on the date one month thereafter; and

(b) after the period described in clause (a) above, each period commencing on the last day of the immediately preceding Interest Period applicable to such LIBOR Rate Loan and ending one month thereafter; provided that the foregoing provisions are subject to the following:

(i) any Interest Period that would otherwise end on a day that is not a Business Day shall be extended to the next succeeding Business

Day unless such Business Day falls in another calendar month, in which case such Interest Period shall end on the next preceding Business Day;

(ii) any Interest Period that begins on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period) shall end on the last Business Day of the calendar month at the end of such Interest Period;

(iii) no Interest Period shall extend beyond the Maturity Date; and

(iv) notwithstanding the provisions of clause (iii), no Interest Period shall have a duration of less than one month, and if any Interest Period applicable to a LIBOR Rate Loan would be for a shorter period, such Interest Period shall not be available hereunder.

**“Interim DIP Loan Commitment”** shall mean, with respect to each Lender holding an Interim DIP Loan Commitment, the commitment of such Lender to make an Interim DIP Loan, which commitment is in the amount set forth opposite such Lender’s name on Schedule 2.01(a) under the caption “Interim DIP Loan Commitment.” The aggregate amount of the Interim DIP Loan Commitments on the Closing Date shall be the lesser of (a) \$141,000,000 and (b) such amount as approved by the Bankruptcy Court pursuant to the Interim DIP Order.

**“Interim DIP Loans”** means the term loans to be made on the Closing Date, in an aggregate amount not to exceed the Interim DIP Loan Commitments.

**“Interim DIP Order”** shall mean the interim order entered by the Bankruptcy Court in the Chapter 11 Cases (as the same may be amended, supplemented, or modified from time to time after entry thereof in a manner satisfactory to the Required Lenders in their sole discretion) authorizing and approving, among other things, the DIP Facility and the Transactions, which interim order is in form and substance satisfactory to the Agent (with respect to matters relevant to or affecting the Agent and the Collateral Agent) and the Required Lenders in their sole discretion.

**“Internal Control Event”** means a material weakness in, or fraud that involves management or other employees who have a significant role in, the Borrower’s and/or its Subsidiaries’ internal controls over financial reporting, in each case as described in the Securities Laws.

**“Investment”** means, as to any Person, any direct or indirect acquisition or investment by such Person, whether by means of (a) the purchase or other acquisition of Equity Interests of another Person, (b) a loan, advance or capital contribution to, Guarantee or assumption of debt of, or purchase or other acquisition of any other debt or interest in, another Person, (c) any Acquisition, or (d) any other investment of money or capital in order to obtain a profitable return. For purposes of covenant compliance, the amount of any Investment shall be the amount actually invested, without adjustment for subsequent increases or decreases in the value of such Investment.

“**IRS**” means the United States Internal Revenue Service.

“**JBBG**” means James Bates Brannan Groover LLP.

“**K&S**” means King & Spalding LLP.

“**KKR Credit**” shall mean KKR Credit Advisors (US) LLC and certain of its Affiliates and its or their managed funds and accounts.

“**KKR Entities**” shall mean KKR Credit and any of its Affiliates, and shall include, without limitation, certain funds, accounts and clients managed or sub-advised by KKR or any of KKR’s Affiliates, as the context may require.

“**KKR Representative**” shall mean KKR Credit or such other Person as the KKR Entities may otherwise designate from time to time.

“**Known Event**” means, the commencement and continuation of the Chapter 11 Cases, the events leading up to the Chapter 11 Cases, the effect of the bankruptcy, the conditions in which the Borrower operates in as existing on the Closing Date and/or the consummation of transactions contemplated by the Debtors’ “first day” pleadings reviewed by the Agent or Required Lenders, or as disclosed to the Agent and the Lenders prior to the Petition Date.

“**Law**” or “**Laws**” means, collectively, all international, foreign, Federal, state and local statutes, treaties, rules, guidelines, regulations, ordinances, codes and administrative or judicial precedents or authorities, 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.

“**Lease**” means any agreement, whether written or oral, no matter how styled or structured, pursuant to which a Loan Party is the lessee of any real property for any period of time.

“**Lender**” has the meaning provided in the introductory paragraph hereto.

“**Lending Office**” means, as to any Lender, the office or offices of such Lender as a Lender may from time to time notify the Borrower and the Agent.

“**LIBOR Rate**” means for any LIBOR Rate Loan for the then current Interest Period relating thereto, the interest rate per annum determined by Agent by dividing (the resulting quotient rounded upwards, if necessary, to the nearest 1/100th of 1% per annum) (a) the rate which appears on the Bloomberg Page BBAM1 (or on such other substitute Bloomberg page that displays rates at which U.S. dollar deposits are offered by leading banks in the London interbank deposit market), or the rate which is quoted by another source selected by Agent as an authorized information vendor for the purpose of displaying rates at which U.S. dollar deposits are offered by leading banks in the London interbank deposit market (a “**LIBOR Alternate Source**”), at approximately 11:00 a.m., London time, three (3) Business Days prior to the commencement of such Interest Period as the London interbank offered rate for U.S. Dollars for an amount comparable to such LIBOR Rate Loan and having a borrowing date and a maturity comparable to such Interest Period

(or if there shall at any time, for any reason, no longer exist a Bloomberg Page BBAM1 (or any substitute page) or any LIBOR Alternate Source, a comparable replacement rate determined by Agent at such time (which determination shall be conclusive absent manifest error)), by (b) a number equal to 1.00 minus the Reserve Percentage; provided, however, that if the LIBOR Rate determined as provided above would be less than zero, such rate shall be deemed to be zero for purposes of this Agreement; provided, further, with respect to the DIP Loans, that if the LIBOR Rate determined as provided above would be less than 1.00%, such rate shall be deemed to be 1.00% for purposes of this Agreement with respect to the DIP Loans.

“**LIBOR Rate Loan**” means a Loan that bears interest at a rate based on the Adjusted LIBOR Rate.

“**LIBOR Screen Rate**” means the LIBOR quote on the applicable screen page the Agent designates to determine LIBOR (or such other commercially available source providing such quotations as may be designated by the Agent from time to time).

“**LIBOR Successor Rate**” has the meaning specified in Section 3.03(b).

“**LIBOR Successor Rate Conforming Changes**” means, with respect to any proposed LIBOR Successor Rate, any conforming changes to the definition of Base Rate, Interest Period, timing and frequency of determining rates and making payments of interest and other administrative matters as may be appropriate to reflect the adoption of such LIBOR Successor Rate and to permit the administration thereof by the Agent (at the direction of the KKR Representative, in consultation with the Borrower), in a manner substantially consistent with market practice (or, if the Agent determines (at the direction of the KKR Representative, in consultation with the Borrower) that adoption of any portion of such market practice is not administratively feasible or that no market practice for the administration of such LIBOR Successor Rate exists, in such other manner of administration as the Agent determines (at the direction of the KKR Representative, in consultation with the Borrower)).

“**Lien**” means any mortgage, deed of trust, pledge, hypothecation, assignment, deposit arrangement, encumbrance, lien (statutory or other), charge, or preference, priority or other security interest or preferential arrangement in the nature of a security interest of any kind or nature whatsoever (including any conditional sale, Capital Lease Obligation, or other title retention agreement, any easement, right of way or other encumbrance on title to real property, and any financing lease having substantially the same economic effect as any of the foregoing).

“**Loan**” means the Interim DIP Loans and the Final DIP Loans.

“**Loan Documents**” means this Agreement, each Note, the Fee Letters, the Blocked Account Agreements, if any, the Security Documents, the Facility Guaranty, and any other instrument or agreement now or hereafter executed and delivered in connection herewith.

“**Loan Parties**” means, collectively, the Borrower and each Guarantor.

“**London Banking Day**” has the meaning provided in the definition of “Business Day”.

**“Material Adverse Effect”** means a material adverse change, or a material adverse effect, in (i) the business, operations, properties or condition (financial or otherwise) of the Debtors and their subsidiaries, collectively, (ii) the legality, validity or enforceability of any Loan Documents or the DIP Orders, (iii) the ability of the Borrower or the Guarantors, taken as a whole, to perform their payment obligations under the Loan Documents, (iv) the perfection or priority of the DIP Liens granted pursuant to the Loan Documents or the DIP Orders, or (v) the rights and remedies of the Agent and the Lenders under the Loan Documents or the DIP Orders taken as a whole; except, in each case, those events, circumstances or conditions relating to the commencement and continuation of the Chapter 11 Cases.

**“Material Contract”** means, with respect to any Person, each contract to which such Person is a party material to the business, condition (financial or otherwise), operations, performance, properties or prospects of such Person, and shall include, without limitation, each Material License.

**“Material Indebtedness”** means Indebtedness (other than the Obligations) of the Loan Parties in an aggregate principal amount exceeding \$1,000,000. For purposes of determining the amount of Material Indebtedness at any time, (a) [reserved], (b) undrawn committed or available amounts shall be included, and (c) all amounts owing to all creditors under any combined or syndicated credit arrangement shall be included.

**“Material Intellectual Property”** means those items of Intellectual Property described on Part 1 of Schedule 5.17 hereto, and all items of Intellectual Property established, registered or recorded in the United States acquired after the Closing Date in respect of brands that are the subject of a Material License.

**“Material License”** means, as of the Closing Date, the licenses described on Part 2 of Schedule 5.17 hereto, and thereafter, any License to the extent that the revenues from which constitute five percent (5%) or more of the annual revenues of the Borrower and its Subsidiaries.

**“Maturity Date”** means one hundred fifty (150) days after the Petition Date.

**“Maximum Rate”** has the meaning provided in Section 10.09.

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

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

**“Multiemployer Plan”** means any employee benefit plan of the type described in Section 4001(a)(3) of ERISA, to which the Borrower 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.

**“Multiple Employer Plan”** means a Plan which has two or more contributing sponsors (including the Borrower or any ERISA Affiliate) at least two of whom are not under common control, as such a plan is described in Section 4064 of ERISA.

**“Net Proceeds”** means, with respect to the proceeds received by any Loan Party during the term of this Agreement from any Disposition, the excess, if any, of (i) the sum of cash and cash

equivalents received in connection with such Disposition (including any cash or cash equivalents received by way of deferred payment pursuant to, or by monetization of, a note receivable or otherwise, but only as and when so received) over (ii) the sum of (A) if applicable, the principal amount of any Indebtedness that is secured by the applicable asset by a Lien permitted hereunder which is senior to the Agent's Lien on such asset and that is required to be repaid (or to establish an escrow for the future repayment thereof) in connection with such Disposition (other than Indebtedness under the Loan Documents), (B) taxes paid or payable by such Loan Party in connection with such Disposition, and (C) the reasonable and customary out-of-pocket expenses incurred by such Loan Party in connection with such Disposition (including, without limitation, appraisals, and brokerage, legal, agents and title expenses and commissions) paid by any Loan Party to third parties (other than Affiliates)) to the extent in accordance with the Budget.

**"Non-Consenting Lender"** has the meaning provided in Section 10.01.

**"Non-Guarantor Subsidiary"** means any (i) non-wholly owned Subsidiary to the extent a guarantee of the Obligations and a pledge of the assets thereof in support of such guarantee would require the consent of any third-party holder of the Equity Interests thereof (unless and until such consent is obtained), including, for the avoidance of doubt, each Subsidiary set forth on Schedule 1.01, (ii) Excluded Subsidiary, (iii) [reserved], (iv) CFC, (v) domestic Subsidiary substantially all of the assets of which constitute equity and/or Indebtedness of direct or indirect foreign Subsidiaries or intercompany accounts, or (vi) any other Subsidiary organized in a jurisdiction outside of the United States.

**"Note"** means a promissory note made by the Borrower in favor of a Lender evidencing the portion of the Loans made by such Lender, substantially in the form of Exhibit B, as each may be amended, supplemented or modified from time to time.

**"NPL"** means the National Priorities List under CERCLA.

**"Obligations"** means all advances to, and debts (including principal, interest, fees, costs, and expenses), liabilities, obligations, covenants, indemnities, and duties of, any Loan Party arising under any Loan Document or otherwise with respect to any Loan, whether direct or indirect (including those acquired by assumption), absolute or contingent, due or to become due, now existing or hereafter arising and including interest, fees, costs, expenses and indemnities that accrue after the commencement by or against any Loan Party of any proceeding under any Debtor Relief Laws naming such Person as the debtor in such proceeding, regardless of whether such interest, fees costs, expenses and indemnities are allowed claims in such proceeding.

**"OFAC"** means the U.S. Department of the Treasury's Office of Foreign Assets Control.

**"Organization 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; (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, and (d) in each case, all shareholder or other equity holder agreements, voting trusts and similar arrangements to which such Person is a party or which is applicable to its Equity Interests and all other arrangements relating to the Control or management of such Person.

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

“**Other Taxes**” means all present or future stamp, court or documentary, intangible, recording, filing or similar Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Loan Document, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment (other than an assignment made pursuant to Section 3.06(b)).

“**Participant**” has the meaning provided in Section 10.06(d)(i).

“**Participant Register**” has the meaning provided therefor in Section 10.06(d)(iii).

“**PBGC**” means the Pension Benefit Guaranty Corporation.

“**PCAOB**” means the Public Company Accounting Oversight Board.

“**Pension Act**” means the Pension Protection Act of 2006.

“**Pension Funding Rules**” means the rules of the Code and ERISA regarding minimum required contributions (including any installment payment thereof) to Pension Plans and set forth in, with respect to plan years ending prior to the effective date of the Pension Act, Section 412 of the Code and Section 302 of ERISA, each as in effect prior to the Pension Act and, thereafter, Section 412, 430, 431, 432 and 436 of the Code and Sections 302, 303, 304 and 305 of ERISA.

“**Pension Plan**” means any employee pension benefit plan (including a Multiple Employer Plan or a Multiemployer Plan) that is maintained or is contributed to by the Borrower and any ERISA Affiliate and is either covered by Title IV of ERISA or is subject to the minimum funding standards under Section 412 of the Code.

“**Permitted Holder**” means each of Tengram Capital Partners Gen2 Fund, L.P., Martha Stewart Family Limited Partnership and NSP Management, Inc. and their respective Affiliates.

“**Permitted Indebtedness**” means:

(a) any Indebtedness owing to the Agent or any Lender under this Agreement and the other Loan Documents or the Term B Credit Agreement; and

(b) contingent liabilities under surety bonds or similar instruments incurred in the ordinary course of business and in accordance with the Budget;

(c) Indebtedness arising from the honoring by any bank or other financial institution of a check, draft or similar instrument drawn against insufficient funds in the ordinary course of business, so long as such Indebtedness is extinguished within five (5) Business Days of its incurrence;

(d) Indebtedness owed to any Person providing property, casualty, liability or other insurance to any Loan Party, so long as the amount of such Indebtedness is not in excess of the amount of the unpaid cost of, and shall be incurred only to defer the cost of, such insurance for the period in which such Indebtedness is incurred and such Indebtedness is outstanding only for a period not exceeding twelve months;

(e) Indebtedness representing deferred compensation or similar obligation to employees of Loan Parties incurred in the ordinary course of business and in accordance with the Budget;

(f) Indebtedness of any Loan Party in respect of letters of credit, bank guarantees, supporting obligations bankers' acceptances, performance bonds, surety bonds, statutory bonds, appeal bonds, warehouse receipts or similar instruments issued or created in the ordinary course of business, including with respect of workers compensation claims, health, disability or other employee benefits or property, casualty or liability insurance or self-insurance or other Indebtedness with respect to reimbursement-type obligations regarding workers compensation claims; provided that any reimbursement obligations in respect thereof are reimbursed within 30 days following the due date thereof;

(h) Other Indebtedness in respect of employee credit card programs and other cash management and similar arrangements in the ordinary course of business and any Guarantees thereof; and

(i) any other Indebtedness listed on Schedule 7.03 on the Closing Date.

***“Permitted Intercompany Advances”*** means Investments made by a Loan Party into another Loan Party.

***“Permitted Investments”*** means each of the following:

(a) Investments that exist on the Closing Date in cash and cash equivalents;

(b) Good Faith Deposits;

(c) advances made in connection with purchases of goods or services in the ordinary course of business and in accordance with the Budget;

(d) Investments existing on the date hereof, as set forth on Schedule 7.02 hereto, but not any increase in the amount thereof as set forth in such Schedule or any other modification of the terms thereof;

(e) Investments received in connection with the bankruptcy or reorganization of, or settlement of delinquent accounts and disputes with, customers and suppliers, in each case in the ordinary course of business and in accordance with the Budget;

(f) advances in the form of a prepayment of expense to vendors, suppliers and trade creditors consistent with their past practices, so long as such expenses were incurred in the ordinary course of business and in accordance with the Budget;

(g) purchases of assets in the ordinary course of business, consistent with past practice and in accordance with the Budget;

(h) Permitted Intercompany Advances; and

(i) deposits made in the ordinary course of business to secure the performance of leases or other obligations pursuant to Section 7.01.

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

**“Permitted Variance”** shall mean, for (x) the Petition Date through and including the two week period beginning on the second Wednesday following the Petition Date, (y) the three week period beginning on the third Wednesday following the Petition Date and (z) each rolling four-week period thereafter (each week commencing on the Wednesday of such week) (the applicable **“Testing Period”**): (a) all favorable variances, and (b) an unfavorable variance (other than disbursements for Professional Fees of the DIP Lender and DIP Agent and fees of the Office of the United States Trustee) of no more than (i) 15% for actual receipts and (ii) 15% for actual disbursements (on an aggregate basis) as compared to the budgeted receipts and disbursements, respectively, set forth in the Budget with respect to the applicable Testing Period; provided, that any disbursements in such Testing Period made from proceeds of favorable variances with respect to receipts in such Testing Period shall not be counted as disbursements for purposes of calculating unfavorable variances. The Permitted Variances with respect to each Testing Period shall be determined and reported to the DIP Agent (and its advisors), the Required DIP Lenders (and their advisors) and the Prepetition Term B Parties (and their respective advisors), not later than 5:00 p.m. Eastern Time on each Wednesday immediately following the end of each such Testing Period. Additional variances, if any, from the Budget, and any proposed changes to the Budget, shall be subject to the approval of the DIP Agent (acting at the direction of the Required DIP Lenders) and the Prepetition Term B Agent (acting at the direction of the Required Lenders).

Applicable Percentage
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Percentage for Receipts	Percentage for Disbursements
15%	15%

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

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

“**Plan**” means any employee benefit plan within the meaning of Section 3(3) of ERISA (including a Pension Plan), maintained for employees of the Borrower or any ERISA Affiliate or any such Plan to which the Borrower or any ERISA Affiliate is required to contribute on behalf of any of its employees.

“**Prepayment Event**” means:

- (a) any Disposition of DIP Collateral other than Dispositions permitted by Section 7.05;
- (b) the receipt by any Loan Party or any of its Subsidiaries of any Extraordinary Receipts;
- (c) the receipt of (i) any cash or cash equivalents cash collateralizing any letter of credit that are returned to the Borrower or any Guarantor for its own account and (ii) any cash or cash equivalents returned to the Borrower or any Guarantor from rent reserves or security deposits returned to the Borrower or any Guarantor upon the assignment of a lease or otherwise
- (d) any casualty or other insured damage to, or any taking under power of eminent domain or by condemnation or similar proceeding of, any DIP Collateral of Borrower or any Subsidiary; or
- (e) the incurrence by Borrower or any Subsidiary of any Indebtedness (other than Permitted Indebtedness) or the receipt of Net Proceeds from the issuance of Equity Interests.

“**Prepetition Term B Agents**” means the “Agents” under the Prepetition Term B Credit Agreement.

“**Prepetition Term B Collateral**” means the “Collateral” as such term is defined in the Prepetition Term B Credit Agreement.

“**Prepetition Term B Credit Agreement**” shall have the meaning assigned to such term in the recitals to this Agreement.

“**Prepetition Term B Lenders**” shall mean the “Lenders” as defined in the Prepetition Term B Credit Agreement as of the Closing Date.

“**Prepetition Term B Liens**” shall have the meaning assigned to such term in Section 7.11.

“**Prepetition Term B Loan Documents**” shall mean the “Loan Documents” as defined in the Prepetition Term B Credit Agreement as of the Closing Date.

“**Prepetition Term B Obligations**” shall mean the “Obligations” as defined in the Prepetition Term B Credit Agreement as of the Closing Date.

“**Prepetition Term B Secured Parties**” has the meaning set forth in Section 2.15(b).

“**Province**” means Province, Inc.

“**Qualified Stock**” means all Equity Interests other than Disqualified Stock.

“**Real Estate**” means all Leases and all land, together with the buildings, structures, parking areas, and other improvements thereon, now or hereafter owned by any Loan Party, including all easements, rights-of-way, and similar rights relating thereto.

“**Recipient**” means the Agent or any Lender.

“**Register**” has the meaning provided in Section 10.06(c).

“**Registered Public Accounting Firm**” has the meaning provided by the Securities Laws and shall be independent of the Borrower and its Subsidiaries as prescribed by the Securities Laws.

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

“**Reportable Event**” means any of the events set forth in Section 4043(c) of ERISA, other than events for which the 30 day notice period has been waived.

“**Reports**” has the meaning provided in Section 9.11.

“**Required Lenders**” means, as of any date of determination, Lenders holding in the aggregate more than 50% of the aggregate outstanding principal amount of the Loans.

“**Responsible Officer**” means president, chief financial officer, controller, treasurer or assistant treasurer of a Loan Party or any of the other individuals designated in writing to the Agent by an existing Responsible Officer of a Loan Party as an authorized signatory of any certificate or other document to be delivered hereunder. Any document delivered hereunder that is signed by a Responsible Officer of a Loan Party shall be conclusively presumed to have been authorized by all necessary corporate, partnership and/or other action on the part of such Loan Party and such Responsible Officer shall be conclusively presumed to have acted on behalf of such Loan Party.

“**Restricted Payment**” means any dividend or other distribution (whether in cash, securities or other property) with respect to any capital stock or other Equity Interest of any Person or any of its Subsidiaries, or any payment (whether in cash, securities or other property), including any

sinking fund or similar deposit, on account of the purchase, redemption, retirement, defeasance, acquisition, cancellation or termination of any such capital stock or other Equity Interest, or on account of any return of capital to such Person's stockholders, partners or members (or the equivalent of any thereof), or any option, warrant or other right to acquire any such dividend or other distribution or payment to the extent set forth in the Budget. Without limiting the foregoing, "Restricted Payments" with respect to any Person shall also include all payments made by such Person with any proceeds of a dissolution or liquidation of such Person.

"**S&P**" means Standard & Poor's Ratings Services, a division of The McGraw-Hill Companies, Inc. and any successor thereto.

"**Sanction(s)**" means any sanction administered or enforced by the United States Government (including, without limitation, OFAC), the United Nations Security Council, the European Union, Her Majesty's Treasury ("**HMT**") or other relevant sanctions authority.

"**Sarbanes-Oxley**" means the Sarbanes-Oxley Act of 2002.

"**SEC**" means the Securities and Exchange Commission, or any Governmental Authority succeeding to any of its principal functions.

"**Securities Laws**" means the Securities Act of 1933, the Securities Exchange Act of 1934, Sarbanes-Oxley, and the applicable accounting and auditing principles, rules, standards and practices promulgated, approved or incorporated by the SEC or the PCAOB.

"**Security Documents**" means the DIP Orders and any security agreement or other instrument or document executed and delivered to the Agent pursuant to this Agreement or any other Loan Document granting a DIP Lien to secure any of the Obligations.

"**Shareholders' Equity**" means, as of any date of determination, consolidated shareholders' equity of the Borrower and its Subsidiaries as of that date determined in accordance with GAAP.

"**Specified GAAP Change**" means the replacement of ASC 605 with ASC 606.

"**Statutory Reserve Rate**" means a fraction (expressed as a decimal), the numerator of which is the number one and the denominator of which is the number one minus the aggregate of the maximum reserve percentages (including any marginal, special, emergency or supplemental reserves) expressed as a decimal established by the FRB to which the Agent is subject with respect to the Adjusted LIBOR Rate, for eurocurrency funding (currently referred to as "Eurocurrency Liabilities" in Regulation D of the Board). Such reserve percentages shall include those imposed pursuant to such Regulation D. LIBOR Rate Loans shall be deemed to constitute eurocurrency funding and to be subject to such reserve requirements without benefit of or credit for proration, exemptions or offsets that may be available from time to time to any Lender under such Regulation D or any comparable regulation. The Statutory Reserve Rate shall be adjusted automatically on and as of the effective date of any change in any reserve percentage.

"**Subsidiary**" of a Person means a corporation, partnership, joint venture, limited liability company or other business entity of which a majority of the Equity Interests having ordinary voting power for the election of directors or other governing body are at the time beneficially owned, or

the management of which is otherwise controlled, directly, or indirectly through one or more intermediaries, or both, by such Person. Unless otherwise specified, all references herein to a “Subsidiary” or to “Subsidiaries” shall refer to a Subsidiary or Subsidiaries of a Loan Party, but shall exclude Excluded Subsidiaries.

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

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

“**Trading with the Enemy Act**” has the meaning provided in Section 10.18.

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

“**Type**” means, with respect to the portion of any Loan outstanding, its character as a Base Rate Loan or a LIBOR Rate Loan.

“**UCC**” or “**Uniform Commercial Code**” means the Uniform Commercial Code as in effect from time to time in the State of New York; provided, however, that if a term is defined in Article 9 of the Uniform Commercial Code differently than in another Article thereof, the term has the meaning set forth in Article 9; provided further that, if by reason of mandatory provisions of Law, perfection, or the effect of perfection or non-perfection, of a security interest in any Collateral or the availability of any remedy hereunder is governed by the Uniform Commercial Code as in effect in a jurisdiction other than the State of New York, “Uniform Commercial Code” means the Uniform Commercial Code as in effect in such other jurisdiction for purposes of the provisions hereof relating to such perfection or effect of perfection or non-perfection or availability of such remedy, as the case may be.

“**UFCA**” has the meaning provided in Section 10.21(c).

“**UFTA**” has the meaning provided in Section 10.21(c).

“**United States**” and “**U.S.**” mean the United States of America.

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

“**U.S. Tax Compliance Certificate**” has the meaning provided in Section 3.01(e)(ii)(B)(III).

“**Variance Report**” has the meaning assigned to such term in Section 6.01(c).

“**Weighted Average Life to Maturity**” means, when applied to any Indebtedness at any date, the number of years obtained by dividing: (a) the sum of the products obtained by multiplying

(i) the amount of each then remaining installment or other required payments of principal, including payment at final maturity, in respect thereof, by (ii) the number of years (calculated to the nearest one-twelfth) that will elapse between such date and the making of such payment by (b) the then outstanding principal amount of such Indebtedness; provided that for purposes of determining the Weighted Average Life to Maturity of any Indebtedness that is being modified, refinanced, refunded, renewed, replaced or extended, the effects of any prepayments made on such Indebtedness prior to the date of the applicable extension shall be disregarded.

*“Wilmington”* means Wilmington Trust, National Association and its successors.

**1.02 Other Interpretive Provisions.** With reference to this Agreement and each other Loan Document, unless otherwise specified herein or in such other Loan Document:

(a) The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words “include”, “includes” and “including” shall be deemed to be followed by the phrase “without limitation.” The word “will” shall be construed to have the same meaning and effect as the word “shall”. Unless the context requires otherwise, (i) any definition of or reference to any agreement, instrument or other document (including any Organization Document) shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein or in any other Loan Document), (ii) any reference herein to any Person shall be construed to include such Person’s successors and assigns, (iii) the words “herein”, “hereof” and “hereunder”, and words of similar import when used in any Loan Document, shall be construed to refer to such Loan Document in its entirety and not to any particular provision thereof, (iv) all references in a Loan Document to Articles, Sections, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Exhibits and Schedules to, the Loan Document in which such references appear, (v) any reference to any Law shall include all rules, regulations and orders thereunder and all statutory and regulatory provisions consolidating, amending, replacing or interpreting such Law and any reference to any Law or regulation shall, unless otherwise specified, refer to such Law or regulation as amended, modified or supplemented from time to time, and (vi) the words “asset” and “property” shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights.

(b) In the computation of periods of time from a specified date to a later specified date, the word “from” means “from and including;” the words “to” and “until” each mean “to but excluding;” and the word “through” means “to and including.”

(c) Section headings herein and in the other Loan Documents are included for convenience of reference only and shall not affect the interpretation of this Agreement or any other Loan Document.

(d) Any reference herein or in any other Loan Document to the satisfaction, repayment, or payment in full of the Obligations shall mean the repayment in Dollars in full in cash or immediately available funds other than unasserted contingent indemnification Obligations.

### **1.03 Accounting Terms.**

(a) Generally. All accounting terms not specifically or completely defined herein shall be construed in conformity with, and all financial data (including financial ratios and other financial calculations) required to be submitted pursuant to this Agreement shall be prepared in conformity with, GAAP applied on a consistent basis, as in effect from time to time, applied in a manner consistent with that used in preparing the Audited Financial Statements, except as otherwise specifically prescribed herein.

(b) Changes in GAAP. If at any time any change in GAAP would affect the computation of any financial ratio or requirement set forth in any Loan Document, and either the Borrower or the Required Lenders shall so request, the Agent, the Lenders and the Borrower shall negotiate in good faith to amend such ratio or requirement to preserve the original intent thereof in light of such change in GAAP (subject to the approval of the Required Lenders); provided that, until so amended, (i) such ratio or requirement shall continue to be computed in accordance with GAAP prior to such change therein and (ii) except with respect to the Specified GAAP Change, the Borrower shall provide to the Agent and the Lenders financial statements and other documents required under this Agreement or as reasonably requested hereunder setting forth a reconciliation between calculations of such ratio or requirement made before and after giving effect to such change in GAAP; provided further that, with respect to the Specified GAAP Change, on and following January 1, 2019 (and solely with respect to any period following January 1, 2019), all financial ratios and requirements set forth in any Loan Document shall be computed after giving effect to the Specified GAAP Change and all financial statements and other documents delivered by the Borrower with respect to such period shall be prepared after giving effect to the Specified GAAP Change.

**1.04 Rounding.** Any financial ratios required to be maintained by the Loan Parties pursuant to this Agreement shall be calculated by dividing the appropriate component by the other component, carrying the result to one place more than the number of places by which such ratio is expressed herein and rounding the result up or down to the nearest number (with a rounding-up if there is no nearest number).

**1.05 Times of Day.** Unless otherwise specified, all references herein to times of day shall be references to Eastern time (daylight or standard, as applicable).

## **ARTICLE II THE COMMITMENTS AND LOANS**

### **2.01 Loans.**

(a) Subject to the terms and conditions of this Agreement, and pursuant to and solely in accordance with the Budget, on the Closing Date, each Lender, agrees to

severally, and not jointly or jointly and severally, to make an Interim DIP Loan to and for the account of the Borrower as provided herein, in the aggregate amount of such Lender's Interim DIP Loan Commitment (subject to any limitations contained within the Interim DIP Order). The Interim DIP Loans shall be made in one draw on the Closing Date, and the Interim DIP Loan Commitments shall be immediately terminated after the funding of the Interim DIP Loans. Once repaid, no part of the Interim DIP Loans may be reborrowed.

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

## **2.02 Disbursement of Loans.**

Pending use in accordance with the Budget and subject to Section 7.11, all DIP Proceeds (including any intra-company transfers of such DIP Proceeds) shall be deposited into a Blocked Account and invested at all times by the applicable Loan Party in accordance with the Debtors' "first day" pleadings governing cash management. Any such DIP Proceeds may only be used by the Borrower in accordance with the Budget.

## **2.03 Payment of Loans.**

(a) The Borrower hereby unconditionally promises to pay to the Agent for the ratable account of each Lender the then unpaid principal amount of, and unpaid accrued interest on, each Loan of such Lender made to the Borrower, along with all other Obligations owing under any Loan Document, on the DIP Termination Date (or such earlier date on which the Loans become due and payable in accordance hereof) in cash without further application to or order of the Bankruptcy Court.

(b) Amounts repaid or prepaid in respect of Loans may not be reborrowed.

## **2.04 Prepayments of Loans.**

(a) The Borrower shall have the right at any time and from time to time, without premium or penalty, to prepay the Loans in whole or in part, as selected and designated by the Borrower, subject to the requirements of this Section.

(b) Unless the Required Lenders otherwise agree, in the event and on each occasion that any Net Proceeds are received by or on behalf of Borrower or any Subsidiary in respect of any Prepayment Event, the Borrower shall, upon receipt of such Net Proceeds, prepay in strict accordance with Section 2.04(e) the outstanding Loans in an aggregate amount equal to 100% of the amount of such Net Proceeds.

(c) The Borrower shall notify the Agent in writing of any prepayment hereunder not later than **1:00 p.m.**, New York City time, **three (3) Business Days** before the date of the proposed prepayment. Each such notice shall be irrevocable and shall specify the prepayment date, the principal amount of each Borrowing or portion thereof to be prepaid and, in the case of a mandatory prepayment, a reasonably detailed calculation of the amount of such prepayment. Promptly following receipt of any such notice, the Agent shall advise the Lenders of the contents thereof. Each prepayment of the Loans shall be applied ratably. Prepayments shall be accompanied by accrued interest to the extent required by Section 2.07.

(d) The Agent will promptly notify each Lender holding the Loans of the contents of the Borrower's prepayment notice delivered pursuant to Section 2.04(c) and of such Lender's *pro rata* share of the prepayment.

(e) Application of Prepayment. In connection with any voluntary prepayments by any Borrower pursuant to Section 2.04(a) and any mandatory prepayments by any Borrower of the Loans pursuant to Section 2.04(b), such prepayments shall be applied on a *pro rata* basis to the then outstanding Loans.

## **2.05 Making the Loans.**

(a) A Responsible Officer on behalf of the Borrower shall (I) give the Agent written notice in substantially the form of Exhibit F hereto (a "***Borrowing Request***"), not later than 1:00 PM (New York City time) on the date which is (i) one (1) Business Day prior the applicable DIP Loan Funding Date with respect to the Borrowing of any Interim DIP Loans and (ii) three (3) Business Days prior to the applicable DIP Loan Funding Date with respect to the Borrowing of any Final DIP Loans. The Borrowing Request shall be irrevocable and shall specify (i) the principal amount of the proposed Loan (which shall be denominated in Dollars), (ii) the Borrower's wiring instructions, (iii) confirmation that the Borrowing Request complies with the then applicable Budget and (iv) the proposed borrowing date, which must be an applicable Business Day. The Agent and the Lenders may act without liability upon the basis of written, telecopied or telephonic notice believed by the Agent in good faith to be from any Responsible Officer of Administrative Borrower designated in writing to the Agent. Each Borrower hereby waives the right to dispute the Agent's record of the terms of any such telephonic Borrowing Request. The Agent and each Lender shall be entitled to rely conclusively on any Responsible Officer's authority to request a Loan on behalf of the Borrower until the Agent receives written notice to the contrary. The Agent and the Lenders shall have no duty to verify the authenticity of the signature appearing on the written Borrowing Request.

(b) The Borrowing Request pursuant to this Section 2.05 shall be irrevocable and the Borrower shall be bound to make a Borrowing in accordance therewith.

(c) Except as otherwise provided in this Section 2.05(c), all Loans under this Agreement shall be made by the applicable Lenders simultaneously and proportionately to their *pro rata* shares of the Commitment of each such Lender, as the case may be, it being understood that no Lender shall be responsible for any default by any other Lender in that other Lender's obligations to make a Loan requested hereunder, nor

shall the Commitment of any Lender be increased or decreased as a result of the default by any other Lender in that other Lender's obligation to make a Loan requested hereunder, and each Lender shall be obligated to make the Loans required to be made by it by the terms of this Agreement regardless of the failure by any other Lender.

**2.06 No Discharge; Survival of Claims.** Until indefeasible payment in full (other than contingent obligations not yet due and payable) in cash of the Loans and all other Obligations, each of the Borrower and the Guarantors agrees that (a) the Obligations hereunder shall not be discharged by the entry of an order confirming a plan of reorganization or liquidation in any Chapter 11 Case (and each of the Borrower and the Guarantors, pursuant to Section 1141(d)(4) of the Bankruptcy Code, hereby waives any such discharge) and (b) the DIP Credit Facility Super-Priority Claims and the DIP Liens granted to the Agent pursuant to the DIP Orders and described in Section 2.13 shall not be affected in any manner by the entry of an order confirming a plan of reorganization or liquidation in any Chapter 11 Case, and such claims and Liens shall be paid in full in cash by any such plan.

**2.07 Interest.**

(a) Subject to the provisions of Section 2.07(b) below, (i) each LIBOR Rate Loan shall bear interest on the outstanding principal amount thereof for each Interest Period at a rate per annum equal to the Adjusted LIBOR Rate for such Interest Period plus the Applicable Margin for LIBOR Rate Loans and (ii) each Base Rate Loan shall bear interest on the outstanding principal amount thereof from the applicable borrowing date at a rate per annum equal to the Base Rate plus the Applicable Margin for Base Rate Loans.

(b) Notwithstanding the foregoing, immediately following the occurrence and during the continuance of an Event of Default, all principal of, and all interest on, any Loan or any other amount (including any fees) payable by the Borrower hereunder or under any other Loan Document shall automatically bear interest, after as well as before judgment, at a rate per annum equal to 2.00% plus the rate as provided in paragraph (a) of this Section.

(c) Accrued interest on each Loan shall be payable in cash in arrears on each Interest Payment Date for such Loan, commencing on the first Interest Payment Date following the month in which such Loan is made, provided that (i) interest accrued pursuant to paragraph (b) of this Section shall be payable on written demand, and (ii) in the event of any repayment or prepayment of any Loan, accrued interest on the principal amount repaid or prepaid shall be payable on the date of such repayment or prepayment.

**2.08 Fees.**

(a) [Reserved].

(b) Unused Commitment Fee. The Borrower shall pay to each Lender, for itself, a fee (the "**Unused Commitment Fee**") on the daily amount by which such Lender's pro rata share of the Commitment exceeds such Lender's pro rata share of the aggregate outstanding principal amount of the loans funded under the DIP Facility and (only after the entry of the Interim Order) an amount equal to 0.50% per annum, payable

in arrears on the last Business Day of each calendar month and on the date that the DIP Facility is terminated.

(c) Agent and Closing Fees. The Borrower shall pay to the Agent, KKR Credit and the other Lenders for their own account fees in the amounts and at the times specified in the applicable Fee Letter. Such fees shall be fully earned as set forth therein and shall not be refundable for any reason whatsoever.

**2.09 Computation of Interest and Fees.** All computations of interest for Base Rate Loans when the Base Rate is determined by *The Wall Street Journal's* "prime rate" shall be made on the basis of a year of 365 or 366 days, as the case may be, and actual days elapsed. All other computations of fees and interest shall be made on the basis of a 360-day year and actual days elapsed. Interest shall accrue on each Loan for the day on which such Loan is made, and shall not accrue on a Loan, or any portion thereof, for the day on which such Loan or such portion is paid. Each determination by the Agent of an interest rate or fee hereunder shall be conclusive and binding for all purposes, absent manifest error.

## **2.10 Evidence of Debt.**

The Loans made by each Lender shall be evidenced by one or more accounts or records maintained by the Agent in the ordinary course of business. In addition, each Lender may record in such Lender's internal records, an appropriate notation evidencing the date and amount of each Loan from such Lender, each payment and prepayment of principal of any such Loan, and each payment of interest, fees and other amounts due in connection with the Obligations due to such Lender. The accounts or records maintained by the Agent and each Lender shall be conclusive absent manifest error of the amount of the Loans made by the Lenders to the Borrower and the interest and payments thereon. Any failure to so record or any error in doing so shall not, however, limit or otherwise affect the obligation of the Borrower hereunder to pay any amount owing with respect to the Obligations. In the event of any conflict between the accounts and records maintained by any Lender and the accounts and records of the Agent in respect of such matters, the accounts and records of the Agent shall control in the absence of manifest error. Upon the request of any Lender made through the Agent, the Borrower shall execute and deliver to such Lender (through the Agent) a Note, which shall evidence such Lender's Loan in addition to such accounts or records. Each Lender may attach schedules to its Note and endorse thereon the date, Type (if applicable), amount and maturity of its Loan and payments with respect thereto. Upon receipt of an affidavit of a Lender as to the loss, theft, destruction or mutilation of such Lender's Note and upon cancellation of such Note, the Borrower will issue, in lieu thereof, a replacement Note in favor of such Lender, in the same principal amount thereof and otherwise of like tenor.

## **2.11 Payments Generally; Agent's Clawback.**

(a) General. All payments to be made by the Borrower shall be made without condition or deduction for any counterclaim, defense, recoupment or setoff. Except as otherwise expressly provided herein, all payments by the Borrower hereunder shall be made to the Agent, for the account of the respective Lenders to which such payment is owed, at the Agent's Office in Dollars and in immediately available funds not

later than 2:00 p.m. on the date specified herein. The Agent will promptly distribute to each Lender its Applicable Percentage (or other applicable share as provided herein) of such payment in like funds as received by wire transfer to such Lender's Lending Office. All payments received by the Agent after 2:00 p.m. shall, at the option of the Agent, be deemed received on the next succeeding Business Day and any applicable interest or fee shall continue to accrue. If any payment to be made by the Borrower shall come due on a day other than a Business Day, payment shall be made on the next following Business Day (other than with respect to payment of a LIBOR Rate Loan), and such extension of time shall be reflected in computing interest or fees, as the case may be.

(b) [Reserved].

(c) Payments by Borrower; Presumptions by Agent. Unless the Agent shall have received notice from the Borrower prior to the time at which any payment is due to the Agent for the account of any of the Lenders hereunder that the Borrower will not make such payment, the Agent may assume that the Borrower has made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to the Lenders the amount due. In such event, if the Borrower has not in fact made such payment, then each of the Lenders severally agrees to repay to the Agent forthwith on demand the amount so distributed to such Lender, in immediately available funds with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to the Agent, at the Federal Funds Rate.

(d) [Reserved].

(e) Obligations of Lenders Several. The obligations of the Lenders hereunder to make a Loan and to make payments hereunder are several and not joint. The failure of any Lender to make any Loan, to fund any such participation or to make any payment hereunder on any date required hereunder shall not relieve any other Lender of its corresponding obligation to do so on such date, and no Lender shall be responsible for the failure of any other Lender to so make its Loan, to purchase its participation or to make its payment hereunder.

(f) Funding Source. Nothing herein shall be deemed to obligate any Lender to obtain the funds for any Loan in any particular place or manner or to constitute a representation by any Lender that it has obtained or will obtain the funds for any Loan in any particular place or manner.

**2.12 Sharing of Payments by Lenders.** If any Lender shall, by exercising any right of setoff or counterclaim or otherwise, obtain payment in respect of any principal of, interest on, or other amounts with respect to, the Loans resulting in such Lender's receiving payment of a proportion of the aggregate amount of the Loans greater than its *pro rata* share thereof as provided herein (including as in contravention of the priorities of payment set forth in Section 8.03), then the Lender receiving such greater proportion shall (a) notify the Agent of such fact, and (b) purchase (for cash at face value) participations in the Loans of the other Lenders, or make such other adjustments as shall be equitable, so that the benefit of all such payments shall be shared by the Lenders ratably and in the priorities set forth in Section 8.03, provided that:

(i) if any such participations or subparticipations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations or subparticipations shall be rescinded and the purchase price restored to the extent of such recovery, without interest; and

(ii) the provisions of this Section shall not be construed to apply to (x) any payment made by the Loan Parties pursuant to and in accordance with the express terms of this Agreement or (y) any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans to any Eligible Assignee or Participant, other than to the Borrower or any Subsidiary thereof (as to which the provisions of this Section shall apply).

Each Loan Party consents to the foregoing and agrees, to the extent it may effectively do so under Law, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against such Loan Party rights of setoff and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of such Loan Party in the amount of such participation.

### **2.13 Super Priority Nature of Obligations and Lenders' DIP Liens.**

(a) The priority of the DIP Secured Parties' DIP Liens on the DIP Collateral owned by the Loan Parties shall be set forth in the DIP Orders.

(b) All Obligations shall constitute DIP Credit Facility Super-Priority Claims.

(c) Upon entry of the Interim DIP Order, the DIP Liens granted to the Agent for the benefit of the Lenders on the DIP Collateral shall be valid and automatically perfected on the basis with the priority set forth in the DIP Orders.

(d) Except as set forth herein or the DIP Orders, the Debtors shall not seek approval of any other claim having a priority superior or *pari passu* to that granted to the Agent and Lenders by the DIP Orders while any Obligations remain outstanding.

**2.14 Release.** The Borrower and each of the Guarantors hereby acknowledges effective upon entry of the Interim DIP Order, and subject to the terms thereof and of the Final DIP Order, that the Borrower, the Guarantors and any of their Subsidiaries have no defense, counterclaim, offset, recoupment, claim or demand of any kind or nature whatsoever that can be asserted to reduce or eliminate all of any part of the Borrower's, the Guarantors' or any Subsidiaries' liability to repay the Agent or any Lender as provided in this Agreement or to seek affirmative relief or damages of any kind or nature from the Agent or any Lender. Upon entry of the Interim DIP Order, the Borrower and the Guarantors, each in their own right and on behalf of their bankruptcy estates, and on behalf of all their successors, assigns, Subsidiaries and any Affiliates and any Person acting for and on behalf of, or claiming through them, hereby fully, finally and forever release and discharge each Agent and the Lenders and all of the Agent's and the Lenders' respective officers, directors, servants, agents, advisors, attorneys, assigns, heirs,

parents, subsidiaries, and each Person acting for or on behalf of any of them of and from any and all actions, causes of action, demands, suits, claims, liabilities, Liens, lawsuits, adverse consequences, amounts paid in settlement, costs, damages, debts, deficiencies, diminution in value, disbursements, expenses, losses and other obligations of any kind or nature whatsoever, in each case, existing at the time of entry of the Interim DIP Order, whether in law, equity or otherwise (including, without limitation, any so-called “lender liability” or equitable subordination or recharacterization claims or defenses and those arising under Sections 541 through 550 of the Bankruptcy Code and interest or other carrying costs, penalties, legal, accounting and other professional costs, and incidental, consequential and punitive damages payable to third parties), directly or indirectly arising out of, connected with or relating to this Agreement, the DIP Orders and the transactions (including, for avoidance of doubt, the Transactions) contemplated hereby, and all other agreements, certificates, instruments and other documents and statements (whether written or oral) related to any of the foregoing. Notwithstanding anything herein to the contrary, the Borrower and Guarantors shall not have any obligation to indemnify or hold harmless any Agent or any Lender hereunder with respect to liabilities to the extent they result from gross negligence or willful misconduct of such Agent or Lender, as applicable, as finally determined by a court of competent jurisdiction.

## 2.15 Waiver of Certain Rights.

(a) On and after the Closing Date, and on behalf of themselves and their estates, and for so long as any Obligations shall be outstanding, the Borrower and the other Loan Parties hereby irrevocably waive any right, pursuant to sections 364(c) or 364(d) of the Bankruptcy Code or otherwise, to grant any Lien of equal or greater priority than the DIP Liens securing the Obligations, or to approve a claim of equal or greater priority than the Obligations.

(b) The DIP Orders shall provide that in no event shall the Agent, the Lenders, the Prepetition Term B Agents or the Prepetition Term B Lenders under the Prepetition Term B Credit Agreement (the “*Prepetition Term B Secured Parties*”) be subject to the equitable doctrine of “marshalling” or any similar doctrine with respect to the DIP Collateral or the Prepetition Term B Collateral, as applicable, and all proceeds thereof shall be received and applied pursuant to the DIP Orders, the Loan Documents and the Prepetition Term B Loan Documents, as applicable, notwithstanding any other agreement or provision to the contrary.

(c) Upon entry of the Final DIP Order, subject to the Carve-Out, the Debtors (on behalf of themselves and their estates) shall irrevocably waive, and shall be prohibited from asserting in the Chapter 11 Cases or any successor cases, (i) any surcharge claim under sections 105(a) or 506(c) of the Bankruptcy Code for any costs and expenses incurred in connection with the preservation, protection or enhancement of, or realization by the Agent, the Lenders, or the Prepetition Term B Secured Parties upon the DIP Collateral or the Prepetition Term B Collateral, and (ii) the Agent, the Lenders, and the Prepetition Term B Secured Parties shall each 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 Agent, the Lenders, and the

Prepetition Term B Secured Parties with respect to proceeds, product, offspring or profits of any of the Prepetition Term B Collateral or DIP Collateral.

**2.16 Grant of Security; Security for Obligations; Debtors Remain Liable.**

(a) Pursuant to the DIP Orders, each Debtor hereby grants to the Agent, for the benefit of the DIP Secured Parties, a security interest in all of such Debtor's right, title and interest in and to all of the following real and personal property, in each case whether now owned or existing or hereafter acquired, possessed or arising, whether tangible or intangible, wherever located, including any such property in which a security interest is granted to the Agent pursuant to, as applicable, the Loan Documents, the DIP Orders, or any other order of the Bankruptcy Court to secure the Obligations (all of which collectively shall hereinafter be referred to as the "***DIP Collateral***"):

- (i) all Accounts;
- (ii) all Chattel Paper;
- (iii) all Money and all Deposit Accounts, together with all amounts on deposit from time to time in such Deposit Accounts;
- (iv) all Documents;
- (v) all General Intangibles, including Payment Intangibles and all Intellectual Property;
- (vi) all Goods, including Inventory, Equipment and Fixtures;
- (vii) all Instruments;
- (viii) all Intellectual Property;
- (ix) all Investment Property;
- (x) all Letter-of-Credit Rights and other Supporting Obligations;
- (xi) all Records;
- (xii) all Commercial Tort Claims;
- (xiii) all books and records relating to any of the foregoing;
- (xiv) all leasehold interests in real property;
- (xv) rights, claims or causes of action that the Loan Parties may have with respect to DIP Collateral;

(xvi) all present and future claims, rights, interests, assets and properties recovered by or on behalf of the Loan Parties or any trustee of any Loan Party (whether in the Chapter 11 Cases or any subsequent case to which any Chapter 11 Case is converted), including, without limitation, all such property recovered as a result of transfers or obligations avoided or actions maintained or taken pursuant to, inter alia, Sections 542, 544, 545, 547, 548, 549, 550, 552 and 553 of the Bankruptcy Code, and the proceeds thereof, subject to the terms of the DIP Orders; and

(xvii) all Proceeds and Accessions with respect to any of the foregoing DIP Collateral.

Each category of DIP Collateral set forth above shall have the meaning set forth in the UCC (to the extent such term is defined in the UCC), it being the intention of Debtors that the description of the DIP Collateral set forth above be construed to include the broadest possible range of assets, in all instances as more fully set forth in the DIP Orders.

(b) Notwithstanding anything herein to the contrary, and subject to the terms of the DIP Orders, in no event shall the DIP Collateral include (nor shall any defined term used therein include), and no Grantor shall be deemed to have granted a security interest in, any of such Grantor's rights or interests in any Excluded Property.

(c) The DIP Orders grant DIP Liens with respect to the DIP Collateral, and the DIP Collateral is collateral security for, the prompt payment in full when due and owing, whether at stated maturity, by required prepayment, declaration, acceleration, demand or otherwise, of all Obligations. It is the intention of the parties that if the Agent shall fail to have a perfected Lien in any particular property or assets of any Loan Party for any reason whatsoever, the provisions of this Agreement and/or the other Loan Documents, together with the DIP Orders, all financing statements and other public financing relating to Liens filed or recorded by the Agent against the Loan Parties and, with respect to all Loan Parties, the DIP Orders and any other order entered by the Bankruptcy Court to secure the Obligations, would be sufficient to create a perfected first priority DIP Lien in any property or assets that such Loan Party may receive upon the sale, lease, license, exchange, transfer or disposition of such particular property or assets, then all such "proceeds" of such particular property or assets shall be included in the DIP Collateral.

(d) Anything contained herein to the contrary notwithstanding, (a) each Debtor shall remain liable under any contracts and agreements included in the DIP Collateral, to the extent set forth therein, to perform all of its duties and obligations thereunder to the same extent as if this Agreement had not been executed, (b) the exercise by the Agent of any of its rights hereunder or under any other Loan Document shall not release any Debtor from any of its duties or obligations under the contracts and agreements included in the DIP Collateral unless the Agent has expressly in writing assumed such duties and obligations and released the Debtors from such duties and obligations, and (c) the Agent shall not have any obligation or liability under any contracts, licenses, and agreements included in the DIP Collateral by reason of this Agreement, nor shall the Agent be obligated to perform any of the obligations or duties of any Debtor thereunder or to take

any action to collect or enforce any claim for payment assigned hereunder unless the Agent has expressly in writing assumed such duties and obligations and released the Debtors from such duties and obligations.

**ARTICLE III  
TAXES, YIELD PROTECTION AND ILLEGALITY**

**3.01 Taxes.**

(a) Payments Free of Taxes; Obligation to Withhold; Payments on Account of Taxes.

(i) Any and all payments by or on account of any obligation of any Loan Party under any Loan Document shall be made without deduction or withholding for any Taxes, except as required by applicable Laws. If any applicable Laws (as determined in good faith by the Agent or an applicable Loan Party) require the deduction or withholding of any Tax from any such payment by the Agent or a Loan Party (as applicable), then the Agent or such Loan Party (as applicable) shall be entitled to make such deduction or withholding, upon the basis of the information and documentation to be delivered pursuant to subsection (e) below.

(ii) If any Loan Party or the Agent shall be required by any applicable Laws other than the Code to withhold or deduct any Taxes from any payment, then (A) such Loan Party or the Agent, as required by such Laws, shall withhold or make such deductions as are determined by it to be required based upon the information and documentation it has received pursuant to subsection (e) below, (B) such Loan Party or the Agent, to the extent required by such Laws, shall timely pay the full amount withheld or deducted to the relevant Governmental Authority in accordance with such Laws, and (C) to the extent that the withholding or deduction is made on account of Indemnified Taxes, the sum payable by the applicable Loan Party shall be increased as necessary so that after any required withholding or the making of all required deductions (including deductions applicable to additional sums payable under this Section 3.01) the applicable Recipient receives an amount equal to the sum it would have received had no such withholding or deduction been made.

(b) Payment of Other Taxes by the Borrower. Without limiting the provisions of subsection (a) above, the Borrower shall timely pay to the relevant Governmental Authority in accordance with applicable Law, or at the option of the applicable Lender timely reimburse it for the payment of, any Other Taxes.

(c) Tax Indemnifications.

(i) The Loan Parties shall, and each Loan Party does hereby, jointly and severally indemnify each Recipient, and shall make

payment in respect thereof within 10 days after demand therefor, for the full amount of any Indemnified Taxes (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this Section 3.01) payable or paid by such Recipient or required to be withheld or deducted from a payment to such Recipient, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to the Borrower by a Lender (with a copy to the Agent), or by the Agent on its own behalf or on behalf of a Lender, shall be conclusive absent manifest error.

(ii) Each Lender shall, and does hereby, severally indemnify, and shall make payment in respect thereof within 10 days after demand therefor, (x) the Agent against any Indemnified Taxes attributable to a Lender (but only to the extent that any Loan Party has not already indemnified the Agent for such Indemnified Taxes and without limiting the obligation of the Loan Parties to do so), (y) the Agent and the Loan Parties, as applicable, against any Taxes attributable to a Lender's failure to comply with the provisions of Section 10.06(d) relating to the maintenance of a Participant Register and (z) the Agent and the Loan Parties, as applicable, against any Excluded Taxes attributable to such Lender, in each case, that are payable or paid by the Agent or a Loan Party in connection with any Loan Document, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Lender by the Agent shall be conclusive absent manifest error. Each Lender hereby authorizes the Agent to set off and apply any and all amounts at any time owing to such Lender under this Agreement or any other Loan Document against any amount due to the Agent under this clause (ii).

(d) Evidence of Payments. Upon request by the Borrower or the Agent, as the case may be, after any payment of Taxes by the Borrower or by the Agent to a Governmental Authority as provided in this Section 3.01, the Borrower shall deliver to the Agent or the Agent shall deliver to the Borrower, as the case may be, the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of any return required by Laws to report such payment or other evidence of such payment reasonably satisfactory to the Borrower or the Agent, as the case may be.

(e) Status of Lenders; Tax Documentation.

(i) Any Lender that is entitled to an exemption from or reduction of withholding Tax with respect to payments made under any Loan Document shall deliver to the Borrower and the Agent, at the time or times reasonably requested by the Borrower or the Agent, such properly completed and executed documentation reasonably requested by the

Borrower or the Agent as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender, if reasonably requested by the Borrower or the Agent, shall deliver such other documentation prescribed by applicable Law or reasonably requested by the Borrower or the Agent as will enable the Borrower or the Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution and submission of such documentation (other than such documentation set forth in Section 3.01(e)(ii)(A), (ii)(B) and (ii)(D) below) shall not be required if in the Lender's reasonable judgment such completion, execution or submission would subject such Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender.

(ii) Without limiting the generality of the foregoing,

(A) any Lender that is a U.S. Person shall deliver to the Borrower and the Agent on or prior to the date on which such Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Agent), executed originals of IRS Form W-9 certifying that such Lender is exempt from U.S. federal backup withholding tax;

(B) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Borrower and the Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Agent), whichever of the following is applicable:

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

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

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

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

(C) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Borrower and the Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Agent), executed originals of any other form prescribed by applicable Law as a basis for claiming exemption from or a reduction in U.S. federal withholding Tax, duly completed, together with such supplementary documentation as may be prescribed by applicable Law to permit the Borrower or the Agent to determine the withholding or deduction required to be made; and

(D) if a payment made to a Lender under any Loan Document would be subject to withholding Tax imposed pursuant to or in connection with FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Lender shall deliver to the Borrower and the Agent at the time or times prescribed by applicable Law and at such time or times reasonably requested by the Borrower or the

Agent such documentation prescribed by applicable Law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by the Borrower or the Agent as may be necessary for the Borrower and the Agent to comply with their obligations under FATCA and to determine that such Lender has complied with such Lender's obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of this clause (D), "FATCA" shall include any amendments made to FATCA after the date of this Agreement.

(iii) Each Lender agrees that if any form or certification it previously delivered pursuant to this Section 3.01 expires or becomes obsolete or inaccurate in any respect, it shall update such form or certification or promptly notify the Borrower and the Agent in writing of its legal inability to do so.

(f) Treatment of Certain Refunds. Unless required by applicable Laws, at no time shall the Agent have any obligation to file for or otherwise pursue on behalf of a Lender, or have any obligation to pay to any Lender, any refund of Taxes withheld or deducted from funds paid for the account of such Lender. If any Recipient determines, in its sole discretion exercised in good faith, that it has received a refund of any Taxes as to which it has been indemnified by any Loan Party or with respect to which any Loan Party has paid additional amounts pursuant to this Section 3.01, it shall pay to the Loan Party an amount equal to such refund (but only to the extent of indemnity payments made, or additional amounts paid, by a Loan Party under this Section 3.01 with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) incurred by such Recipient, and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund), provided that the Loan Party, upon the request of the Recipient, agrees to repay the amount paid over to the Loan Party (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to the Recipient in the event the Recipient is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this subsection, in no event will the applicable Recipient be required to pay any amount to the Loan Party pursuant to this subsection the payment of which would place the Recipient in a less favorable net after-Tax position than such Recipient would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. This subsection shall not be construed to require any Recipient to make available its tax returns (or any other information relating to its taxes that it deems confidential) to any Loan Party or any other Person.

(g) Tax Reporting. Notwithstanding anything to the contrary contained herein, the Agent shall have no duty to prepare or file any federal or state tax report or return with respect to any funds held pursuant to this Agreement or any income earned thereon, except for the delivery and filing of tax information reporting forms required to be delivered and filed with the Internal Revenue Service.

(h) Survival. Each party's obligations under this Section 3.01 shall survive the resignation or replacement of the Agent or any assignment of rights by, or the replacement of, a Lender, and the repayment, satisfaction or discharge of all of the Obligations.

**3.02 Illegality.** If any Lender determines that any Law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for any Lender or its applicable Lending Office to make, maintain or fund LIBOR Rate Loans, or to determine or charge interest rates based upon the LIBOR Rate, or any Governmental Authority has imposed material restrictions on the authority of such Lender to purchase or sell, or to take deposits of, Dollars in the London interbank market, then, on notice thereof by such Lender to the Borrower through the Agent, (i) any obligation of such Lender to make or continue LIBOR Rate Loans or to Convert Base Rate Loans to LIBOR Rate Loans shall be suspended, and (ii) if such notice asserts the illegality of such Lender making or maintaining Base Rate Loans the interest rate on which is determined by reference to the LIBOR Rate component of the Base Rate, the interest rate on which Base Rate Loans of such Lender shall, if necessary to avoid such illegality, be determined by the Agent without reference to the LIBOR Rate component of the Base Rate, in each case, until such Lender notifies the Agent and the Borrower that the circumstances giving rise to such determination no longer exist. Upon receipt of such notice, (x) the Borrower shall, upon demand from such Lender (with a copy to the Agent) together with documentation reasonably supporting such request, prepay or, if applicable, Convert all LIBOR Rate Loans of such Lender to Base Rate Loans (the interest rate on which Base Rate Loans of such Lender shall, if necessary to avoid such illegality, be determined by the Agent without reference to the LIBOR Rate component of the Base Rate), either on the last day of the Interest Period therefor, if such Lender may lawfully continue to maintain such LIBOR Rate Loans to such day, or immediately, if such Lender may not lawfully continue to maintain such LIBOR Rate Loans and (y) if such notice asserts the illegality of such Lender determining or charging interest rates based upon the LIBOR Rate, the Agent shall during the period of such suspension compute the Base Rate applicable to such Lender without reference to the LIBOR Rate component thereof until the Agent is advised in writing by such Lender that it is no longer illegal for such Lender to determine or charge interest rates based upon the LIBOR Rate. Upon any such prepayment or Conversion, the Borrower shall also pay accrued interest on the amount so prepaid or Converted.

**3.03 Inability to Determine Rates.**

(a) If the Required Lenders determine that for any reason in connection with any request for a LIBOR Rate Loan or a Conversion to or continuation thereof that (a) Dollar deposits are not being offered to banks in the London interbank market for the applicable amount and Interest Period of such LIBOR Rate Loan, (b) adequate and reasonable means do not exist for determining the LIBOR Rate for any requested Interest Period with respect to a proposed LIBOR Rate Loan, or (c) the LIBOR Rate for any requested Interest Period with respect to a proposed LIBOR Rate Loan does not adequately and fairly reflect the cost to such Lenders of funding such Loan, the Agent will promptly so notify the Borrower and each Lender. Thereafter, (x) the obligation of the Lenders to make or maintain LIBOR Rate Loans shall be suspended, and (y) in the event of a determination described in the preceding sentence with respect to the LIBOR Rate component of the Base Rate, the utilization of the LIBOR Rate component in determining

the Base Rate shall be suspended, in each case until the Agent (upon the instruction of the Required Lenders) revokes such notice. Upon receipt of such notice, the Borrower may revoke any pending request for a Conversion to or continuation of LIBOR Rate Loans or, failing that, will be deemed to have Converted such request into a request Base Rate Loans in the amount specified therein.

(b) Notwithstanding anything to the contrary in this Agreement or any other Loan Documents, if the Agent (in consultation with the KKR Representative) determines (which determination shall be conclusive absent manifest error), or the Borrower or Required Lenders notify the Agent (with, in the case of the Required Lenders, a copy to the Borrower) that the Borrower or Required Lenders (as applicable) have determined, that:

(i) adequate and reasonable means do not exist for ascertaining LIBOR for any requested Interest Period, including, without limitation, because the LIBOR Screen Rate is not available or published on a current basis and such circumstances are unlikely to be temporary; or

(ii) the administrator of the LIBOR Screen Rate or a Governmental Authority having jurisdiction over the Agent has made a public statement identifying a specific date after which LIBOR or the LIBOR Screen Rate shall no longer be made available, or used for determining the interest rate of loans (such specific date, the “*Scheduled Unavailability Date*”), or

(iii) syndicated loans currently being executed, or that include language similar to that contained in this Section, are being executed or amended (as applicable) to incorporate or adopt a new benchmark interest rate to replace LIBOR,

(c) then, reasonably promptly after such determination by the Agent (in consultation with the KKR Representative) or receipt by the Agent of such notice, as applicable, the Agent, the KKR Representative and the Borrower may amend this Agreement to replace LIBOR with an alternate benchmark rate (including any mathematical or other adjustments to the benchmark (if any) incorporated therein), giving due consideration to any evolving or then existing convention for similar U.S. dollar denominated syndicated credit facilities for such alternative benchmarks (any such proposed rate, a “*LIBOR Successor Rate*”), together with any proposed LIBOR Successor Rate Conforming Changes and any such amendment shall become effective at 5:00 p.m. on the fifth Business Day after the Agent shall have posted such proposed amendment to all Lenders and the Borrower unless, prior to such time, any Lender has delivered to the Agent written notice that such Lender does not accept such amendment.

(d) If no LIBOR Successor Rate has been determined and the circumstances under clause (i) above exist or the Scheduled Unavailability Date has occurred (as applicable), the Agent will promptly so notify the Borrower and each Lender. Thereafter, (x) the obligation of the Lenders to make or maintain LIBOR Rate Loans shall

be suspended, (to the extent of the affected LIBOR Rate Loans or Interest Periods), and (y) the LIBOR Rate component shall no longer be utilized in determining the Base Rate. Upon receipt of such notice, the Borrower may revoke any pending request for a Loan, Conversion to or continuation of LIBOR Rate Loans (to the extent of the affected LIBOR Rate Loans or Interest Periods) or, failing that, will be deemed to have Converted such request into a request for a Base Rate Loan (subject to the foregoing clause (y)) in the amount specified therein.

Notwithstanding anything else herein, any definition of LIBOR Successor Rate shall provide that in no event shall such LIBOR Successor Rate be less than zero for purposes of this Agreement.

### **3.04 Increased Costs; Reserves on LIBOR Rate Loans.**

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

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

(ii) subject any Recipient to any Taxes (other than (A) Indemnified Taxes, (B) Taxes described in clauses (b) through (d) of the definition of "Excluded Taxes" and (C) Connection Income Taxes) on its loans, loan principal, letters of credit, commitments, or other obligations, or its deposits, reserves, other liabilities or capital attributable thereto; or

(iii) impose on any Lender or the London interbank market any other condition, cost or expense (other than Taxes) affecting this Agreement or LIBOR Rate Loans made by such Lender;

and the result of any of the foregoing shall be to increase the cost to such Lender of making, Converting to, continuing or maintaining any LIBOR Rate Loan (or of maintaining its obligation to make any such Loan), or to reduce the amount of any sum received or receivable by such Lender hereunder (whether of principal, interest or any other amount) then, upon request of such Lender, together with documentation reasonably supporting such request, the Loan Parties will pay to such Lender such additional amount or amounts as will compensate such Lender for such additional costs incurred or reduction suffered.

(b) Capital Requirements. If any Lender determines that any Change in Law affecting such Lender or any Lending Office of such Lender or such Lender's holding company, if any, regarding capital requirements has or would have the effect of reducing the rate of return on such Lender's capital or on the capital or liquidity of such Lender's holding company, if any, as a consequence of this Agreement, or the Loans made by such Lender, to a level below that which such Lender or such Lender's holding company could have achieved but for such Change in Law (taking into consideration such Lender's policies and the policies of such Lender's holding company with respect to capital adequacy), then upon request from time to time from such Lender together with

documentation reasonably supporting such request, the Loan Parties will pay to such Lender such additional amount or amounts as will compensate such Lender or such Lender's holding company for any such reduction suffered.

(c) Certificates for Reimbursement. A certificate of a Lender setting forth the amount or amounts necessary to compensate such Lender or its holding company, as the case may be, as specified in subsection (a) or (b) of this Section and delivered to the Borrower shall be conclusive absent manifest error. The Loan Parties shall pay such Lender the amount shown as due on any such certificate within 10 days after receipt thereof.

(d) Delay in Requests. Failure or delay on the part of any Lender to demand compensation pursuant to the foregoing provisions of this Section shall not constitute a waiver of such Lender's right to demand such compensation, provided that the Loan Parties shall not be required to compensate a Lender pursuant to the foregoing provisions of this Section for any increased costs incurred or reductions suffered more than nine months prior to the date that such Lender notifies the Borrower of the Change in Law giving rise to such increased costs or reductions and of such Lender's intention to claim compensation therefor (except that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the nine-month period referred to above shall be extended to include the period of retroactive effect thereof).

(e) Reserves on LIBOR Rate Loans. The Borrower shall pay to each Lender, as long as such Lender shall be required to maintain reserves with respect to liabilities or assets consisting of or including Eurocurrency funds or deposits (currently known as "*Eurocurrency liabilities*"), additional interest on the unpaid principal amount of each LIBOR Rate Loan equal to the actual costs of such reserves allocated to such Loan by such Lender (as determined by such Lender in good faith, which determination shall be conclusive), which shall be due and payable on each date on which interest is payable on such Loan, provided that the Borrower shall have received at least 10 days' prior notice (with a copy to the Agent) of such additional interest from such Lender. If a Lender fails to give notice 10 days prior to the relevant Interest Payment Date, such additional interest shall be due and payable 10 days from receipt of such notice.

(f) Notwithstanding anything to the contrary contained in this Section 3.04, no Lender shall demand compensation for any increased costs pursuant to this Section 3.04 if it shall not be the general policy or practice of such Lender to demand such compensation in similar circumstances and unless such demand is generally consistent with such Lender's treatment of comparable borrowers of such Lender in the United States with similarly affected loans.

**3.05 Compensation for Losses.** Upon demand of any Lender (with a copy to the Agent) from time to time, which demand shall set forth in reasonable detail the basis for such demand for compensation, the Borrower shall promptly compensate such Lender for and hold such Lender harmless from any loss, cost or expense incurred by it as a result of:

(a) any continuation, Conversion, payment or prepayment of any Loan other than a Base Rate Loan on a day other than the last day of the Interest Period for such Loan (whether voluntary, mandatory, automatic, by reason of acceleration, or otherwise);

(b) any failure by the Borrower (for a reason other than the failure of such Lender to make a Loan) to prepay, borrow, continue or Convert any Loan other than a Base Rate Loan on the date or in the amount notified by the Borrower; or

(c) any assignment of a LIBOR Rate Loan on a day other than the last day of the Interest Period therefor as a result of a request by the Borrower pursuant to Section 10.13;

excluding any loss of anticipated profits from the failure to collect the then Applicable Margin, but including any loss or expense arising from the liquidation or reemployment of funds obtained by it to maintain such Loan or from fees payable to terminate the deposits from which such funds were obtained. The Borrower shall also pay any customary administrative fees charged by such Lender in connection with the foregoing.

For purposes of calculating amounts payable by the Borrower to the Lenders under this Section 3.05, each Lender shall be deemed to have funded each LIBOR Rate Loan made by it at the LIBOR Rate for such Loan by a matching deposit or other borrowing in the London interbank market for a comparable amount and for a comparable period, whether or not such LIBOR Rate Loan was in fact so funded.

### **3.06 Mitigation Obligations; Replacement of Lenders.**

(a) Designation of a Different Lending Office. If any Lender requests compensation under Section 3.04, or the Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.01, or if any Lender gives a notice pursuant to Section 3.02, then such Lender shall use reasonable efforts to designate a different Lending Office for funding or booking its Loan hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the judgment of such Lender, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Section 3.01 or Section 3.04, as the case may be, in the future, or eliminate the need for notice pursuant to Section 3.02, as applicable, and (ii) in each case, would not subject such Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender. The Borrower hereby agrees to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment.

(b) Replacement of Lenders. If any Lender requests compensation under Section 3.04, or if the Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.01 and, in each case, such Lender has declined or is unable to designate a different Lending Office in accordance with Section 3.06(a), the Borrower may replace such Lender in accordance with Section 10.13.

**3.07 Survival.** All of the Borrower's obligations under this Article III shall survive repayment of all Obligations hereunder and resignation of the Agent.

#### **ARTICLE IV CONDITIONS PRECEDENT**

**4.01 Conditions to Closing Date.** The effectiveness of this Agreement and obligation is subject to satisfaction, among other things, of the following conditions precedent in a manner satisfactory to the Agent and the Required Lenders:

(a) The Agent and the Required Lenders (or their counsel) shall have received from the Borrower a counterpart of this Agreement and each other Loan Document signed on behalf of each applicable party.

(b) The Agent and the Required Lenders (or their counsel) shall have received: (i) a copy of each Organization Document of the Borrower and the Guarantors as of the Closing Date; (ii) signature and incumbency certificates of the officers of such Person executing the Loan Documents to which it is a party as of the Closing Date; (iii) resolutions of the board of directors or similar governing body of the Borrower and the Guarantors approving and authorizing the execution, delivery and performance of this Agreement and the other Loan Documents to which such Loan Party is a party as of the Closing Date, certified as of the Closing Date by such Loan Party as being in full force and effect without modification or amendment; and (iv) a good standing certificate (to the extent such concept is known in the relevant jurisdiction) from the applicable Governmental Authority of the Borrower and the Guarantors' respective jurisdiction of incorporation, organization or formation dated a recent date prior to the Closing Date.

(c) All reasonable and documented (in summary form) out-of-pocket fees, costs, disbursements and expenses, accrued and unpaid as of the Closing Date, of (i) the Agent (limited, in the case of counsel, to all reasonable and documented out-of-pocket fees, costs, disbursements and expenses of the Agent's outside counsel, JBBG, and any successor counsel, and any firm of local counsel engaged by the Agent in connection with the Chapter 11 Cases), including without limitation Morris, Nichols, Arshat & Tunnell LLP, (ii) KKR Representative (limited, in the case of counsel, to all reasonable and documented out-of-pocket fees, costs, disbursements and expenses of the Required Lenders' outside counsel, K&S, and, Morris, Nichols, Arshat & Tunnell LLP, as local counsel engaged by the Required Lenders in connection with the Debtors' Chapter 11 Cases), and (iii) Province, as financial advisor to KKR Representative, shall have been paid in full in cash (which payment may be made from DIP Proceeds), in each case to the extent invoices for any such accrued and unpaid amounts are provided to the Debtors no later than two (2) Business Days prior to the Closing Date. The Agent and KKR Credit shall have received fully executed copies of the Fee Letters and the payment of the fees thereunder on the Closing Date, to the extent such fees are due on the Closing Date.

(d) Other than the DIP Orders, there shall not exist any law, regulation, ruling, judgment, order, injunction or other restraint that prohibits, restricts or imposes a materially adverse condition on the DIP Facility or the exercise by the Agent at the

direction of the Required Lenders of its rights as a secured party with respect to the DIP Collateral.

(e) The Bankruptcy Court shall have entered the Interim DIP Order within three (3) Business Days following the Petition Date, which Interim DIP Order shall include, without limitation, copies of the DIP Facility and the Initial Budget as exhibits thereto, entered on notice to such parties as may be satisfactory to the Required Lenders, (i) authorizing and approving the DIP Facility and the transactions contemplated thereby, including, without limitation, the granting of the superpriority claim status, security interests and priming liens, and the payment of all fees, referred to herein and therein; (ii) authorizing the lifting or modification of the Automatic Stay to permit the Borrowers and the Guarantors to perform their obligations, and the Lenders to exercise their rights and remedies, with respect to the DIP Facility; (iii) authorizing the use of cash collateral and providing for adequate protection in favor of the Prepetition Term B Secured Parties, as and to the extent provided herein and therein; and (iv) reflecting such other terms and conditions that are mutually satisfactory to the Required Lenders and the Debtors, in their respective discretion in each case, which Interim DIP Order shall be in full force and effect, shall not have been reversed, vacated or stayed and shall not have been amended, supplemented or otherwise modified without the prior written consent of the Agent at the direction of the Required Lenders.

(f) The Agent shall have received at least three (3) Business Days prior to the Closing Date, all documentation and other information required by the Agent and regulatory authorities under applicable “know your customer” and anti-money laundering rules and regulations, including, without limitation, the PATRIOT Act, and the Agent shall have completed, with results satisfactory to the Agent, its review procedures regarding the respective documentation and information.

(g) The representations and warranties of each Loan Party set forth in Article V and in each of the Loan Documents shall be true and correct in all material respects on and as of the Closing Date, except to the extent such representations and warranties expressly relate to an earlier date (in which case such representations and warranties shall be true and correct in all material respects on and as of such earlier date).

(h) Since the Petition Date, other than the Known Events, there has been no event or circumstance, either individually or in the aggregate, that has resulted, or could reasonably be expected to result, in a Material Adverse Effect.

(i) Other than as a result of or in connection with the Chapter 11 Cases, all governmental and third party consents and approvals reasonably necessary to be obtained by the Borrower in connection with the DIP Facility, if any, shall have been obtained (without the imposition of any conditions that are not reasonably acceptable to the Required Lenders in their reasonable discretion) or permitted pursuant to the DIP Order, as applicable, and shall remain in effect.

(j) The Agent and the Required Lenders shall have received the Initial Budget in form and substance satisfactory to the Agent at the direction of the Required Lenders.

(k) All first day motions, including those related to the DIP Facility, filed by the Loan Parties and related orders entered by the Bankruptcy Court in the Chapter 11 Cases shall be in form and substance reasonably satisfactory to the Agent at the direction of the Required Lenders.

(l) Other than the Chapter 11 Cases, as stayed upon the commencement of the Chapter 11 Cases, or as otherwise disclosed to the Agent and Required Lenders prior to the Petition Date, there shall exist no action, suit, investigation, litigation or proceeding pending or threatened in writing in any court or before any arbitrator or governmental authority that (i) would reasonably be expected to result in a Material Adverse Effect or (ii) restrains, prevents or purports to affect materially adversely the legality, validity or enforceability of the DIP Facility or the consummation of the transactions contemplated thereby.

(m) Subject to entry of the Interim DIP Order, the Agent, for the benefit of the Lenders, shall have a valid and perfected DIP Lien on and security interest in the DIP Collateral of the Debtors on the basis and with the priority set forth herein.

(n) The Debtors shall have entered into the restructuring support agreement (the “*RSA*”) with the Required Consenting Lenders (as defined in the RSA) in accordance with its terms and the RSA shall otherwise become effective as to such parties, and the RSA shall continue to be in full force and effect according to its terms.

(o) The Debtors shall have entered into all stalking horse purchase agreements as set forth in and pursuant to the RSA.

**4.02 Conditions to Extensions of Loans.** The obligation of the Lenders to make the Interim DIP Loans on the Closing Date and Final DIP Loans following the Final DIP Closing Date until the Commitment Termination Date shall include the satisfaction of the following conditions precedent in a manner satisfactory to the Agent and the Required Lenders (each, a “*DIP Loan Funding Date*”):

(a) The representations and warranties of each Loan Party set forth in Article V and in each of the Loan Documents shall be true and correct in all material respects on and as of the Closing Date or such other DIP Loan Funding Date, as applicable, except to the extent such representations and warranties expressly relate to an earlier date (in which case such representations and warranties shall be true and correct in all material respects on and as of such earlier date).

(b) At the time of and immediately after giving effect to the Interim DIP Loans or the Final DIP Loans, as applicable, no Default or Event of Default shall have occurred and be continuing.

(c) The Agent shall have received a Borrowing Request relating to the Interim DIP Loans or the Final DIP Loans, as applicable, in accordance with Section 2.05, which shall be in accordance with the Initial Budget or then applicable Budget Update, as applicable.

(d) With respect to the Final DIP Loans, the Bankruptcy Court shall have entered the Final DIP Order within twenty (23) calendar days following the Petition Date, in form and substance satisfactory to the Agent at the direction of the Required Lenders, which Final DIP Order shall include, a Budget Update, as necessary, as an exhibit thereto, entered on notice to such parties as may be satisfactory to the Agent acting at the direction of the Required Lenders and otherwise as required by the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure and the Local Bankruptcy Rules of the Bankruptcy Court, (i) authorizing and approving, on a final basis, the DIP Facility and the transactions contemplated hereby, including, without limitation, the granting of the superpriority claim status, security interests and priming liens, and the payment of all fees, referred to herein; (ii) authorizing, on a final basis, the lifting or modification of the automatic stay to permit the Borrower and the Guarantors to perform their obligations, and the Lenders to exercise their rights and remedies, with respect to the DIP Facility; (iii) authorizing, on a final basis, the use of cash collateral and providing for adequate protection in favor of the Prepetition Term B Secured Parties; and (iv) reflecting such other terms and conditions that are mutually satisfactory to the Agent (at the direction of the Required Lenders) and the Debtors, in their respective discretion, in each case, which Final DIP Order shall be in full force and effect, shall not have been reversed, vacated or stayed and shall not have been amended, supplemented or otherwise modified without the prior written consent of the Agent (at the direction of the Required Lenders).

(e) The making of the Loans shall not violate any requirement of law and shall not be enjoined, temporarily, preliminarily or permanently.

(f) The making of the Loans shall be authorized pursuant to the then applicable DIP Order.

(g) Other than the DIP Orders, there shall not exist any law, regulation, ruling, judgment, order, injunction or other restraint that prohibits, restricts or imposes a materially adverse condition on the DIP Facility or the exercise by the Agent at the direction of the Lenders of its rights as a secured party with respect to the DIP Collateral.

(h) The RSA is in full force and effect according to its terms as to the Loan Parties and the Consenting Lenders (as defined in the RSA).

(i) Other than the Known Events, since the Petition Date there shall not have occurred a Material Adverse Effect.

(j) Other than the Chapter 11 Cases, as stayed upon the commencement of the Chapter 11 Cases, or as otherwise disclosed to the Agent prior to the Petition Date, there shall exist no action, suit, investigation, litigation or proceeding pending or threatened in writing in any court or before any arbitrator or governmental authority that (i) would reasonably be expected to result in a Material Adverse Effect or (ii) restrains, prevents or

purports to affect materially adversely the legality, validity or enforceability of the DIP Facility or the consummation of the transactions contemplated thereby.

(k) The Loan Parties shall be in compliance with (i) the applicable DIP Order, and (ii) the Budget (subject to Permitted Variances).

## **ARTICLE V REPRESENTATIONS AND WARRANTIES**

To induce the Credit Parties to enter into this Agreement and to make Loans hereunder, each Loan Party represents and warrants to the Agent and the other Credit Parties that:

**5.01 Existence, Qualification and Power.** Each Loan Party and each of their Subsidiaries (a) is a corporation, limited liability company, partnership or limited partnership, duly incorporated, organized or formed, validly existing and, where applicable, in good standing under the Laws of the jurisdiction of its incorporation, organization or formation, (b) subject to entry by the Bankruptcy Court of the applicable Orders, has all requisite power and authority and all requisite governmental licenses, permits, authorizations, consents and approvals to (i) own or lease its assets and carry on its business and (ii) other than with respect to Subsidiaries that are not Loan Parties, execute, deliver and perform its obligations under the Loan Documents to which it is a party, and (c) is duly qualified and is licensed and, where applicable, in good standing under the Laws of each jurisdiction where its ownership, lease or operation of properties or the conduct of its business requires such qualification or license; except in each case referred to in clause (c), to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect. Schedule 5.01 annexed hereto sets forth, as of the Closing Date, each Loan Party's name as it appears in official filings in its state of incorporation or organization, its state of incorporation or organization, organization type, organization number, if any, issued by its state of incorporation or organization, and its federal employer identification number.

**5.02 Authorization; No Contravention.** Subject to entry by the Bankruptcy Court of the DIP Orders, the execution, delivery and performance by each Loan Party of each Loan Document to which such Person is or is to be a party, has been duly authorized by all necessary corporate or other organizational action, and does not and will not (a) contravene the terms of any of such Person's Organization Documents; (b) conflict with or result in any breach, termination, or contravention of, or constitute a default under, or require any payment to be made under (i) any Material Contract or any Material Indebtedness to which such Person is a party or affecting such Person or the properties of such Person or any of its Subsidiaries or (ii) any order, injunction, writ or decree of any Governmental Authority or any arbitral award to which such Person or its property is subject; (c) result in or require the creation of any Lien upon any asset of any Loan Party (other than Liens in favor of the Agent under the Security Documents); or (d) violate any applicable Law, except in the case of clauses (b)(ii) and (d), to the extent that such conflict or violation would not reasonably be expected to result in a Material Adverse Effect.

**5.03 Governmental Authorization; Other Consents.** No approval, consent, exemption, authorization, or other action by, or notice to, or filing with, any Governmental Authority or any other Person is necessary or required in connection with the execution, delivery or performance by, or enforcement against, any Loan Party of this Agreement or any other Loan

Document, except for (a) the perfection or maintenance of the DIP Liens and the Prepetition Term B Liens or (b) such as have been obtained or made and are in full force and effect.

**5.04 Binding Effect.** This Agreement has been, and each other Loan Document, when delivered, will have been, duly executed and delivered by each Loan Party that is party thereto. Subject to entry by the Bankruptcy Court of the applicable Orders, this Agreement constitutes, and each other Loan Document when so delivered will constitute, a legal, valid and binding obligation of such Loan Party, enforceable against each Loan Party that is party thereto in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other Laws affecting creditors' rights generally and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law.

**5.05 Financial Statements; Budget; No Material Adverse Effect.**

(a) The unaudited Consolidated balance sheet of the Borrower and its Subsidiaries dated September 30, 2020, as restated, and the related Consolidated statements of income or operations, Shareholders' Equity and cash flows for the Fiscal Quarter ended on that date (i) were prepared in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein, and (ii) fairly present the financial condition of the Borrower and its Subsidiaries as of the date thereof and their results of operations for the period covered thereby, subject, in the case of clauses (i) and (ii), to the absence of footnotes and to normal year-end audit adjustments.

(b) The Borrower has heretofore furnished to the Agent the Initial Budget. The Initial Budget and each Budget delivered thereafter are based on good faith estimates and assumptions believed by management of the Borrower to be reasonable and fair in light of current conditions and facts known to the Borrower at the time delivered.

(c) Since the Petition Date (other than in connection with the Bankruptcy Cases), there has been no event or circumstance, either individually or in the aggregate, that has had or could reasonably be expected to have a Material Adverse Effect.

**5.06 Litigation.** Other than as disclosed on Schedule 5.06 hereto, there are no actions, suits, proceedings, claims or disputes pending or, to the knowledge of the Loan Parties after due and diligent investigation, threatened or contemplated, at law, in equity, in arbitration or before any Governmental Authority, by or against any Loan Party or any of its Subsidiaries or against any of its properties or revenues that (a) purport to affect or pertain to this Agreement or any other Loan Document, or any of the transactions contemplated hereby, or (b) either individually or in the aggregate, if determined adversely, could reasonably be expected to have a Material Adverse Effect.

**5.07 No Default.** As of the Petition Date, no Default or Event of Default has occurred and is continuing or would result from the consummation of the transactions contemplated by this Agreement or any other Loan Document.

**5.08 Ownership of Property; Liens.**

(a) Each of the Loan Parties has good marketable title in fee simple to or valid leasehold interests or use rights in, all Real Estate necessary in the ordinary conduct of its business, except for (i) Permitted Prior Liens, and (ii) such defects in, or failures to have, title as could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. Each of the Loan Parties and each of their Subsidiaries has good and marketable title to, or valid licenses to use, all personal property and assets material to the ordinary conduct of its business, including, without limitation, the DIP Collateral, except for such defects in, or failures to have, title as could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(b) Schedule 5.08(b)(1) sets forth the address (including street address, county and state) of all Real Estate (excluding Leases, easements, rights of way and similar rights) that is owned by the Loan Parties, together with a list of the holders of any mortgage or other Lien thereon as of the Closing Date. Schedule 5.08(b)(2) sets forth the address (including street address, county and state) of all material Leases of the Loan Parties, together with the name of each lessor and its contact information with respect to each such Lease. Each of such Leases is in full force and effect and the Loan Parties are not in default of any material term thereof.

#### **5.09 Environmental Compliance.**

(a) No Loan Party (i) has failed to comply with any Environmental Law or to obtain, maintain or comply with any permit, license or other approval required under any Environmental Law, (ii) has become subject to any Environmental Liability, (iii) has received notice of any claim with respect to any Environmental Liability or (iv) knows of any basis for any Environmental Liability, except, in each case (i) to (iv), as could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(b) Except as could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, (i) none of the properties currently owned or operated by any Loan Party is listed or, to the knowledge of the Loan Parties proposed for listing, on the NPL or on the CERCLIS; (ii) to the knowledge of the Loan Parties, there are no underground or above-ground storage tanks or any surface impoundments, septic tanks, pits, sumps or lagoons in which Hazardous Materials are being treated, stored or disposed on any property currently owned or operated by any Loan Party; (iii) there is no asbestos or asbestos-containing material on any property currently owned or operated by any Loan Party; and (iv) Hazardous Materials have not been released, discharged or disposed of on any property currently owned or operated by any Loan Party in violation of any Environmental Law.

(c) No Loan Party is undertaking, either individually or together with other potentially responsible parties, any investigation or assessment or remedial or response action relating to any actual or threatened release, discharge or disposal of Hazardous Materials at any site, location or operation, either voluntarily or pursuant to the order of any Governmental Authority or the requirements of any Environmental Law, except, in each case, as could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect; and to the knowledge of the Loan Parties, all Hazardous

Materials generated, used, treated, handled or stored at, or transported to or from, any property currently owned or operated by any Loan Party have been disposed of in a manner not reasonably expected to have a Material Adverse Effect.

**5.10 Insurance.** The properties of the Loan Parties are insured with financially sound and reputable insurance companies which are not Affiliates of the Loan Parties, in such, with such deductibles and covering such risks (including, without limitation, workmen's compensation, public liability, business interruption, property damage and directors and officers liability insurance) as are customarily carried by companies engaged in similar businesses and owning similar properties in localities where the Loan Parties operates. Schedule 5.10 sets forth a description of all insurance maintained by or on behalf of the Loan Parties as of the Closing Date. As of the Petition Date, each insurance policy listed on Schedule 5.10 is in full force and effect and all premiums in respect thereof that are due and payable have been paid.

**5.11 Taxes.** The Loan Parties and each of their Subsidiaries (a) have filed all United States federal, state and other material tax returns and reports required to be filed, and (b) have paid all United States federal, state and other material taxes, assessments, fees and other governmental charges levied or imposed upon them or their properties, income or assets otherwise due and payable, except in each case of clauses (a) and (b), those (i) which are being contested in good faith by appropriate proceedings being diligently conducted, for which adequate reserves have been provided in accordance with GAAP or (ii) as could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. There is no proposed tax assessment against any Loan Party that would, if made, have a Material Adverse Effect. No Loan Party or any Subsidiary thereof is a party to any tax sharing agreement.

**5.12 ERISA Compliance.**

(a) Each Pension Plan is in compliance in all material respects with the applicable provisions of ERISA, the Code and other U.S. federal or state Laws, except where any failure could not reasonably be expected to have a Material Adverse Effect. Each Pension Plan that is intended to be a qualified plan under Section 401(a) of the Code has received a favorable determination letter from the Internal Revenue Service to the effect that the form of such Plan is qualified under Section 401(a) of the Code and the trust related thereto has been determined by the Internal Revenue Service to be exempt from federal income tax under Section 501(a) of the Code, or an application for such a letter is currently being processed by the Internal Revenue Service. To the knowledge of the Borrower, nothing has occurred that would prevent or cause the loss of such tax-qualified status.

(b) There are no pending or, to the knowledge of the Borrower, threatened claims, actions or lawsuits, or action by any Governmental Authority, with respect to any Plan that could reasonably be expected to have a Material Adverse Effect. There has been no non-exempt prohibited transaction or violation of the fiduciary responsibility rules with respect to any Plan that has resulted or could reasonably be expected to result in a Material Adverse Effect.

(c) (i) No ERISA Event has occurred, and neither the Borrower nor any ERISA Affiliate is aware of any fact, event or circumstance that could reasonably be expected to constitute or result in an ERISA Event with respect to any Pension Plan; (ii) the Borrower and each ERISA Affiliate has met all applicable requirements under the Pension Funding Rules in respect of each Pension Plan, and no waiver of the minimum funding standards under the Pension Funding Rules has been applied for or obtained; (iii) neither the Borrower nor any ERISA Affiliate has incurred any liability to the PBGC other than for the payment of premiums, and there are no premium payments which have become due that are unpaid; (iv) neither the Borrower nor any ERISA Affiliate has engaged in a transaction that could be subject to Section 4069 or Section 4212(c) of ERISA; and (v) no Pension Plan has been terminated by the plan administrator thereof nor by the PBGC, and no event or circumstance has occurred or exists that could reasonably be expected to cause the PBGC to institute proceedings under Title IV of ERISA to terminate any Pension Plan, except, in each of clauses (i) through (v), as could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(d) The Borrower represents and warrants as of the Petition Date that the Borrower is not and will not be using “plan assets” (within the meaning of 29 CFR § 2510.3-101, as modified by Section 3(42) of ERISA) of one or more Plans in connection with the Loans.

**5.13 Subsidiaries; Equity Interests.** As of the Petition Date, the Loan Parties have no Subsidiaries other than those specifically disclosed in Part (a) of Schedule 5.13, which Schedule sets forth the legal name, jurisdiction of incorporation or formation and authorized Equity Interests of each such Subsidiary. All of the outstanding Equity Interests in such Subsidiaries have been validly issued, are fully paid and non-assessable and are owned by a Loan Party in the amounts specified on Part (a) of Schedule 5.13 free and clear of all Liens except for the DIP Liens, the Prepetition Term B Liens and Permitted Prior Liens. Except as set forth in Schedule 5.13, there are no outstanding rights to purchase any Equity Interests in any Subsidiary. As of the Petition Date, the Loan Parties have no equity investments in any other corporation or entity other than those specifically disclosed in Part (b) of Schedule 5.13. All of the outstanding Equity Interests in the Loan Parties have been validly issued, and are fully paid and non-assessable and are owned in the amounts specified on Part (c) of Schedule 5.13 free and clear of all Liens except for the DIP Liens, the Prepetition Term B Liens and Permitted Prior Liens. The copies of the Organization Documents of each Loan Party and each amendment thereto provided on the Petition Date are true and correct copies of each such document, each of which is valid and in full force and effect.

**5.14 Margin Regulations; Investment Company Act.**

(a) No Loan Party is engaged or will be engaged, principally or as one of its important activities, in the business of purchasing or carrying margin stock (within the meaning of Regulation U issued by the FRB), or extending credit for the purpose of purchasing or carrying margin stock. None of the proceeds of the Loan shall be used directly or indirectly for the purpose of purchasing or carrying any margin stock, for the purpose of reducing or retiring any Indebtedness that was originally incurred to purchase or carry any margin stock or for any other purpose that might cause any of the Loan to be

considered a “purpose credit” within the meaning of Regulations T, U, or X issued by the FRB.

(b) None of the Loan Parties, any Person Controlling any Loan Party, or any Subsidiary is or is required to be registered as an “investment company” under the Investment Company Act of 1940.

**5.15 Disclosure.** Each Loan Party and each of their Subsidiaries has disclosed to the Agent and the Lenders all agreements, instruments and corporate or other restrictions to which it is subject, and all other matters known to it, that, in each case, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect. As of the Petition Date, no report, financial statement, certificate or other information relating to the Borrower or any of its Subsidiaries (other than any information of a general economic or industry specific nature and third party consultants reports) furnished by or on behalf of any Loan Party to the Agent or any Lender in connection with the transactions contemplated hereby and the negotiation of this Agreement or delivered hereunder or under any other Loan Document (in each case, as modified or supplemented by other information so furnished prior to the execution hereof or thereof) when taken as a whole contains any material misstatement of fact or omits to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, immediately after giving effect to any supplements thereto, not materially misleading; provided that with respect to projected financial information, the Loan Parties represent only that such information was prepared in good faith based upon assumptions believed to be reasonable at the time.

**5.16 Compliance with Laws.** Subject to entry by the Bankruptcy Court of the applicable Orders, as applicable, each of the Loan Parties and each of their Subsidiaries is in compliance in all material respects with the requirements of all Laws and all orders, writs, injunctions and decrees applicable to it or to its properties, except in such instances in which (a) such requirement of Law or order, writ, injunction or decree is being contested in good faith by appropriate proceedings diligently conducted or (b) the failure to comply therewith, either individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect.

**5.17 Intellectual Property; Licenses, Etc..** The Loan Parties and each of their Subsidiaries own, or are licensed to use, all Material Intellectual Property, and the use thereof by the Loan Parties or their Subsidiaries does not infringe upon the rights of any other Person. All items of Material Intellectual Property as of the Petition Date are: (a) subsisting and have not been adjudged invalid or unenforceable, in whole or part; and (b) to the knowledge of the Loan Parties, valid, in full force and effect and not in known conflict with the rights of any Person. The Loan Parties have made all filings and recordations necessary in the exercise of reasonable and prudent business judgment to protect their interests in the Material Intellectual Property in the United States Patent and Trademark Office, and the United States Copyright Office, as appropriate, including, the performance of all acts and the payment of all required fees and taxes to maintain each and every item of Material Intellectual Property in full force and effect. As of the Petition Date, no litigation is pending or, to the knowledge of any Loan Party, threatened which contains allegations respecting the validity, enforceability, infringement or ownership of any of the Material Intellectual Property. No Loan Party is in breach of or default under the provisions of any of the

Material Licenses, nor is there any event, fact, condition or circumstance which, with notice or passage of time or both, would constitute or result in a conflict, breach, default or event of default under, any of the foregoing which reasonably could be expected to result in, either individually or in the aggregate, a Material Adverse Effect.

**5.18 [Reserved].**

**5.19 Security Interest.** This Agreement, the DIP Orders and the Security Documents, subject to entry of the DIP Orders, are effective to create in favor of the Agent, for the benefit of the DIP Secured Parties legal, valid, and enforceable first-priority Liens on, and security interests in, the DIP Collateral pledged hereunder or thereunder, in each case, with respect to priority, subject to no Liens other than the Carve-Out and Permitted Prior Liens with the relative priorities granted pursuant to the terms of the DIP Orders. Pursuant to the terms of the DIP Orders, no filing or other action will be necessary to perfect or protect such DIP Liens and security interests. Pursuant to and to the extent provided in the DIP Orders, the Indebtedness of the Debtors under this Agreement will constitute part of the DIP Credit Facility Super-Priority Claims.

**5.20 Chapter 11 Cases.** The Chapter 11 Cases were commenced on the Petition Date in accordance with the applicable law and proper notice has been or will be given of (i) the motion seeking approval of the Loan Documents and the DIP Orders, and (ii) the hearing for the entry of the Final DIP Order.

**5.21 Deposit Accounts.** Annexed hereto as Schedule 5.21 is a list of all Deposit Accounts maintained by the Loan Parties as of the Closing Date, which Schedule includes, with respect to each Deposit Account (i) the name and address of the depository; (ii) the account number(s) maintained with such depository; (iii) a contact person at such depository, and (iv) the identification of each Blocked Account Bank. The DIP Orders grant the DIP Agent “control” (as such term is used in the UCC) over such Deposit Accounts for the benefit of the DIP Secured Parties.

**5.22 DIP Orders.** As of the date of each Borrowing, the Loan Parties are in compliance in all material respects with the terms and conditions of the DIP Orders. Each of the Interim DIP Order (with respect to the period prior to the entry of the Final DIP Order) or the Final DIP Order (from and after the date the Final DIP Order is entered), as applicable, is in full force and effect, shall not have been reversed, vacated or stayed and shall not have been amended, supplemented or otherwise modified without the prior written consent of the Agent acting at the direction of the Required Lenders.

**5.23 Material Contracts.** Schedule 5.23 sets forth all Material Contracts (other than Material Licenses set forth on Schedule 5.17) to which any Loan Party is a party or is bound as of the Petition Date. The Loan Parties have delivered true, correct and complete copies of such Material Contracts to the Agent on or before the Petition Date. The Loan Parties are not in breach or in default in any material respect of or under any Material Contract and have not received any notice of default under, or of the intention of any other party thereto to terminate, any Material Contract.

**5.24 Sanctions Concerns and Anti-Corruption Laws.**

(a) No Loan Party, nor any Subsidiary, nor, to the knowledge of the Loan Parties, any director, officer, employee, agent, affiliate or representative thereof, is an individual or entity that is, or is owned or controlled by any individual or entity that is (i) currently the subject or target of any Sanctions, (ii) included on OFAC's List of Specially Designated Nationals, HMT's Consolidated List of Financial Sanctions Targets and the Investment Ban List, or any similar list enforced by any other relevant sanctions authority or (iii) located, organized or resident in a Designated Jurisdiction.

(b) The Loan Parties and their Subsidiaries have conducted their business in compliance with the United States Foreign Corrupt Practices Act of 1977, the UK Bribery Act 2010 and other similar anti-corruption legislation in other jurisdictions, and have instituted and maintained policies and procedures designed to promote and achieve compliance with such laws and applicable Sanctions, and to the knowledge of the Borrower, the Loan Parties and their Subsidiaries are in compliance with such anti-corruption laws and applicable Sanctions in all material respects.

**5.25 Beneficial Ownership Certification.** As of the Petition Date, the information included in the Beneficial Ownership Certification, if applicable, is true and correct in all respects.

**5.26 Excluded Subsidiaries.** No Subsidiary constitutes an Excluded Subsidiary and no Loan Party shall form or otherwise acquire any Excluded Subsidiary.

## ARTICLE VI AFFIRMATIVE COVENANTS

So long as any Loan or other Obligation hereunder shall remain unpaid or unsatisfied (other than contingent indemnification claims for which a claim has not been asserted), the Loan Parties shall and shall cause their Subsidiaries to:

**6.01 Financial Statements.** Deliver to the Agent, in form and detail satisfactory to the KKR Representative:

(a) as soon as available, but in any event within 30 days after the end of each month, a Consolidated balance sheet of the Borrower and its Subsidiaries as at the end of such month, and the related consolidated statements of income or operations, Shareholders' Equity and cash flows for such month, setting forth in each case in comparative form the figures for (A) the corresponding month of the previous Fiscal Year and (B) the corresponding portion of the previous Fiscal Year, all in reasonable detail, certified by a Responsible Officer of the Borrower as fairly presenting the financial condition, results of operations, Shareholders' Equity and cash flows of the Borrower and its Subsidiaries as of the end of such Fiscal Quarter in accordance with GAAP, subject only to normal year-end audit adjustments and the absence of footnotes;

(b) as soon as available, but in any event within 45 days after the end of each Fiscal Quarters of each Fiscal Year of the Borrower (other than the last Fiscal Quarter of each Fiscal Year of the Borrower), a Consolidated balance sheet of the Borrower and its Subsidiaries as at the end of such Fiscal Quarter, and the related consolidated statements

of income or operations, Shareholders' Equity and cash flows for such Fiscal Quarter and for the portion of the Borrower's Fiscal Year then ended, setting forth in each case in comparative form the figures for (A) such period set forth in the projections delivered pursuant to Section 6.01(c) hereof, (B) the corresponding Fiscal Quarter of the previous Fiscal Year and (C) the corresponding portion of the previous Fiscal Year, all in reasonable detail, certified by a Responsible Officer of the Borrower as fairly presenting the financial condition, results of operations, Shareholders' Equity and cash flows of the Borrower and its Subsidiaries as of the end of such Fiscal Quarter in accordance with GAAP, subject only to normal year-end audit adjustments and the absence of footnotes; and

(c) following delivery of the Budget on the Closing Date, by not later than 5:00 p.m. Eastern Time on the second Wednesday following the Closing Date and by not later than 5:00 p.m. Eastern Time on each Wednesday following the end of each Testing Period, a Budget Update, in each case, in form reasonably satisfactory to the Agent at the direction of the Required Lenders and in substance satisfactory to the Agent at the direction of the Required Lenders for the subsequent 13 week period consistent with the form of the Budget, and such Budget Update shall become the "Budget" for the purposes of the DIP Facility upon the Agent's acknowledgement at the direction of the Required Lenders that the proposed Budget Update is substantially in the form of the Budget and in substance satisfactory to the Agent at the direction of the Required Lenders (provided, that, until a new Budget has been approved by the Agent at the direction of the Required Lenders, the most recently approved Budget shall govern); and (iv) beginning on the second Wednesday following the Closing Date (by not later than 5:00 p.m. Eastern Time), and on every Wednesday following the end of each Testing Period (by not later than 5:00 p.m. Eastern Time), a variance report (the "*Variance Report*") setting forth actual cash receipts and disbursements and cash flows of the Debtors for the prior Testing Period and setting forth all the variances, on a line-item and aggregate basis, from the amount set forth for such period as compared to the applicable approved Budget delivered by the Debtors, in each case, on a cumulative rolling two-week, three-week or four-week basis, as applicable (and each such Variance Report shall include explanations for all material variances and shall be certified by the Chief Financial Officer of the Debtors).

**6.02 Certificates; Other Information.** Deliver to the Agent, in form and detail satisfactory to the KKR Representative:

(a) [reserved];

(b) concurrently with the delivery of the financial statements referred to in Sections 6.01(a) and 6.01(b), a duly completed Compliance Certificate signed by a Responsible Officer of the Borrower, and in the event of any change in generally accepted accounting principles used in the preparation of such financial statements, the Borrower shall also provide a statement of reconciliation conforming such financial statements to GAAP;

(c) concurrently with the delivery of the financial statements referred to in Sections 6.01(a) and (b), financial statements with respect to any Excluded Subsidiaries of the Loan Parties;

(d) promptly upon receipt, copies of any detailed audit reports, management letters or recommendations submitted to the board of directors (or the audit committee of the board of directors) of the Borrower by its Registered Public Accounting Firm in connection with the accounts or books of the Loan Parties, or any audit of any of them, including, without limitation, specifying any Internal Control Event;

(e) promptly after the same are available, copies of each annual report, proxy or financial statement or other report or communication sent to the stockholders of the Borrower, and copies of all annual, regular, periodic and special reports and registration statements which the Borrower may file or be required to file with the SEC under Section 13 or 15(d) of the Securities Exchange Act of 1934 or with any national securities exchange;

(f) [reserved];

(g) [reserved];

(h) [reserved];

(i) promptly after the Agent's, or any Lender's through the Agent, request therefor, copies of all Material Contracts and documents evidencing Material Indebtedness;

(j) promptly, and in any event within five Business Days after receipt thereof by the Borrower, copies of each notice or other correspondence received from any Governmental Authority (including, without limitation, the SEC (or comparable agency in any applicable non-U.S. jurisdiction)) concerning any proceeding with, or investigation or possible investigation or other inquiry by such Governmental Authority regarding financial or other operational results of any Loan Party or any other matter which, if adversely determined, could reasonably be expected to have a Material Adverse Effect;

(k) promptly, any material amendments, modifications or waivers with respect to any Material Contract or Material License;

(l) promptly, any Material License entered into by a Loan Party or its Subsidiary;

(m) promptly following any reasonable request therefor, provide information and documentation reasonably requested by the Agent or any Lender which are necessary for purposes of compliance with applicable "know your customer" and anti-money-laundering rules and regulations, including, without limitation, the Act and the Beneficial Ownership Regulation;

(n) promptly, such additional information regarding the business affairs, financial condition or operations of any Loan Party, or compliance with the terms of the Loan Documents, as the Agent or any Lender may from time to time reasonably request;

- (o) [reserved]; and
- (p) [reserved].

Documents required to be delivered pursuant to Section 6.01(a) or (b), or Section 6.02 (to the extent any such documents are included in materials otherwise filed with the SEC) may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date (i) on which the Borrower posts such documents, or provides a link thereto on the Borrower's website on the Internet at the website address listed on Schedule 10.02; or (ii) on which such documents are posted on the Borrower's behalf on an Internet or intranet website, if any, to which each Lender and the Agent have access (whether a commercial, third-party website or whether sponsored by the Agent); provided that: (i) the Borrower shall deliver paper copies of such documents to the Agent or any Lender that requests the Borrower to deliver such paper copies until a written request to cease delivering paper copies is given by the Agent or such Lender and (ii) the Borrower shall notify the Agent (by electronic mail) of the posting of any such documents and provide to the Agent by electronic mail electronic versions (i.e., soft copies) of such documents. The Agent shall have no obligation to request the delivery or to maintain copies of the documents referred to above, and in any event shall have no responsibility to monitor compliance by the Loan Parties with any such request for delivery, and each Lender shall be solely responsible for requesting delivery to it or maintaining its copies of such documents.

**6.03 Notices.** Deliver written notice to the Agent:

- (a) of the occurrence of any Default or Event of Default;
- (b) of any matter that has resulted or could reasonably be expected to result in a Material Adverse Effect;
- (c) of any breach or non-performance of, or any default under, a Material Contract or with respect to Material Indebtedness of any Loan Party that has resulted or could reasonably be expected to result in a Material Adverse Effect;
- (d) of any dispute, litigation, investigation, proceeding or suspension between any Loan Party and any Governmental Authority, or the commencement of, or any material development in, any litigation or proceeding affecting any Loan, including pursuant to any applicable Environmental Laws, in each case that has resulted or could reasonably be expected to result in a Material Adverse Effect;
- (e) of the occurrence of any ERISA Event that has resulted or could reasonably be expected to result in a Material Adverse Effect;
- (f) of any change in the Borrower's senior executive officers;
- (g) of the discharge by the Borrower of its present Registered Public Accounting Firm or any withdrawal or resignation by such Registered Public Accounting Firm;

(h) of the filing of any Lien for unpaid Taxes against any Loan Party that has resulted or could reasonably be expected to result in a Material Adverse Effect;

(i) of the Borrower's obtaining knowledge that any application or registration relating to any Material Intellectual Property (whether now or hereafter existing) may become abandoned or dedicated, or of any material adverse determination or material development (including the institution of, or any such determination or development in, any proceeding in the United States Patent and Trademark Office, the United States Copyright Office or any court) regarding the Borrower's ownership of any Material Intellectual Property; and

(j) of the failure to renew, or the cancelation of, any Material License.

Each notice pursuant to this Section shall be accompanied by a statement of a Responsible Officer of the Borrower setting forth details of the occurrence referred to therein and stating what action the Borrower has taken and proposes to take with respect thereto.

Documents required to be delivered pursuant to this Section 6.03 (to the extent any such documents are included in materials otherwise filed with the SEC) may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date (i) on which the Borrower posts such documents, or provides a link thereto on the Borrower's website on the Internet at the website address listed on Schedule 10.02; or (ii) on which such documents are posted on the Borrower's behalf on an Internet or intranet website, if any, to which each Lender and the Agent have access (whether a commercial, third-party website or whether sponsored by the Agent); provided that the Borrower shall notify the Agent (by electronic mail) of the posting of any such documents and provide to the Agent by electronic mail electronic versions (i.e., soft copies) of such documents.

**6.04 Payment of Obligations.** Subject to the Budget, pay and discharge as the same shall become due and payable, all its obligations and liabilities, including (a) all tax liabilities, assessments and governmental charges or levies upon it or its properties or assets, (b) all lawful claims (including, without limitation, claims of landlords, warehousemen, customs brokers, freight forwarders, consolidators, and carriers) which, if unpaid, would by Law become a Lien upon its property (other than Permitted Prior Liens); and (c) all Material Indebtedness, as and when due and payable, but subject to any subordination provisions contained in any instrument or agreement evidencing such Indebtedness, except, in each case, where (i) the validity or amount thereof is being contested in good faith by appropriate proceedings and such Loan Party has set aside on its books adequate reserves with respect thereto in accordance with GAAP, or (ii) the failure to make such payment could not reasonably be expected to result in a Material Adverse Effect.

**6.05 Preservation of Existence, Etc..** (a) Preserve, renew and maintain in full force and effect its legal existence and good standing under the Laws of the jurisdiction of its organization or formation except in a transaction permitted by Section 7.04 or 7.05; and (b) take all reasonable action to maintain all rights, privileges, permits, licenses and franchises necessary or desirable in the normal conduct of its business, except to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect.

**6.06 Maintenance of Properties; Material Intellectual Property**

(a) (i) Maintain, preserve and protect all of its material properties and equipment necessary in the operation of its business in good working order and condition, ordinary wear and tear, casualty and condemnation excepted; and (ii) make all necessary repairs thereto and renewals and replacements thereof except where the failure to do so could not reasonably be expected to have a Material Adverse Effect.

(b) (i) Maintain all Material Intellectual Property in order that such Material Intellectual Property will be (A) subsisting and not adjudged invalid or unenforceable, in whole or part and (B) valid, in full force and effect and not in known conflict with the rights of any Person; (ii) make all filings and recordings necessary in the exercise of reasonable and prudent business judgment to protect such Loan Party's interest in the Material Intellectual Property in the United States Patent and Trademark Office and the United States Copyright Office; (iii) perform all acts and pay all required fees and taxes to maintain each and every item of the Material Intellectual Property in full force and effect; and (iv) use commercially reasonable efforts to enforce all material provisions relating to quality assurance of products and services set forth in any Material License. For clarity, if any Loan Party determines, in its reasonable judgment, that any items of Intellectual Property which do not constitute Material Intellectual Property is no longer used or useful or of material value, such Loan Party may abandon, cancel or cease to protect such non- Material Intellectual Property.

**6.07 Maintenance of Insurance.** (a) Maintain with financially sound and reputable insurance companies reasonably acceptable to the KKR Representative and not Affiliates of the Loan Parties, insurance with respect to its properties and business against loss or damage of the kinds customarily insured against by Persons engaged in the same or similar business and operating in the same or similar locations or as is required by Law, of such types as are customarily carried under similar circumstances by such other Persons and as are reasonably acceptable to the KKR Representative, in each case, in such amounts as are customarily carried under similar circumstances by such other Persons and are reasonably acceptable to the KKR Representative.

(b) Cause each such policy referred to in clause (a)(i) above (i) to be endorsed to name the Agent as an additional insured or a lender loss payee, as applicable, in a form reasonably satisfactory to the KKR Representative, and (ii) to provide that it shall not be canceled, modified or not renewed (x) by reason of nonpayment of premium except upon not less than ten (10) days' prior written notice thereof by the insurer to the Agent (giving the Agent the right to cure defaults in the payment of premiums) or (y) for any other reason except upon not less than thirty (30) days' prior written notice thereof by the insurer to the Agent.

(c) Deliver to the Agent, prior to the cancellation, modification or non-renewal of any such policy of insurance referred to in clause (a) above, a copy of a renewal or replacement policy (or other evidence of renewal of a policy previously delivered to the Agent, including an insurance binder) together with evidence satisfactory to the KKR Representative of payment of the premium therefor.

(d) None of the Credit Parties, or their agents or employees shall be liable for any loss or damage insured by the insurance policies required to be maintained

under this Section 6.07. Each Loan Party shall look solely to its insurance companies or any other parties other than the Credit Parties for the recovery of such loss or damage and such insurance companies shall have no rights of subrogation against any Credit Party or its agents or employees. If, however, the insurance policies do not provide waiver of subrogation rights against such parties, as required above, then the Loan Parties hereby agree, to the extent permitted by Law, to waive their right of recovery, if any, against the Credit Parties and their agents and employees. The designation of any form, type or amount of insurance coverage by any Credit Party under this Section 6.07 shall in no event be deemed a representation, warranty or advice by such Credit Party that such insurance is adequate for the purposes of the business of the Loan Parties or the protection of their properties.

**6.08 Compliance with Laws.** Comply in all material respects with the requirements of all Laws and all orders, writs, injunctions and decrees applicable to it or to its business or property, except in such instances in which (a) such requirement of Law or order, writ, injunction or decree is being contested in good faith by appropriate proceedings diligently conducted and with respect to which adequate reserves have been set aside and maintained by the Loan Parties in accordance with GAAP; (b) such contest effectively suspends enforcement of the contested Laws, and (c) the failure to comply therewith could not reasonably be expected to have a Material Adverse Effect.

**6.09 Books and Records; Accountants.**

(a) Maintain proper books of record and account, in which full, true and correct entries in conformity with GAAP consistently applied shall be made of all financial transactions and matters involving the assets and business of the Loan Parties.

(b) [reserved].

**6.10 Inspection Rights; Appraisals of Intellectual Property.**

(a) Permit representatives and independent contractors, including consultants, of the Agent or KKR Representative to visit and inspect, under guidance of officers of the Borrower, any of its properties, to examine its corporate, financial and operating records, and make copies thereof or abstracts therefrom, and to discuss its affairs, finances and accounts with its officers, and Registered Public Accounting Firm, all at the expense of the Loan Parties and at such reasonable times during normal business hours and as often as may be reasonably desired.

(b) Upon the request of the Agent, or KKR Representative after reasonable prior notice, permit the Agent, the KKR Representative or professionals (including appraisers) retained by the Agent or KKR Representative to conduct (x) up to one (1) appraisal of the trade names and brands and other Intellectual Property of the Loan Parties in each calendar year of the Borrower at the Loan Parties' expense and (y) up to one (1) additional appraisal of the trade names and brands and other Intellectual Property of the Loan Parties in each calendar year at the Lenders' expense.

**6.11 Additional Loan Parties.** Notify the Agent at the time that any Person becomes a domestic Subsidiary, and promptly thereafter (and in any event within fifteen (15) Business Days or such longer period as may be agreed to by the KKR Representative in its reasonable discretion), cause any such Person (a) which does not qualify as a Non-Guarantor Subsidiary to (i) become a Loan Party by executing and delivering to the Agent a joinder to this Agreement or a joinder to the Facility Guaranty or such other documents as the KKR Representative shall deem appropriate for such purpose, (ii) grant a Lien to the Agent on such Person's Intellectual Property and other assets of the same type that constitute Collateral (other than for the avoidance of doubt, Real Estate and other Excluded Property) to secure the Obligations, and (iii) deliver to the Agent opinions of counsel to such Person (which shall cover, among other things, the legality, validity, binding effect and enforceability of the documentation referred to in clause (a)), and (b) if any Equity Interests or Indebtedness of such Person (other than an Excluded Subsidiary) are owned by or on behalf of any Loan Party, to pledge such Equity Interests and promissory notes evidencing such Indebtedness (except that, if such Subsidiary is a CFC, the Equity Interests of such Subsidiary to be pledged shall be limited to 65% of the outstanding voting Equity Interests of such Subsidiary and 100% of the non-voting Equity Interests of such Subsidiary, in each case in form, content and scope reasonably satisfactory to the KKR Representative (it being understood that in no event shall the Borrower be required to take any action outside of the United States in order to create or perfect any security interest in any Equity Interests of a foreign Subsidiary and no foreign Law security or pledge agreements, deeds, filings or searches will be required)). In no event shall compliance with this Section 6.11 waive or be deemed a waiver or Consent to any transaction giving rise to the need to comply with this Section 6.11 if such transaction was not otherwise expressly permitted by this Agreement or constitute or be deemed to constitute, with respect to any Subsidiary, an approval of such Person as a Borrower.

**6.12 Cash Management.**

(a) Cause all Deposit Accounts that are concentration and controlled disbursement accounts of the Loan Parties to be maintained pursuant to such documentation as the Agent or any Lender may reasonably request, including, without limitation, if requested by the Agent (at the direction of the Required Lenders), a Blocked Account Agreement satisfactory in form and substance to the KKR Representative with respect to each such Deposit Account (collectively, the "**Blocked Accounts**"); it being understood that no Blocked Account Control Agreements or other control agreements shall be required in respect of the Excluded Accounts.

(b) Maintain a cash management system as in effect on the Petition Date and as required by the DIP Orders and as authorized by the Bankruptcy Court pursuant to orders approving the first day motions filed by the Loan Parties and otherwise in compliance with the Prepetition Term B Credit Agreement.

(c) [reserved].

(d) [reserved].

(e) Upon the request of the Agent (at the direction of the Required Lenders), cause bank statements and/or other reports to be delivered to the Agent not less

often than monthly, accurately setting forth all amounts deposited in each Blocked Account to ensure the proper transfer of funds as set forth above.

**6.13 Information Regarding the Collateral.** Furnish to the Agent at least thirty (30) days prior written notice of any change in: (i) any Loan Party's; (ii) the location of any Loan Party's chief executive office, its principal place of business or any office in which it maintains books or records relating to Collateral owned by it; (iii) any Loan Party's organizational structure or jurisdiction of incorporation or formation; or (iv) any Loan Party's Federal Taxpayer Identification Number or organizational identification number assigned to it by its state of organization. The Loan Parties shall not effect or permit any change referred to in the preceding sentence unless all filings have been made or are made substantially concurrently therewith under the UCC or otherwise that are required in order for the Agent to continue at all times following such change to have a valid, legal and perfected first priority security interest in all the DIP Collateral for its own benefit and the benefit of the other Credit Parties.

**6.14 Environmental Laws.** Except in each case, where the failure to do so would not, individually or in the aggregate reasonably be expected to result in a Material Adverse Effect, (a) conduct its operations and keep and maintain its Real Estate in material compliance with all Environmental Laws; (b) obtain and renew all material environmental permits necessary for its operations and properties; and (c) implement any and all investigation, remediation, removal and response actions that are appropriate or necessary to maintain the value and marketability of the Real Estate or to otherwise comply with Environmental Laws pertaining to the presence, generation, treatment, storage, use, disposal, transportation or release of any Hazardous Materials on, at, in, under, above, to, from or about any of its Real Estate, provided, however, that neither a Loan Party nor any of its Subsidiaries shall be required to undertake any such cleanup, removal, remedial or other action to the extent that its obligation to do so is being contested in good faith and by proper proceedings and adequate reserves have been set aside and are being maintained by the Loan Parties with respect to such circumstances in accordance with GAAP.

**6.15 Further Assurances.**

(a) Execute any and all further documents, financing statements, agreements and instruments, and take all such further actions (including the filing and recording of financing statements and other documents), that may be required under any Law, or which the Agent or the KKR Representative may reasonably request, to effectuate the transactions contemplated by the Loan Documents or to grant, preserve, protect or perfect the Liens created or intended to be created by the Security Documents or the validity or priority of any such Lien, all at the expense of the Loan Parties (subject to the rights of the Loan Parties to dispose of the DIP Collateral to the extent permitted herein). The Loan Parties also agree to provide to the Agent or the KKR Representative, from time to time upon request, evidence satisfactory to the Agent or the KKR Representative, as applicable, as to the perfection and priority of the Liens created or intended to be created by the Security Documents.

(b) [reserved].

**6.16 Material Contracts.** (a) Perform and observe all the terms and provisions of each Material License and each other Material Contract to be performed or observed by it, (b) maintain each such Material License and each other Material Contract in full force and effect except to the extent such Material License or other Material Contract is no longer used or useful in the conduct of the business of the Loan Parties in the ordinary course of business, consistent with past practices or unless such Material License is terminated and replaced with another Material License in the ordinary course of business, (c) enforce each such Material License and each other Material Contract in accordance with its terms, and (d) cause each of its Subsidiaries to do the foregoing, except, in each case, where the failure to do so, either individually or in the aggregate, could not be reasonably likely to have a Material Adverse Effect.

**6.17 Board Packages.**

Promptly upon request of the KKR Representative, the Borrower shall provide to the KKR Representative copies of any audit reports, management letters or recommendations or other written materials provided to the members of the board of directors of the Borrower for discussion at regularly scheduled meetings of the board of directors of the Borrower, which shall be held no less frequently than quarterly (in each case other than any portions of such reports or materials that contain confidential information or are attorney-client privileged information or work product).

**6.18 Lender Meetings.** During the continuance of the Chapter 11 Cases, the Loan Parties shall cause their senior management and their advisors (including any investment banker and/or financial advisor) to make themselves available each Monday (or, in the event that such day is not a Business Day then on the Business Day immediately following), for a conference call with the Lenders and their representatives for purposes of discussing (x) any information contained in any Budget and any other report delivered pursuant to Section 6.01 or 6.02, including the Permitted Variances, and (y) any other information regarding the Loan Parties' and their estates' business results and operations reasonably requested by the KKR Representative or the Lenders.

**6.19 Milestones.** Each of the Borrower and the Guarantors covenants and agrees with each Lender that, so long as this Agreement shall remain in effect and until the Commitments have been terminated and the principal of and interest on each Loan, all fees and all other expenses or amounts payable under any Loan Document have been paid in full in cash (other than contingent obligations not yet due and payable), each of the Borrower and the Guarantors shall and shall cause each of the Subsidiaries to ensure that each of the Milestones set forth in the DIP Orders is achieved in accordance with the applicable timing referred to therein (or such later dates as may be approved in writing by the Required Lenders in their sole discretion).

**6.20 Bankruptcy Covenants.** Notwithstanding anything in the Loan Documents to the contrary, the Debtors shall comply with all material covenants, terms and conditions and otherwise perform all obligations set forth in the DIP Orders in all material respects.

**6.21 Chapter 11 Cases.**

(a) Each Debtor shall deliver or cause to be delivered for review and comment, as soon as commercially reasonable and in any event at least three (3) Business Days (or as soon thereafter as is reasonably practicable under the circumstance) prior to filing, all material pleadings, motions and other documents (provided that any of the foregoing relating to the DIP Facility shall be deemed material) to be filed on behalf of the Debtors with the Bankruptcy Court to K&S and shall consult in good faith with such counsel regarding the form and substance of any such proposed filing. If not otherwise provided by the Bankruptcy Court's electronic docketing system, the Borrower shall provide copies to the Agent and the Lenders of all pleadings, motions, applications, judicial information, financial information and other documents filed by or on behalf of the Debtors with the Bankruptcy Court, distributed by or on behalf of the Debtors to any Committee, filed with respect to the Chapter 11 Cases or filed with respect to any Loan Document. In connection with the Chapter 11 Cases, the Debtors shall give the proper notice for (x) the motions seeking approval of the Loan Documents and the DIP Orders and (y) the hearings for the approval of the Final DIP Order.

(b) Each Loan Party shall deliver or cause to be delivered to the Agent and the Lenders, in accordance with the Bid Procedures, copies of any term sheets, proposals, presentations, amendments to any Asset Purchase Agreement(s) (as defined in the RSA) or other documents, from any party, related to (i) the restructuring of the Debtors, or (ii) the sale of assets of one or more of the Debtors. Notwithstanding the foregoing, the Debtors will not provide copies of any term sheets, proposals, presentations, amendments to any Asset Purchase Agreement(s), bids or other confidential information to the Agent and the Lenders if the Agent and the Lenders are active bidders or involved in the bidding process as to the relevant Asset(s) at the applicable time.

(c) Except to the extent permitted (or required) hereunder, under the DIP Orders and under the Budget, no Loan Party shall, without the express prior written consent of the Required Lenders or pursuant to an order of the Bankruptcy Court after notice and a hearing, use the DIP Proceeds or cash DIP Collateral to make any critical vendor payment with respect to any prepetition amount.

**6.22 Budget Matters.** The Borrower hereby acknowledges and agrees that any updated Budget (each such updated Budget, a "***Budget Update***") provided to the Agent and the Lenders shall not amend and supplement the applicable approved Budget until the Agent (at the direction of the Required Lenders) delivers a notice (which may be delivered by electronic mail) to the Borrower stating that the Required Lenders have approved of such Budget Update in accordance with Section 6.01(c); provided, that if the Agent does not deliver a notice of approval to the Borrower, then the existing approved Budget shall continue to constitute the applicable approved Budget until such time as the subject Budget Update is agreed to among the Borrower and the Required Lenders in accordance with Section 6.01(c). Once such Budget Update is so approved in writing by the Agent and the Required Lenders, it shall supplement or replace the prior approved Budget, and shall thereafter constitute the approved Budget.

## ARTICLE VII NEGATIVE COVENANTS

So long as any Loan or other Obligation hereunder shall remain unpaid or unsatisfied (other than contingent indemnification claims for which a claim has not been asserted), no Loan Party shall nor shall it permit any of its Subsidiaries to:

**7.01 Liens.** Create, incur, assume or suffer to exist any Lien upon any of its property, assets or revenues, whether now owned or hereafter acquired or sign or file or suffer to exist under the UCC or any similar Law or statute of any jurisdiction a financing statement that names any Loan Party as debtor; sign or suffer to exist any security agreement authorizing any Person thereunder to file such financing statement; sell any of its property or assets subject to an understanding or agreement (contingent or otherwise) to repurchase such property or assets with recourse to it; or assign or otherwise transfer any accounts or other rights to receive income, other than, as to all of the above, Permitted Prior Liens.

**7.02 Investments.** Make any Investments, except Permitted Investments.

**7.03 Indebtedness; Disqualified Stock; Equity Issuances.**

(a) Create, incur, assume, guarantee, suffer to exist or otherwise become or remain liable with respect to, any Indebtedness, except Permitted Indebtedness;

(b) Issue Disqualified Stock;

(c) Issue and sell any Equity Interests (other than Disqualified Stock). All Equity Interests issued to any Loan Party shall, to the extent required by any Security Document, be pledged as Collateral pursuant to the applicable Security Document; or

(d) Permit any Excluded Subsidiary to create, incur, assume, guarantee, suffer to exist or otherwise become or remain liable with respect to any Indebtedness.

**7.04 Fundamental Changes.** Merge, dissolve, liquidate, consolidate with or into another Person, (or agree to do any of the foregoing), except that, so long as no Default or Event of Default shall have occurred and be continuing prior to or immediately after giving effect to any action described below or would result therefrom:

(a) any Subsidiary which is not a Loan Party (other than an Excluded Subsidiary) may merge with (i) a Loan Party, provided that the Loan Party shall be the continuing or surviving Person, or (ii) any one or more other Subsidiaries which are not Loan Parties, provided that when any wholly-owned Subsidiary is merging with another Subsidiary, the wholly-owned Subsidiary shall be the continuing or surviving Person;

(b) [reserved];

(c) any Subsidiary which is a Loan Party may merge into any Subsidiary which is a Loan Party or into the Borrower, provided that in any merger involving the Borrower, the Borrower shall be the continuing or surviving Person;

(d) [reserved]; and

(e) [reserved].

Notwithstanding the foregoing or anything to the contrary contained herein, no Loan Party shall nor shall any Subsidiary form or otherwise acquire any Excluded Subsidiary.

**7.05 Dispositions.** Make any Disposition, other than in the ordinary course of business and consistent with past practice.

**7.06 Restricted Payments.** Declare or make, directly or indirectly, any Restricted Payment, or incur any obligation (contingent or otherwise) to do so, except:

(a) each Subsidiary of a Loan Party may make Restricted Payments to any Loan Party or to another Subsidiary of the Borrower which is the immediate parent of the Subsidiary making such Restricted Payment;

(b) the Loan Parties and each Subsidiary may declare and make dividend payments or other distributions payable solely in the common stock or other common Equity Interests of such Person;

(c) [reserved];

(d) any non-wholly-owned Subsidiary of the Borrower may make Restricted Payments (which may be in cash) to its shareholders, members or partners generally, so long as the Borrower or its respective Subsidiary which owns the Equity Interest in the Subsidiary making such Restricted Payment receives at least its proportionate share thereof (based upon its relative holding of the Equity Interest in the Subsidiary making such Restricted Payment and taking into account the relative preferences, if any, of the various classes of Equity Interests of such Subsidiary);

(e) [reserved];

(f) [reserved];

(g) [reserved]; and

(h) subject to the Budget, the Debtors may make or commit to may payments in respect of warrants, options, repurchase of stock, dividends or other distributions in the ordinary course of business.

Notwithstanding the foregoing, no such Restricted Payments specified in clause (g) above shall be permitted without the prior express written consent of the KKR Representative.

**7.07 Prepayments of Indebtedness.** Prepay, redeem, purchase, defease or otherwise satisfy prior to the scheduled maturity thereof in any manner any Indebtedness for borrowed money, other than the Obligations under the BoA Credit Agreement.

**7.08 Change in Nature of Business.** Engage in any line of business substantially different from the business conducted by the Loan Parties on the Petition Date or any business substantially related or incidental thereto.

**7.09 Transactions with Affiliates.** Enter into, renew, extend or be a party to any transaction of any kind with any Affiliate of any Loan Party, whether or not in the ordinary course of business, other than on fair and reasonable terms substantially as favorable to the Loan Parties or such Subsidiary as would be obtainable by the Loan Parties or such Subsidiary at the time in a comparable arm's length transaction with a Person other than an Affiliate, provided that the foregoing restriction shall not apply to:

- (a) a transaction between or among the Loan Parties;
- (b) dividends may be paid to the extent provided in Section 7.06;
- (c) loans may be made and other transactions may be entered into by the Borrower and its Subsidiaries to the extent permitted by Sections 7.02, 7.03 and 7.04;
- (d) subject to the Budget, customary fees, indemnities and reimbursements may be paid to non-officer directors of the Borrower and its Subsidiaries;
- (e) subject to the Budget, the Borrower and its Subsidiaries may enter into, and may make payments under, employment agreements, employee benefits plans, stock option plans, indemnification provisions and other similar compensatory arrangements with officers, employees and directors of the Borrower and its Subsidiaries in the ordinary course of business;
- (f) subject to the Budget, Subsidiaries of the Borrower may pay management fees, licensing fees and similar fees to the Borrower or to any wholly-owned domestic Subsidiary of the Borrower that is a Guarantor; and
- (g) [reserved].

**7.10 Burdensome Agreements.** Enter into or permit to exist any Contractual Obligation (other than this Agreement or any other Loan Document) that (a) limits the ability (i) of any Subsidiary (other than an Excluded Subsidiary) to make Restricted Payments or other distributions to any Loan Party or to otherwise transfer property to or invest in a Loan Party, (ii) of any Subsidiary (other than an Excluded Subsidiary) to Guarantee the Obligations, (iii) of any Subsidiary (other than an Excluded Subsidiary) to make or repay loans to a Loan Party, or (iv) of the Loan Parties to create, incur, assume or suffer to exist Liens on property of such Person in favor of the Agent; provided, however, that this clause (iv) shall not prohibit any negative pledge incurred or provided in favor of any holder of Indebtedness permitted under clauses (c), or (d) of the definition of "Permitted Indebtedness" solely to the extent any such negative pledge relates to the property financed by or the subject of such Indebtedness; or (b) requires the grant of a Lien to secure an obligation of such Person if a Lien is granted to secure another obligation of such Person.

**7.11 Use of Proceeds.** The proceeds of the Loans shall be used to provide working capital, for general corporate purposes and to fund the Chapter 11 Cases, subject to the

Budget (including Permitted Variances) and the terms and conditions of this Agreement and the DIP Orders, including, without limitation, to (i) repay in full in cash the outstanding obligations of the Borrower under the BoA Credit Agreement, (ii) provide working capital and for other general corporate purposes of the Debtors; (iii) fund the costs of the administration of the Chapter 11 Cases (including professional fees and expenses); and (iv) fund interest, fees, and other payments contemplated in respect of the DIP Facility. Without in any way limiting the foregoing, and otherwise in accordance with the DIP Orders, no DIP Collateral, DIP Proceeds or any portion of the Carve-Out may be used directly or indirectly by any of the Debtors, the Committee, if any, or any trustee or other estate representative appointed in the Chapter 11 Cases (or any successor case) or any other person or entity (or to pay any professional fees, disbursements, costs or expenses incurred in connection therewith): (a) to seek authorization to obtain liens or security interests that are senior to or pari passu with the DIP Liens or the Liens in existence on the Petition Date securing the Prepetition Term B Obligations (the “**Prepetition Term B Liens**”); or (b) to investigate (including by way of examinations or discovery proceedings), prepare, assert, join, commence, support or prosecute any action for any claim, counter-claim, action, proceeding, application, motion, objection, defense, or other contested matter seeking any order, judgment, determination or similar relief against, or adverse to the interests of, in any capacity, any of the Agent, the Lenders, or the Prepetition Term B Secured Parties, and each of their respective officers, directors, controlling persons, employees, agents, attorneys, affiliates, assigns, or successors of each of the foregoing (all in their capacities as such) (collectively, the “**Released Parties**”), with respect to any transaction, occurrence, omission, action or other matter (including formal discovery proceedings in anticipation thereof), including, without limitation, (i) any claims or causes of action arising under chapter 5 of the Bankruptcy Code; (ii) any so-called “lender liability” claims and causes of action; (iii) any action with respect to the validity, enforceability, priority and extent of, or asserting any defense, counterclaim, or offset to, the Obligations, the DIP Credit Facility Super-Priority Claims, the DIP Liens, the Loan Documents, the Prepetition Term B Liens, the Prepetition Term B Loan Documents, or the Prepetition Term B Obligations; (iv) any action seeking to invalidate, modify, set aside, avoid or subordinate, in whole or in part, the Obligations or the Prepetition Term B Obligations; (v) any action seeking to modify any of the rights, remedies, priorities, privileges, protections and benefits granted to either (A) the Agent or the Lenders hereunder or under any of the Loan Documents, or (B) the Prepetition Term B Agents or the Prepetition Term B Lenders under any of the Prepetition Term B Loan Documents (in each case, including, without limitation, claims, proceedings or actions that might prevent, hinder or delay any of the Agent’s or the Lenders’ assertions, enforcements, realizations or remedies on or against the DIP Collateral in accordance with the applicable Loan Documents and the DIP Orders); or (vi) objecting to, contesting, or interfering with, in any way, the Agent’s and the Lenders’ enforcement or realization upon any of the DIP Collateral once an Event of Default has occurred; provided, however, that no more than \$50,000 in the aggregate of the DIP Collateral, DIP Proceeds or any portion of the Carve-Out may be used by the Committee, if any, to investigate claims and/or liens of the Prepetition Term B Agents and Prepetition Term B Lenders under the Prepetition Term B Credit Agreement.

#### **7.12 Amendment of Material Documents; Material Licenses.**

(a) Amend, modify or waive any of a Loan Party’s rights under (i) its Organization Documents in a manner materially adverse to the Credit Parties, (ii) [reserved], or (iii) any Material License which would have a material adverse impact on

the Lenders (as reasonably determined by the Agent and the KKR Representative), without the prior express written consent of the KKR Representative.

(b) Enter into any new Material Licenses unless such require each such licensee thereunder to pay any fees and other consideration thereunder into a Blocked Account.

**7.13 Fiscal Year.** Change the Fiscal Year of any Loan Party, or the accounting policies or reporting practices of the Loan Parties, except as required by GAAP.

**7.14 Deposit Accounts.** Open new Deposit Accounts (other than the Excluded Account) unless in accordance with the Cash Management Order or the Loan Parties shall have delivered to the Agent appropriate Blocked Account Agreements as requested pursuant to Section 6.12 and otherwise satisfactory to the KKR Representative.

**7.15 Permitted Variances.** Permit (i) actual aggregate disbursements to exceed the aggregate amount of disbursements in the Budget for the applicable period by more than the Permitted Variances, and (ii) actual aggregate cash receipts (excluding DIP Proceeds that may be deemed a receipt) during the applicable period to be less than the aggregate amount of such cash receipts in the Budget for such period by more than the Permitted Variances.

**7.16 Sanctions.** Directly or indirectly, use any Loan or the proceeds of any Loan, or lend, contribute or otherwise make available such Loan or the proceeds of any Loan to any Person, to fund any activities of or business with any Person, or in any Designated Jurisdiction, that, at the time of such funding, is the subject of Sanctions, or in any other manner that will result in a violation by any Person (including any Person participating in the transaction, whether as Lender, the Agent, or otherwise) of Sanctions.

**7.17 Anti-Corruption Laws.** Directly or indirectly, use any Loan or the proceeds of any Loan for any purpose which would breach the United States Foreign Corrupt Practices Act of 1977, the UK Bribery Act 2010 and other similar anti-corruption legislation in other jurisdictions.

**7.18 Employees Payments.** Make any cash bonus payment to any executive officers or employees of the Borrower or any of its Subsidiaries unless in accordance with the Budget, or otherwise acceptable to the Required Lenders.

## ARTICLE VIII EVENTS OF DEFAULT AND REMEDIES

**8.01 Events of Default.** Any of the following shall constitute an Event of Default:

(a) Non-Payment. The Borrower or any other Loan Party fails to pay (i) when and as required to be paid, any amount of principal of any Loan, or (ii) interest on any Loan, any fee due hereunder, or any other amount payable hereunder or under any other Loan Document; or

(b) Specific Covenants. Any Loan Party fails to perform or observe any term, covenant or agreement contained in any of (i) Sections 6.01(c), 6.03(a), 6.05(a) (solely with respect to the Borrower), 6.06(b)(i)(A), 6.07, 6.17, 6.18, 6.19, 6.20 or 6.21 or Article VII, (ii) [reserved], (iii) [reserved], (iv) Sections 6.01 (other than Section 6.01(c)), 6.02, or 6.03 (other than 6.03(a)) and such failure continues for 10 days, (v) Section 6.06(b)(i)(B) and (ii) – (iv) and such failure continues for 10 days or (vi) Section 6.11, Section 6.12 or 6.13 and such failure continues for 15 days; or

(c) Other Defaults. Any Loan Party fails to perform or observe any other covenant or agreement (not specified in subsection (a) or (b) above) contained in any Loan Document on its part to be performed or observed and such failure continues for 15 days; or

(d) Representations and Warranties. Any representation, warranty, certification or statement of fact made or deemed made by or on behalf of any Loan Party herein, in any other Loan Document, or in any document delivered in connection herewith or therewith shall be incorrect or misleading in any material respect when made or deemed made; or

(e) Cross-Default. Subject to the Budget, any Loan Party (A) fails to make any payment when due (whether by scheduled maturity, required prepayment, acceleration, demand, or otherwise) in respect of any Material Indebtedness, or (B) fails to observe or perform any other agreement or condition relating to any such Material Indebtedness or contained in any instrument or agreement evidencing, securing or relating thereto, or any other event occurs, the effect of which default or other event is to cause, or to permit the holder or holders of such Material Indebtedness or the beneficiary or beneficiaries of any Guarantee thereof (or a trustee or agent on behalf of such holder or holders or beneficiary or beneficiaries) to cause, with the giving of notice if required, such Material Indebtedness to be demanded or to become due or to be repurchased, prepaid, defeased or redeemed (automatically or otherwise), or an offer to repurchase, prepay, defease or redeem such Material Indebtedness to be made, prior to its stated maturity or such Guarantee to become payable or cash collateral in respect thereof to be demanded; or

(f) Insolvency Proceedings, Etc. Other than with respect to the Chapter 11 Cases, any Loan Party institutes or consents to the institution of any proceeding under any Debtor Relief Law, or makes an assignment for the benefit of creditors; or applies for or consents to the appointment of any receiver, trustee, custodian, conservator, liquidator, rehabilitator or similar officer for it or for all or any material part of its property; or a proceeding shall be commenced or a petition filed, without the application or consent of such Person, seeking or requesting the appointment of any receiver, trustee, custodian, conservator, liquidator, rehabilitator or similar officer is appointed and the appointment continues undischarged, undismissed or unstayed for 45 calendar days or an order or decree approving or ordering any of the foregoing shall be entered; or any proceeding under any Debtor Relief Law relating to any such Person or to all or any material part of its property is instituted without the consent of such Person and continues undismissed or unstayed for 45 calendar days, or an order for relief is entered in any such proceeding; or

(g) Inability to Pay Debts; Attachment. Other than with respect to the Chapter 11 Cases, (i) any Loan Party becomes unable or admits in writing its inability or fails generally to pay its debts as they become due in the ordinary course of business, or (ii) any writ or warrant of attachment or execution or similar process is issued or levied against all or any material part of the property of any such Person and is not released, vacated or fully bonded within 30 days after its issuance or levy; or

(h) Judgments. There is entered against any Loan Party (i) one or more judgments or orders for the payment of money in an aggregate amount (as to all such judgments and orders) exceeding \$1,000,000 (to the extent not covered by independent third-party insurance as to which the insurer is rated at least "A" by A.M. Best Company, has been notified of the potential claim and does not dispute coverage), or (ii) any one or more non-monetary judgments that have, or could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect and, in either case, (A) enforcement proceedings are commenced by any creditor upon such judgment or order, or (B) there is a period of 10 consecutive days during which a stay of enforcement of such judgment or order, by reason of a pending appeal or otherwise, is not in effect; or

(i) ERISA. (i) An ERISA Event occurs with respect to a Pension Plan or Multiemployer Plan which has resulted or could reasonably be expected to result in liability of any Loan Party under Title IV of ERISA to the Pension Plan, Multiemployer Plan or the PBGC in an aggregate amount in excess of \$1,000,000 or which would reasonably likely result in a Material Adverse Effect, or (ii) a Loan Party or any ERISA Affiliate fails to pay when due, after the expiration of any applicable grace period, any installment payment with respect to its withdrawal liability under Section 4201 of ERISA under a Multiemployer Plan in an aggregate amount in excess of \$1,000,000 or which would reasonably likely result in a Material Adverse Effect; or

(j) Invalidity of Loan Documents. (i) Any material provision of any Loan Document, at any time after its execution and delivery and for any reason, ceases to be in full force and effect; or any Loan Party or any other Person contests in any manner the validity or enforceability of any material provision of any Loan Document; or any Loan Party denies that it has any or further liability or obligation under any material provision of any Loan Document, or purports to revoke, terminate or rescind any material provision of any Loan Document or seeks to avoid, limit or otherwise adversely affect any Lien purported to be created under any Security Document; or (ii) any Lien purported to be created under any Security Document shall cease to be, or shall be asserted by any Loan Party or any other Person not to be, a valid and perfected Lien on any Material Intellectual Property, Material License or any other material portion of the DIP Collateral, with the priority required by the applicable Security Document; or

(k) Change of Control. There occurs any Change of Control; or

(l) Cessation of Business. Except as otherwise expressly permitted hereunder and subject to any applicable cure period in connection with a breach of any applicable covenant with respect to the same, the Loan Parties, taken as a whole, shall take

any action to suspend the operation of their business in the ordinary course or liquidate all or a material portion of their assets or business; or

(m) Breach of Contractual Obligation. Any default or event of default occurs under a Material License which gives rise to a right of a party to such Material License to cease payment to, or excuses payment to, the Borrower thereunder, or the termination of any Material License; or

(n) Indictment. Any director or senior officer of any Loan Party is (i) criminally indicted or convicted of a felony for fraud or dishonesty in connection with the Loan Parties' business, unless such director or senior officer promptly resigns or is removed or replaced or (ii) charged by a Governmental Authority under any Law that would reasonably be expected to lead to forfeiture of any material portion of Collateral; or

(o) Insolvency of Licensee. Any proceeding described in clause (f) above, whether voluntary or involuntary, shall commence with respect to any licensee under a Material License and shall continue for a period of 45 days; or

(p) [Reserved].

(q) Material Adverse Effect. Other than a Known Event, there occurs a Material Adverse Effect; or

(r) Chapter 11 Cases. The occurrence of any of the following in any Chapter 11 Case:

(i) termination of the RSA;

(ii) termination of the Asset Purchase Agreements (as defined in the RSA) due to a breach thereunder by any Debtor;

(iii) filing of a plan of liquidation under Chapter 11 of the Bankruptcy Code by the Debtors that has not been consented to by the Required Lenders;

(iv) filing of a plan of reorganization by the Debtors that does not propose to indefeasibly pay the Obligations in full in cash, unless otherwise consented to by the Agent and the Required Lenders;

(v) any of the Debtors shall file a pleading seeking to vacate or modify any of the DIP Orders over the objection of the Agent or the Agent at the direction of the Required Lenders;

(vi) entry of an order without the prior written consent of the Required Lenders amending, supplementing or otherwise modifying the DIP Orders;

(vii) reversal, vacatur or stay of the effectiveness of the DIP Orders except to the extent stayed or reversed within five (5) Business Days;

(viii) a failure by the Loan Parties to comply with any material provision of the DIP Orders (except where such failure would not materially and adversely affect the Lenders or the Agent);

(ix) dismissal of the Chapter 11 Case of a Debtor with material assets or conversion of the Chapter 11 Case of a Debtor with material assets to a case under Chapter 7 of the Bankruptcy Code;

(x) appointment of a Chapter 11 trustee or examiner with enlarged powers relating to the operation of the business of the Borrower or any other Loan Party or any Debtor shall file a motion or other pleading seeking such appointment;

(xi) any sale of all or substantially all assets of the Debtors pursuant to Section 363 of the Bankruptcy Code, unless such sale is conducted in accordance with the Bid Procedures and consented to by the Required Lenders;

(xii) failure to meet a Milestone, unless extended or waived pursuant by the prior written consent of the Agent at the direction of the Required Lenders;

(xiii) granting of relief from the Automatic Stay in the Chapter 11 Cases to permit foreclosure or enforcement on assets of the Borrower or any other Loan Party, in each case, with a fair market value in excess of \$100,000;

(xiv) the Debtors' filing of (or supporting another party in the filing of) a motion seeking entry of, or the entry of an order by the Bankruptcy Court, granting any superpriority claim or lien (except as contemplated herein) which is senior to or pari passu with the Lenders' claims under the DIP Facility;

(xv) an order shall be entered in any of the Chapter 11 Cases, without the prior written consent of the Agent and the Required Lenders (i) to permit any administrative expense or any claim (now existing or hereafter arising of any kind or nature whatsoever) to have administrative priority equal or superior to the DIP Credit Facility Super-Priority Claims or (ii) granting or permitted grant of a lien that is equal in priority or senior to the DIP Liens;

(xvi) the Debtors' filing of (or supporting another party in the filing of) a motion seeking entry of an order approving any key

employee incentive plan, employee retention plan, or comparable plan, without the prior written consent of the Required Lenders;

(xvii) the Debtors shall seek, or shall support any other person's motion seeking (in any such case, verbally in any court of competent jurisdiction or by way of any motion or pleading with the Bankruptcy Court, or any other writing to another party in interest by Debtors) to challenge the validity or enforceability of any of the Lien or obligations of the parties under the Prepetition Term B Loan Documents;

(xviii) the Debtors shall assert in any pleading filed in any court that the guarantee contained in the Loan Documents is not valid and binding, for any reason, to be in full force and effect, other than pursuant to the terms hereof;

(xix) payment of or granting adequate protection with respect to prepetition debt, other than as expressly provided herein or in the DIP Orders or consented to by the Agent at the direction of the Required Lenders;

(xx) expiration or termination of the period provided by section 1121 of the Bankruptcy Code for the exclusive right to file a plan, with respect to a Debtor with material assets unless such expiration or termination was sought by the Prepetition Term B Secured Parties or the DIP Secured Parties;

(xxi) cessation of the DIP Liens or the DIP Credit Facility Super-Priority Claims to be valid, perfected and enforceable in all respects;

(xxii) Permitted Variances under the Budget are exceeded for any period of time without consent of or waiver by the Agent at the direction of the Required Lenders;

(xxiii) any uninsured judgments are entered with respect to any post-petition non-ordinary course claims against any of the Debtors or any of their respective affiliates in a combined aggregate amount in excess of \$100,000 unless stayed;

(xxiv) other than in the ordinary course and consistent with past practice, any Debtor asserting any right of subrogation or contribution against any other Debtor until all borrowings under the DIP Facility are paid in full in cash and the commitments are terminated;

(xxv) subject to entry of the Final DIP Order, the allowance of any claim or claims under Section 506(c) of the Bankruptcy Code or otherwise against any Lender;

(xxvi) the commencement of a suit or action against any Lender and, as to any suit or action brought by any person other than any Debtor or an officer or employee of any Debtor, the continuation thereof without dismissal for thirty (30) days after service thereof on the Lenders, that asserts or seeks by or on behalf of the Debtors, any Committee or any other party in interest in any of the Chapter 11 Cases, a claim or any legal or equitable remedy that would (i) have the effect of subordinating any or all of the Obligations or DIP Liens of the Lenders under the Loan Documents to any other claim, or (ii) have a material adverse effect on the rights and remedies of the Agent and/or the Lenders under any Loan Document or the collectability of all or any portion of the Obligations;

(xxvii) the entry of an order in any Bankruptcy Case avoiding or requiring repayment of any portion of the payments made on account of the DIP Obligations owing under the DIP Credit Agreement or the other Loan Documents;

(xxviii) an order shall have been entered by the Bankruptcy Court prohibiting, limiting or restricting the right of the Agent (on behalf of the Lenders) to credit bid for any or all of the Debtors' assets;

and

(xxix) the payment of any prepetition claim other than (i) as consented to by the Required Lenders, (ii) as authorized by the Budget, (iii) permitted under the terms of this Agreement or (iv) as authorized by the Bankruptcy Court pursuant to the "first day" or "second day" orders or the DIP Orders and reflected in the Budget.

**8.02 Remedies Upon Event of Default.** If any Event of Default occurs and is continuing, the Agent, at the request of the Required Lenders, shall, in accordance with and subject to the DIP Orders, take any or all of the following actions:

- (a) any action permitted under, and in accordance with, the DIP Orders;
- (b) declare the unpaid principal amount of the Loans, all interest accrued and unpaid thereon, and all other Obligations, to be immediately due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived by the Loan Parties; and
- (c) whether or not the maturity of the Obligations shall have been accelerated pursuant hereto, proceed to protect, enforce and exercise all rights and remedies of the Credit Parties under this Agreement, any of the other Loan Documents, the DIP Orders or Law, including, but not limited to, by suit in equity, action at law or other appropriate proceeding, whether for the specific performance of any covenant or agreement contained in this Agreement and the other Loan Documents or any instrument pursuant to which the Obligations are evidenced, and, if such amount shall have become due, by

declaration or otherwise, proceed to enforce the payment thereof or any other legal or equitable right of the Credit Parties;

provided, however, that upon the occurrence of any Default or Event of Default with respect to any Loan Party under Section 8.01(f), the unpaid principal amount of the Loans, all interest accrued thereon and all other Obligations shall automatically become due and payable without further act of the Agent or any Lender.

No remedy herein is intended to be exclusive of any other remedy and each and every remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or any other provision of Law.

**8.03 Application of Funds.** After the exercise of remedies provided for in Section 8.02 (or after the Obligations have automatically become immediately due and payable as set forth in the proviso to Section 8.02), any amounts received on account of the Obligations shall be applied by the Agent in the following order:

First, to payment of that portion of the Obligations constituting fees, indemnities, Credit Party Expenses and other amounts (including fees, charges and disbursements of counsel to the Agent and KKR Credit and amounts payable under Article III) payable to the Agent;

Second, to payment of that portion of the Obligations constituting indemnities (including indemnities due under Section 10.04 hereof), Credit Party Expenses, and other amounts (other than principal, interest and fees) payable to the Lenders (including Credit Party Expenses to the respective Lenders and amounts payable under Article III), ratably among them in proportion to the amounts described in this clause Second payable to them;

Third, to payment of that portion of the Obligations constituting accrued and unpaid interest on the Loans, and fees, ratably among the Lenders in proportion to the respective amounts described in this clause Third payable to them;

Fourth, to payment of that portion of the Obligations constituting unpaid principal of the Loans, ratably among the Lenders in proportion to the respective amounts described in this clause Fourth held by them;

Fifth, to payment of all other Obligations (including without limitation the cash collateralization of unliquidated indemnification obligations), ratably among the Credit Parties in proportion to the respective amounts described in this clause Fifth held by them; and

Last, the balance, if any, after all of the Obligations have been indefeasibly paid in full, to the Loan Parties or as otherwise required by Law.

## ARTICLE IX THE AGENT

**9.01 Appointment and Authority.** Each of the Lenders (in its capacity as a Lender) hereby irrevocably appoints Wilmington to act on its behalf as the administrative agent and collateral agent hereunder and under the other Loan Documents and authorizes the Agent to

take such actions on its behalf and to exercise such powers as are delegated to the Agent by the terms hereof or thereof (including, without limitation, acquiring, holding and enforcing any and all DIP Liens on DIP Collateral granted by any of the Loan Parties to secure any of the Obligations), together with such actions and powers as are reasonably incidental thereto. The provisions of this Article are solely for the benefit of the Agent and the other Credit Parties, and no Loan Party or any Subsidiary thereof shall have rights as a third party beneficiary of any of such provisions. It is understood and agreed that the use of the term “agent” herein or in any other Loan Documents (or any other similar term) with reference to the Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable Law. Instead such term is used as a matter of market custom, and is intended to create or reflect only an administrative relationship between contracting parties.

**9.02 Rights as a Lender.** The Person serving as the Agent hereunder shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not the Agent and the term “**Lender**” or “**Lenders**” shall, unless otherwise expressly indicated or unless the context otherwise requires, include the Person serving as the Agent hereunder in its individual capacity. Such Person and its Affiliates may accept deposits from, lend money to, act as the financial advisor or in any other advisory capacity for and generally engage in any kind of business with the Loan Parties or any Subsidiary or other Affiliate thereof as if such Person were not the Agent hereunder and without any duty to account therefor to the Lenders.

**9.03 Exculpatory Provisions.** The Agent shall not have any duties or obligations except those expressly set forth herein and in the other Loan Documents. The Agent’s duties shall be deemed purely ministerial in nature, and the Agent shall not be liable except for the performance of such duties, and no implied covenants or obligations shall read into this Agreement against the Agent. Without limiting the generality of the foregoing, the Agent:

(a) shall not be subject to any fiduciary or other implied duties, regardless of whether a Default or Event of Default has occurred and is continuing;

(b) shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by the other Loan Documents that the Agent is required to exercise as directed in writing by the Applicable Lenders, provided that the Agent shall not be required to take any action that, in its opinion or the opinion of its counsel, may expose the Agent to liability or that is contrary to any Loan Document or Law;

(c) shall not, except as expressly set forth herein and in the other Loan Documents, have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to the Loan Parties or any of their Affiliates that is communicated to or obtained by the Person serving as the Agent or any of their Affiliates in any capacity; and

(d) shall not be responsible or liable for special, indirect, punitive, incidental or consequential loss or damage of any kind (including, without limitation, loss

of profit) irrespective of whether the Agent has been advised of the likelihood of such loss or damage and regardless of the form of action.

The Agent shall not be liable for any action taken or not taken by it (i) with the Consent or at the request of the Applicable Lenders (as the Agent shall believe in good faith shall be necessary under the circumstances as provided in Sections 10.01 and 8.02) or (ii) in the absence of its own gross negligence or willful misconduct as determined by a final and non-appealable judgment of a court of competent jurisdiction.

The Agent shall not be deemed to have knowledge of any Default or Event of Default unless and until a written notice describing such Default or Event of Default is given to the Agent by the Loan Parties or a Lender. In the event that the Agent obtains such actual knowledge or receives such a notice, the Agent shall give prompt notice thereof to each of the other Credit Parties. Upon the occurrence of a Default or an Event of Default, the Agent shall take such action with respect to such Default or Event of Default as shall be reasonably directed by the Applicable Lenders. Unless and until the Agent shall have received such direction, the Agent may (but shall not be obligated to) take such action, or refrain from taking such action, with respect to any such Default or Event of Default. In no event shall the Agent be required to comply with any such directions to the extent that the Agent believes that its compliance with such directions would be unlawful, and the Agent shall be fully justified in failing or refusing to take any discretionary action under any Loan Document unless the Agent shall first receive consent of the Applicable Lenders as the Agent deems appropriate and, if the Agent so requests, the Agent shall first be indemnified to the Agent's satisfaction by the Lenders against any and all liability and expense which may be incurred by the Agent by reason of taking or continuing to take such action.

The Agent shall not be responsible for or have any duty to ascertain, monitor or inquire into (i) any statement, warranty or representation made in or in connection with this Agreement or any other Loan Document, (ii) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or therein or the occurrence of any Default or Event of Default, (iv) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Loan Document or any other agreement, instrument or document or the creation, perfection or priority of any DIP Lien purported to be created by the Security Documents, (v) the value or the sufficiency of any DIP Collateral, or (vi) the satisfaction of any condition set forth in Article IV or elsewhere herein, other than to confirm receipt of items expressly required to be delivered to the Agent. The Agent shall have no obligation for (a) perfecting, maintaining, monitoring, preserving or protecting the security interest or Lien granted under this Agreement, any other Loan Document, or any agreement or instrument contemplated hereby or thereby; (b) the filing, re-filing, recording, re-recording, or continuing of any document, financing statement, mortgage, assignment, notice, instrument of further assurance, or other instrument in any public office at any time or times; or (c) providing, maintaining, monitoring, or preserving insurance on or the payment of taxes with respect to any DIP Collateral.

The permissive rights of the Agent to do things enumerated in this Agreement shall not be construed as a duty and, with respect to such permissive rights, the Agent shall not be answerable or responsible for Agent's exercise or non-exercise of such permissive rights other than the Agent's gross negligence or willful misconduct.

Notwithstanding anything to the contrary contained herein or in any other Loan Document, the Agent shall not be required to expend or risk the Agent's own funds or otherwise incur any financial liability in the performance of any of its duties or in the exercise of any of its rights or powers hereunder.

**9.04 Reliance by Agent.** The Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document, order or other writing (including, but not limited to, any electronic message, Internet or intranet website posting or other distribution) believed by it to be genuine and to have been signed, sent or otherwise authenticated by the proper Person. The Agent also may rely upon any statement made to it orally or by telephone and believed by it to have been made by the proper Person, and shall not incur any liability for relying thereon. The Agent may consult with legal counsel (who may be counsel for any Loan Party), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

**9.05 Delegation of Duties.** The Agent may perform any and all of its duties and exercise its rights and powers hereunder or under any other Loan Document by or through any one or more sub-agents appointed by the Agent. The Agent and any such sub-agent may perform any and all of its duties and exercise its rights and powers by or through their respective Related Parties. The exculpatory provisions of this Article shall apply to any such sub agent and to the Related Parties of the Agent and any such sub-agent. The Agent shall not be responsible for the negligence or misconduct of any sub-agents except to the extent that a court of competent jurisdiction determines in a final and non-appealable judgment that the Agent acted with gross negligence or willful misconduct in the selection of such sub-agents.

**9.06 Resignation or Replacement of Agent.**

(a) The Agent may at any time give written notice of its resignation to the Lenders and the Borrower. Upon receipt of any such notice of resignation, the Required Lenders shall have the right, in consultation with the Borrower, to appoint a successor, which shall be a bank with an office in the United States, or an Affiliate of any such bank with an office in the United States. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within 30 days after the retiring Agent gives notice of its resignation, then the retiring Agent may on behalf of the Lenders appoint a successor Agent meeting the qualifications set forth above; provided that if the Agent shall notify the Borrower and the Lenders that no qualifying Person has accepted such appointment, then such resignation shall nonetheless become effective in accordance with such notice and (1) the retiring Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents (except that in the case of any DIP Collateral held by the Agent on behalf of the Lenders under any of the Loan Documents, the retiring Agent shall continue to hold such collateral security until such time as a successor Agent is appointed) and (2) all payments, communications and determinations provided to be made by, to or through the Agent shall instead be made by or to each Lender directly, until such time as the Required Lenders appoint a successor Agent as provided for above in this Section.

(b) The Required Lenders may at any time give written notice to the Agent and the Borrower of their election to replace the Agent with a successor agent. The Required Lenders shall with the consultation of the Borrower appoint a successor, which shall be a bank with an office in the United States, or an Affiliate of any such bank with an office in the United States.

(c) Upon the acceptance of a successor's appointment as Agent hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring (or retired) Agent, and the retiring Agent shall be discharged from all of its duties and obligations hereunder or under the other Loan Documents (if not already discharged therefrom as provided above in this Section). The fees payable by the Borrower to a successor Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Borrower and such successor. After the retiring Agent's resignation hereunder and under the other Loan Documents, the provisions of this Article and Section 10.04 shall continue in effect for the benefit of such retiring Agent, its sub agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while the retiring Agent was acting as Agent hereunder.

(d) Any corporation or association into which the Agent may be converted or merged, or with which the Agent may be consolidated, or to which the Agent may sell or transfer all or substantially all of the Agent's corporate trust business and assets as a whole or substantially as a whole, or any corporation or association resulting from such conversion, sale, merger, consolidation or transfer to which the Agent is a party, will be and become the successor to the Agent under this Agreement and will have and succeed to the rights, powers, duties, immunities and privileges as its predecessor, without the execution or filing of any instrument or paper or performance of any further act.

**9.07 Non-Reliance on Agent and Other Lenders.** Each Lender acknowledges that it has, independently and without reliance upon the Agent or any other Lender or any of their Related Parties and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Lender also acknowledges that it will, independently and without reliance upon the Agent or any other Lender or any of their Related Parties and based on such documents and information as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Agreement, any other Loan Document or any related agreement or any document furnished hereunder or thereunder. Except as provided in Section 9.11, the Agent shall not have any duty or responsibility to provide any Credit Party with any other credit or other information concerning the affairs, financial condition or business of any Loan Party that may come into the possession of the Agent.

**9.08 Agent May File Proofs of Claim.** In case of the pendency of any proceeding under any Debtor Relief Law or any other judicial proceeding relative to any Loan Party, the Agent (irrespective of whether the principal of the Loan shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Agent shall have made any demand on the Loan Parties) shall be entitled and empowered, by intervention in such proceeding or otherwise:

(a) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans and all other Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Lenders, the Agent and the other Credit Parties (including any claim for the reasonable compensation, expenses, disbursements and advances of the Lenders, the Agent, such Credit Parties and their respective agents and counsel and all other amounts due the Lenders, the Agent and such Credit Parties under Sections 2.06 and 10.04) allowed in such judicial proceeding; and

(b) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same;

and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender to make such payments to the Agent and to pay to the Agent any amount due for the reasonable compensation, expenses, disbursements and advances of the Agent and its agents and counsel, and any other amounts due the Agent under Sections 2.06 and 10.04.

Nothing contained herein shall be deemed to authorize the Agent to authorize or consent to or accept or adopt on behalf of any Credit Party any plan of reorganization, arrangement, adjustment or composition affecting the Obligations or the rights of any Credit Party or to authorize the Agent to vote in respect of the claim of any Credit Party in any such proceeding.

**9.09 Collateral and Guaranty Matters; Credit Bid.** The Credit Parties irrevocably authorize the Agent, at its option and in its discretion,

(a) to release any DIP Lien on any property granted to or held by the Agent under any Loan Document (i) upon termination of the Aggregate Commitments and payment in full of all Obligations (other than contingent indemnification obligations for which no claim has been asserted), (ii) that is sold or to be sold as part of or in connection with any sale permitted hereunder or under any other Loan Document, or (iii) if approved, authorized or ratified in writing by the Applicable Lenders in accordance with Section 10.01;

(b) [reserved];

(c) to release any Guarantor from its obligations under the Facility Guaranty if such Person ceases to be a Subsidiary as a result of a transaction permitted hereunder; and

(d) the Lenders hereby irrevocably authorize the Agent, based upon the instruction of the Required Lenders, to (a) consent to, credit bid or purchase (either directly or indirectly through one or more entities) all or any portion of the DIP Collateral at any sale thereof conducted under the provisions of the Bankruptcy Code, including Section 363 of the Bankruptcy Code and any similar laws in any other jurisdictions in which a Loan Party is subject, (b) credit bid or purchase (either directly or indirectly through one or more entities) all or any portion of the DIP Collateral at any sale or other disposition thereof conducted under the provisions of the Uniform Commercial Code, including pursuant to

Sections 9-610 or 9-620 of the Uniform Commercial Code, or (c) credit bid or purchase (either directly or indirectly through one or more entities) all or any portion of the DIP Collateral at any other sale or foreclosure conducted or consented to by the Agent (at the direction of the Required Lenders) in accordance with applicable law in any judicial action or proceeding or by the exercise of any legal or equitable remedy. In connection with any such credit bid or purchase, (i) the Obligations owed to the Lenders shall be entitled to be, and shall be, credit bid on a ratable basis (with Obligations with respect to contingent or unliquidated claims being estimated for such purpose if the fixing or liquidation thereof would not impair or unduly delay the ability of the Agent to credit bid or purchase at such sale or other disposition of the DIP Collateral and, if such contingent or unliquidated claims cannot be estimated without impairing or unduly delaying the ability of the Agent to credit bid at such sale or other disposition, then such claims shall be disregarded, not credit bid, and not entitled to any interest in the DIP Collateral that is the subject of such credit bid or purchase) and the Lenders whose Obligations are credit bid shall be entitled to receive interests (ratably based upon the proportion of their Obligations credit bid in relation to the aggregate amount of Obligations so credit bid) in the DIP Collateral that is the subject of such credit bid or purchase (or in the Equity Interests of the any entities that are used to consummate such credit bid or purchase), and (ii) the Agent, based upon the instruction of the Required Lenders, may accept non-cash consideration, including debt and equity securities issued by any entities used to consummate such credit bid or purchase and in connection therewith the Agent may reduce the Obligations owed to the Lenders (ratably based upon the proportion of their Obligations credit bid in relation to the aggregate amount of Obligations so credit bid) based upon the value of such non-cash consideration. Except as provided above, the Agent will not execute and deliver a release of any DIP Lien on any DIP Collateral without the prior written authorization of (y) if the release is of all or substantially all of the DIP Collateral, all of the Lenders, or (z) otherwise, the Required Lenders. Upon request by the Agent or the Borrower at any time, the Lenders will confirm in writing the Agent's authority to release any such DIP Liens on particular types or items of DIP Collateral pursuant to this Section 9.09; provided, that (1) anything to the contrary contained in any of the Loan Documents notwithstanding, the Agent shall not be required to execute any document or take any action necessary to evidence such release on terms that, in the Agent's reasonable opinion, could expose Agent to liability or create any obligation or entail any consequence other than the release of such DIP Lien without recourse, representation, or warranty, and (2) such release shall not in any manner discharge, affect, or impair the Obligations or any DIP Liens (other than those expressly released) upon (or obligations of the Borrower in respect of) any and all interests retained by the Borrower, including, the proceeds of any sale, all of which shall continue to constitute part of the DIP Collateral.

Upon request by the Agent at any time, the Applicable Lenders will confirm in writing the Agent's authority to release its interest in particular types or items of property, or to release any Guarantor from its obligations under the Facility Guaranty pursuant to this Section 9.09. In each case as specified in this Section 9.09, the Agent will, at the Loan Parties' expense, execute and deliver to the applicable Loan Party such documents as such Loan Party may reasonably request to evidence the release of such item of DIP Collateral from the assignment and security interest granted under the Security Documents or to subordinate its interest in such item, or to release such Guarantor

from its obligations under the Facility Guaranty, in each case in accordance with the terms of the Loan Documents and this Section 9.09.

**9.10 Notice of Transfer.** The Agent may deem and treat a Lender party to this Agreement as the owner of such Lender's portion of the Obligations for all purposes, unless and until, and except to the extent, an Assignment and Acceptance shall have become effective as set forth in Section 10.06.

**9.11 Reports and Financial Statements.**

By signing this Agreement, each Lender:

(a) is deemed to have requested that the Agent furnish, and the Agent agrees to furnish, such Lender, promptly after they become available, copies of all financial statements required to be delivered by the Borrower hereunder;

(b) is deemed to have requested that the Agent furnish, and the Agent agrees to furnish, such Lender, promptly after they become available, copies of all appraisals of the DIP Collateral received by the Agent (collectively, the "**Reports**");

(c) expressly agrees and acknowledges that the Agent makes no representation or warranty as to the accuracy of the financial statements or Reports, and shall not be liable for any information contained in any financial statement or Report;

(d) expressly agrees and acknowledges that the Reports are not comprehensive audits or examinations, that the Agent or any other party performing any audit or examination will inspect only specific information regarding the Loan Parties and will rely significantly upon the Loan Parties' books and records, as well as on representations of the Loan Parties' personnel;

(e) agrees to keep all financial statements, including all deliverables under Section 6.01, and Reports confidential in accordance with the provisions of Section 10.07 hereof; and

(f) without limiting the generality of any other indemnification provision contained in this Agreement, agrees: (i) to hold the Agent and any such other Lender preparing a Report harmless from any action the indemnifying Lender may take or conclusion the indemnifying Lender may reach or draw from any Report in connection with any Loan that the indemnifying Lender has made or may make to the Borrower, or the indemnifying Lender's participation in, or the indemnifying Lender's purchase of, the Loans; and (ii) to pay and protect, and indemnify, defend, and hold the Agent and any such other Lender preparing a Report harmless from and against, the claims, actions, proceedings, damages, costs, expenses, and other amounts (including attorney costs) incurred by the Agent and any such other Lender preparing a Report as the direct or indirect result of any third parties who might obtain all or part of any Report through the indemnifying Lender.

**9.12 Agency for Perfection.** Each Credit Party hereby appoints each other Credit Party as agent for the purpose of perfecting DIP Liens for the benefit of the Credit Parties, in assets which, in accordance with Article 9 of the UCC or any other Law of the United States can be perfected only by possession or control. Should any Credit Party (other than the Agent) obtain possession or control of any such DIP Collateral, such Credit Party shall notify the Agent thereof, and, promptly upon the Agent's request therefor shall deliver such DIP Collateral to the Agent or otherwise deal with such DIP Collateral in accordance with the Agent's instructions.

**9.13 Indemnification of Agent.** Without limiting the obligations of Loan Parties hereunder, to the extent that the Loan Parties for any reason fails to indefeasibly pay any amount required under Section 10.04 to be paid by them to the Agent (or any sub-agent thereof), the Lenders shall indemnify the Agent, any sub-agent thereof and any Related Party, as the case may be ratably according to their Applicable Percentages, from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind or nature whatsoever that may be imposed on, incurred by, or asserted against the Agent, any sub-agent thereof and their Related Parties in any way relating to or arising out of this Agreement or any other Loan Document or any action taken or omitted to be taken by the Agent, any sub-agent thereof and their Related Parties in connection therewith; provided, that no Lender shall be liable for any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements resulting from the Agent's, any sub-agent's and their Related Parties' gross negligence or willful misconduct as determined by a final and nonappealable judgment of a court of competent jurisdiction.

**9.14 Relation among Lenders.** The Lenders are not partners or co-venturers, and no Lender shall be liable for the acts or omissions of, or (except as otherwise set forth herein in case of the Agent) authorized to act for, any other Lender.

**9.15 Force Majeure.** The Agent shall not be responsible or liable for any failure or delay in the performance of the Agent's obligations under this Agreement arising out of or caused, directly or indirectly, by circumstances beyond the Agent's control, including, without limitation, any act or provision of any present or future law or regulation or governmental authority; acts of God; earthquakes; fires; floods; wars; terrorism; civil or military disturbances; sabotage; epidemics; riots; interruptions, loss or malfunctions of utilities, computer (hardware or software) or communications service; accidents; labor disputes; acts of civil or military authority or governmental actions; or the unavailability of the Federal Reserve Bank wire or telex or other wire or communication facility.

## ARTICLE X MISCELLANEOUS

### 10.01 Amendments, Etc.

(a) No amendment or waiver of any provision of this Agreement or any other Loan Document, and no Consent to any departure by any Loan Party therefrom, shall be effective unless in writing signed by the Agent (at the direction of the Required Lenders), with the Consent of the Required Lenders, and the Borrower or the applicable Loan Party, as the case may be, and each such waiver or Consent shall be effective only in

the specific instance and for the specific purpose for which given; provided, however, that no such amendment, waiver or consent shall:

(i) [Reserved];

(ii) as to any Lender, postpone any date fixed by this Agreement or any other Loan Document for any scheduled payment (including the Maturity Date) or mandatory prepayment of principal, interest, fees or other amounts due hereunder or under any of the other Loan Documents without the written Consent of such Lender,

(iii) as to any Lender, reduce the principal of, or the rate of interest specified herein on, any Loan held by such Lender, or (subject to clause (ii) of the second proviso to this Section 10.01) any fees or other amounts payable hereunder or under any other Loan Document to or for the account of such Lender, without the written Consent of such Lender; provided, however, that only the Consent of the Required Lenders shall be necessary to amend the definition of “Default Rate” or to waive any obligation of the Borrower to pay interest at the Default Rate;

(iv) as to any Lender, change Section 2.12 or Section 8.03 in a manner that would alter the pro rata sharing of payments required thereby without the written Consent of such Lender;

(v) change any provision of this Section or the definition of “Required Lenders”, or any other provision hereof specifying the number or percentage of Lenders required to amend, waive or otherwise modify any rights hereunder or make any determination or grant any consent hereunder, without the written Consent of each Lender;

(vi) except as expressly permitted hereunder or under any other Loan Document, release, or limit the liability of, any Loan Party without the written Consent of each Lender;

(vii) except for Permitted Dispositions or as provided in Section 9.09, release all or substantially all of the DIP Collateral from the DIP Liens of the Security Documents without the written Consent of each Lender; and

(viii) except as expressly permitted herein or in any other Loan Document, subordinate the Obligations hereunder or the DIP Liens granted hereunder or under the other Loan Documents, to any other Indebtedness or DIP Lien, as the case may be without the written Consent of each Lender;

and, provided further, that (i) no amendment, waiver or Consent shall, unless in writing and signed by the Agent in addition to the Lenders required above, affect the rights or duties of the Agent

under this Agreement or any other Loan Document; and (ii) the Fee Letter may be amended, or rights or privileges thereunder waived, in a writing executed only by the parties thereto.

(b) Notwithstanding anything to the contrary in this Agreement or any other Loan Document, any Loan Document may be amended with the consent of the Agent, the KKR Representative and the Borrower without the need to obtain the consent of any other Lender if such amendment or waiver is delivered in order (i) to comply with local Law or advice of local counsel, (ii) to cure ambiguities or defects, or (iii) to cause any Loan Document to be consistent with this Agreement and the other Loan Documents.

(c) If any Lender does not Consent (a “*Non-Consenting Lender*”) to a proposed amendment, waiver, consent or release with respect to any Loan Document that requires the Consent of each Lender and that has been approved by the Required Lenders, the Borrower may replace such Non-Consenting Lender in accordance with Section 10.13; provided that such amendment, waiver, consent or release can be effected as a result of the assignment contemplated by such Section (together with all other such assignments required by the Borrower to be made pursuant to this paragraph).

(d) Notwithstanding any provision herein to the contrary, this Agreement may be amended with the written consent of the Required Lenders, the Agent and the Borrower (i) to add one or more additional term loan facilities to this Agreement, and to permit the extensions of credit and all related obligations and liabilities arising in connection therewith from time to time outstanding to share ratably (or, at the election of the Borrower and the relevant lenders providing such additional credit facilities, on a basis subordinated to the existing facilities hereunder) in the benefits of this Agreement and the other Loan Documents with the obligations and liabilities from time to time outstanding in respect of the existing facilities hereunder, (ii) in connection with the foregoing, to permit, as deemed appropriate by the Agent and approved by the Required Lenders, (x) to permit the relevant lenders providing such additional credit facilities to participate in any required vote or action required to be approved by the Required Lenders or by any other number, percentage or class of Lenders hereunder and (y) to change Section 2.12 or Section 8.03 or any other provision hereof relating to the pro rata sharing of payments among the Lenders as if the relevant lenders providing such additional credit facilities were a party to this Agreement on the Closing Date and included in the definition of “Lenders”, as Lenders hereunder, as of the Closing Date, and (iii) to make technical amendments as may be necessary or appropriate to the extent necessary to effectuate any of the amendments enumerated in this clause (d).

## **10.02 Notices; Effectiveness; Electronic Communications.**

(a) Notices Generally. Except in the case of notices and other communications expressly permitted to be given by telephone (and except as provided in subsection (b) below), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by electronic mail as follows, and all notices and other communications expressly permitted hereunder to be given by telephone shall be made to the applicable telephone number, as follows:

(i) if to the Loan Parties, the Agent or any KKR Credit Entity, to the address, electronic mail address or telephone number specified for such Person on Schedule 10.02; and

(ii) if to any other Lender, to the address, electronic mail address or telephone number specified in writing to the Borrower and the Agent.

Notices and other communications sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received; notices and other communications sent by facsimile shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next Business Day for the recipient). Notices and other communications delivered through electronic communications to the extent provided in subsection (b) below, shall be effective as provided in such subsection (b).

(b) Electronic Communications. Notices and other communications to the Lender hereunder may be delivered or furnished by electronic communication (including e mail and Internet or intranet websites) pursuant to procedures approved by the Agent. The Agent or the Borrower may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it, provided that approval of such procedures may be limited to particular notices or communications.

Unless the Agent otherwise prescribes, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement), and (ii) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing clause (i) of notification that such notice or communication is available and identifying the website address therefor; provided that, for both clauses (i) and (ii), if such notice, email or other communication is not sent during the normal business hours of the recipient, such notice, email or communication shall be deemed to have been sent at the opening of business on the next business day for the recipient.

(c) Change of Address, Etc. Each of the Loan Parties and the Agent may change its address, electronic mail address or telephone number for notices and other communications hereunder by notice to the other parties hereto. Each other Lender may change its address, electronic mail address or telephone number for notices and other communications hereunder by notice to the Borrower and the Agent. In addition, each Lender agrees to notify the Agent from time to time to ensure that the Agent has on record (i) an effective address, contact name, telephone number and electronic mail address to which notices and other communications may be sent and (ii) accurate wire instructions for such Lender.

(d) Reliance by Agent and Lenders. The Agent and the Lenders shall be entitled to rely and act upon any notices purportedly given by or on behalf of the Loan

Parties even if (i) such notices were not made in a manner specified herein, were incomplete or were not preceded or followed by any other form of notice specified herein, or (ii) the terms thereof, as understood by the recipient, varied from any confirmation thereof. The Loan Parties shall indemnify the Agent, each Lender and the Related Parties of each of them from all losses, costs, expenses and liabilities resulting from the reliance by such Person on each notice purportedly given by or on behalf of the Loan Parties. All telephonic notices to and other telephonic communications with the Agent may be recorded by the Agent, and each of the parties hereto hereby consents to such recording.

**10.03 No Waiver; Cumulative Remedies.** No failure by any Credit Party to exercise, and no delay by any such Person in exercising, any right, remedy, power or privilege hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder or under any other Loan Document preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges provided herein and in the other Loan Documents are cumulative and not exclusive of any rights, remedies, powers and privileges provided by Law. Without limiting the generality of the foregoing, the making of the Loan shall not be construed as a waiver of any Default or Event of Default, regardless of whether any Credit Party may have had notice or knowledge of such Default or Event of Default at the time.

Notwithstanding anything to the contrary contained herein or in any other Loan Document, the authority to enforce rights and remedies hereunder and under the other Loan Documents against the Loan Parties or any of them shall be vested exclusively in, and all actions and proceedings at Law in connection with such enforcement shall be instituted and maintained exclusively by, the Agent in accordance with Section 8.02 for the benefit of all the Lenders; provided, however, that the foregoing shall not prohibit (a) the Agent from exercising on its own behalf the rights and remedies that inure to its benefit (solely in its capacity as Agent) hereunder and under the other Loan Documents or (b) any Lender from exercising setoff rights in accordance with Section 10.08 (subject to the terms of Section 2.12); and provided, further, that if at any time there is no Person acting as Agent hereunder and under the other Loan Documents, then (i) the Required Lenders shall have the rights otherwise ascribed to the Agent pursuant to Section 8.02 and (ii) in addition to the matters set forth in clause (b) of the preceding proviso and subject to Section 2.12, any Lender may, with the consent of the Required Lenders, enforce any rights and remedies available to it and as authorized by the Required Lenders.

**10.04 Expenses; Indemnity; Damage Waiver.**

Expenses. (a) Costs and Expenses. The Borrower shall pay all Credit Party

(b) Indemnification by the Loan Parties.

(i) Without duplication of the expense reimbursement obligations pursuant to paragraph (a) above, the Borrower and the Guarantors shall jointly and severally indemnify and hold harmless each Agent, each Lender and each of their Affiliates and each of the respective officers, directors, employees, controlling persons, agents, advisors,

attorneys and representatives of each (each, an “*Indemnified Party*”) from and against any and all claims, damages, actual losses, liabilities and expenses (including (and limited, in the case of counsel, to) reasonable and documented out-of-pocket fees and disbursements of (x) one counsel, one local counsel in each relevant jurisdiction, and any successor counsel to primary or local counsel, for the Agent and (y) one counsel for the other Indemnified Parties), joint or several, that may be incurred by or asserted or awarded against any Indemnified Party, in each case arising out of or in connection with or relating to any investigation, litigation or proceeding or the preparation of any defense, arising out of or in connection with or relating to the DIP Facility, the Loan Documents or the transactions contemplated thereby, or any use made or proposed to be made with the DIP Proceeds, whether or not such investigation, litigation or proceeding is brought by any Debtor or any of its subsidiaries, any shareholders or creditors of the foregoing, an Indemnified Party or any other person, or an Indemnified Party is otherwise a party thereto (collectively, the “*Indemnified Liabilities*”), except, to the extent such claim, damage, loss, liability or expense (i) is found in a final non appealable judgment by a court of competent jurisdiction to have resulted solely from the gross negligence or willful misconduct of such Indemnified Party or any of such Indemnified Party’s affiliates or their respective principals, directors, officers or employees, (ii) resulted solely from a dispute among Indemnified Parties other than any claims against any Indemnified Party in its capacity or in fulfilling its role as an Agent or (iii) other than in the case of the Agent and its Related Parties, resulted from a material breach of the Loan Documents by such Indemnified Party or any of such Indemnified Party’s Affiliates or their respective principals, directors, officers or employees, as determined in a final non-appealable judgment of a court of competent jurisdiction. No Indemnified Party shall have any liability (whether direct or indirect, in contract, tort or otherwise) to any Debtor or any of its subsidiaries or any shareholders or creditors of the foregoing for or in connection with the transactions contemplated hereby, except, with respect to any Indemnified Party, to the extent such liability is found in a final non appealable judgment by a court of competent jurisdiction to have resulted (i) solely from the gross negligence or willful misconduct of such Indemnified Party or any of such Indemnified Party’s Affiliates or their respective principals, directors, officers or employees or (ii) other than in the case of the Agent and its Related Parties, solely from a material breach of the Loan Documents by such Indemnified Person or any of such Indemnified Party’s affiliates or their respective principals, directors, officers or employees. In no event, however, shall any Indemnified Party or Debtor be liable on any theory of liability for any special, indirect, consequential or punitive damages.

(c) Waiver of Consequential Damages, Etc. To the fullest extent permitted by Law, the Loan Parties shall not assert, and hereby waive, any claim against any Indemnified Party, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection

with, or as a result of, this Agreement, any other Loan Document or any agreement or instrument contemplated hereby, the transactions contemplated hereby or thereby, the Loans or the use of the proceeds thereof.

(d) Payments. All amounts due under this Section shall be payable on demand therefor and in accordance with the DIP Orders.

(e) Limitation of Liability. No Indemnified Party shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed to such unintended recipients by such Indemnified Party through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Loan Documents or the transactions contemplated hereby or thereby other than for direct or actual damages resulting from the gross negligence or willful misconduct of such Indemnified Party as determined by a final and nonappealable judgment of a court of competent jurisdiction.

(f) Survival. The agreements in this Section shall survive the resignation or removal of the Agent, the assignment of any portion of the Loans by any Lender, the replacement of any Lender, the termination of the Aggregate Commitments and the repayment, satisfaction or discharge of all the other Obligations.

**10.05 Payments Set Aside.** To the extent that any payment by or on behalf of the Loan Parties is made to any Credit Party, or any Credit Party exercises its right of setoff, and such payment or the proceeds of such setoff or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by such Credit Party in its discretion) to be repaid to a trustee, receiver or any other party, in connection with any proceeding under any Debtor Relief Law or otherwise, then (a) to the extent of such recovery, the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such setoff had not occurred, and (b) each Lender severally agrees to pay to the Agent upon demand its Applicable Percentage (without duplication) of any amount so recovered from or repaid by the Agent, plus interest thereon from the date of such demand to the date such payment is made at a rate per annum equal to the Federal Funds Rate from time to time in effect. The obligations of the Lenders under clause (b) of the preceding sentence shall survive the payment in full of the Obligations and the termination of this Agreement.

#### **10.06 Successors and Assigns.**

(a) Successors and Assigns Generally. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that no Loan Party may assign or otherwise transfer any of its rights or obligations hereunder or under any other Loan Document without the prior written Consent of the Agent and each Lender and no Lender may assign or otherwise transfer any of its rights or obligations hereunder except (i) to an Eligible Assignee in accordance with the provisions of Section 10.06(b), (ii) by way of participation in accordance with the provisions of subsection Section 10.06(d), or (iii) by way of pledge or assignment of a security interest subject to the restrictions of Section

10.06(f) (and any other attempted assignment or transfer by any party hereto shall be null and void). Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants to the extent provided in subsection (c) of this Section and, to the extent expressly contemplated hereby, the Related Parties of each of the Credit Parties) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) Assignments by Lenders. Any Lender may at any time assign to one or more Eligible Assignees all or a portion of its rights and obligations under this Agreement, or its portion of the Loans, as applicable, at the time owing to it); provided that any such assignment shall be subject to the following conditions:

(i) Minimum Amounts.

(A) in the case of an assignment of the entire remaining amount of the assigning Lender's Loan at the time owing to it or in the case of an assignment to a KKR Credit Entity, a Lender or an Affiliate of a Lender or an Approved Fund with respect to a Lender, no minimum amount need be assigned; and

(B) in any case not described in subsection (b)(i)(A) of this Section, the principal outstanding balance of the Loans of the assigning Lender subject to each such assignment, determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Agent or, if "Trade Date" is specified in the Assignment and Assumption, as of the Trade Date, shall not be less than \$5,000,000 unless the Agent otherwise consents (such consent not to be unreasonably withheld or delayed); provided, however, that concurrent assignments to members of an Assignee Group and concurrent assignments from members of an Assignee Group to a single Eligible Assignee (or to an Eligible Assignee and members of its Assignee Group) will be treated as a single assignment for purposes of determining whether such minimum amount has been met;

(ii) [Reserved];

(iii) Required Consents. No consent shall be required for any assignment except to the extent required by subsection (b)(i)(B) of this Section and, in addition:

(A) [reserved]; and

(B) other than with respect to any assignment to a KKR Credit Entity, the consent of the Agent (such consent not to be unreasonably withheld or delayed) shall be required for assignments (unless a Default or Event of Default has occurred and is continuing at the time of such assignment) if such assignment is to a Person that

is not a Lender, an Affiliate of such Lender or an Approved Fund with respect to such Lender; and

(iv) Assignment and Assumption. The parties to each assignment shall execute and deliver to the Agent an Assignment and Assumption, together with a processing and recordation fee of \$3,500, provided, however, that the Agent may, in its sole discretion, elect to waive such processing and recordation fee in the case of any assignment.

(v) No Assignment to Certain Persons. No such assignment shall be made (A) to the Loan Parties or any of the Loan Parties' Subsidiaries or (B) to a natural Person.

Subject to acceptance and recording thereof by the Agent pursuant to subsection (c) of this Section, from and after the effective date specified in each Assignment and Assumption, the Eligible Assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto) but shall continue to be entitled to the benefits of Sections 3.01, 3.04, 3.05, and 10.04 with respect to facts and circumstances occurring prior to the effective date of such assignment. Upon request, the Borrower (at its expense) shall execute and deliver a Note to the assignee Lender. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this subsection shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with Section 10.06(d).

(c) Register. The Agent, acting solely for this purpose as an agent of the Borrower, shall maintain at the Agent's Office a copy of each Assignment and Assumption delivered to it (or the equivalent thereof in electronic form) and a register for the recordation of the names and addresses of the Lenders and principal amounts (and stated interest) of the Loans owing to, each Lender pursuant to the terms hereof from time to time (the "**Register**"). The entries in the Register shall be conclusive, absent manifest error, and the Loan Parties, the Agent and the Lenders may treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. The Register shall be available for inspection by the Borrower and any Lender at any reasonable time and from time to time upon reasonable prior notice.

(d) Participations. (i) Any Lender may at any time, without the consent of, or notice to, the Loan Parties or the Agent, sell participations to any Person (other than a natural person or the Loan Parties or any of the Loan Parties' Affiliates or Subsidiaries) (each, a "**Participant**") in all or a portion of such Lender's rights and/or obligations under this Agreement; provided that (x) such Lender's obligations under this Agreement shall remain unchanged, (y) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (z) the Loan Parties, the Agent, the

Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. Any Participant shall agree in writing to comply with all confidentiality obligations set forth in Section 10.07 as if such Participant was a Lender hereunder.

(ii) Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; provided that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, waiver or other modification described in clauses (i) through (iii) of the first proviso to Section 10.01 that affects such Participant. Subject to subsection (e) of this Section, the Loan Parties agree that each Participant shall be entitled to the benefits of Sections 3.01, 3.04 and 3.05 (subject to the requirements and limitations therein, including the requirements under Section 3.01(e) (it being understood that the documentation required under Section 3.01(e) shall be delivered to the participating Lender)) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to Section 10.06(b). To the extent permitted by Law, each Participant also shall be entitled to the benefits of Section 10.08 as though it were a Lender, provided that such Participant agrees to be subject to Section 2.12 as though it were a Lender.

(iii) Each Lender that sells a participation shall, acting solely for this purpose as an agent of the Borrower, maintain a register on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each Participant's interest in the Loans or other obligations under the Loan Documents (the "***Participant Register***"); provided that no Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any information relating to a Participant's interest in the Loans or its other obligations under any Loan Document) to any Person except to the extent that such disclosure is necessary to establish that such Loan or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, the Agent (in its capacity as Agent) shall have no responsibility for maintaining a Participant Register.

(e) Limitations upon Participant Rights. A Participant shall not be entitled to receive any greater payment under Section 3.01 or 3.04 than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant, unless the sale of the participation to such Participant is made with the Borrower's prior written consent. A Participant that would be a Foreign Lender if it were

a Lender shall not be entitled to the benefits of Section 3.01 unless the Borrower is notified of the participation sold to such Participant and such Participant agrees, for the benefit of the Loan Parties, to comply with Section 3.01(e) as though it were a Lender.

(f) Certain Pledges. Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement (including under its Note, if any) to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank; provided that no such pledge or assignment shall release such Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

**10.07 Treatment of Certain Information; Confidentiality.** Each of the Credit Parties agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (a) to each Credit Party's Affiliates, Approved Funds, each Credit Party's and their respective Affiliates' and Approved Funds' respective partners, directors, officers, employees, agents, funding sources, attorneys, advisors and representatives (including, if such Credit Party is a KKR Credit Entity, to any other KKR Credit Entity and its respective partners, directors, officers, employees, existing and prospective investors, agents, funding sources, attorneys, advisors and representatives) (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential), (b) to the extent requested by any regulatory authority purporting to have jurisdiction over it (including any self-regulatory authority), (c) to the extent required by Laws or regulations or by any subpoena or similar legal process, (d) to any other party hereto, (e) in connection with the exercise of any remedies hereunder or under any other Loan Document or any action or proceeding relating to this Agreement or any other Loan Document or the enforcement of rights hereunder or thereunder, (f) subject to an agreement (including any electronic agreement contained in any platform) containing provisions substantially the same as those of this Section, to (i) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights or obligations under this Agreement or (ii) any actual or prospective counterparty (or its advisors) to any Swap Contract relating to any Loan Party and its obligations, (g) with the consent of the Borrower, (h) to a trustee, collateral manager, servicer, backup servicer, noteholder or secured party in connection with the administration, servicing and reporting on the assets serving as collateral for securities issued by a KKR Credit Entity, or (i) to the extent such Information (i) becomes publicly available other than as a result of a breach of this Section or (ii) becomes available to any Credit Party or any of their respective Affiliates on a non-confidential basis from a source other than the Loan Parties.

For purposes of this Section, "**Information**" means all information received from the Loan Parties or any Subsidiary thereof relating to the Loan Parties or any Subsidiary thereof or their respective businesses, other than any such information that is available to any Credit Party on a non-confidential basis prior to disclosure by the Loan Parties or any Subsidiary thereof. Any Person required to maintain the confidentiality of Information as provided in this Section shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information.

Each of the Credit Parties acknowledges that (a) the Information may include material non-public information concerning the Loan Parties or a Subsidiary, as the case may be, (b) it has developed compliance procedures regarding the use of material non-public information and (c) it will handle such material non-public information in accordance with Law, including Federal and state securities Laws.

**10.08 Right of Setoff.** If an Event of Default shall have occurred and be continuing or if any Lender shall have been served with a trustee process or similar attachment relating to property of a Loan Party, each Lender and each of their respective Affiliates is hereby authorized at any time and from time to time, after obtaining the prior written consent of the Agent or the Required Lenders, to the fullest extent permitted by Law, to set off and apply any and all deposits (general or special, time or demand, provisional or final, in whatever currency) or other property at any time held and other obligations (in whatever currency) at any time owing by such Lender or any such Affiliate to or for the credit or the account of the Borrower or any other Loan Party against any and all of the Obligations now or hereafter existing under this Agreement or any other Loan Document to such Lender, regardless of the adequacy of the DIP Collateral, and irrespective of whether or not such Lender shall have made any demand under this Agreement or any other Loan Document and although such obligations of the Borrower or such Loan Party may be contingent or unmatured or are owed to a branch or office of such Lender different from the branch or office holding such deposit or obligated on such indebtedness. The rights of each Lender and its Affiliates under this Section are in addition to other rights and remedies (including other rights of setoff) that such Lender or its Affiliates may have. Each Lender agrees to notify the Borrower and the Agent promptly after any such setoff and application, provided that the failure to give such notice shall not affect the validity of such setoff and application.

**10.09 Interest Rate Limitation.** Notwithstanding anything to the contrary contained in any Loan Document, the interest paid or agreed to be paid under the Loan Documents shall not exceed the maximum rate of non-usurious interest permitted by Law (the “*Maximum Rate*”). If the Agent or any Lender shall receive interest in an amount that exceeds the Maximum Rate, the excess interest shall be applied to the principal of the Loans and other Obligations or, if it exceeds such unpaid principal, refunded to the Borrower. In determining whether the interest contracted for, charged, or received by the Agent or a Lender exceeds the Maximum Rate, such Person may, to the extent permitted by Law, (a) characterize any payment that is not principal as an expense, fee, or premium rather than interest, (b) exclude voluntary prepayments and the effects thereof, and (c) amortize, prorate, allocate, and spread in equal or unequal parts the total amount of interest throughout the contemplated term of the Obligations hereunder.

**10.10 Counterparts; Integration; Effectiveness.** This Agreement may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement and the other Loan Documents constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. This Agreement shall become effective when it shall have been executed by the Agent and when the Agent shall have received counterparts hereof that, when taken together, bear the signatures of each of the other parties hereto. Delivery of an executed counterpart of a signature page of this Agreement by telecopy,

pdf or other electronic transmission shall be as effective as delivery of a manually executed counterpart of this Agreement.

**10.11 Survival.** All representations and warranties made hereunder and in any other Loan Document or other document delivered pursuant hereto or thereto or in connection herewith or therewith shall survive the execution and delivery hereof and thereof. Such representations and warranties have been or will be relied upon by the Credit Parties, regardless of any investigation made by any Credit Party or on their behalf and notwithstanding that any Credit Party may have had notice or knowledge of any Default or Event of Default, and shall continue in full force and effect as long as the Loans or any other Obligation hereunder shall remain unpaid or unsatisfied. Further, the provisions of Sections 3.01, 3.04, 3.05 and 10.04 and Article IX shall survive and remain in full force and effect regardless of the repayment of the Obligations or the termination of this Agreement or any provision hereof.

**10.12 Severability.** If any provision of this Agreement or the other Loan Documents is held to be illegal, invalid or unenforceable, (a) the legality, validity and enforceability of the remaining provisions of this Agreement and the other Loan Documents shall not be affected or impaired thereby and (b) the parties shall endeavor in good faith negotiations to replace the illegal, invalid or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the illegal, invalid or unenforceable provisions. The invalidity of a provision in a particular jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

**10.13 Replacement of Lenders.** If any Lender requests compensation under Section 3.04, or if the Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.01, or if any Lender is a Non-Consenting Lender, then the Borrower may, at its sole expense and effort, upon notice to such Lender and the Agent, require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in, and consents required by, Section 10.06), all of its interests, rights (other than its existing rights to payments pursuant to Section 3.01 and 3.04) and obligations under this Agreement and the related Loan Documents to an assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment), provided that:

(a) the Borrower shall have paid to the Agent the assignment fee specified in Section 10.06(b);

(b) such Lender shall have received payment of an amount equal to the outstanding principal of its Loans, accrued interest thereon, accrued fees and all other amounts payable to it hereunder and under the other Loan Documents (including any amounts under Section 3.05) from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrower (in the case of all other amounts);

(c) in the case of any such assignment resulting from a claim for compensation under Section 3.04 or payments required to be made pursuant to Section 3.01, such assignment will result in a reduction in such compensation or payments thereafter;

(d) such assignment does not conflict with Laws; and

(e) in the case of an assignment resulting from a Lender becoming a Non-Consenting Lender, the applicable assignee shall have consented to the applicable amendment, waiver or consent.

A Lender shall not be required to make any such assignment or delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling the Borrower to require such assignment and delegation cease to apply.

#### **10.14 Governing Law; Jurisdiction; Etc.**

(a) GOVERNING LAW. THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS AND ANY CLAIMS, CONTROVERSY, DISPUTE OR CAUSE OF ACTION, WHETHER IN LAW OR EQUITY, WHETHER IN CONTRACT OR IN TORT OR OTHERWISE, BASED UPON, ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT (EXCEPT, AS TO ANY OTHER LOAN DOCUMENT, AS EXPRESSLY SET FORTH THEREIN) AND THE TRANSACTIONS CONTEMPLATED HEREBY AND THEREBY SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.

(b) SUBMISSION TO JURISDICTION. EACH PARTY HERETO IRREVOCABLY AND UNCONDITIONALLY AGREES THAT IT WILL NOT COMMENCE ANY ACTION, LITIGATION OR PROCEEDING OF ANY KIND OR DESCRIPTION, WHETHER IN LAW OR EQUITY, WHETHER IN CONTRACT OR IN TORT OR OTHERWISE, IN ANY WAY RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS RELATING HERETO OR THERETO, IN ANY FORUM OTHER THAN THE BANKRUPTCY COURT, AND IF THE BANKRUPTCY COURT DOES NOT HAVE, OR ABSTAINS FROM EXERCISING JURISDICTION, ANY U.S. FEDERAL OR NEW YORK STATE COURT SITTING IN THE BOROUGH OF MANHATTAN, IN THE CITY OF NEW YORK, AND ANY APPELLATE COURT FROM ANY THEREOF EXCEPT TO THE EXTENT THAT THE PROVISIONS OF THE BANKRUPTCY CODE ARE APPLICABLE AND SPECIFICALLY CONFLICT WITH THE FOREGOING, AND EACH OF THE PARTIES HERETO IRREVOCABLY AND UNCONDITIONALLY SUBMITS TO THE EXCLUSIVE JURISDICTION OF SUCH COURTS AND AGREES THAT ALL CLAIMS IN RESPECT OF ANY SUCH ACTION, LITIGATION OR PROCEEDING SHALL BE HEARD AND DETERMINED IN SUCH BANKRUPTCY COURT OR NEW YORK STATE COURT OR, TO THE FULLEST EXTENT PERMITTED BY LAW, IN SUCH FEDERAL COURT. EACH OF THE PARTIES HERETO AGREES THAT A FINAL JUDGMENT IN ANY SUCH ACTION, LITIGATION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW.

(c) WAIVER OF VENUE. EACH PARTY HERETO IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY 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 LOAN DOCUMENT IN ANY COURT REFERRED TO IN SUBSECTION (B) OF THIS SECTION. EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING IN ANY SUCH COURT.

(d) SERVICE OF PROCESS. EACH PARTY HERETO IRREVOCABLY CONSENTS TO SERVICE OF PROCESS IN THE MANNER PROVIDED FOR NOTICES IN SECTION 10.02. NOTHING IN THIS AGREEMENT WILL AFFECT THE RIGHT OF ANY PARTY HERETO TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY LAW.

(e) NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION 10.14, THE BANKRUPTCY COURT SHALL HAVE EXCLUSIVE JURISDICTION OVER ANY ACTION OR DISPUTE INVOLVING, RELATING TO OR ARISING OUT OF THIS AGREEMENT OR THE OTHER LOAN DOCUMENTS.

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

**10.16 No Advisory or Fiduciary Responsibility.** In connection with all aspects of each transaction contemplated hereby, the Loan Parties each acknowledge and agree that: (i) the credit facility provided for hereunder and any related arranging or other services in connection therewith (including in connection with any amendment, waiver or other modification hereof or of any other Loan Document) are an arm's-length commercial transaction between the Loan Parties, on the one hand, and the Credit Parties, on the other hand, and each of the Loan Parties is capable of evaluating and understanding and understands and accepts the terms, risks and conditions of the transactions contemplated hereby and by the other Loan Documents (including any amendment, waiver or other modification hereof or thereof); (ii) in connection with the process leading to such transaction, each Credit Party is and has been acting solely as a principal and is not the financial

advisor, agent or fiduciary, for the Loan Parties or any of their respective Affiliates, stockholders, creditors or employees or any other Person; (iii) none of the Credit Parties has assumed or will assume an advisory, agency or fiduciary responsibility in favor of the Loan Parties with respect to any of the transactions contemplated hereby or the process leading thereto, including with respect to any amendment, waiver or other modification hereof or of any other Loan Document (irrespective of whether any of the Credit Parties has advised or is currently advising any Loan Party or any of its Affiliates on other matters) and none of the Credit Parties has any obligation to any Loan Party or any of its Affiliates with respect to the transactions contemplated hereby except those obligations expressly set forth herein and in the other Loan Documents; (iv) the Credit Parties and their respective Affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Loan Parties and their respective Affiliates, and none of the Credit Parties has any obligation to disclose any of such interests by virtue of any advisory, agency or fiduciary relationship; and (v) the Credit Parties have not provided and will not provide any legal, accounting, regulatory or tax advice with respect to any of the transactions contemplated hereby (including any amendment, waiver or other modification hereof or of any other Loan Document) and each of the Loan Parties has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate. Each of the Loan Parties hereby waives and releases, to the fullest extent permitted by law, any claims that it may have against each of the Credit Parties with respect to any breach or alleged breach of agency or fiduciary duty.

**10.17 USA PATRIOT Act Notice.** Each Lender that is subject to the Act (as hereinafter defined) and the Agent (for itself and not on behalf of any Lender) hereby notifies the Loan Parties that pursuant to the requirements of the USA Patriot Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the “*Act*”), it is required to obtain, verify and record information that identifies each Loan Party, which information includes the name and address of each Loan Party and other information that will allow such Lender or the Agent, as applicable, to identify each Loan Party in accordance with the Act. Each Loan Party is in compliance, in all material respects, with the Patriot Act. No part of the proceeds of the Loan will be used by the Loan Parties, directly or indirectly, for any payments to any governmental official or employee, political party, official of a political party, candidate for political office, or anyone else acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage, in violation of the United States Foreign Corrupt Practices Act of 1977, as amended. The Loan Parties shall, promptly following a request by the Agent or any Lender, provide all documentation and other information that the Agent or such Lender requests in order to comply with its ongoing obligations under applicable “know your customer” and anti-money laundering rules and regulations, including the Act.

**10.18 Foreign Assets Control Regulations.** Neither of the advance of the Loans nor the use of the proceeds of any thereof will violate the Trading With the Enemy Act (50 U.S.C. § 1 et seq., as amended) (the “*Trading With the Enemy Act*”) or any of the foreign assets control regulations of the United States Treasury Department (31 CFR, Subtitle B, Chapter V, as amended) (the “*Foreign Assets Control Regulations*”) or any enabling legislation or executive order relating thereto (which for the avoidance of doubt shall include, but shall not be limited to (a) Executive Order 13224 of September 21, 2001 Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism (66 Fed. Reg. 49079 (2001)) (the “*Executive Order*”) and (b) the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (Public Law 107-56)).

Furthermore, none of the Loan Parties or their Affiliates (a) is or will become a “blocked person” as described in the Executive Order, the Trading With the Enemy Act or the Foreign Assets Control Regulations or (b) engages or will engage in any dealings or transactions, or be otherwise associated, with any such “blocked person” or in any manner violative of any such order.

**10.19 Time of the Essence.** Time is of the essence of the Loan Documents.

**10.20 Press Releases.**

(a) Each Credit Party executing this Agreement agrees that neither it nor its Affiliates will in the future issue any press releases or other public disclosure using the name of the Agent, KKR Entities or their respective Affiliates or referring to this Agreement or the other Loan Documents without at least two (2) Business Days’ prior notice to the Agent and the KKR Representative and without the prior written consent of the Agent and the KKR Representative unless (and only to the extent that) such Credit Party or Affiliate is required to do so under Law and then, in any event, such Credit Party or Affiliate will consult with the Agent and the KKR Representative before issuing such press release or other public disclosure.

(b) Each Loan Party consents to the publication by the Agent or any Lender relating to the financing transactions on the Agent or such Lender’s internet site or in its marketing materials, press releases or published “tombstone” announcements or any announcements on any other print or electronic medium, and each such publication may include the aggregate amount of the investment, such Lender’s allocated investment amount, the pricing terms of the financing transaction, the identity of the Loan Parties, product photographs, logos or trademarks owned by the Loan Parties. The Agent or such Lender shall provide a draft reasonably in advance of any advertising material to the Borrower prior to the publication thereof; provided, however, that the Agent and any Lender shall not be required to provide the Borrower with an advance draft of any publication or materials where the information being published in such publication or materials may be disclosed publicly or is required to be disclosed by such party in accordance with applicable Laws or regulations. The Agent and the KKR Representative reserve the right to provide to industry trade organizations information necessary and customary for inclusion in league table measurements, including, without limitation, the facility size and pricing terms.

**10.21 Additional Waivers.**

(a) The Obligations are the joint and several obligation of each Loan Party. To the fullest extent permitted by Law, the obligations of each Loan Party shall not be affected by (i) the failure of any Credit Party to assert any claim or demand or to enforce or exercise any right or remedy against any other Loan Party under the provisions of this Agreement, any other Loan Document or otherwise, (ii) any rescission, waiver, amendment or modification of, or any release from any of the terms or provisions of, this Agreement or any other Loan Document, (iii) the failure to perfect any security interest in, or the release of, any of the DIP Collateral or other security held by or on behalf of the Agent or any other Credit Party, or (iv) any default, failure or delay, willful or otherwise, in the

performance of any of the Obligations, or by any other act or omission that may or might in any manner or to any extent vary the risk of any Loan Party or that would otherwise operate as a discharge of any Loan Party as a matter of law or equity (other than the indefeasible payment in full in cash of all the Obligations). The obligations of each Loan Party shall not be subject to any reduction, limitation, impairment or termination for any reason (other than the indefeasible payment in full in cash of the Obligations), including any claim of waiver, release, surrender, alteration or compromise of any of the Obligations, and shall not be subject to any defense or setoff, counterclaim, recoupment or termination whatsoever by reason of the invalidity, illegality or unenforceability of any of the Obligations or otherwise.

(b) To the fullest extent permitted by Law, each Loan Party waives any defense based on or arising out of any defense of any other Loan Party or the unenforceability of the Obligations or any part thereof from any cause, or the cessation from any cause of the liability of any other Loan Party, other than the indefeasible payment in full in cash of all the Obligations. The Agent and the other Credit Parties may, at their election, foreclose on any security held by one or more of them by one or more judicial or non-judicial sales, accept an assignment of any such security in lieu of foreclosure, compromise or adjust any part of the Obligations, make any other accommodation with any other Loan Party, or exercise any other right or remedy available to them against any other Loan Party, without affecting or impairing in any way the liability of any Loan Party hereunder except to the extent that all of the Obligations have been indefeasibly paid in full in cash. Each Loan Party waives any defense arising out of any such election even though such election operates, pursuant to Law, to impair or to extinguish any right of reimbursement or subrogation or other right or remedy of such Loan Party against any other Loan Party.

(c) Upon payment by any Loan Party of any Obligations, all rights of such Loan Party against any other Loan Party arising as a result thereof by way of right of subrogation, contribution, reimbursement, indemnity or otherwise shall in all respects be subordinate and junior in right of payment to the prior indefeasible payment in full in cash of all of the Obligations. In addition, any indebtedness of any Loan Party now or hereafter held by any other Loan Party is hereby subordinated in right of payment to the prior indefeasible payment in full of the Obligations and no Loan Party will demand, sue for or otherwise attempt to collect any such indebtedness. If any amount shall erroneously be paid to any Loan Party on account of (i) such subrogation, contribution, reimbursement, indemnity or similar right or (ii) any such indebtedness of any Loan Party, such amount shall be held in trust for the benefit of the Credit Parties and shall forthwith be paid to the Agent to be credited against the payment of the Obligations, whether matured or unmatured, in accordance with the terms of this Agreement and the other Loan Documents. Subject to the foregoing, to the extent that any Loan Party shall, under this Agreement as a joint and several obligor, repay any of the Obligations constituting the Loans made to the Borrower hereunder or other Obligations incurred directly and primarily by the Borrower (an "*Accommodation Payment*"), then the Loan Party making such Accommodation Payment shall be entitled to contribution and indemnification from, and be reimbursed by, each of the other Loan Parties in an amount, for each of such other Loan Parties, equal to a fraction of such Accommodation Payment, the numerator of which fraction is such other

Loan Party's Allocable Amount and the denominator of which is the sum of the Allocable Amounts of all of the Loan Parties. As of any date of determination, the "**Allocable Amount**" of each Loan Party shall be equal to the maximum amount of liability for Accommodation Payments which could be asserted against such Loan Party hereunder without (a) rendering such Loan Party "insolvent" within the meaning of Section 101 (32) of the Bankruptcy Code, Section 2 of the Uniform Fraudulent Transfer Act ("**UFTA**") or Section 2 of the Uniform Fraudulent Conveyance Act ("**UFCA**") or the applicable section of the Uniform Voidable Transactions Act, (b) leaving such Loan Party with unreasonably small capital or assets, within the meaning of Section 548 of the Bankruptcy Code, Section 4 of the UFTA, or Section 5 of the UFCA, or (c) leaving such Loan Party unable to pay its debts as they become due within the meaning of Section 548 of the Bankruptcy Code or Section 4 of the UFTA, or Section 5 of the UFCA.

(d) Without limiting the generality of the foregoing, or of any other waiver or other provision set forth in this Agreement, each Loan Party hereby absolutely, knowingly, unconditionally, and expressly waives any and all claim, defense or benefit arising directly or indirectly under any one or more of Sections 2787 to 2855 inclusive of the California Civil Code or any similar Law of the State of California.

**10.22 No Strict Construction.** The parties hereto have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties hereto and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any provisions of this Agreement.

**10.23 Attachments.** The exhibits, schedules and annexes attached to this Agreement are incorporated herein and shall be considered a part of this Agreement for the purposes stated herein, except that in the event of any conflict between any of the provisions of such exhibits and the provisions of this Agreement, the provisions of this Agreement shall prevail.

**10.24 Electronic Execution of Assignments and Certain Other Documents.** The words "execute," "execution," "signed," "signature," and words of like import in any Assignment and Assumption or in any amendment or other modification hereof (including waivers and consents) shall be deemed to include electronic signatures, the electronic matching of assignment terms and contract formations on electronic platforms approved by the Agent, or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable Law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state Laws based on the Uniform Electronic Transactions Act.

**10.25 [Reserved].**

**10.26 California Judicial Reference.** If any action or proceeding is filed in a court of the State of California by or against any party hereto in connection with any of the transactions contemplated by this Agreement or any other Loan Document, (a) the court shall, and

is hereby directed to, make a general reference pursuant to California Code of Civil Procedure Section 638 to a referee (who shall be a single active or retired judge) to hear and determine all of the issues in such action or proceeding (whether of fact or of Law) and to report a statement of decision, provided that at the option of any party to such proceeding, any such issues pertaining to a “provisional remedy” as defined in California Code of Civil Procedure Section 1281.8 shall be heard and determined by the court, and (b) without limiting the generality of Section 10.04, the Borrower shall be solely responsible to pay all fees and expenses of any referee appointed in such action or proceeding.

**10.27 [Reserved].**

**10.28 Conflict; Control.** In the event of any inconsistency between the terms and conditions of the DIP Loan Documents, the Interim DIP Order or any Final DIP Order, the provisions of the Interim DIP Order or Final DIP Order, as the case may be, shall govern and control.

**10.29 Bankruptcy Matters.**

This Agreement, the other Loan Documents, and all Liens and DIP Liens and other rights and privileges created hereby or pursuant hereto or to any other Loan Document shall be binding upon each Debtor, the estate of each Debtor, and any trustee, other estate representative or any successor in interest of any Debtor in any Chapter 11 Case or any subsequent case commenced under Chapter 7 of the Bankruptcy Code, and shall not be subject to Section 365 of the Bankruptcy Code. This Agreement and the other Loan Documents shall be binding upon, and inure to the benefit of, the successors of each Agent and the Lenders and their respective assigns, transferees and endorsees. The DIP Liens created by this Agreement and the other Loan Documents shall be and remain valid and perfected in the event of the substantive consolidation or conversion of any Chapter 11 Case or any other bankruptcy case of any Debtor to a case under Chapter 7 of the Bankruptcy Code or in the event of dismissal of any Chapter 11 Case or the release of any DIP Collateral from the jurisdiction of the Bankruptcy Court for any reason, without the necessity that the Agent file financing statements or otherwise perfect its DIP Liens under applicable law. No Loan Party may assign, transfer, hypothecate or otherwise convey its rights, benefits, obligations or duties hereunder or under any of the other Loan Documents without the prior express written consent of the Agent and the Lenders. Any such purported assignment, transfer, hypothecation or other conveyance by any Loan Party without the prior express written consent of the Agent and the Lenders shall be void. The terms and provisions of this Agreement are for the purpose of defining the relative rights and obligations of each Loan Party, the Agent and the Lenders with respect to the transactions contemplated hereby and no Person shall be a third party beneficiary of any of the terms and provisions of this Agreement or any of the other Loan Documents.

The Agent is hereby authorized and directed by the Lenders to execute and deliver this Agreement and any additional Loan Documents entered into in connection with the subject matter of this Agreement, in its capacity as Agent, and, by its execution below, each of the undersigned Lenders agrees to be bound by the terms and conditions of this Agreement, the Intercreditor Agreement and such other Loan Documents. The Agent shall have all of the benefits, indemnities, powers, privileges, protections and rights contained in this Agreement (including, for

the avoidance of any doubt, Article IX) in connection with acting in its capacity as Agent hereunder.

[signature pages follow]

*IN WITNESS WHEREOF*, the parties hereto have caused this Agreement to be duly executed by their respective authorized officers as of the date first above written.

**BORROWER:**

**SEQUENTIAL BRANDS GROUP, INC.**

By: \_\_\_\_\_

Lorraine DiSanto

Title: Chief Financial Officer

**GUARANTORS:**

**SQBG, INC.**

By: \_\_\_\_\_  
Name: Lorraine DiSanto  
Title: Chief Financial Officer

**SEQUENTIAL LICENSING, INC.**

By: \_\_\_\_\_  
Name: Lorraine DiSanto  
Title: Chief Financial Officer

**WILLIAM RAST LICENSING, LLC**

By: \_\_\_\_\_  
Name: Lorraine DiSanto  
Title: Chief Financial Officer

**HEELING SPORTS LIMITED**

By: \_\_\_\_\_  
Name: Lorraine DiSanto  
Title: Chief Financial Officer

**SBG FM, LLC**

By: \_\_\_\_\_  
Name: Lorraine DiSanto  
Title: Chief Financial Officer

**SBG UNIVERSE BRANDS, LLC**

By: \_\_\_\_\_  
Name: Lorraine DiSanto  
Title: Chief Financial Officer

**GALAXY BRANDS LLC**

By: \_\_\_\_\_  
Name: Lorraine DiSanto  
Title: Chief Financial Officer

**THE BASKETBALL MARKETING  
COMPANY, INC.**

By: \_\_\_\_\_  
Name: Lorraine DiSanto  
Title: Chief Financial Officer

**AMERICAN SPORTING GOODS  
CORPORATION**

By: \_\_\_\_\_  
Name: Lorraine DiSanto  
Title: Chief Financial Officer

**LNT BRANDS LLC**

By: \_\_\_\_\_  
Name: Lorraine DiSanto  
Title: Chief Financial Officer

**JOE'S HOLDINGS LLC**

By: \_\_\_\_\_  
Name: Lorraine DiSanto  
Title: Chief Financial Officer

**GAIAM BRAND HOLDCO, LLC**

By: \_\_\_\_\_

Name: Lorraine DiSanto

Title: Chief Financial Officer

**GAIAM AMERICAS, INC.**

By: \_\_\_\_\_

Name: Lorraine DiSanto

Title: Chief Financial Officer

**SBG-GAIAM HOLDINGS, LLC**

By: \_\_\_\_\_

Name: Lorraine DiSanto

Title: Chief Financial Officer

**AGENT:**

**WILMINGTON TRUST, NATIONAL ASSOCIATION, as Agent**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**LENDERS:**

**FS KKR CAPITAL CORP.**

By: \_\_\_\_\_  
Name: Jessica Woolf  
Title: Authorized Signatory

**DARBY CREEK LLC**

By: \_\_\_\_\_  
Name: Jessica Woolf  
Title: Authorized Signatory

**DUNLAP FUNDING LLC**

By: \_\_\_\_\_  
Name: Jessica Woolf  
Title: Authorized Signatory

**APOLLO CENTRE STREET PARTNERSHIP, L.P.**

By: Apollo Centre Street Advisors (APO DC), L.P., its general partner

By: Apollo Centre Street Advisors (APO DC-GP), LLC, its general partner

By: \_\_\_\_\_

Name: Joseph D. Glatt

Title: Vice President

**APOLLO UNION STREET PARTNERS, L.P.**

By: Apollo Union Street Advisors, L.P., its General Partner

By: Apollo Union Street Capital Management, LLC, its General Partner

By: \_\_\_\_\_

Name: Joseph D. Glatt

Title: Vice President

**APOLLO KINGS ALLEY CREDIT FUND, LP**

By: Apollo Kings Alley Credit Advisors, L.P., its general partner

By: Apollo Kings Alley Credit Capital Management, LLC, its general partner

By: \_\_\_\_\_

Name: Joseph D. Glatt

Title: Vice President

**APOLLO MOULTRIE CREDIT FUND, L.P.**

By: Apollo Moultrie Credit Fund Management, LLC, its investment manager

By: \_\_\_\_\_

Name: Joseph D. Glatt

Title: Vice President

**APOLLO TACTICAL VALUE SPN INVESTMENTS, L.P.**

By: Apollo Tactical Value SPN Advisors (APO DC), L.P., its  
General Partner

By: Apollo Tactical Value SPN Capital Management (APO DC-  
GP), LLC, its General Partner

By: \_\_\_\_\_

Name: Joseph D. Glatt

Title: Vice President

**APOLLO INVESTMENT CORPORATION**

By: Apollo Investment Management, L.P., as Advisor

By: ACC Management, LLC, as its General Partner

By: \_\_\_\_\_

Name:

Title:

**EXHIBIT C**

**BUDGET**

Week #	1	2	3	4	5	6	7	8	9	10	11	12	13	Total
Week Beginning:	8/29	9/5	9/12	9/19	9/26	10/3	10/10	10/17	10/24	10/31	11/7	11/14	11/21	
<b>INFLOWS</b>														
Operating Receipts	\$0.6	\$0.0	\$0.0	\$0.1	\$4.1	-	\$0.9	\$3.8	\$13.5	-	-	\$0.4	-	\$23.5
<b>TOTAL INFLOWS</b>	<b>\$0.6</b>	<b>\$0.0</b>	<b>\$0.0</b>	<b>\$0.1</b>	<b>\$4.1</b>	<b>-</b>	<b>\$0.9</b>	<b>\$3.8</b>	<b>\$13.5</b>	<b>-</b>	<b>-</b>	<b>\$0.4</b>	<b>-</b>	<b>\$23.5</b>
<b>OUTFLOWS</b>														
<b>Operating Disbursements</b>														
Compensation	0.2	-	0.2	-	0.2	-	0.2	-	-	0.2	-	0.2	-	1.0
Advertising	0.0	0.3	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	-	0.3	-	0.8
Rent	0.1	-	-	-	-	-	-	-	-	-	-	-	-	0.1
Other SG&A	5.3	0.0	0.1	0.0	0.1	0.0	0.1	0.0	0.1	0.0	0.1	0.0	0.1	5.8
Other Operating Disbursements	1.7	0.1	0.6	0.1	0.2	0.1	0.6	0.1	0.1	1.6	0.0	1.5	0.0	6.6
<b>Total Operating Disbursements</b>	<b>\$7.3</b>	<b>\$0.4</b>	<b>\$0.8</b>	<b>\$0.1</b>	<b>\$0.5</b>	<b>\$0.1</b>	<b>\$0.8</b>	<b>\$0.1</b>	<b>\$0.2</b>	<b>\$1.9</b>	<b>\$0.1</b>	<b>\$1.9</b>	<b>\$0.1</b>	<b>\$14.3</b>
<b>Restructuring Disbursements</b>														
Professional Fees (excl. Lender)	0.1	-	-	2.0	0.1	1.6	-	3.6	-	6.1	-	2.1	-	15.5
Lender Professional Fees	0.1	-	-	1.5	0.1	-	-	1.5	-	1.9	-	0.5	-	5.5
US Trustee	-	-	-	-	0.3	-	-	-	-	-	-	-	-	0.3
<b>Total Restructuring Disbursements</b>	<b>\$0.2</b>	<b>-</b>	<b>-</b>	<b>\$3.5</b>	<b>\$0.4</b>	<b>\$1.6</b>	<b>-</b>	<b>\$5.1</b>	<b>-</b>	<b>\$8.0</b>	<b>-</b>	<b>\$2.6</b>	<b>-</b>	<b>\$21.2</b>
<b>Financing Disbursements</b>														
Interest	0.7	-	-	-	0.7	-	-	-	0.7	0.2	-	-	-	2.2
Principal	127.9	-	-	-	-	-	-	-	-	-	-	-	-	127.9
Other Financing Costs	3.5	-	-	-	-	-	-	-	-	-	-	-	-	3.5
<b>Total Financing Disbursements</b>	<b>\$132.1</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>\$0.7</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>\$0.7</b>	<b>\$0.2</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>\$133.7</b>
<b>TOTAL OUTFLOWS</b>	<b>\$139.5</b>	<b>\$0.4</b>	<b>\$0.8</b>	<b>\$3.6</b>	<b>\$1.6</b>	<b>\$1.7</b>	<b>\$0.8</b>	<b>\$5.2</b>	<b>\$0.9</b>	<b>\$10.0</b>	<b>\$0.1</b>	<b>\$4.5</b>	<b>\$0.1</b>	<b>\$169.1</b>
<b>Beginning Cash</b>	<b>\$6.9</b>	<b>\$9.3</b>	<b>\$9.0</b>	<b>\$8.2</b>	<b>\$4.6</b>	<b>\$7.1</b>	<b>\$5.4</b>	<b>\$5.5</b>	<b>\$4.1</b>	<b>\$16.8</b>	<b>\$11.8</b>	<b>\$11.7</b>	<b>\$11.7</b>	<b>\$7.7</b>
Cash Inflows	0.6	0.0	0.0	0.1	4.1	-	0.9	3.8	13.5	-	-	0.4	-	23.5
Cash Outflows	(139.5)	(0.4)	(0.8)	(3.6)	(1.6)	(1.7)	(0.8)	(5.2)	(0.9)	(10.0)	(0.1)	(4.5)	(0.1)	(169.1)
<b>Net Change</b>	<b>(\$138.9)</b>	<b>(\$0.4)</b>	<b>(\$0.8)</b>	<b>(\$3.5)</b>	<b>\$2.5</b>	<b>(\$1.7)</b>	<b>\$0.1</b>	<b>(\$1.4)</b>	<b>\$12.7</b>	<b>(\$10.0)</b>	<b>(\$0.1)</b>	<b>(\$4.1)</b>	<b>(\$0.1)</b>	<b>(\$145.6)</b>
DIP Draw	141.3	-	-	-	-	-	-	-	-	5.0	-	-	-	146.3
<b>Ending Cash</b>	<b>\$9.3</b>	<b>\$9.0</b>	<b>\$8.2</b>	<b>\$4.6</b>	<b>\$7.1</b>	<b>\$5.4</b>	<b>\$5.5</b>	<b>\$4.1</b>	<b>\$16.8</b>	<b>\$11.8</b>	<b>\$11.7</b>	<b>\$7.7</b>	<b>\$7.6</b>	<b>\$7.6</b>