IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
AVADIM HEALTH, INC., et al.,[1]	)	Case No. 21-10083 (___)
Debtors.	)	(Joint Administration Requested)

DEBTORS' MOTION FOR ENTRY OF INTERIM AND FINAL ORDERS (I) AUTHORIZING DEBTORS TO (A) OBTAIN POSTPETITION SENIOR SECURED 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

The above-captioned debtors and debtors in possession (the "Debtors") in the above-captioned chapter 11 cases (the "Chapter 11 Cases"), hereby file this motion (the "Motion") and, in support thereof, rely upon and incorporate herein by reference the *Declaration of Keith Daniels, Chief Restructuring Officer of the Debtors, in Support of the Debtors' Chapter 11 Petitions and First Day Motions* (the "First Day Declaration"), filed contemporaneously herewith, and respectfully state as follows:

Relief Requested

1. The Debtors seek entry of an interim order substantially in the form of the Interim Order attached to this Motion as **Exhibit A** (the "Interim Order")[2] and a final order to be submitted at a later date (the "Final Order"):

---

[1] The Debtors, along with the last four (4) digits of each Debtor's federal tax identification number are: Avadim Health, Inc. (8411); Avadim Health IP, Inc. (7594); Bionome Properties Corp. (6483); Quality Assurance Associates, Inc. (5613); and Relion Manufacturing, Inc. (0430). The Debtors' business address is 81 Thompson Street, Asheville, NC 28803.

[2] Capitalized terms used but not defined herein shall have the meanings set forth in the Interim Order.

a. authorizing the Debtors to receive senior secured debtor-in-possession term loan financing in an aggregate principal amount of up to $7,156,000 of commitments (the "DIP Commitments") to make two term loans (the "DIP Facility") on the terms and conditions set forth in the Interim Order and the DIP Documents (as defined below); *provided, however*, that only $2,250,000 of new loans under the DIP Facility shall be available upon entry of the Interim Order;

b. authorizing (i) the Borrower (as defined below) to execute and enter into that certain *Superpriority Senior Secured Debtor-in-Possession Credit Agreement*, to be dated on or around the date hereof, 2021 (as amended, supplemented, or otherwise modified from time to time in accordance with the terms hereof and thereof, the "DIP Credit Agreement" and, together with the schedules and exhibits attached thereto and all agreements, documents, instruments and/or amendments executed and delivered in connection therewith, including the DIP GCA (as defined below), collectively, the "DIP Documents"),[3] among the Borrower, the lenders from time to time party thereto (the "DIP Lenders") and Hayfin Services, LLP, as administrative agent for the DIP Lenders and collateral agent for the DIP Secured Parties (as defined below) (in such capacities, the "DIP Agent"), and (ii) the Debtors to execute and enter into that certain Guarantee and Collateral Agreement, to be dated on or around the date hereof, among the Debtors and the DIP Agent (as amended, supplemented, or otherwise modified from time to time in accordance with the terms hereof and thereof, the "DIP GCA") and the other DIP Documents to which they are intended to be a party, and to perform all such other and further acts as may be required in connection with the DIP Facility and the DIP Documents;

c. granting adequate protection to the Prepetition Secured Parties (as defined below);

d. subject to the restrictions set forth in the DIP Documents and the Interim Order, authorizing the Debtors to use Cash Collateral (as defined below) and all other Prepetition Collateral (as defined below) in which the Prepetition Secured Parties have an interest and the granting of adequate protection to the Prepetition Secured Parties with respect to, *inter alia*, such use of Cash Collateral and the other Prepetition Collateral;

e. subject to certain challenge rights of parties in interest described herein and set forth in the Interim Order, approving certain stipulations by the Debtors with respect to the Senior Secured Debt Documents (as defined below) and the liens and security interests arising therefrom;

---

[3] Capitalized terms used but not otherwise defined herein shall have the respective meanings ascribed to such terms in the DIP Credit Agreement, which is attached hereto as **Exhibit B**.

f. granting superpriority claims pursuant to section 364(c)(1) of the Bankruptcy Code to the DIP Agent, for the benefit of the DIP Lenders and the other "Secured Parties" (as defined in the DIP Credit Agreement, the "DIP Secured Parties"), as well as liens, including priming liens, pursuant to section 364(d) of the Bankruptcy Code, as further described herein and in the Interim Order, on all prepetition and postpetition property of the Debtors' estates and all proceeds thereof (including, subject to entry of the Final Order, any Avoidance Proceeds (as defined in the Interim Order));

g. subject to entry of the Final Order, waiving the Debtors' right to surcharge the Prepetition Collateral and the DIP Collateral (as defined in the Interim Order) pursuant to section 506(c) of the Bankruptcy Code and any right of the Debtors under the "equities of the case" exception in section 552(b) of the Bankruptcy Code;

h. subject to entry of the Final Order, finding that none of the DIP Secured Parties or the Prepetition Secured Parties shall be subject to the equitable doctrine of "marshaling" or any similar doctrine with respect to the DIP Collateral or the Prepetition Collateral;

i. modifying the automatic stay to the extent set forth herein, in the Interim Order and in the DIP Documents; and

j. setting a date for the hearing (the "Final Hearing") to consider this Motion on a final basis and the entry of the Final Order authorizing and approving the transactions described in the foregoing clauses and herein.

Jurisdiction

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

orders or judgments in connection herewith consistent with Article III of the United States Constitution.

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

4. The statutory bases for the relief sought herein are sections 105, 361, 362, 363, 364, 503, and 507 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the "Bankruptcy Code"), Rules 2002, 4001, 6003, 6004 and 9014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), and Local Rule 4001-2.

Background

5. On the date hereof (the "Petition Date"), the Debtors each filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Debtors are managing their properties as debtors in possession pursuant to Bankruptcy Code sections 1107(a) and 1108. As of the date of this Motion, no trustee or examiner has been appointed in the Debtors' Chapter 11 Cases, and no committees have been appointed or designated.

6. Founded in 2007, Avadim Health, Inc. (collectively referred to herein with its Debtor affiliates as the "Company") is a vertically integrated healthcare and wellness company that sells topical products to improve immune health, neuromuscular health, and skin barrier health. The Company has commercialized a number of products under two brand families: Theraworx Protect, which targets institutional care and community health, and Theraworx Relief, marketed through retail pharmacies. As of the end of 2019, the Company's products were used in approximately 300 acute care hospitals, 850 nursing homes and other long-term care facilities, and were available in more than 49,000 pharmacy locations worldwide. The Company maintains its own research and development, manufacturing and commercialization infrastructure, and is strategically positioned to take advantage of several emerging trends in healthcare: antibiotic

stewardship, negativity around opioids, consumerization of healthcare and growth in self-care. The Company's products are designed to take advantage of the increasing desire for easily accessible, self-directed care, with options that are safe and easy to use.

7. The factual background regarding the Debtors, including its historical business operations and the events precipitating the chapter 11 filing, is set forth in detail in the *Declaration of Keith Daniels, Chief Restructuring Officer of the Debtors, in Support of the Debtors' Chapter 11 Petitions and First Day Motions* (the "First Day Declaration") filed concurrently herewith and fully incorporated herein by reference.

Prepetition Capital Structure

8. The Senior Secured Lenders (as defined below) provided the Borrower with certain loans and other financial accommodations (the "Prepetition Credit Facility") pursuant to that certain Credit Agreement, dated as of October 5, 2018 (as amended, supplemented, or otherwise modified from time to time, the "Senior Secured Credit Agreement", and together with any ancillary documents, security agreements, guarantees, pledge agreements, other instruments and notes issued in connection therewith, including, without limitation, that certain Guarantee and Collateral Agreement, dated as of October 5, 2018, by and among the Debtors and the Collateral Agent (as amended and as may be further amended, restated, amended and restated, supplemented and/or otherwise modified from time to time, the "Senior Secured GCA"), and as each may be amended, restated, supplemented, or otherwise modified from time to time prior to the date hereof, collectively, the "Senior Secured Credit Facility Documents") by and among (a) the Borrower, (b) Hayfin Services LLP, as administrative agent for the Senior Secured Lenders (in such capacity, the "Administrative Agent") and collateral agent for the Secured Parties (as defined in the Senior Secured Credit Agreement) (including, without limitation, the Senior Secured Noteholders) (in

such capacity, the "Collateral Agent"), and (c) the lenders party thereto from time to time and each solely in their capacity as such (the "Senior Secured Lenders").

9. The Borrower also entered into that certain Note Agreement, dated as of April 3, 2020 (as amended, restated, amended and restated, supplemented and/or otherwise modified from time to time prior to the date hereof, the "Senior Secured Note Agreement"), by and among (a) the Borrower, (b) the persons party thereto as "Holders" (each, a "Senior Secured Noteholder", and collectively, the "Senior Secured Noteholders"), and (c) Hayfin Services LLP, as the representative for the Senior Secured Noteholders (in such capacity, the "Noteholder Representative", and together with the Administrative Agent, the Collateral Agent, the Senior Secured Lenders, the Senior Secured Noteholders, and the other Secured Parties, collectively, the "Prepetition Secured Parties") and as Collateral Agent, pursuant to which the Borrower issued to the Senior Secured Noteholders (i) that certain Secured Note, dated as of April 3, 2020, in the original face amount of $12,000,000.00, (ii) that certain Secured Note, dated as of May 26, 2020, in the original face amount of $5,000,000.00, (iii) that certain Secured Note, dated as of May 5, 2021, in the original face amount of $1,000,000, (iv) that certain Secured Note, dated as of May 12, 2021, in the original face amount of $2,000,000 and (v) that certain Secured Note, dated as of May 20, 2021, in the original face amount of $2,000,000 (collectively, the "Senior Secured Notes", and together with the Senior Secured Note Agreement and any ancillary documents, security agreements, guarantees, pledge agreements, other instruments and notes issued in connection therewith (including, without limitation, the Senior Secured GCA,), and as each may be amended, restated, supplemented, or otherwise modified from time to time prior to the date hereof, collectively, the "Senior Secured Note Documents", and together with the Senior Secured Credit Facility Documents, the "Senior Secured Debt Documents").

10. As of the Petition Date, the Debtors were lawfully indebted and liable to the Prepetition Secured Parties in respect of the obligations under the Senior Secured Debt Documents in the aggregate outstanding principal amount of not less than $101,033,412.00 plus all accrued but unpaid interest, penalties and fees thereon (including interest paid in kind, the Prepayment/Repayment Premium (as defined in the Senior Secured Credit Agreement) (which as of the Petition Date is fully earned, due and payable in an amount equal to $618,632.52) and interest at the default rate, as applicable), fees, expenses, and all other obligations expressly provided for thereunder, or incurred in connection therewith, including any "Obligations" as defined in the Senior Secured Credit Facility Documents or Senior Secured Debt Documents (such obligations under the Senior Secured Debt Documents, the "Senior Secured Debt Obligations").

11. The Debtors are unconditionally liable, without defense, counterclaim, offset or setoff of any kind, with respect to the Senior Secured Debt Obligations. The Senior Secured Debt Obligations constitute legal, valid, and binding obligations of the Debtors. No offsets, defenses, or counterclaims to, or claims or causes of action that could reduce the amount or ranking of the Senior Secured Debt Obligations exist. No portion of the Senior Secured Debt Obligations (including any interest owed thereunder) is subject to set-off, avoidance, impairment, disallowance, recharacterization, reduction, subordination (whether equitable, contractual, or otherwise), counterclaims, recoupment, cross-claims, defenses, or any other challenges under or pursuant to the Bankruptcy Code or any other applicable domestic or foreign law or regulation by any person or entity. The Senior Secured Debt Documents are valid and enforceable by the Prepetition Secured Parties against each of the Debtors.

12. To secure the Senior Secured Debt Obligations, the Debtors entered into various security and collateral documents pursuant to and in connection with the Senior Secured Debt

Documents (including, without limitation, the Senior Secured GCA), pursuant to which the Prepetition Secured Parties were granted the benefit of valid, binding, perfected, enforceable, first-priority liens and security interests in the Prepetition Collateral (as defined below) (the "Senior Secured Debt Liens"). The Senior Secured Debt Liens provide the Prepetition Secured Parties with valid, binding, perfected, enforceable, first-priority liens, and security interests in all property of the Debtors, including, without limitation, cash collateral as defined in section 363(a) of the Bankruptcy Code (the "Cash Collateral") and the "Collateral" (as defined in the Senior Secured Credit Facility Documents) (collectively, the "Prepetition Collateral"). All cash of the Debtors and cash proceeds of the Prepetition Collateral, including all such cash and cash proceeds of such Prepetition Collateral held at any time and from time to time in any of the Debtors' securities accounts and banking, checking, or other deposit accounts with financial institutions, are and will be Cash Collateral of the Prepetition Secured Parties.

Background to Proposed DIP Loan

13. As described in detail in the First Day Declaration, prior to the Petition Date, the Debtors recognized a need for further outside financing and began the process of considering potential funding sources. The Debtors, through their advisors, discussed with various third parties the opportunity to provide financing to the Debtors, but because the Debtors have insufficient unencumbered collateral to secure postpetition financing from a new lender, the only proposal received would have required a priming or *pari passu* lien with the existing secured debt. The Prepetition Lenders informed the Debtors that they would not consent to such terms and, accordingly, taking into account the circumstances and the proposal provided by the DIP Lenders, the Debtors determined, in an exercise of their business judgment, to accept the DIP Lenders' proposal.

14. The Debtors believe that it is necessary to have access to additional working capital to sustain the operation of their businesses through the sale process in order to maximize the value of the sale of the Debtors' assets for all stakeholders. Prior to filing this Motion, the Debtors, in consultation with their advisors, reviewed and analyzed the Debtors' projected cash needs during the current sale process and prepared the Approved Budget, which the Debtors believe is sufficient to accomplish their goals in these cases.

15. In the face of insufficient cash-on-hand, the Debtors have determined that they would require postpetition financing to support their operational needs and fund the cases through the sale process.

16. After extended arms' length and good faith negotiations, the Debtors, in an exercise of their sound business judgment, determined that the terms of the proposed DIP Facility represent a fair and reasonable outcome for their estates and should be approved by this Court.

17. The Debtors are unable to obtain financing on terms more favorable than that offered by the DIP Lenders under the DIP Documents and are unable to obtain adequate unsecured credit allowable under section 503(b)(1) of the Bankruptcy Code as an administrative expense. The Debtors are also unable to obtain secured credit allowable solely under sections 364(c)(1), 364(c)(2), and 364(c)(3) of the Bankruptcy Code without the Debtors granting to the DIP Agent, for the benefit of the DIP Secured Parties, the DIP Liens (as defined in the Interim Order) and the DIP Superpriority Claims (as defined in the Interim Order) on the terms and conditions set forth in the Interim Order and granting the Adequate Protection Obligations (as defined below), in each case, under the terms and conditions set forth in the Interim Order and in the DIP Documents.

18. After careful review of available financing options, the Debtors have further concluded that the DIP Lenders' proposed terms would allow the Debtors to meet their goals and

provide the Debtors with sufficient liquidity on the best available economic terms. Through the DIP Documents, the Debtors will have access to sufficient liquidity for its ordinary course operations and accruing administrative expenses.

19. All negotiations with the DIP Lenders were conducted at arms' length and in good faith. The outcome of such negotiations is the DIP Credit Agreement and DIP Facility pending before this Court.

20. The Debtors now seek to move forward with the proposed DIP Facility on the terms set forth in the DIP Documents. Subject to this Court's approval, the Debtors intend to draw on the DIP Facility in order to satisfy the Debtors' ongoing working capital needs through this restructuring process.

21. The Prepetition Secured Parties have consented to the use of Cash Collateral and the other Prepetition Collateral, the priming of the Senior Secured Debt Liens pursuant to section 364(d)(1) of the Bankruptcy Code, and the Debtors' entry into the DIP Documents in accordance with and subject to the terms of the Interim Order and the DIP Documents.

Concise Statement of Relief Requested and Disclosures

22. In accordance with Bankruptcy Rule 4001(b) and Local Rule 4001-2, below is a summary[4] of the terms of the proposed financing and use of cash collateral:

Summary of Terms of DIP Facility	
Borrower:	Avadim Health, Inc. (DIP Credit Agmt., Preamble)

[4] The summaries and descriptions of the terms and conditions for the proposed financing and use of cash collateral and the provisions of the Interim Order and the Final Order set forth in this Motion are intended solely for informational purposes to provide the Court and parties in interest with an overview of the significant terms thereof. The summaries and descriptions are qualified in their entirety by the proposed Interim Order, the Final Order, and the DIP Documents. In the event there is any conflict between this Motion and the Interim Order, the Final Order, or the DIP Documents, the Interim Order, the Final Order, and the DIP Documents, as applicable, will control in all respects.

Fed. R. Bankr. P. 4001(c)(1)(B)	
Guarantors: Fed. R. Bankr. P. 4001(c)(1)(B);	Each, direct or indirect, subsidiary of the Borrower, including, without limitation, Relion Manufacturing, Inc., Bionome Properties Corp., Quality Assurance Associates, Inc. and Avadim Health IP, Inc. (DIP Credit Agmt., Preamble)
DIP Agent: Fed. R. Bankr. P. 4001(c)(1)(B);	Hayfin Services LLP (DIP Credit Agmt., Preamble)
DIP Lenders: Fed. R. Bankr. P. 4001(c)(1)(B);	Hayfin SOF II Luxco 2 S.à r.l., Hayfin Opal III L.P., Hayfin Topaz Luxco 2 S.C.A. (DIP Credit Agmt., Preamble)
Parties with an Interest in Cash Collateral: Fed. R. Bankr. P. 4001(b)(1)(B)(i) Fed. R. Bankr. P. 4001(c)(1)(B);	Prepetition Secured Parties (DIP Credit Agmt., Preamble)
Commitment Amount: Fed. R. Bankr. P. 4001(c)(1)(B) Local Bankr. R. 4001-2(a)(i)(A)	The DIP Facility will provide for loans in an aggregate principal amount of up to $7,156,000 of commitments on the terms and conditions set forth in the Interim Order and the DIP Documents; *provided, however*, that only $2,250,000 of new loans under the DIP Facility shall be available upon entry of the Interim Order. (DIP Credit Agmt., Preamble)
Type and Maturity: Fed. R. Bankr. P. 4001(c)(1)(B) Local Bankr. R. 4001- 2(a)(i)(B)	Delayed draw term loans with a maturity date of the earliest to occur of (a) August 30, 2021, (b) the consummation of a sale of all or substantially all of the assets of the Debtors pursuant to Bankruptcy Code Section 363, (c) the substantial consummation of a plan of reorganization filed in the Case that is confirmed pursuant to an order entered by the Court and (d) the date of acceleration of the Loans and the termination of

	the Commitments with respect to the Facility resulting from an event of default. (DIP Credit Agmt., Definitions)
Interest Rate: Fed. R. Bankr. P. 4001(c)(1)(B); Local Bankr. R. 4001- 2(a)(i)(B)	LIBOR (subject to a 1% floor) + 12% per annum. (DIP Credit Agmt., Section 2.07) Default interest at prevailing rate *plus* 2.00% per annum. (DIP Credit Agmt., Section 2.08)
Limitations on Court Authority to Enter Future Orders: Local Bankr. R. 4001- 2(a)(i)(C)	None.
Use of DIP Loans: Fed. R. Bankr. P. 4001(b)(1)(B)(ii), 4001(c)(1)(B); Local Bankr. R. 4001- 2(a)(i)(D)	The Borrower's borrowings from the DIP Lenders under the DIP Facility will be used in accordance with the Approved Budget for: (a) working capital and other general corporate purposes of the Debtors; (b) payment of amounts due under the DIP Facility, including interest and fees payable thereunder and any adequate protection payments payable pursuant to the Interim Order; (c) payment of the professional fees and expenses of administering the Chapter 11 Cases; and (d) other purposes as expressly set forth in the Interim Order, the Approved Budget, or as expressly approved by the DIP Agent in writing (in its sole discretion). (Interim Order ¶ I(ii)). Borrowings under the DIP Facility will not be used to fund non-Debtor expenses.
Conditions Precedent for Borrowing: Fed. R. Bankr. P. 4001(c)(1)(B); Local Bankr. R. 4001- 2(a)(i)(E)	*See inset at end of table.*

Carve-Out and Funded Reserve Account: Fed. R. Bankr. P. 4001(c)(1)(B); Local Bankr. R. 4001-2(a)(i)(F)	The DIP Liens, Adequate Protection Liens, Adequate Protection 507(b) Claims and Senior Secured Debt Liens shall in all events be junior and subordinate to a Carve-Out (as defined in the Interim Order), which shall consist of the following: (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; (ii) all reasonable fees and expenses incurred by a chapter 7 trustee under section 726(b) of the Bankruptcy Code in an amount not to exceed $25,000; (iii) all accrued and unpaid hourly fees and expenses to the extent allowed at any time, earned before or on the day of delivery of a Trigger Notice (as defined below) not to exceed the amounts set forth on a line item basis in the Approved Budget (as defined in the Interim Order) (collectively, the "Allowed Debtor Professional Fees") of persons or firms retained by the Debtors pursuant to sections 327, 328 or 363 of the Bankruptcy Code (the "Debtor Professionals"); (iv) all accrued and unpaid hourly fees and expenses to the extent allowed at any time, earned before or on the day of delivery of the Trigger Notice (as defined below) not to exceed the amounts set forth on a line item basis in the Approved Budget (collectively, the "Allowed Committee Professional Fees" and together with the Allowed Debtor Professional Fees, the "Allowed Professional Fees") of persons or firms retained by any official committee of unsecured creditors appointed (the "Committee") in the Chapter 11 Cases pursuant to section 1103 of the Bankruptcy Code (the "Committee Professionals", together with the Debtor Professionals, the "Professional Persons"), and (v) Allowed Professional Fees incurred after the delivery of the Trigger Notice in an amount not to exceed $25,000, in each case subject to the limits imposed by the Interim Order, the Final Order (if and when entered), the Approved Budget on a line item basis, or otherwise, on Allowed Professional Fees permitted to be incurred, including in connection with any permitted investigation of the claims, liens, and defenses against the Prepetition Secured Parties; provided, however, nothing in the Interim Order is to be construed to impair the ability of any party to object to the fees, expenses, reimbursement or compensation described in clauses (i), (ii), (iii), (iv) or (v) above on any other grounds. "Trigger Notice" means a written notice delivered by email (or other electronic means) by the DIP Agent to the Debtors, their restructuring counsel, the U.S. Trustee, and counsel to the Committee (if any), which notice shall be delivered following (i) the occurrence and during the continuation of an Event of

	Default (as defined in the DIP Credit Agreement) and (ii) acceleration of the DIP Obligations (as defined in the Interim Order) under the DIP Facility, stating that the Carve-Out Cap has been invoked. The occurrence of the Maturity Date (as defined in the DIP Credit Agreement) under the DIP Credit Agreement will be deemed as an automatic delivery of the Trigger Notice, regardless of when actual notice was provided by the DIP Agent. Funded Reserve Account. Beginning on the second Friday after the Petition Date and continuing every second Friday thereafter, the Debtors will be required to fund from cash on hand into a segregated account acceptable to the DIP Agent (the "Funded Reserve Account") for the benefit of Debtor Professional Persons, an amount (the "Funded Reserve Amount") equal to the sum of the total weekly fees of Debtor Professional Persons for the prior two (2) weeks, subject to the Approved Budget up to the amount in the line item for each Debtor Professional Person. For the avoidance of doubt, the DIP Lenders and DIP Agent shall have no obligation to fund aggregate fees and expenses in excess of (i) the amounts set forth in the Approved Budget up to the amount in the line item for each Debtor Professional Person or (ii) the DIP Commitments. The Debtors will be required to use funds held in the Funded Reserve Account exclusively to pay Allowed Debtor Professional Fees as they become allowed and payable pursuant to the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, and any interim or final order of the Bankruptcy Court; provided, however, that no Allowed Professional Fees shall be transferred to or paid from the Funded Reserve Account in excess of the applicable line items in the Approved Budget on a line item basis for each Debtor Professional Person. Funds transferred to the Funded Reserve Account will not be subject to any liens or claims granted to the Prepetition Secured Parties, the DIP Lenders, or the DIP Agent or any liens or claims granted as adequate protection, shall not constitute DIP Collateral, and shall not constitute Cash Collateral; provided, that, notwithstanding anything to the contrary in the Interim Order or in the DIP Documents, the DIP Collateral shall include the Debtors' reversionary interest in funds held in the Funded Reserve Account and such reversionary interest shall be treated as DIP Collateral and Prepetition Collateral and subject to the DIP Liens, the DIP Superpriority Claims, the Adequate Protection Liens and the Adequate Protection Claims. (Interim Order ¶ 14).
DIP Collateral / Liens and Priorities	First Lien on Unencumbered Property. Pursuant to section 364(c)(2) of the Bankruptcy Code, a valid, binding, continuing,

/ Priming Provisions: Fed. R. Bankr. P. 4001(b)(1)(B)(iv); Fed. R. Bankr. P. 4001(c)(1)(B)(i), (ii), and (xi); Local Bankr. R. 4001- 2(a)(i)(G)	enforceable, fully-perfected first priority senior security interest in and lien upon all tangible and intangible pre- and postpetition property of the Debtors, whether existing on the Petition Date or thereafter acquired, that, on, after or as of the Petition Date, is not subject to a valid, perfected and non-avoidable lien (collectively, the "Unencumbered Property"), including any and all unencumbered cash of the Debtors and any investment of such cash, inventory, accounts receivable, other rights to payment whether arising before or after the Petition Date, claims, causes of action, commercial tort claims, contracts, properties, plants, fixtures, machinery, equipment, general intangibles, documents, instruments, securities, chattel paper, interests in leaseholds, real properties, deposit accounts, patents, intellectual property, copyrights, trademarks, trade names, rights under license agreements and other intellectual property, capital stock of subsidiaries, wherever located and whenever arising, and the proceeds, products, rents and profits of the foregoing, whether arising under section 552(b) of the Bankruptcy Code or otherwise, of all the foregoing, in each case other than the Avoidance Actions (as defined in the Interim Order), but including, subject to the entry of the Final Order, the Avoidance Proceeds; Unencumbered Property primarily consists of the parcel of real property and improvements thereon owned by Bionome Properties Corp. located at 865 Blue Ridge Road, Black Mountain, NC 28711. Priming Liens on Prepetition Collateral. Pursuant to section 364(d)(1) of the Bankruptcy Code, a valid, binding, continuing, enforceable, fully-perfected first priority senior priming security interest in and lien upon all pre- and postpetition property of the Debtors (including any and all cash and cash collateral and any investment of such cash and cash collateral, inventory, accounts receivable, other rights to payment whether arising before or after the Petition Date (including post-petition intercompany claims against any Debtor), claims or causes of action, commercial tort claims, contracts, properties, plants, fixtures, machinery, equipment, general intangibles, documents, instruments, securities, chattel paper, interests in leaseholds, real properties, deposit accounts, patents, intellectual property, copyrights, trademarks, trade names, rights under license agreements and other intellectual property, capital stock of subsidiaries, wherever located and whenever arising, and the proceeds, products, rents and profits of the foregoing), whether now existing or hereafter acquired, that is subject to the Senior Secured Debt Liens, which lien shall be

	senior in all respects to such Senior Secured Debt Liens. Such security interests and liens shall be senior in all respects to the interests in such property of the Prepetition Secured Parties arising from current and future liens of the Prepetition Secured Parties (including the Adequate Protection Liens granted hereunder); The Prepetition Secured Parties (who are also the DIP Secured Parties) have consented to the DIP Liens' priming their prepetition liens. DIP Liens Junior to Certain Other Liens. Pursuant to section 364(c)(3) of the Bankruptcy Code, a valid, binding, continuing, enforceable, fully-perfected junior security interest in and lien upon all tangible and intangible pre- and postpetition property of the Debtors that was, as of the Petition Date, subject to valid, properly perfected (before the Petition Date), binding, and unavoidable liens that were otherwise senior to the Senior Secured Debt Liens as of the Petition Date (the "Senior Liens"); and Avoidance Proceeds. subject to the entry of the Final Order, proceeds or property recovered, unencumbered or otherwise from Avoidance Actions, whether by judgment, settlement or otherwise. The foregoing described liens will be effective and perfected upon the date of the Interim Order and without the necessity of the execution, recordation of filings by the DIP Secured Parties or the Debtors of mortgages, security agreements, control agreements, pledge agreements, financing statements or other similar documents, any notation of certificates of title for a titled good, or the possession or control by the DIP Agent or any DIP Lender of, or over, any DIP Collateral. (Interim Order ¶ 4).
Milestones: Fed. R. Bankr. P. 4001(c)(1)(B)(vi) Local Bankr. R. 4001- 2(a)(i)(H)	The Debtors are required to achieve the following milestones in accordance with the deadlines specified below, which deadlines in all cases may be extended by the DIP Agent, in its sole discretion: (a) No later than the Petition Date, (i) the Debtors shall have filed with the Bankruptcy Court a motion seeking entry of the Interim Order, (ii) the Debtors shall filed the Bidding Procedures Motion (as defined in the DIP Credit

	Agreement), and (iii) the Debtors shall have entered into the Stalking Horse APA (as defined in the DIP Credit Agreement). (b) On or before the date that is two (2) business days after the Petition Date, the Bankruptcy Court shall have entered the Interim Order. (c) On or before the date that is twenty-one (21) days after the Petition Date, the Bankruptcy Court shall have entered the Bidding Procedures Order (as defined in the DIP Credit Agreement). (d) On or before the date that is thirty (30) days after the Petition Date, the Bankruptcy Court shall have entered the Final Order. (e) On or before the date that is fifty-six (56) days after the Petition Date, the Bid Deadline (as defined in the DIP Credit Agreement) shall have occurred. (f) On or before the date that is fifty-eight (58) days after the Petition Date, the Debtors shall have commenced the Auction (as defined in the DIP Credit Agreement), if necessary. (g) On or before the date that is sixty (60) days after the Petition Date, a hearing shall have occurred in the Bankruptcy Court to consider approval of the Stalking Horse APA and the Stalking Horse Transaction (each as defined in the DIP Credit Agreement), or another alternative transaction pursuant to the Bidding Procedures (as defined in the DIP Credit Agreement). (h) On or before the date that is sixty (60) days after the Petition Date, the Bankruptcy Court shall have entered the Sale Order (as defined in the DIP Credit Agreement). (i) On or before the date that is seventy (70) days after the Petition Date, the Stalking Horse Transaction (as defined in the DIP Credit Agreement) or another sale transaction approved in the Sale Order shall be consummated and closed. (DIP Credit Agmt., Section 5.21)
Prepayments: Fed. R. Bankr. P. 4001(c)(1)(B)	The DIP Facility may be prepaid at any time without premium or penalty. The DIP Facility is subject to mandatory

Local Bankr. R. 4001- 2(a)(i)(I)	prepayment from the proceeds of asset sales, insurance proceeds, extraordinary receipts and indebtedness. (DIP Credit Agmt., Section 2.13)
Joint Liability: Local Bankr. R. 4001- 2(a)(i)(J)	The DIP Obligations are joint and several among the Debtors in a manner consistent with the joint and several liability of the Debtors under the Prepetition Senior Secured Debt Obligations. (DIP Credit Agmt., Section 9.21).
Expense Reimbursement: Fed. R. Bankr. P. 4001(c)(1)(B) Local Bankr. R. 4001- 2(a)(i)(K)	Borrower agrees to pay on the Closing Date, and thereafter from time to time, upon presentation of a reasonably detailed statement, (1) all reasonable and documented expenses incurred by the DIP Lenders and DIP Agent in connection with the syndication of the DIP Facility and the preparation, documentation, negotiation and administration of the DIP Facility or in connection with any amendments, modifications or waivers of same and (2) incurred by any such party in connection with the enforcement or protection of its rights in connection with the DIP Facility. (DIP Credit Agmt., Section 2.08) Expense reimbursements required to be made by the Debtors are subject to a seven (7) day review and objection period provided to the U.S. Trustee, or a Committee if formed. (Interim Order ¶13).
Limitations on Use: Fed. R. Bankr. P. 4001(c)(1)(B) Local Bankr. R. 4001- 2(a)(i)(L)	No DIP Loans, DIP Collateral, Prepetition Collateral or any portion of the Carve-Out, may be used directly or indirectly by the Debtors, the Committee (if any), or any trustee appointed in the Chapter 11 Cases or any successor case, including any chapter 7 case, or any other person, party or entity (a) in connection with the investigation, initiation or prosecution of any claims, causes of action, adversary proceedings or other litigation (i) against the DIP Secured Parties or the Prepetition Secured Parties or any of their respective Representatives, or any action purporting to do the foregoing in respect of the Senior Secured Debt Obligations, the Senior Secured Debt Liens on the Prepetition Collateral, DIP Obligations, DIP Liens on the DIP Collateral, DIP Superpriority Claims, or the adequate protection obligations, adequate protection liens and superpriority claims granted to the Prepetition Secured Parties,

	as applicable, under the Interim Order or the Final Order, as applicable, or (ii) challenging the amount, validity, perfection, priority or enforceability of or asserting any defense, counterclaim or offset with respect to, the Senior Secured Debt Obligations, the DIP Obligations, or the liens, claims, rights, or security interests granted under the Interim Order, the Final Order, the DIP Documents, or the Senior Secured Debt Documents including, in each case for lender liability or pursuant to section 105, 510, 544, 547, 548, 549, 550, or 552 of the Bankruptcy Code, applicable non-bankruptcy law or otherwise; provided, however, advisors to any Committee may investigate any potential challenges with respect to the Senior Secured Debt Documents, the Senior Secured Debt Obligations, or Senior Secured Debt Liens during the Challenge Period at an aggregate expense for such investigation, but not litigation, prosecution, objection or challenge thereto, not to exceed $25,000 in the aggregate; (b) to prevent, hinder, or otherwise delay the Prepetition Secured Parties' or DIP Secured Parties', as applicable, enforcement or realization on the Senior Secured Debt Obligations, Prepetition Collateral, DIP Obligations, DIP Collateral, and the liens, claims, and rights granted to such parties under the Interim Order or the Final Order, each in accordance with the DIP Documents, the Senior Secured Debt Documents, or the Interim Order, or the Final Order, other than to seek a determination that an Event of Default has not occurred or is not continuing; (c) to seek to modify any of the rights and remedies granted to the Prepetition Secured Parties or the DIP Secured Parties under the Interim Order, the Senior Secured Debt Documents or the DIP Documents, as applicable; (d) to apply to the Court for authority to approve superpriority claims or grant liens or security interests in the DIP Collateral or any portion thereof that are senior to, or on parity with, the Carve-Out or the DIP Liens, DIP Superpriority Claims, Adequate Protection Liens, and Superpriority Claims granted to the Prepetition Secured Parties and the DIP Secured Parties unless all DIP Obligations, Senior Secured Debt Obligations, Adequate Protection Obligations, and claims granted to the DIP Secured Parties or Prepetition Secured Parties under the Interim Order, have been refinanced or paid in full in cash or otherwise agreed to in writing by the DIP Agent and the Administrative Agent; or (e) to seek to pay any amount on account of any claims arising before the Petition Date unless such payments are agreed to in writing by the DIP Agent or are otherwise included in the Approved Budget. (Interim Order ¶ 24).

Events of Default: Fed. R. Bankr. P. 4001(c)(1)(B) Local Bankr. R. 4001- 2(a)(i)(M)	Customary and appropriate for financings of this type and for this transaction in particular, including, without limitation, the appointment of a trustee or examiner or a conversion of the Chapter 11 Cases. (DIP Credit Agmt., Section 7).
Cross Collateralization: Local Bankr. R. 4001- 2(a)(i)(N)	None.
"Roll-Up" of Prepetition Debt: Local Bankr. R. 4001- 2(a)(i)(O)	None.
Priming Provisions: Local Bankr. R. 4001-2(a)(i)(P)	Priming Liens on Prepetition Collateral. Pursuant to section 364(d)(1) of the Bankruptcy Code, a valid, binding, continuing, enforceable, fully-perfected first priority senior priming security interest in and lien upon all pre- and postpetition property of the Debtors (including any and all cash and cash collateral and any investment of such cash and cash collateral, inventory, accounts receivable, other rights to payment whether arising before or after the Petition Date (including post-petition intercompany claims against any Debtor), claims or causes of action, commercial tort claims, contracts, properties, plants, fixtures, machinery, equipment, general intangibles, documents, instruments, securities, chattel paper, interests in leaseholds, real properties, deposit accounts, patents, intellectual property, copyrights, trademarks, trade names, rights under license agreements and other intellectual property, capital stock of subsidiaries, wherever located and whenever arising, and the proceeds, products, rents and profits of the foregoing), whether now existing or hereafter acquired, that is subject to the Senior Secured Debt Liens, which lien shall be senior in all respects to such Senior Secured Debt Liens. Such security interests and liens shall be senior in all respects to the interests in such property of the Prepetition Secured Parties arising from current and future liens of the Prepetition Secured Parties (including the Adequate Protection Liens granted hereunder);

	The Prepetition Secured Parties (who are also the DIP Secured Parties) have consented to the DIP Liens' priming their prepetition liens.
Deadline for Pursuit of Claims / Stipulations / Releases: Fed. R. Bankr. P. 4001(c)(1)(B)(iii) Fed. R. Bankr. P. 4001(c)(1)(B)(viii) Local Bankruptcy Rule 4001-2(a)(i)(Q)	Interim Order ¶¶ F and G provide for broad Debtor releases of the Prepetition Secured Parties and DIP Secured Parties, provided that: The Debtors' stipulations, admissions, releases, and agreements contained in the Interim Order will be binding upon all other parties in interest, including any statutory or non-statutory committees appointed or formed in the Chapter 11 Cases and any other person or entity acting or seeking to act on behalf of the Debtors' estates, including any chapter 7 or chapter 11 trustee or examiner appointed or elected for the Debtors, in all circumstances and for all purposes unless: (a) such committee, or any other party in interest, with requisite standing has timely filed an adversary proceeding by no later than the earlier of (i) with respect to parties in interest (including the Committee) with requisite standing, seventy-five (75) calendar days after entry of the Interim Order; (ii) subject to entry of the Final Order, entry of a Sale Order; and (iii) any such later date as has been agreed to, in writing, by the Administrative Agent. (Interim Order ¶12).
Automatic Approval Provisions: Local Bankruptcy Rule 4001-2(a)(i)(R)	None.
Waiver/Modification of the Automatic Stay: Automatic Stay Fed. R. Bankr. P. 4001(c)(1)(B)(iv) Local Bankr. R. 4001- 2(a)(i)(S)	The proposed Interim Order describes the modification of the automatic stay to the extent necessary to implement the Interim Order and enforce remedies thereunder. (Interim Order ¶ 10).
Emergency Hearing Restrictions:	None.

Local Bankruptcy Rule 4001-2(a)(i)(T)	
Liens on Avoidance Actions: Fed. R. Bankr. P. 4001(c)(1)(B)(xi); Local Bankruptcy Rule 4001-2(a)(i)(U)	The proposed Interim Order does not grant liens on Avoidance Actions or Avoidance Action Proceeds. Further, the DIP Superpriority Claims and the Section 507(b) Adequate Protection Claims shall be payable out of the Avoidance Action Proceeds only upon entry of the Final Order. (Interim Order ¶ 3).
506(c) Waiver: Fed. R. Bankr. P. 4001(c)(1)(B)(x); Local Bankruptcy Rule 4001-2(a)(i)(V)	Subject to entry of a Final Order, waiver of any and all rights to surcharge the DIP Collateral pursuant to section 506(c) of the Bankruptcy Code. (Interim Order ¶ 16).
Equities of the Case Waiver: Local Bankruptcy Rule 4001-2(a)(i)(W)	Subject to entry of the Final Order, the Prepetition Secured Parties shall be entitled to all of the rights and benefits of section 552(b) of the Bankruptcy Code, and the "equities of the case" exception thereunder shall not apply to the Prepetition Secured Parties. (Interim Order ¶ 11).
Marshalling Waiver: Local Bankruptcy Rule 4001-2(a)(i)(X)	Subject to entry of the Final Order, none of the DIP Secured Parties or the Prepetition Secured Parties shall be subject to the equitable doctrine of "marshaling" or any similar doctrine with respect to the DIP Collateral or the Prepetition Collateral. (Interim Order ¶ 11).
Covenants:	Customary and appropriate affirmative and negative covenants for financings of this type and for this transaction in particular.
Representations and Warranties:	Customary and appropriate for financings of this type and for this transaction in particular.
Remedies:	Customary and appropriate for financings of this type and for this transaction in particular.

Indemnification:	Customary and appropriate by the Borrower of the DIP Lenders, DIP Agent and related parties for financings of this type and for this transaction in particular.
Governing Law:	Internal laws of the State of New York.
Miscellaneous:	Customary and appropriate indemnification, tax, and waiver and amendment provisions for financings of this type and for this transaction in particular.
Conditions Precedent for Borrowing: Fed. R. Bankr. P. 4001(c)(1)(B); Local Bankr. R. 4001- 2(a)(i)(E) Those conditions precedent that are usual and customary for this type of DIP Loan, and such additional conditions precedent for the initial and subsequent borrowings as the DIP Lenders shall reasonably deem appropriate in the context of the proposed transaction. Without limiting the foregoing, the following conditions shall apply:	
DIP Loan Documents:	The definitive documentation evidencing the DIP Facility (including, without limitation, collateral documentation) shall be in form and substance satisfactory to the DIP Lenders.
Budget; Financial Statements: Local Bankruptcy Rule 4001-2(a)(iii)	The DIP Lenders shall have received certified copies of a budget prepared by the Borrower (as supplemented from time to time in accordance with the DIP Documents) in form and substance satisfactory to the DIP Lenders. The DIP Lenders shall have approved the Borrower's budget, as modified and in effect from time to time.
Orders:	The Orders (or in the case of any Initial Borrowing (as defined in the DIP Credit Agreement), only the Interim Order) shall be in full force and effect and shall not have been vacated, reversed, modified, amended or subject to a stay without the prior written consent of the Required Lenders.

Adequate Protection

23. The Prepetition Secured Parties are entitled, pursuant to sections 361, 362, 363(e), 364(d)(1) and 507 of the Bankruptcy Code, to adequate protection of their interests in all Prepetition Collateral, including the Cash Collateral, in an amount equal to the aggregate diminution in the value of the Prepetition Secured Parties' interests in the Prepetition Collateral

(including Cash Collateral) from and after the Petition Date, if any, for any reason provided for under the Bankruptcy Code, including any such diminution resulting from the depreciation, sale, lease or use by the Debtors (or other decline in value) of the Prepetition Collateral (including Cash Collateral), the priming of the Prepetition Secured Parties' security interests and liens on the Prepetition Collateral (including Cash Collateral) by the DIP Secured Parties pursuant to the DIP Documents and the Interim Order, and the imposition of the automatic stay pursuant to section 362 of the Bankruptcy Code (the "Adequate Protection Claim").

24. As such, the Prepetition Secured Parties, as applicable, shall receive the following (collectively, the "Adequate Protection Obligations"):

25. *Adequate Protection Liens.* The Prepetition Secured Parties will be granted (effective and perfected upon the date of the Interim Order and without the necessity of the execution of any mortgages, security agreements, pledge agreements, financing statements or other agreements), in the amount of the Adequate Protection Claim, valid, perfected replacement security interests in and liens upon all of the DIP Collateral including all Unencumbered Property and, subject to the entry of the Final Order, the Avoidance Proceeds, in each case subject and subordinate only to (i) the DIP Liens and any liens to which the DIP Liens are junior, including the Senior Liens, if any, and (ii) the Carve-Out (the "Adequate Protection Liens").

26. *Adequate Protection Section 507(b) Claim.* The Prepetition Secured Parties will be granted, subject to the Carve-Out, an allowed superpriority administrative expense claim as provided for in section 507(b) of the Bankruptcy Code in the amount of the Adequate Protection Claim with, except as set forth in the Interim Order, priority in payment over any and all administrative expenses of the kind specified or ordered pursuant to any provision of the Bankruptcy Code (the "Adequate Protection 507(b) Claim"), which Adequate Protection 507(b)

Claim shall have recourse to and be payable from all of the DIP Collateral in accordance with the priorities set forth in the Interim Order and Final Order, including, subject to the entry of the Final Order, the Avoidance Proceeds. The Adequate Protection 507(b) Claim will be subject and subordinate to the Carve-Out and the DIP Superpriority Claims. Except to the extent expressly set forth in the Interim Order or the DIP Credit Agreement, the Prepetition Secured Parties shall not receive or retain any payments, property or other amounts in respect of the Adequate Protection 507(b) Claim unless and until the DIP Obligations (other than contingent indemnification obligations as to which no claim has been asserted) and any claims having a priority superior to or *pari passu* with the DIP Superpriority Claims, including claims that benefit from the Carve-Out, have indefeasibly been paid in cash in full and all DIP Commitments have been terminated.

27. *Adequate Protection Payments.* As further adequate protection, the Debtors will be authorized and directed to pay, in accordance with the terms of the Interim Order, all reasonable and documented out-of-pocket fees and expenses (the "Adequate Protection Fees"), whether incurred before or after the Petition Date, including all reasonable and documented out-of-pocket fees and expenses of the Prepetition Secured Parties and the DIP Secured Parties and for the counsel and other professionals retained as provided for in the DIP Documents and the Interim Order. None of the Adequate Protection Fees shall be subject to separate approval by this Court or the U.S. Trustee Guidelines, and no recipient of any such payment shall be required to file any interim or final fee application with respect thereto or otherwise seek the Court's approval of any such payments.

Need for Financing and Use of Cash Collateral

28. The Debtors have an urgent and immediate need for access to funds available under the DIP Facility and the use of the Cash Collateral. Such funding is necessary in order for the

Debtors to have sufficient liquidity to satisfy accruing administrative obligations and to maintain their assets. Without immediate access to the DIP Facility and Cash Collateral, the Debtors may be forced to convert these cases to chapter 7 and liquidate their assets, which would eliminate any possibility of maximizing the value of this estates. Accordingly, the Debtors believe that the relief requested herein is immediately necessary and believe that the Court should authorize the DIP Facility and continued use of Cash Collateral on the terms contemplated herein, initially on an interim basis and, following a final hearing, on a final basis.

Alternative Sources of Financing Are Not Readily Available

29. The Debtors do not believe that alternative sources of financing are readily available. Additionally, the Debtors do not believe that it would be prudent, or even possible, to administer these Chapter 11 Cases based solely on the use of "cash collateral." Absent access to the DIP Facility, the Debtors lack sufficient cash on hand, and do not expect to be able to generate sufficient levels of operating cash flow in the ordinary course of business to cover their working capital needs and the projected costs of these Chapter 11 Cases.

30. In addition, substantially all of the Debtors' operating assets are encumbered by liens securing the Senior Secured Debt Obligations. As a result, the Debtors do not believe that third-party debtor-in-possession financing would be reasonably available given the Debtors' existing capital structure and available collateral.

31. Indeed, the Debtors believe, after consulting with their advisors, that because any alternative sources of financing (outside of the Prepetition Secured Parties) would undoubtedly insist on priming or require satisfying all of the obligations of the Prepetition Secured Parties in full, such outside financing is not a feasible option. Without the consent of the Prepetition Secured Parties, any attempts at non-consensual priming of the Prepetition Secured Parties' liens would

likely involve costly, extended, and contested litigation. The Debtors also believe they would likely be unable to provide adequate protection for the non-consensual priming of the Prepetition Secured Parties' liens, and this risk is not an acceptable possibility. Moreover, any such outside financing would expose the Debtors to the execution risk associated with a new lender transaction, including material timing and due diligence constraints, necessarily involving the payment of additional professional fees, further exacerbating the need for DIP financing.

32. In contrast, the proposed DIP Facility offered by the DIP Lenders avoids any costly and time-consuming priming fight at the outset of these Chapter 11 Cases. Moreover, consensual DIP financing sends a positive message to the Debtors' stakeholders. The DIP Facility is the product of extensive good faith, arms'-length negotiations with the DIP Secured Parties and is an essential component of the Debtors' chapter 11 strategy. Accordingly, the Debtors believe that the DIP Facility provides, on balance, the only viable postpetition financing proposal.

Basis for Relief

A. The Debtors Should Be Permitted to Obtain Postpetition Financing Pursuant to Section 364(c) of the Bankruptcy Code

33. The Debtors propose to obtain financing under the DIP Facility by providing security interests and liens as set forth above pursuant to section 364(c) of the Bankruptcy Code . Section 364(c) of the Bankruptcy Code requires a finding, made after notice and a hearing, that the debtors seeking postpetition financing on a secured basis cannot "obtain unsecured credit allowable under section 503(b)(1) of [the Bankruptcy Code] as an administrative expense." 11 U.S.C. § 364(c).

34. In evaluating proposed postpetition financing under section 364(c) of the Bankruptcy Code, courts perform a qualitative analysis and generally consider similar factors, including whether:

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

b. the credit transactions are necessary to preserve assets of the estate;

c. the terms of the credit agreement are fair, reasonable, and adequate;

d. the proposed financing agreement was negotiated in good faith and at arm's-length and entry thereto is an exercise of sound and reasonable business judgment and in the best interest of the debtors' estates and its creditors; and

e. the proposed financing agreement adequately protects the prepetition secured parties.

See, e.g., In re Aqua Assoc., 123 B.R. 192 (Bankr. E.D. Pa. 1991) (applying the first three factors in making a determination under section 364(c)).

35. For the reasons discussed below, the Debtors satisfy the standards required to obtain postpetition financing in this case on a secured superpriority basis as to the DIP Collateral under sections 364(c)(l), (2), and (3) of the Bankruptcy Code.

B. The Debtors are Unable to Obtain Financing on More Favorable Terms

36. The Debtors extensively considered their financing options prior to the Petition Date. Given the uncertain value of the Prepetition Collateral and the Debtors' inability to consensually prime the Prepetition Credit Facility, no third party was willing to offer financing on a junior basis and the Debtors therefore focused their efforts on obtaining additional new money advances from the Prepetition Secured Parties. After extended arms' length and good faith negotiations, the Debtors, in an exercise of their sound business judgment, have determined that the terms of the proposed DIP Facility represent a fair and reasonable outcome for the estates and should be approved by this Court.

37. The Debtors respectfully submit that their efforts to obtain postpetition financing therefore satisfy the standard required under section 364(c) of the Bankruptcy Code. *See, e.g., In*

re Sky Valley, Inc., 100 B.R. 107, 113 (Bankr. N.D. Ga. 1988) (where few lenders can or will extend the necessary credit to a debtor, "it would be unrealistic and unnecessary to require [the debtor] to conduct such an exhaustive search for financing").

38. As noted above, the Debtors do not believe that alternative sources of financing are reasonably available. The DIP Facility is the product of extensive good faith negotiations and the Debtors carefully reviewed their DIP financing alternatives and concluded that third-party debtor-in-possession financing was not a feasible option given the Debtors' existing capital structure, available collateral and funding needs. Further, the Prepetition Secured Lenders would not consent to the priming of their liens, making an alternative funding source unlikely. Thus, based on the marketing process and negotiation history of the DIP Facility, the Debtors have determined that the DIP Facility provides the best option forward under the circumstances.

C. The Debtors Should be Authorized to Grant DIP Liens and DIP Superpriority Claims

39. The Debtors propose to obtain financing under the DIP Facility by providing security interests and liens as set forth in the DIP Documents and described above. The Debtors satisfy the requirement for relief under section 364(c) of the Bankruptcy Code, which authorizes a debtor to incur secured or superpriority debt under certain circumstances. The statutory requirement for obtaining postpetition credit under section 364(c) is a finding, made after notice and hearing, that a debtor is "unable to obtain unsecured credit allowable under Section 503(b)(1) of the [the Bankruptcy Code]." 11 U.S.C. § 364(c). *See In re Crouse Grp., Inc.*, 71 B.R. 544, 549 (Bankr. E.D. Pa. 1987) (secured credit under section 364(c) of the Bankruptcy Code is authorized, after notice and hearing, upon showing that unsecured credit cannot be obtained).

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

a. the debtor is unable to obtain unsecured credit under section 364(b) of the Bankruptcy Code, i.e., by allowing a lender only an administrative claim;

b. the credit transaction is necessary to preserve the assets of the estate; and

c. the terms of the transaction are fair, reasonable, and adequate, given the circumstances of the debtor-borrower and proposed lenders.

In re Ames Dep't Stores, 115 B.R. at 37-39; *see also In re St. Mary Hosp.*, 86 B.R. 393, 401-02 (Bankr. E.D. Pa. 1988); *Crouse Grp.*, 71 B.R. at 549.

41. Furthermore, in the event that a debtor is unable to obtain unsecured credit, 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." As described herein, the Debtors are unable to obtain unsecured credit. Therefore, approving the DIP Superpriority Claims in favor of the DIP Lenders is reasonable and appropriate.

42. Further, subsections 364(c)(2) and (c)(3) of the Bankruptcy Code provide that the debtor may obtain credit that is secured by a lien on property of the estate that is not otherwise subject to a lien or secured by a junior lien on property of the estate that is subject to a lien. As the Debtors are unable to obtain the critical financing they need to administer their Chapter 11 Cases from any other source, they respectfully represent that granting DIP Liens to the DIP Secured Parties on unencumbered property and/or a junior lien basis is warranted under the circumstances.

43. 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 by the secured creditors to priming 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 they are unable to obtain unsecured or junior secured credit and either (a) the Prepetition Secured Parties have consented or (b) the Prepetition Secured Parties' interests in Prepetition Collateral are adequately protected.

44. As described above and in the First Day Declaration, prior to negotiating the DIP Facility, the Debtors, together with their advisors, considered other sources of postpetition financing to determine whether the Debtors could obtain debtor-in-possession financing on better terms. Based on current capital market conditions and results of the marketing process, and after consultation with their advisors, the Debtors determined that postpetition financing on an unsecured basis would be unobtainable.

45. With respect to the Prepetition Secured Parties, the priming is consensual because the Senior Secured Lenders have consented to the DIP Facility and the priming of the Senior Secured Debt Liens pursuant to section 364(d)(1) of the Bankruptcy Code. As described above and in the First Day Declaration, the Prepetition Secured Parties and the DIP Secured Parties support the Debtors' entry into the DIP Facility and the priming of the Senior Secured Liens in exchange for an adequate protection package including, adequate protection liens senior to the Senior Secured Debt Liens, adequate protection claims with administrative expense priority, and the payment of certain fees and expenses. Further, the Debtors are not aware of any financing

being available on equal or better terms from the Prepetition Secured Parties and the DIP Lenders, without granting first priority liens in the Prepetition Collateral. Therefore, the Debtors submit that the requirement of section 364 of the Bankruptcy Code that alternative credit on more favorable terms be unavailable to the Debtors is satisfied.

D. Interests of Prepetition Secured Parties are Adequately Protected

46. Parties with an interest in the Cash Collateral are entitled to adequate protection. *See* 11 U.S.C. § 363(e). Adequate protection may be provided in various forms, including payment of adequate protection fees, payment of interest, or granting of replacement liens or administrative claims. Thus, what constitutes adequate protection is decided on a case-by-case basis. *See, e.g.*, *In re Mosello*, 195 B.R. 277, 289 (Bankr. S.D.N.Y. 1996) ("the determination of adequate protection is a fact specific inquiry . . . left to the vagaries of each case"); *In re Realty Sw. Assocs.*, 140 B.R. 360 (Bankr. S.D.N.Y. 1992); *In re Beker Indus. Corp.*, 58 B.R. 725, 736 (Bankr. S.D.N.Y. 1986) (the application of adequate protection "is left to the vagaries of each case, but its focus is protection of the secured creditor from diminution in the value of its collateral during the reorganization process") (citation omitted). The critical purpose of adequate protection is to guard against the diminution of a secured creditor's collateral during the period when such collateral is being used by the debtor in possession. *See 495 Cent. Park*, 136 B.R. at 631 ("The goal of adequate protection is to safeguard the secured creditor from diminution in the value of its interest during the chapter 11 reorganization."); *In re Beker Indus. Corp.*, 58 B.R. 725, 736 (Bankr. S.D.N.Y. 1986); *In re Hubbard Power & Light*, 202 B.R. 680, 685 (Bankr. E.D.N.Y. 1996).

47. The adequate protection package, as described above, provided to the Prepetition Secured Parties appropriately safeguards the Senior Secured Lenders from the diminution in the value of their interests in the Prepetition Collateral. Moreover, as noted above, the Prepetition

Secured Parties have consented to the DIP Facility and the priming of the Senior Secured Debt Liens pursuant to section 364(d)(1) of the Bankruptcy Code. The Debtors submit that their provision of adequate protection to the Prepetition Secured Parties is fair and reasonable and is sufficient to satisfy the requirements of section 364(d)(1)(B) of the Bankruptcy Code.

E. The Proposed Financing is Necessary to Maximize the Value of the Debtors' Estates

48. The Debtors seek to use the proceeds of the DIP Facility for general working capital purposes in accordance with the Approved Budget and in order to allow the Debtors to maximize value through an orderly sale process. The DIP Facility represents the best economic alternative for a new debtor-in-possession lending arrangement.

49. Without immediate access to the DIP Facility, the Debtors may be forced to convert these cases to chapter 7 and liquidate their assets, eliminating any chance of maximizing the value of their estates. Stated simply, failure to access the DIP Facility would irreparably damage the Debtors' efforts to reorganize for the benefit of all constituents and creditors. Accordingly, the Debtors urge the Court to authorize the DIP Facility on the terms contemplated herein.

F. The Terms of the Proposed Financing are Fair, Reasonable, and Appropriate

50. In considering whether the terms of postpetition financing are fair and reasonable, courts consider the terms in light of the relative circumstances of both the debtor and the potential lender. *In re Farmland Indus., Inc.*, 294 B.R. 855, 886 (Bankr. W.D. Mo. 2003); *see also Unsecured Creditors' Comm. Mobil Oil Corp. v. First Nat'l Bank & Trust Co. (In re Ellingsen MacLean Oil Co.)*, 65 B.R. 358, 365 (W.D. Mich. 1986) (a debtor may have to enter into hard bargains to acquire funds).

51. The terms of the DIP Facility were negotiated in good faith and at arms'-length among the Debtors and the DIP Lenders, resulting in an agreement that is designed to permit the

Debtors to maximize the value of their assets. The Debtors submit that the proposed terms of the DIP Facility are fair, reasonable, and appropriate under the circumstances and include no burdensome fees. *See, e.g., Bray v. Shenandoah Fed. Sav. and Loan Ass 'n (In re Snowshoe Co.)*, 789 F.2d 1085, 1088 (4th Cir. 1986) (stating that section 364(d) of the Bankruptcy Code imposes no duty to seek credit from every possible lender); *In re Western Pacific Airlines, Inc.*, 223 B.R. 567 (Bankr. D. Colo. 1997) (authorizing postpetition financing that would preserve the value of the debtor's assets). Further, the Prepetition Secured Parties have consented to the DIP Facility on the terms set forth in the Interim Order.

G. Entry Into the Proposed Financing Reflects the Debtors' Sound Business Judgment

52. A debtor's decision to enter into a postpetition lending facility under section 364 of the Bankruptcy Code is governed by the business judgment standard. *See, e.g., Trans World Airlines, Inc. v. Travelers Int'! AG (In re Trans World Airlines, Inc.)*, 163 B.R. 964, 974 (Bankr. D. Del. 1994) (approving postpetition credit facility because such facility "reflect[ed] sound and prudent business judgment"); *In re Ames Dep 't Stores, Inc.*, 115 B.R. 34, 38 (Bankr. S.D.N.Y. 1990) (financing decisions under section 364 of the Bankruptcy Code must reflect a debtor's business judgment).

53. Bankruptcy courts routinely accept a debtor's business judgment on many business decisions, including the decision to borrow money. *See, e.g., Group of Inst. Investors v. Chicago, Mil., St. P. & Pac.*, 318 U.S. 523, 550 (1943) (holding that decisions regarding assumption or rejection of leases are left to the business judgment of the debtor); *In re Simasko Prod. Co.*, 47 B.R. 444, 449 (D. Colo. 1985) ("[b]usiness judgments should be left to the board room and not to this Court"). Further, one court has noted that "[m]ore exacting scrutiny [of the debtors' business decisions] would slow the administration of the debtor's estate and increase its cost, interfere with the Bankruptcy Code's provision for private control of administration of the estate, and threaten

the court's ability to control a case impartially." *Richmond Leasing Co. v. Capital Bank, NA.*, 762 F.2d 1303, 1311 (5th Cir. 1985).

54. Bankruptcy courts generally will defer to a debtor in possession's business judgment regarding the need for and the proposed use of funds, unless such decision is arbitrary and capricious, *In re Curlew* Valley *Assocs.*, 14 B.R. 506, 511-13 (Bankr. D. Utah 1981); *see also Trans World Airlines, Inc.*, 163 B.R. at 974 (approving interim loan, receivables facility and asset-based facility based upon prudent business judgment of the debtor), and generally will not second-guess a debtor in possession's business decisions involving "a business judgment made in good faith, upon a reasonable basis, and within the scope of his authority under the Code." *Curlew Valley*, 14 B.R. at 513-14 (footnotes omitted).

55. For the reasons set forth above, the Debtors' sound business judgment clearly supports approval of the DIP Facility in order to allow the Debtors to gain access to needed financing and thereby maximize value for all constituents.

I. Section 363 of the Bankruptcy Code Authorizes the Debtors' Use of Cash Collateral

56. Section 363(c)(2) of the Bankruptcy Code provides that a debtor in possession may not use cash collateral unless (A) each entity that has an interest in such cash collateral provides consent, or (B) the court approves the use of cash collateral after notice and a hearing. *See* 11 U.S.C. § 363(c). Section 363(e) of the Bankruptcy Code provides that, "on request of an entity that has an interest in property used ... or proposed to be used ... by the [debtor in possession], the court ... shall prohibit or condition such use ... as is necessary to provide adequate protection of such interest." 11 U.S.C. § 363(e).

57. Here, the Debtors seek authority to use the Cash Collateral pursuant to the Approved Budget and on terms consistent with the proposed Interim Order and the Prepetition

Secured Parties have consented to the use of such Cash Collateral and the other Prepetition Collateral in accordance with and subject to the terms of the Interim Order and the DIP Documents.

58. Further, Bankruptcy Rule 4001(b) permits a court to approve a debtor's request for use of cash collateral during the 14-day period following the filing of a motion requesting authorization to use cash collateral, "only ... as is necessary to avoid immediate and irreparable harm to the estate pending a final hearing." Bankruptcy Rule 4001(b)(2). In examining requests for interim relief under this rule, courts apply the same business judgment standard applicable to other business decisions. *See, e.g., In re Simasko Production Co.*, 47 B.R. 444,449 (D. Colo. 1985); *see also In re Ames Dep 't Stores Inc.*, 115 B.R. 34, 38 (Bankr. S.D.N.Y. 1990). After the 14-day period, the request for use of cash collateral is not limited to those amounts necessary to prevent harm to the debtor's business.

59. As previously noted, in order to satisfy accruing administrative expenses and continue its sale and reorganization efforts, the Debtors require access to the DIP Facility and the use of Cash Collateral. Such use will provide the Debtors with the necessary funds to remain administratively solvent, while allowing the Debtors to maximize value. As noted, the Prepetition Secured Parties consent to the Debtors' use of Cash Collateral on the terms of the Interim Order.

60. Absent access to Cash Collateral, the Debtors would face immediate and irreparable harm. The Debtors would be forced to convert these cases to chapter 7 and their assets would be liquidated at a fire sale value, without any realistic hope of maximizing returns. Thus, immediate access to Cash Collateral is essential to the Debtors' ability to reorganize for the benefit of all constituents.

H. Interim Order and Request for Final Hearing

61. Pursuant to Bankruptcy Rules 4001(b)(2) and 4001(c)(2), the Debtors request that the Court set a date for the Final Hearing that is as soon as practicable, and fix the time and date prior to the final hearing for parties to file objections to the Motion.

62. The urgent need to avoid immediate and irreparable harm to the Debtors' estates makes it imperative that the Debtors be authorized to access the DIP Facility and use Cash Collateral, pending the Final Hearing, in order to allow the Debtors to administer their cases and maintain their assets on a postpetition basis. Without the ability to make draws under the DIP Facility and use Cash Collateral, the Debtors would be unable to meet their ongoing obligations and would be unable to implement their sale and reorganization process, thus causing irreparable harm to the Debtors and the value of these estates. Accordingly, the Debtors respectfully request that, pending the hearing on a Final Order, the Interim Order be approved in all respects and that the terms and provisions of the Interim Order be implemented and be deemed binding and that, after the Final Hearing, the Final Order be approved in all respects and the terms and provisions of the Final Order be implemented and be deemed binding.

I. Carve-Out is Appropriate

63. The liens granted pursuant to the DIP Facility, replacement liens, and the superpriority claims of the DIP Secured Parties are subject and subordinate to the Carve-Out. The Carve-Out is similar to other terms created for professional fees that have been found to be reasonable and necessary to ensure that a debtor's estate and any statutory committee can retain assistance from counsel.

64. Without the Carve-Out, the Debtors' estates may be deprived of possible rights and powers because the services for which professionals may be paid in these Chapter 11 Cases is restricted. *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 Chapter 11 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 prepetition secured interests.

J. The DIP Secured Parties Should Be Deemed a Good Faith Lender under Section 364(e)

65. Section 364(e) of the Bankruptcy Code protects a good faith lender's right to collect on loans extended to a debtor, and its right in any lien securing those loans, even if the authority of the debtor to obtain such loans or grant such liens is later reversed or modified on appeal. Here, the Debtors believe the DIP Facility embodies the most favorable terms on which the Debtors could obtain postpetition financing. All negotiations of the DIP Documents with potential lenders were conducted in good faith and at arms' length. The terms and conditions of the DIP 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, and in accordance with the Interim Order and the Final Order and the DIP Documents. Further, no consideration is being provided to any party to the DIP Documents other than as described herein. Accordingly, the Debtors respectfully request that the Court should find that the DIP Secured Parties are "good faith" lenders within the meaning of section 364(e) of the Bankruptcy Code, and is entitled to all of the protections afforded by that section.

K. Modification of the Automatic Stay is Warranted

66. The relief requested herein contemplates a modification of the automatic stay to permit the Debtors to, among other things: (a) grant the security interests, liens and superpriority

claims described above by the Debtors with respect to the DIP Lenders, and to perform such acts as may be requested to assure the perfection and priority of such security interests and liens; (b) upon the occurrence of an Event of Default, for the DIP Lenders to secure any remedies available to it; and (c) implement the terms of the proposed Interim order and Final Order, including payment of all amounts referred to in the DIP Documents. Stay modifications of this kind are ordinary and standard features of postpetition financing facilities and, in the Debtors' reasonable exercise of their business judgement, are appropriate under the present circumstances. *See, e.g., In re The Great Atl. & Pac. Tea Co., Inc.*, Case No. 15-23007 (RDD) (Bankr. S.D.N.Y. July 21, 2015) [Docket No. 88]. Accordingly, the Debtors respectfully request the Court to modify the automatic stay as requested herein.

L. Bankruptcy Rule 4001(a)(3) Should be Waived

67. The Debtors request a waiver of the stay of the effectiveness of the order approving this Motion under Bankruptcy Rule 4001(a)(3), which provides, "[an] order granting a motion for relief from an automatic stay made in accordance with Rule 4001(a)(1) is stayed until the expiration of fourteen days after entry of the order, unless the court orders otherwise." As explained herein, access to the DIP Facility is essential to prevent irreparable damage to the Debtors' estates. Accordingly, ample cause exists to justify the waiver of the fourteen-day stay imposed by Bankruptcy Rule 4001(a)(3), to the extent such applies.

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

68. To implement the foregoing successfully, the Debtors request that the Court enter an order providing that notice of the relief requested herein satisfies Bankruptcy Rule 6004(a) and that the Debtors have established cause to exclude such relief from the fourteen (14) day stay period 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. By this Motion, the Debtors request that the order approving this Motion be effective immediately by providing that the fourteen-day stay under Bankruptcy Rule 6004(h) is waived, so that the Debtors may immediately use some or all of the DIP Facility in the manner requested herein. Accordingly, ample cause exists to justify finding that the notice requirements under Bankruptcy Rule 6004(a) have been satisfied and to grant a waiver of the fourteen-day stay imposed by Bankruptcy Rule 6004(h), to the extent such notice requirements and such stay apply.

Notice

69. Notice of this Motion shall be given to the following parties: (a) the Office of the United States Trustee; (b) counsel to the Debtors' prepetition and postpetition secured lenders; and (c) the Debtors' thirty five (35) largest unsecured creditors on a consolidated basis. As the Motion is seeking "first day" relief, within two (2) business days after the hearing on the Motion, the Debtors will serve copies of the Motion and any order entered respecting the Motion as required by Local Rule 9013-1(m). The Debtors submit that, in light of the nature of the relief requested, no other or further notice need be given.

No Prior Request

70. The Debtors have not previously sought the relief requested herein from this or any other Court.

[*Remainder of page intentionally left blank*]

WHEREFORE, the Debtors respectfully request the Court's entry of the Interim Order in substantially the form attached hereto as Exhibit A (i) granting this Motion and the relief requested herein, (ii) authorizing the Debtors to enter into the DIP Loan Agreement in order to sustain the Debtors' business for a brief period of time during the current sale process and to fund these bankruptcy cases, and (iii) granting such other and further relief as the Court deems just and proper.

Dated: May 31, 2021

PACHULSKI STANG ZIEHL & JONES LLP

/s/ Laura Davis Jones

Laura Davis Jones (DE Bar No. 2436)
David M. Bertenthal (CA Bar No. 167624)
Timothy P. Cairns (DE Bar No. 4228)
919 North Market Street, 17th Floor
P.O. Box 8705
Wilmington, Delaware 19899 (Courier 19801)
Telephone: (302) 652-4100
Facsimile: (302) 652-4400
Email: ljones@pszjlaw.com
dbertenthal@pszjlaw.com
tcairns@pszjlaw.com

and

CHAPMAN AND CUTLER LLP
Larry G. Halperin
Joon P. Hong
1270 Avenue of the Americas
New York, New York 10020
Telephone: 212-655-6000
Facsimile: 212-697-7210
Email: halperin@chapman.com
joonhong@chapman.com

Proposed Counsel for the Debtors and Debtors in Possession

EXHIBIT A

Proposed Interim Order

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
	)	
AVADIM HEALTH, INC., et al.,[1]	)	Case No. 21-10883 (___)
	)	
Debtors.	)	(Joint Administration Requested)
	)	

INTERIM ORDER (I) AUTHORIZING DEBTORS TO (A) OBTAIN POSTPETITION SENIOR SECURED 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

Upon the motion (the "**Motion**") of Avadim Health, Inc. (the "**Borrower**") and the other above-captioned debtors and debtors in possession, as debtors and debtors-in-possession (the "**Debtors**") in the above-captioned cases (the "**Chapter 11 Cases**"), pursuant to sections 105, 361, 362, 363, 364, 503, and 507 of title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq.* (the "**Bankruptcy Code**"), Rules 2002, 4001, 6003, 6004 and 9014 of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**") and Rule 4001-2 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the "**Local Rules**"), seeking, among other things:

A. authorization for the Debtors to receive senior secured debtor-in-possession term loan financing (the "**DIP Financing**") in an aggregate principal amount of up to $7,156,000 of commitments (the "**DIP Commitments**") to make two term loans (the "**DIP Facility**") on the terms and conditions set forth in this Interim Order and the DIP Documents (as defined below); provided, however, only $2,250,000 of new loans under the DIP Facility shall be available upon entry of the Interim Order;

[1] The Debtors, along with the last four (4) digits of each Debtor's federal tax identification number are: Avadim Health, Inc. (8411); Avadim Health IP, Inc. (7594); Bionome Properties, Inc. (6483); Quality Assurance Associates, Inc. (5613); and Relion Manufacturing, Inc. (0430). The Debtors' business address is 81 Thompson Street, Asheville, NC 28803.

B. authorization for (i) the Borrower (as defined below) to execute and enter into that certain *Superpriority Senior Secured Debtor-in-Possession Credit Agreement*, dated as of May 31, 2021 (as amended, supplemented, or otherwise modified from time to time in accordance with the terms hereof and thereof, the "**DIP Credit Agreement**" and, together with the schedules and exhibits attached thereto and all agreements, documents, instruments and/or amendments executed and delivered in connection therewith, including the DIP GCA (as defined below), collectively, the "**DIP Documents**"),[2] among the Borrower, the lenders from time to time party thereto (the "**DIP Lenders**") and Hayfin Services, LLP, as administrative agent for the DIP Lenders and collateral agent for the DIP Secured Parties (as defined below) (in such capacities, the "**DIP Agent**"), and (ii) the Debtors to execute and enter into that certain Guarantee and Collateral Agreement, dated as of May 31, 2021, among the Debtors and the DIP Agent (as amended, supplemented, or otherwise modified from time to time in accordance with the terms hereof and thereof, the "**DIP GCA**") and the other DIP Documents to which they are intended to be a party, and to perform all such other and further acts as may be required in connection with the DIP Facility and the DIP Documents;

C. the granting of adequate protection to the Prepetition Secured Parties (as defined below);

D. subject to the restrictions set forth in the DIP Documents and this Interim Order, authorization for the Debtors to use Cash Collateral (as defined below) and all other Prepetition Collateral (as defined below) in which the Prepetition Secured Parties have an interest and the granting of adequate protection to the Prepetition Secured Parties with respect to, *inter alia*, such use of Cash Collateral and the other Prepetition Collateral;

E. subject to certain challenge rights of parties in interest set forth herein, approval of certain stipulations by the Debtors with respect to the Senior Secured Debt Documents (as defined below) and the liens and security interests arising therefrom;

F. the granting of superpriority claims pursuant to section 364(c)(1) of the Bankruptcy Code to the DIP Agent, for the benefit of the DIP Lenders and the other "Secured Parties" (as defined in the DIP Credit Agreement, the "**DIP Secured Parties**"), as well as liens, including priming liens, pursuant to section 364(d) of the Bankruptcy Code, as further described herein, on all prepetition and postpetition property of the Debtors' estate and all proceeds thereof (including, subject to entry of the Final Order, any Avoidance Proceeds (each as defined below));

G. subject to entry of the Final Order, the waiver of the Debtors' right to surcharge the Prepetition Collateral and the DIP Collateral (as defined below) pursuant to section

[2] Capitalized terms used but not otherwise defined herein shall have the respective meanings ascribed to such terms in the DIP Credit Agreement.

506(c) of the Bankruptcy Code and any right of the Debtors under the "equities of the case" exception in section 552(b) of the Bankruptcy Code;

H. subject to entry of the Final Order, a finding that none of the DIP Secured Parties or the Prepetition Secured Parties shall be subject to the equitable doctrine of "marshaling" or any similar doctrine with respect to the DIP Collateral or the Prepetition Collateral;

I. the modification of the automatic stay to the extent set forth herein and in the DIP Documents; and

J. a date for the hearing (the "**Final Hearing**") to consider the Motion on a final basis and the entry of a final order (the "**Final Order**") authorizing and approving the transactions described in the foregoing clauses.

This Court having reviewed the Motion, the exhibits attached thereto, the *Declaration of Keith Daniels* (the "**First Day Declaration**") and the evidence submitted at the interim hearing held on [•], 2021 (the "**Interim Hearing**"); and notice of the Motion and the Interim Hearing having been provided in accordance with the Bankruptcy Code, Bankruptcy Rules and Local Rules; and this Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein and that such relief is in the best interests of the Debtors and their estates and creditors and all parties in interest and is necessary to avoid immediate and irreparable harm to the Debtors and their estates pending the Final Hearing; and any objections to the Motion having been withdrawn or overruled on the merits; and upon all of the proceedings had before this Court and after due deliberation and sufficient cause appearing therefor;

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

A. **Debtor-in-Possession Operation**. On May 31, 2021 (the "**Petition Date**"), the Debtors commenced with this Court voluntary cases under chapter 11 of the Bankruptcy Code.

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

The Debtors are authorized to continue to operate their business and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

B. **Jurisdiction and Venue**. This Court has jurisdiction over the Chapter 11 Cases, the Motion and the parties and property affected hereby pursuant to 28 U.S.C. §§ 157(a)-(b) and 1334. Venue for the Chapter 11 Cases and proceeding on the Motion is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

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

D. **Notice**. Notice of the Motion and the Interim Hearing has been provided in accordance with the Bankruptcy Code, 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 the Final Hearing, for purposes of Bankruptcy Rule 4001.

E. **Debtors' Stipulations**. Without prejudice to the rights of any other party in interest and subject to the limitations thereon contained in paragraphs 12 and 24 below, the Debtors admit, acknowledge, agree, and stipulate to the following, which stipulations shall be binding on the Debtors, their estates, and all parties in interest (collectively, the "**Debtors' Stipulations**"):

---

any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent that any of the following conclusions of law constitute findings of fact, they are adopted as such.

i. *Senior Secured Credit Agreement.* Pursuant to that certain Credit Agreement, dated as of October 5, 2018 (as amended, supplemented, or otherwise modified from time to time, the "**Senior Secured Credit Agreement**", and together with any ancillary documents, security agreements, guarantees, pledge agreements, other instruments and notes issued in connection therewith, including, without limitation, that certain Guarantee and Collateral Agreement, dated as of October 5, 2018, by and among the Debtors and the Collateral Agent (as amended and as may be further amended, restated, amended and restated, supplemented and/or otherwise modified from time to time, the "**Senior Secured GCA**"), and as each may be amended, restated, supplemented, or otherwise modified from time to time prior to the date hereof, collectively, the "**Senior Secured Credit Facility Documents**") by and among (a) the Borrower, (b) Hayfin Services LLP, as administrative agent for the Senior Secured Lenders (in such capacity, the "**Administrative Agent**") and collateral agent for the Secured Parties (as defined in the Senior Secured Credit Agreement) (including, without limitation, the Senior Secured Noteholders) (in such capacity, the "**Collateral Agent**"), and (c) the lenders party thereto from time to time and each solely in their capacity as such (the "**Senior Secured Lenders**"), the Senior Secured Lenders provided the Borrower with certain loans and other financial accommodations (the "**Prepetition Credit Facility**").

ii. *Senior Secured Note Agreement.* The Borrower also entered into that certain Note Agreement, dated as of April 3, 2020 (as amended, restated, amended and restated, supplemented and/or otherwise modified from time to time prior to the date hereof, the "**Senior Secured Note Agreement**"), by and among (a) the Borrower, (b) the persons party thereto as "Holders" (each, a "**Senior Secured Noteholder**", and collectively, the "**Senior Secured Noteholders**"), and (c) Hayfin Services LLP, as the representative for the Senior Secured

Noteholders (in such capacity, the "**Noteholder Representative**", and together with the Administrative Agent, the Collateral Agent, the Senior Secured Lenders, the Senior Secured Noteholders, and the other Secured Parties (as defined in the Senior Secured Credit Agreement), collectively, the "**Prepetition Secured Parties**") and as Collateral Agent, pursuant to which the Borrower issued to the Senior Secured Noteholders (i) that certain Secured Note, dated as of April 3, 2020, in the original face amount of $12,000,000.00, (ii) that certain Secured Note, dated as of May 26, 2020, in the original face amount of $5,000,000.00, (iii) that certain Secured Note, dated as of May 5, 2021, in the original face amount of $1,000,000, (iv) that certain Secured Note, dated as of May 12, 2021, in the original face amount of $2,000,000 and (v) that certain Secured Note, dated as of May 20, 2021, in the original face amount of $2,000,000 (collectively, the "**Senior Secured Notes**", and together with the Senior Secured Note Agreement and any ancillary documents, security agreements, guarantees, pledge agreements, other instruments and notes issued in connection therewith (including, without limitation, the Senior Secured GCA,), and as each may be amended, restated, supplemented, or otherwise modified from time to time prior to the date hereof, collectively, the "**Senior Secured Note Documents**", and together with the Senior Secured Credit Facility Documents, the "**Senior Secured Debt Documents**"). All amounts owing under the Senior Secured Notes and the Senior Secured Note Documents constitute 'Obligations' under and as defined in the Senior Secured Credit Facility Documents.

iii. *Senior Secured Debt Obligations.* As of the Petition Date, the Debtors were lawfully indebted and liable to the Prepetition Secured Parties in respect of the obligations under the Senior Secured Debt Documents in the aggregate outstanding principal amount of not less than $101,033,412.00 plus all accrued but unpaid interest, penalties and fees thereon (including interest paid in kind, the Prepayment/Repayment Premium (as defined in the Senior Secured Credit

Agreement) (which as of the Petition Date is fully earned, due and payable in an amount equal to $618,632.52) and interest at the default rate, as applicable), fees, expenses, and all other obligations expressly provided for thereunder, or incurred in connection therewith, including any "Obligations" as defined in the Senior Secured Credit Facility Documents or Senior Secured Debt Documents (such obligations under the Senior Secured Debt Documents, the "**Senior Secured Debt Obligations**"), and the Debtors are unconditionally liable, without defense, counterclaim, offset or setoff of any kind, with respect to the Senior Secured Debt Obligations. The Senior Secured Debt Obligations constitute legal, valid, and binding obligations of the Debtors. No offsets, defenses, or counterclaims to, or claims or causes of action that could reduce the amount or ranking of the Senior Secured Debt Obligations exist. No portion of the Senior Secured Debt Obligations (including any interest owed thereunder) is subject to set-off, avoidance, impairment, disallowance, recharacterization, reduction, subordination (whether equitable, contractual, or otherwise), counterclaims, recoupment, cross-claims, defenses, or any other challenges under or pursuant to the Bankruptcy Code or any other applicable domestic or foreign law or regulation by any person or entity. The Senior Secured Debt Documents are valid and enforceable by the Prepetition Secured Parties against each of the Debtors.

iv. *Liens and Collateral.* To secure the Senior Secured Debt Obligations, the Debtors entered into various security and collateral documents pursuant to and in connection with the Senior Secured Debt Documents (including, without limitation, the Senior Secured GCA), pursuant to which the Prepetition Secured Parties were granted the benefit of valid, binding, perfected, enforceable, first-priority liens and security interests in the Prepetition Collateral (as defined below) (the "**Senior Secured Debt Liens**"). The Senior Secured Debt Liens provide the Prepetition Secured Parties with valid, binding, perfected, enforceable, first-priority liens, and

security interests in all property of the Debtors, including, without limitation, cash collateral as defined in section 363(a) of the Bankruptcy Code (the "**Cash Collateral**") and the "Collateral" (as defined in the Senior Secured Credit Facility Documents) (collectively, the "**Prepetition Collateral**"). All cash of the Debtors and cash proceeds of the Prepetition Collateral, including all such cash and cash proceeds of such Prepetition Collateral held at any time and from time to time in any of the Debtors' securities accounts and banking, checking, or other deposit accounts with financial institutions, are and will be Cash Collateral of the Prepetition Secured Parties.

v. *Validity, Perfection, and Priority of Senior Secured Debt Liens and Senior Secured Debt Obligations.* The Senior Secured Debt Liens (a) are valid, binding, perfected, and enforceable liens on and security interests in the Prepetition Collateral; (b) are not subject to, pursuant to the Bankruptcy Code or other applicable law (foreign or domestic), avoidance, disallowance, reduction, recharacterization, recovery, subordination (whether equitable, contractual, or otherwise), attachment, offset, counterclaim, defense, "claim" (as defined in the Bankruptcy Code), impairment, or any other challenge of any kind by any person or entity; (c) entitle the Prepetition Secured Parties to credit bid the entirety of the Senior Secured Debt Obligations pursuant to section 363(k) of the Bankruptcy Code without further challenges from the Debtors or any other party and implemented by the Prepetition Secured Parties in their absolute discretion; and (d) are subject and subordinate only to (1) the Carve-Out (as defined below) and (2) valid and enforceable liens and encumbrances in the Prepetition Collateral (if any) that were expressly permitted to be senior to the Senior Secured Debt Liens under the applicable Senior Secured Debt Documents, that are valid, perfected, enforceable, and non-avoidable as of the Petition Date and that are not subject to avoidance, reduction, disallowance, disgorgement, counterclaim, surcharge, or subordination pursuant to the Bankruptcy Code or applicable non-

bankruptcy law, and the Debtors irrevocably waive, for themselves and their estate, any right to challenge or contest in any way the scope, extent, perfection, priority, validity, non-avoidability, and enforceability of the Senior Secured Debt Liens or the validity, enforceability, or priority of payment of the Senior Secured Debt Obligations and the Senior Secured Debt Documents. The Senior Secured Debt Liens were granted to the Prepetition Secured Parties for fair consideration and reasonably equivalent value, and were granted contemporaneously with the making of loans, commitments, and/or other financial accommodations under the Senior Secured Debt Documents. Pursuant to and as more particularly described in the Senior Secured Debt Documents, the Senior Secured Debt Liens are valid, binding, properly perfected, enforceable, non-avoidable, first-priority liens and security interests in and against the Prepetition Collateral (including, without limitation, Cash Collateral), and are senior in right, priority, operation and effect to all other interests in the Prepetition Collateral (subject to the Senior Liens (as defined below)) in all respects, notwithstanding any provisions of the Uniform Commercial Code or any other Federal, State or foreign law.

vi. *Not Control Persons or Insiders.* By virtue of any of the actions taken with respect to, in connection with, related to or arising from the Senior Secured Loan Documents, the Prepetition Secured Parties do not control the Debtors or their properties or operation or have authority to determine the manner in which the Debtors' operations are conducted, and are not control persons or insiders of the Debtors.

vii. *Events of Default.* Numerous events of Default (as defined in the Senior Secured Credit Agreement), Note Defaults (as defined in the Senior Secured Note Agreement), and other defaults have occurred and are continuing under the terms of the Senior Secured Debt

Documents. The Prepetition Secured Parties expressly reserve all of their respective rights, powers, privileges, and remedies under the Senior Secured Debt Documents.

F. **Release of Prepetition Secured Parties**. Subject to paragraph 12 hereof, each of the Debtors and the Debtors' estates on their own behalf and on behalf of their past, present, and future predecessors, successors, heirs, subsidiaries and assigns hereby unconditionally, irrevocably, and fully forever release, remise, acquit, relinquish, irrevocably waive, and discharge each of the Prepetition Secured Parties, and each of their respective affiliates, former, current, or future officers, employees, directors, agents, representatives, owners, members, partners, financial advisors, legal advisors, shareholders, managers, consultants, accountants, attorneys, affiliates, assigns, and predecessors in interest, each in their capacity as such (collectively, the "**Representatives**"), of and from any and all claims, demands, liabilities, responsibilities, disputes, remedies, causes of action, indebtedness and obligations, rights, assertions, allegations, actions, suits, controversies, proceedings, losses, damages, injuries, attorneys' fees, costs, expenses, or judgments of every type, whether known, unknown, asserted, unasserted, suspected, unsuspected, accrued, unaccrued, fixed, contingent, pending, or threatened, including, without limitation, all legal and equitable theories of recovery, arising under common law, statute, or regulation or by contract, of every nature and description that exist on the date hereof with respect to or relating to the Senior Secured Debt Obligations, the Senior Secured Debt Liens, or the Senior Secured Debt Documents, including, without limitation, (i) any so-called "lender liability" or equitable subordination claims or defenses, (ii) any and all claims and causes of action arising under the Bankruptcy Code, and (iii) any and all claims and causes of action regarding the validity, priority, extent, enforceability, perfection, or avoidability of the liens or claims of the Prepetition Secured Parties.

G. **Release of DIP Secured Parties**. Each of the Debtors and the Debtors' estates on their own behalf and on behalf of their past, present, and future predecessors, successors, heirs, subsidiaries and assigns hereby unconditionally, irrevocably, and fully forever release, remise, acquit, relinquish, irrevocably waive, and discharge each of the DIP Secured Parties, and each of their respective Representatives, of and from any and all claims, demands, liabilities, responsibilities, disputes, remedies, causes of action, indebtedness and obligations, rights, assertions, allegations, actions, suits, controversies, proceedings, losses, damages, injuries, attorneys' fees, costs, expenses, or judgments of every type, whether known, unknown, asserted, unasserted, suspected, unsuspected, accrued, unaccrued, fixed, contingent, pending, or threatened, including, without limitation, all legal and equitable theories of recovery, arising under common law, statute, or regulation or by contract, of every nature and description that exist on the date hereof with respect to or relating to the DIP Obligations (as defined below), the DIP Liens (as defined below), or the DIP Documents, including, without limitation, (i) any so-called "lender liability" or equitable subordination claims or defenses, (ii) any and all claims and causes of action arising under the Bankruptcy Code, and (iii) any and all claims and causes of action regarding the validity, priority, extent, enforceability, perfection, or avoidability of the liens or claims of the DIP Secured Parties.

H. **Stipulation Binding on Debtors**. The Debtors' Stipulations and releases shall be binding on the Debtors and their respective representatives, successors, and assigns, and on each of the Debtors' estates and, subject to paragraph 12 hereof, all other entities and persons, including any creditors of the Debtors, and each of their respective representatives, successors, and assigns, including, without limitation, any trustee or other representative appointed in these Chapter 11

Cases, or upon conversion to chapter 7, whether such trustee or representative is appointed under chapter 11 or chapter 7 of the Bankruptcy Code.

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

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

ii. The Debtors have an immediate need to obtain the DIP Financing and continue to use the Prepetition Collateral (including Cash Collateral). The Borrower's borrowings from the DIP Lenders under the DIP Facility will be used in a manner consistent with the terms and conditions of the applicable DIP Documents and this Interim Order for and, in each case, solely in accordance with the Approved Budget (as defined below): (a) working capital and other general corporate purposes of the Debtors; (b) payment of amounts due under the DIP Facility, including interest and fees payable thereunder and any adequate protection payments payable pursuant to this Interim Order; (c) payment of the professional fees and expenses of administering the Chapter 11 Cases; and (d) other purposes as expressly set forth in this Interim Order, the Approved Budget, or as expressly approved by the DIP Agent in writing (in its sole discretion). Except with the prior written consent of the DIP Agent in its sole discretion, the Debtors shall not be permitted to use the proceeds of the DIP Facility and the proceeds of the Prepetition Collateral (including the Cash Collateral) in contravention of the provisions of the orders entered in the Chapter 11 Cases (including this Interim Order), including any restrictions or limitations on the use of proceeds contained therein. The Debtors' access to sufficient working capital through the use of Cash Collateral and other Prepetition Collateral and the incurrence of indebtedness under the DIP Facility are necessary and vital to the preservation and maintenance of the going-concern value of the Debtors. The Debtors' use of Cash Collateral alone would be insufficient to meet the

Debtors' cash disbursement needs during the period of effectiveness of this Interim Order. The access by the Debtors' to sufficient working capital and liquidity through the use of Cash Collateral and other Prepetition Collateral, incurrence of new indebtedness under the DIP Facility, and other financial accommodations provided under the DIP Documents are necessary and vital to avoid an immediate liquidation and for the preservation and maintenance of the going concern value of the Debtors and to a successful restructuring of the Debtors.

iii. The Debtors are unable to obtain financing on terms more favorable than that offered by the DIP Lenders under the DIP Documents and are unable to obtain adequate unsecured credit allowable under section 503(b)(1) of the Bankruptcy Code as an administrative expense. The Debtors are also unable to obtain secured credit allowable solely under sections 364(c)(1), 364(c)(2), and 364(c)(3) of the Bankruptcy Code without the Debtors granting to the DIP Agent, for the benefit of the DIP Secured Parties, the DIP Liens and the DIP Superpriority Claims (as defined below) on the terms and conditions set forth herein and granting the Adequate Protection Obligations (as defined below), in each case, under the terms and conditions set forth in this Interim Order and in the DIP Documents.

iv. The terms of the DIP Financing, the terms of the Adequate Protection Obligations, and the terms on which the Debtors' may continue to use the Prepetition Collateral (including Cash Collateral) pursuant to this Interim Order and the DIP Documents are fair and reasonable, reflect the Debtors' exercise of prudent business judgment consistent with its fiduciary duties, and constitute reasonably equivalent value and fair consideration.

v. The Prepetition Secured Parties have consented to the use of Cash Collateral and the other Prepetition Collateral, the priming of the Senior Secured Debt Liens pursuant to

section 364(d)(1) of the Bankruptcy Code, and the Debtors' entry into the DIP Documents in accordance with and subject to the terms of this Interim Order and the DIP Documents.

vi. The DIP Financing, as well as the terms of the Adequate Protection Obligations, and the use of the Prepetition Collateral (including Cash Collateral) have been negotiated in good faith and at arm's length among the Debtors, the DIP Secured Parties, and the Prepetition Secured Parties, and their respective advisors, and all of the Debtors' obligations and indebtedness arising under, in respect of, or in connection with, the DIP Financing and the DIP Documents, including: (a) all loans made to and guarantees issued by the Debtors pursuant to the DIP Documents (collectively, the "**DIP Loans**") and (b) any "Obligations" (as defined in the DIP Credit Agreement) of the Debtors owing to any of the DIP Secured Parties, or any of their Representatives, in accordance with the terms of the DIP Documents, including any obligations, to the extent provided for in the DIP Documents, to indemnify the DIP Secured Parties, each of their Representatives and each of the other Indemnitees (as defined in the DIP Credit Agreement) and to pay any interest, fees, expenses (including any attorneys', accountants', appraisers' and financial advisors' fees that are chargeable or reimbursable under the DIP Documents), amounts, charges, costs, indemnities and other obligations that are chargeable or reimbursable under this Interim Order, the Final Order or the DIP Documents (the foregoing in clauses (a) and (b) collectively, the "**DIP Obligations**"), shall be deemed to have been extended by the DIP Secured Parties and their respective Representatives in good faith, as that term is used in section 364(e) of the Bankruptcy Code and in express reliance upon the protections offered by section 364(e) of the Bankruptcy Code, and each of the DIP Secured Parties shall be entitled to the full protection of section 364(e) of the Bankruptcy Code in the event that this Interim Order or any provision hereof is vacated, reversed or modified, on appeal or otherwise. In providing the DIP Loans and

consenting to the use of Cash Collateral, as applicable, each of the DIP Secured Parties and the Prepetition Secured Parties and each of their Representatives have acted in the best interests of the Debtors' estates, for the benefit of all stakeholders, to preserve and enhance the value of the Prepetition Collateral and maximize recoveries for stakeholders. Each of the Prepetition Secured Parties, the DIP Secured Parties have acted in good faith regarding the DIP Financing and the Debtors' continued use of the Prepetition Collateral (including the Cash Collateral) to fund the administration of the Debtors' estate and continued operation of its businesses (including the incurrence and payment of the Adequate Protection Obligations and the granting of the Adequate Protection Liens), in accordance with the terms hereof, and the Prepetition Secured Parties (and each of their Representatives) and the DIP Secured Parties (and each of their Representatives) shall be entitled to the full protection of section 363(m) of the Bankruptcy Code in the event that this Interim Order or any provision hereof is vacated, reversed or modified, on appeal or otherwise.

vii. The Prepetition Secured Parties are entitled to the adequate protection provided in this Interim Order as and to the extent set forth herein pursuant to sections 361, 362, 363 and 364 of the Bankruptcy Code. The terms of the proposed adequate protection arrangements and of the use of the Prepetition Collateral (including Cash Collateral) are fair and reasonable, reflect the Debtors' prudent exercise of business judgment and constitute reasonably equivalent value and fair consideration for the use of Cash Collateral; provided, however, nothing in this Interim Order or the other DIP Documents shall (a) be construed as the affirmative consent by the Prepetition Secured Parties for the use of Cash Collateral, other than on the terms set forth in this Interim Order and in the context of the DIP Financing authorized by this Interim Order, (b) be construed as a consent by any party to the terms of any other financing or any other lien encumbering the Prepetition Collateral (whether senior or junior), or (c) prejudice, limit or

otherwise impair the rights of the Prepetition Secured Parties to seek new, different or additional adequate protection or assert the interests of any of the Prepetition Secured Parties.

viii. The Debtors have prepared and delivered to the DIP Agent a budget (such initial budget, the "**Initial DIP Budget**"), a copy of which is attached hereto as **Exhibit A**. The Initial DIP Budget reflects the Debtors' anticipated net cash flow and anticipated disbursements for each month during the period from the Petition Date through and including August 27, 2021. The Initial DIP Budget may be modified, amended and updated from time to time in accordance with the DIP Credit Agreement, and once approved by, in form and substance satisfactory to the DIP Agent (in its sole discretion), shall supplement and replace the Initial DIP Budget (the Initial DIP Budget and each subsequent approved budget, shall constitute without duplication, an "**Approved Budget**"). The Debtors believe that the Initial DIP Budget is reasonable under the facts and circumstances. The DIP Lenders and the DIP Agent are relying, in part, upon the Debtors' agreement to comply with the Approved Budget, the other DIP Documents, and this Interim Order in determining to enter into the postpetition financing arrangements provided for in this Interim Order.

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

J. **Sections 506(c) and 552(b)**. In light of, among other things, the Prepetition Secured Parties' agreement to subordinate the Senior Secured Debt Liens and Senior Secured Debt

Obligations to the DIP Liens and the Adequate Protection Liens, and to permit the use of the DIP Facility and Cash Collateral for payments made in accordance the terms of this Interim Order and the other DIP Documents, including the Approved Budget, subject to the entry of the Final Order, the DIP Secured Parties and the Prepetition Secured Parties are entitled to a waiver of (i) the provisions of Bankruptcy Code section 506(c), (ii) any "equities of the case" claims under Bankruptcy Code section 552(b), and (iii) the equitable doctrine of "marshaling" or any similar doctrine.

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

IT IS HEREBY ORDERED THAT:

1. **Motion Granted**. The Motion is GRANTED to the extent provided herein on an interim basis. Any objections, reservations of rights, or other statements with respect to entry of the Interim Order, to the extent not withdrawn or resolved, are overruled on the merits.

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

(a) The Debtors are hereby authorized to execute, enter into and perform all obligations under the DIP Documents. The Debtors are hereby authorized to borrow money pursuant to the DIP Credit Agreement in an aggregate principal or face amount not to exceed $7,156,000 under the DIP Facility, which shall be used for all purposes permitted under the DIP Documents (and subject to the terms and conditions set forth herein and therein); provided, however, no more than $2,250,000 of new DIP Loans shall be available to the Debtors pending the entry of the Final Order.

(b) In furtherance of the foregoing and without further approval of this Court, the Debtors are authorized and directed to perform all acts, to make, execute and deliver all

instruments and documents (including the execution or recordation of security agreements, mortgages and financing statements), and to pay all fees that may be reasonably required or necessary for the Debtors' performance of its obligations under or related to the DIP Financing, including:

(i) Entry/Execution. The execution and delivery of, and performance under, each of the DIP Documents;

(ii) Amendment. The execution and delivery of, and performance under, one or more amendments, waivers, consents or other modifications to and under the DIP Documents, in each case, in such form as the Debtors and the DIP Agent may agree, it being understood that no further approval of the Court or any other party shall be required for (A) any immaterial amendment, waiver, consent or other modification (including any extensions of the Milestones (as defined below)) or (B) any waivers of covenants under the DIP Documents and Defaults or Events of Default (each as defined in the DIP Documents); provided, however, that the Committee (if any) shall receive notice of any such amendment, waiver, consent or other modification. Any other material amendment, waiver, consent or other modification shall require further Court order; and

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

(c) Upon execution and delivery of the DIP Documents, the DIP Documents shall constitute valid, binding and unavoidable obligations of the Debtors, enforceable against the Debtors in accordance with the terms of the DIP Documents and this Interim Order. No obligation, payment, transfer or grant of security under the DIP Documents or this Interim Order to the DIP Lenders or DIP Agent shall be stayed, restrained, voidable or recoverable under the Bankruptcy Code or under any applicable law (including under sections 502(d), 548 or 549 of the Bankruptcy Code, any applicable Uniform Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act or other similar state statute or common law), or subject to any defense, reduction, setoff, recoupment, recharacterization, subordination, disallowance, impairment, cross-claim, claim or counterclaim.

(d) The Initial DIP Budget is approved in its entirety. Not later than 5:00 p.m. (Prevailing Eastern Time) on the third business day of each week starting with the first full calendar week following the Petition Date, each Professional Person (as defined below), shall deliver to the Debtors, the DIP Agent, and the DIP Agent's professionals a statement setting forth the actual amount of fees and expenses incurred during the preceding week by such Professional Person (through the Saturday of such week, the "**Calculation Date**") along with a good-faith estimate of such Professional Person's cumulative total amount of unpaid fees and expenses for the current week and the week thereafter.

3. **DIP Superpriority Claims**. Subject to the Carve-Out, pursuant to section 364(c)(1) of the Bankruptcy Code, all of the DIP Obligations shall constitute allowed superpriority administrative expense claims against each of the Debtors (without the need to file any proof of claim) with priority over any and all claims against the Debtors, now existing or hereafter arising, of any kind whatsoever, including all administrative expenses of the kind specified in sections 503(b) and 507(b) of the Bankruptcy Code and any and all administrative expenses or other claims

arising under sections 105, 326, 328, 330, 331, 365, 503(b), 506(c) (subject to the entry of the Final Order), 507(a), 507(b), 726, 1113 or 1114 of the Bankruptcy Code (including the Adequate Protection Obligations (as defined below)), whether or not such expenses or claims may become secured by a judgment lien or other non-consensual lien, levy or attachment, which allowed claims (the "**DIP Superpriority Claims**") shall for purposes of section 1129(a)(9)(A) of the Bankruptcy Code be considered administrative expenses allowed under section 503(b) of the Bankruptcy Code, and which DIP Superpriority Claims shall be payable from and have recourse to all pre- and postpetition property of the Debtors and all proceeds thereof (excluding the Debtors' claims and causes of action under sections 502(d), 544, 545, 547, 548 and 550 of the Bankruptcy Code, or any other avoidance actions under the Bankruptcy Code (collectively, the "**Avoidance Actions**"), but including, subject to entry of the Final Order, any proceeds or property recovered, unencumbered or otherwise from Avoidance Actions, whether by judgment, settlement or otherwise (the "**Avoidance Proceeds**")). The DIP Superpriority Claims shall be entitled to the full protection of section 364(e) of the Bankruptcy Code in the event that this Interim Order or any provision hereof is vacated, reversed or modified, on appeal or otherwise.

4. **DIP Liens**. As security for the DIP Obligations, effective and perfected upon the date of this Interim Order and without the necessity of the execution, recordation of filings by the DIP Secured Parties or the Debtors of mortgages, security agreements, control agreements, pledge agreements, financing statements or other similar documents, any notation of certificates of title for a titled good, or the possession or control by the DIP Agent or any DIP Lender of, or over, any DIP Collateral (as defined below), the following security interests and liens are hereby granted to the DIP Agent, for the benefit of the DIP Secured Parties (all property identified in clauses (a), (b) and (c) below, and, subject to the entry of the Final Order, the Avoidance Proceeds, being

collectively referred to as the "**DIP Collateral**"), subject only to the Carve-Out and the Senior Liens (as defined herein) (all such liens and security interests granted to the DIP Secured Parties pursuant to this Interim Order and the DIP Documents, the "**DIP Liens**"):

(a) First Lien on Unencumbered Property. Pursuant to section 364(c)(2) of the Bankruptcy Code, a valid, binding, continuing, enforceable, fully-perfected first priority senior security interest in and lien upon all tangible and intangible pre- and postpetition property of the Debtors, whether existing on the Petition Date or thereafter acquired, that, on, after or as of the Petition Date, is not subject to a valid, perfected and non-avoidable lien (collectively, the "**Unencumbered Property**"), including any and all unencumbered cash of the Debtors and any investment of such cash, inventory, accounts receivable, other rights to payment whether arising before or after the Petition Date, claims, causes of action, commercial tort claims, contracts, properties, plants, fixtures, machinery, equipment, general intangibles, documents, instruments, securities, chattel paper, interests in leaseholds, real properties, deposit accounts, patents, intellectual property, copyrights, trademarks, trade names, rights under license agreements and other intellectual property, capital stock of subsidiaries, wherever located and whenever arising, and the proceeds, products, rents and profits of the foregoing, whether arising under section 552(b) of the Bankruptcy Code or otherwise, of all the foregoing, in each case other than the Avoidance Actions, but including, subject to the entry of the Final Order, the Avoidance Proceeds;

(b) Priming Liens on Prepetition Collateral. Pursuant to section 364(d)(1) of the Bankruptcy Code, a valid, binding, continuing, enforceable, fully-perfected first priority senior priming security interest in and lien upon all pre- and postpetition property of the Debtors (including any and all cash and cash collateral and any investment of such cash and cash collateral, inventory, accounts receivable, other rights to payment whether arising before or after the Petition

Date (including post-petition intercompany claims against any Debtor), claims or causes of action, commercial tort claims, contracts, properties, plants, fixtures, machinery, equipment, general intangibles, documents, instruments, securities, chattel paper, interests in leaseholds, real properties, deposit accounts, patents, intellectual property, copyrights, trademarks, trade names, rights under license agreements and other intellectual property, capital stock of subsidiaries, wherever located and whenever arising, and the proceeds, products, rents and profits of the foregoing), whether now existing or hereafter acquired, that is subject to the Senior Secured Debt Liens, which lien shall be senior in all respects to such Senior Secured Debt Liens. Such security interests and liens shall be senior in all respects to the interests in such property of the Prepetition Secured Parties arising from current and future liens of the Prepetition Secured Parties (including the Adequate Protection Liens granted hereunder);

(c) DIP Liens Junior to Certain Other Liens. Pursuant to section 364(c)(3) of the Bankruptcy Code, a valid, binding, continuing, enforceable, fully-perfected junior security interest in and lien upon all tangible and intangible pre- and postpetition property of the Debtors that was, as of the Petition Date, subject to valid, properly perfected (before the Petition Date), binding, and unavoidable liens that were otherwise senior to the Senior Secured Debt Liens as of the Petition Date (the "**Senior Liens**"); and

(d) DIP Liens Senior to Certain Other Liens. The DIP Liens shall not be (i) subject or subordinate to (a) any lien or security interest that is avoided and preserved for the benefit of the Debtors and their estates under section 551 of the Bankruptcy Code, (b) unless otherwise provided for in the DIP Documents or in this Interim Order, any liens or security interests arising after the Petition Date, including any liens or security interests granted in favor of any federal, state, municipal or other governmental unit (including any regulatory body), commission, board or court

for any liability of the Debtors, (c) any intercompany or affiliate liens of the Debtors, or (d) any orders of attachment or judicial liens; or (ii) subordinated to or made *pari passu* with any other lien or security interest under section 363 or 364 of the Bankruptcy Code.

5. **Use of Cash Collateral**. The Debtors are hereby authorized, subject to the terms and conditions of this Interim Order, to use Cash Collateral strictly in accordance with the Approved Budget; provided, however, (a) the Prepetition Secured Parties are granted the adequate protection as hereinafter set forth and (b) except on the terms and conditions of this Interim Order, the Debtors shall be enjoined and prohibited from at any times using the Cash Collateral absent further order of the Court. The Debtors' authority to use Cash Collateral shall terminate upon expiration of the Approved Budget (as defined below).

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

Parties, as applicable, shall receive the following (collectively, the "**Adequate Protection Obligations**"):

(a) Adequate Protection Liens. The Prepetition Secured Parties are hereby granted (effective and perfected upon the date of this Interim Order and without the necessity of the execution of any mortgages, security agreements, pledge agreements, financing statements or other agreements), in the amount of the Adequate Protection Claim, valid, perfected replacement security interests in and liens upon all of the DIP Collateral including all Unencumbered Property and, subject to the entry of the Final Order, the Avoidance Proceeds, in each case subject and subordinate only to (i) the DIP Liens and any liens to which the DIP Liens are junior, including the Senior Liens, if any, and (ii) the Carve-Out (the "**Adequate Protection Liens**").

(b) Adequate Protection Section 507(b) Claim. The Prepetition Secured Parties are hereby granted, subject to the Carve-Out, an allowed superpriority administrative expense claim as provided for in section 507(b) of the Bankruptcy Code in the amount of the Adequate Protection Claim with, except as set forth in this Interim Order, priority in payment over any and all administrative expenses of the kind specified or ordered pursuant to any provision of the Bankruptcy Code (the "**Adequate Protection 507(b) Claim**"), which Adequate Protection 507(b) Claim shall have recourse to and be payable from all of the DIP Collateral in accordance with the priorities set forth herein, including, subject to the entry of the Final Order, the Avoidance Proceeds. The Adequate Protection 507(b) Claim shall be subject and subordinate to the Carve-Out and the DIP Superpriority Claims. Except to the extent expressly set forth in this Interim Order or the DIP Credit Agreement, the Prepetition Secured Parties shall not receive or retain any payments, property or other amounts in respect of the Adequate Protection 507(b) Claim unless and until the DIP Obligations (other than contingent indemnification obligations as to which no

claim has been asserted) and any claims having a priority superior to or *pari passu* with the DIP Superpriority Claims, including claims that benefit from the Carve-Out, have indefeasibly been paid in cash in full and all DIP Commitments have been terminated.

(c) Adequate Protection Payments. As further adequate protection, the Debtors are authorized and directed to pay, in accordance with the terms of Paragraph 5 of this Interim Order, all reasonable and documented out-of-pocket fees and expenses (the "**Adequate Protection Fees**"), whether incurred before or after the Petition Date, including all reasonable and documented out-of-pocket fees and expenses of the Prepetition Secured Parties and the DIP Secured Parties and for the counsel and other professionals retained as provided for in the DIP Documents and this Interim Order. None of the Adequate Protection Fees shall be subject to separate approval by this Court or the U.S. Trustee Guidelines, and no recipient of any such payment shall be required to file any interim or final fee application with respect thereto or otherwise seek the Court's approval of any such payments.

7. **Application of Proceeds of Collateral**. As a condition to entry into the DIP Credit Agreement, the extension of funds under the DIP Facility and authorization to use Cash Collateral, the Debtors, the DIP Secured Parties and the Prepetition Secured Parties, in their respective capacities, have agreed that as of and commencing on the date of entry of this Interim Order (and the date of entry of Final Order, if entered), and to the extent set forth therein, the Debtors shall apply the proceeds of DIP Collateral and Prepetition Collateral solely in accordance with this Interim Order (and the Final Order, if entered), the DIP Documents, the Senior Secured Debt Documents, and the Approved Budget.

8. **Milestones**. The DIP Secured Parties and Prepetition Secured Parties are hereby entitled to performance of the following milestones by the dates set forth below (or such later date

as may be agreed by the DIP Agent (the "**Milestones**"), and for the avoidance of doubt, the failure of the Debtors to comply with any of the Milestones shall constitute an immediate Event of Default under the DIP Credit Agreement and this Interim Order and permit the DIP Agent to exercise the rights and remedies provided for in this Interim Order and the DIP Documents:

a. On the Petition Date, (i) the Debtors shall file a motion with the Bankruptcy Court seeking approval of this Interim Order, (ii) the Debtors shall file the Bidding Procedures Motion with the Bankruptcy Court, and (iii) the Debtors shall have entered into the Stalking Horse APA.

b. On or before the date that is two (2) business days after the Petition Date, the Bankruptcy Court shall have entered this Interim Order.

c. On or before the date that is twenty-one (21) days after the Petition Date, the Bankruptcy Court shall have approved the Bidding Procedures.

d. On or before the date that is thirty (30) days after the Petition Date, the Bankruptcy Court shall have entered the Final Order.

e. On or before the date that is fifty-six (56) days after the Petition Date, the Bid Deadline (as defined in the Bidding Procedures Order) shall have occurred.

f. On or before the date that is fifty-eight (58) days after the Petition Date, the Debtors shall have commenced the Auction, if necessary.

g. On or before the date that is sixty (60) days after the Petition Date, a hearing shall have occurred in the Bankruptcy Court to consider approval of the Stalking Horse APA and the Stalking Horse Transaction, or another alternative transaction pursuant to the Bidding Procedures.

h. On or before the date that is sixty (60) days after the Petition Date, the Bankruptcy Court shall have entered the Sale Order.

i. On or before the date that is seventy (70) days after the Petition Date, the Stalking Horse Transaction or another sale transaction approved in the Sale Order shall be consummated and closed.

9. **Event of Default**. With respect to the (a) the DIP Secured Parties and the DIP Facility or (b) the Prepetition Secured Parties and the Debtors use of Cash Collateral, for purposes of this Interim Order an "**Event of Default**" means an Event of Default as defined in the DIP Credit Agreement.

10. **Remedies Upon Event of Default**. The automatic stay provisions of section 362 of the Bankruptcy Code are hereby modified, without requiring prior notice to or authorization of this Court, to the extent necessary to permit, as applicable, the DIP Agent, Administrative Agent, Collateral, and the Noteholder Representative to enforce all of their rights under the DIP Documents and Senior Secured Debt Documents and (a) immediately upon the occurrence of an Event of Default, declare (i) the termination, reduction or restriction of Cash Collateral and any further DIP Commitments to the extent any such DIP Commitment remains in effect and (ii) all DIP Obligations to be immediately due and payable, without presentment, demand, protest, or other notice of any kind, all of which are expressly waived by the Debtors and (b) upon the occurrence of an Event of Default and the giving of five (5) business days' prior written notice (the "**Remedies Notice Period**") (which shall run concurrently with any notice required to be provided under the DIP Documents or Senior Secured Debt Documents) via email to counsel to the Debtors, counsel to the Committee (if any), and the U.S. Trustee to (i) immediately terminate consent to the Debtors' continued use of Cash Collateral and/or the DIP Facility and (ii) exercise all other rights and remedies provided for in the DIP Documents, Senior Secured Debt Documents, and under applicable law. Notwithstanding anything in this Interim Order, during the Remedies Notice Period, the Debtors may only use Cash Collateral with the express written consent of the DIP Agent and the Administrative Agent. During the Remedies Notice Period, the Debtors and any other party in interest shall be entitled to seek an emergency hearing with the Court. No rights, protections or remedies of the DIP Secured Parties and the Prepetition Secured Parties granted by the provisions of this Interim Order, the DIP Documents, or Senior Secured Debt Documents shall be limited, modified or impaired in any way by: (a) any actual or purported withdrawal of the consent of any party to the Debtors' authority to continue to use Cash Collateral; (b) any actual or

purported termination of the Debtors' authority to continue to use Cash Collateral; or (c) except as provided herein or in the Final Order, the terms of any other order or stipulation related to the Debtors' continued use of Cash Collateral or the provision of adequate protection to any party.

11. **No Marshalling**. Subject to entry of the Final Order, none of the DIP Secured Parties or the Prepetition Secured Parties shall be subject to (a) the equitable doctrine of "marshaling" or any similar doctrine with respect to the DIP Collateral or Prepetition Collateral or (b) the "equities of the case" exception in section 552(b) of the Bankruptcy Code.

12. **Effect of Stipulations on Third Parties**. The Debtors' stipulations, admissions, releases, and agreements contained in this Interim Order, including in paragraph H of this Interim Order, shall be binding upon the Debtors and any successor thereto (including any chapter 7 or chapter 11 trustee or examiner appointed or elected for the Debtors) in all circumstances and for all purposes upon entry of this Interim Order. The Debtors' stipulations, admissions, releases, and agreements contained in this Interim Order, including in paragraphs E and F of this Interim Order, shall be binding upon all other parties in interest, including any statutory or non-statutory committees appointed or formed in the Chapter 11 Cases and any other person or entity acting or seeking to act on behalf of the Debtors' estates, including any chapter 7 or chapter 11 trustee or examiner appointed or elected for the Debtors, in all circumstances and for all purposes unless: (a) such committee, or any other party in interest, with requisite standing (subject in all respects to any agreement or applicable law that may limit or affect such entity's right or ability to do so), has timely filed an adversary proceeding (subject to the limitations contained herein, including, among others, in this paragraph 12) (i) objecting to or challenging the amount, validity, perfection, enforceability, priority or extent of any of the Senior Secured Debt Obligations or the Senior Secured Debt Liens or (ii) otherwise asserting or prosecuting any action for preferences, fraudulent

transfers or conveyances, other avoidance power claims or any other claims, counterclaims or causes of action, objections, contests or defenses against either the Prepetition Secured Parties or their respective Representatives in connection with matters related to the Senior Secured Debt Documents, the Senior Secured Debt Obligations, the Senior Secured Debt Liens, and the Prepetition Collateral (collectively, the "**Challenges**") by no later than the earlier of (i) with respect to parties in interest (including the Committee) with requisite standing, seventy-five (75) calendar days after entry of this Interim Order; (ii) subject to entry of the Final Order, entry of the Sale Order; and (iii) any such later date as has been agreed to, in writing, by the Administrative Agent (the time period established by the foregoing clauses (i), (ii) and (iii), the "**Challenge Period**"); and (b) there is a final non-appealable order in favor of the plaintiff sustaining any such Challenge in any such timely filed adversary proceeding; provided, however, that any pleadings filed in connection with any Challenge shall set forth with specificity the basis for such challenge or claim and any challenges or claims not so specified before the expiration of the Challenge Period shall be deemed forever, waived, released and barred. If (a) no such Challenge is timely and properly filed during the Challenge Period by a party with requisite standing in strict compliance with the terms of this Interim Order, or (b) the Court does not rule in favor of the plaintiff in any such proceeding then: (i) the Debtors' stipulations, admissions, releases, and agreements contained in this Interim Order, including those contained in paragraphs E and F of this Interim Order, shall be binding on all parties in interest, including the Committee (if any) and any chapter 7 or chapter 11 trustee or examiner appointed or elected for the Debtors; (ii) the obligations of the Debtors under the Senior Secured Debt Documents, including the Senior Secured Debt Obligations, shall constitute allowed claims (without the need to file a proof of claim) not subject to defense, claim, counterclaim, recharacterization, subordination, offset or avoidance, for all purposes in the Chapter

11 Cases, and any subsequent chapter 7 case(s); (iii) the Senior Secured Debt Liens on the Prepetition Collateral shall be deemed to have been, as of the Petition Date, legal, valid, binding, perfected, security interests and liens on the Prepetition Collateral, not subject to recharacterization, subordination, avoidance or other defense; and (iv) the Senior Secured Debt Obligations and the Senior Secured Debt Liens on the Prepetition Collateral shall not be subject to any other or further claim or challenge by the Committee (if any), any non-statutory committees appointed or formed in the Chapter 11 Cases or any other party in interest acting or seeking to act on behalf of the Debtors' estate, including any successor thereto (including any chapter 7 trustee or chapter 11 trustee or examiner appointed or elected for the Debtor) and any defenses, claims, causes of action, counterclaims and offsets by the Committee (if any), any non-statutory committees appointed or formed in the Chapter 11 Cases, or any other party acting or seeking to act on behalf of the Debtors' estate, including any successor thereto (including any chapter 7 trustee or chapter 11 trustee or examiner appointed or elected for the Debtor), whether arising under the Bankruptcy Code or otherwise, against the Prepetition Secured Parties and their Representatives arising out of or relating to any of the Senior Secured Debt Documents shall be deemed forever waived, released and barred. If any such Challenge is timely filed during the Challenge Period, the stipulations, admissions, releases, and agreements contained in this Interim Order, including those contained in paragraphs E and F of this Interim Order, shall nonetheless remain binding and preclusive (as provided in the second sentence of this paragraph) on any statutory or nonstatutory committee appointed or formed in the Chapter 11 Cases, including the Committee (if any) and any chapter 7 or chapter 11 trustee or examiner appointed or elected for the Debtors, and on any other person or entity and their Representatives, except to the extent that such stipulations, admissions, releases, and agreements were expressly and successfully

challenged in such Challenge as set forth in a final, non-appealable order of a court of competent jurisdiction. Nothing in this Interim Order vests or confers on any Person (as defined in the Bankruptcy Code), including the Committee (if any) or any non-statutory committees appointed or formed in the Chapter 11 Cases, standing or authority to pursue any claim or cause of action belonging to the Debtors or their estate, including Challenges with respect to the Senior Secured Debt Documents, the Senior Secured Debt Obligations, or the Senior Secured Debt Liens.

13. **Fees & Expenses**. The Debtors are authorized and directed to pay any and all reasonable and documented fees and expenses of the DIP Secured Parties and the Prepetition Secured Parties in connection with the Chapter 11 Cases, DIP Documents, the Senior Secured Debt Documents, and the Adequate Protection Obligations, including the fees and expenses of attorneys, advisors, accountants and other consultants, whether incurred before, on or after the Petition Date and whether or not the transactions contemplated hereby are consummated, including, but not limited to fees and expenses incurred in connection with (a) the preparation, negotiation and execution of the DIP Orders, the DIP Documents, and the Adequate Protection Obligations; (b) the creation, perfection or protection of the DIP Liens and the Adequate Protection (including all search, filing and recording fees); (c) the on-going administration of the DIP Documents (including the preparation, negotiation and execution of any amendments, consents, waivers, assignments, restatements or supplements thereto) and the Chapter 11 Cases (including the filing of any proofs of claim); (d) the enforcement of the DIP Documents, the DIP Orders or the Senior Secured Debt Documents; and (e) any legal proceeding relating to or arising out of the DIP Facilities or the other transactions contemplated by the DIP Documents, the DIP Orders, and the Senior Secured Debt Documents including the Chapter 11 Cases and the credit bid of the DIP Obligations and/or the Senior Secured Debt Obligations. Each professional employed by the DIP

Secured Parties and/or the Prepetition Secured Parties seeking payment of fees and expenses from the Debtors shall provide copies of its invoices to the U.S. Trustee and counsel for the Committee (if appointed) contemporaneously with the delivery of such invoices to the Debtors. Such invoices shall not be required to contain time entries, but shall include a general description of the nature of the matters for which services were performed, a list of professionals who worked on the matter, their hourly rate (if such professionals bill at an hourly rate) and the number of hours each professional billed. Any objections raised by the Debtors, the U.S. Trustee, or a Committee (if appointed) with respect to the Debtors' payment of the amounts in such invoices must be in writing and state with particularity the grounds therefor and must be submitted to the applicable professional within seven (7) calendar days of receipt of such invoice; if after seven (7) calendar days such objection remains unresolved, it will be subject to resolution by the Court. Pending such resolution, the undisputed portion of any such invoice shall be paid promptly by the Debtors. Payment of such reasonable and documented fees and expenses shall not be subject to any offset, defense, claim, counterclaim or diminution of any type, kind or nature whatsoever.

14. **Carve-out**.

(a) For purposes hereof, the "**Carve-Out**" is an amount equal to 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; (ii) all reasonable fees and expenses incurred by a chapter 7 trustee under section 726(b) of the Bankruptcy Code in an amount not to exceed $25,000; (iii) all accrued and unpaid hourly fees and expenses to the extent allowed at any time, earned before or on the day of delivery of the Trigger Notice (as defined below) not to exceed the amounts set forth on a line item basis in the Approved Budget (collectively, the "**Allowed Debtor Professional Fees**") of persons or firms retained by

the Debtors pursuant to sections 327, 328 or 363 of the Bankruptcy Code (the "**Debtor Professionals**"); (iv) all accrued and unpaid hourly fees and expenses to the extent allowed at any time, earned before or on the day of delivery of the Trigger Notice (as defined below) not to exceed the amounts set forth on a line item basis in the Approved Budget (collectively, the "**Allowed Committee Professional Fees**" and together with the Allowed Debtor Professional Fees, the "**Allowed Professional Fees**") of persons or firms retained by any official committee of unsecured creditors appointed (the "**Committee**") in the Chapter 11 Cases pursuant to section 1103 of the Bankruptcy Code (the "**Committee Professionals**", together with the Debtor Professionals, the "**Professional Persons**"); and (vi) Allowed Professional Fees incurred after the delivery of the Trigger Notice in an amount not to exceed $25,000 ((vi) being the "**Carve-Out Cap**"), in each case subject to the limits imposed by this Interim Order, the Final Order (if and when entered), the Approved Budget on a line item basis, or otherwise, on Allowed Professional Fees permitted to be incurred, including in connection with any permitted investigation of the claims, liens, and defenses against the Prepetition Secured Parties; provided, however, nothing herein shall be construed to impair the ability of any party to object to the fees, expenses, reimbursement or compensation described in clauses (i), (ii), (iii), (iv) or (v) above on any other grounds. "**Trigger Notice**" shall mean a written notice delivered by email (or other electronic means) by the DIP Agent to the Debtors, their restructuring counsel, the U.S. Trustee, and counsel to the Committee (if any), which notice shall be delivered following (i) the occurrence and during the continuation of an Event of Default (as defined in the DIP Credit Agreement) and (ii) acceleration of the DIP Obligations under the DIP Facility, stating that the Carve-Out Cap has been invoked. The occurrence of the Maturity Date (as defined in the DIP Credit Agreement)

under the DIP Credit Agreement will be deemed as an automatic delivery of the Trigger Notice, regardless of when actual notice was provided by the DIP Agent.

(b) Beginning on the second Friday after the Petition Date and continuing every second Friday thereafter, the Debtors shall fund from cash on hand into a segregated account acceptable the DIP Agent (the "**Funded Reserve Account**") for the benefit of Debtor Professional Persons, an amount (the "**Funded Reserve Amount**") equal to the sum of the total weekly fees of Debtor Professional Persons for the prior two (2) weeks, subject to the Approved Budget up to the amount in the line item for each Debtor Professional Person. For the avoidance of doubt, the DIP Lenders and DIP Agent shall have no obligation to fund aggregate fees and expenses in excess of (i) the amounts set forth in the Approved Budget up to the amount in the line item for each Debtor Professional Person or (ii) the DIP Commitments. The Debtors shall use funds held in the Funded Reserve Account exclusively to pay Allowed Debtor Professional Fees as they become allowed and payable pursuant to the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, and any interim or final order of the Bankruptcy Court; provided, however, that no Allowed Professional Fees shall be transferred to or paid from the Funded Reserve Account in excess of the applicable line items in the Approved Budget on a line item basis for each Debtor Professional Person. Funds transferred to the Funded Reserve Account shall not be subject to any liens or claims granted to the Prepetition Secured Parties, the DIP Lenders, or the DIP Agent herein or any liens or claims granted as adequate protection, shall not constitute DIP Collateral, and shall not constitute Cash Collateral; provided, that, notwithstanding anything to the contrary herein or in the DIP Documents, the DIP Collateral shall include the Debtors' reversionary interest in funds held in the Funded Reserve Account and such reversionary interest shall be treated as DIP Collateral and

Prepetition Collateral and subject to the DIP Liens, the DIP Superpriority Claims, the Adequate Protection Liens and the Adequate Protection Claims.

(c) On the day on which a Trigger Notice is given by the DIP Agent to the Debtors (the "**Termination Declaration Date**"), the Trigger Notice shall (i) first, constitute a demand to the Debtors to utilize all cash on hand as of such date and any available cash thereafter held by the Debtors to fund a reserve in an amount equal to the then unpaid amounts of the Allowed Professional Fees as of the Termination Declaration Date (subject to the Approved Budget), and (ii) only after utilizing all available cash on hand as of the Termination Declaration Date to fund said reserve as set forth in (i) of this sentence, be deemed a draw request and notice of borrowing by the Debtors under the DIP Facility, in an amount equal to the then unpaid amounts of the Allowed Professional Fees (subject to the Approved Budget) (any such amounts actually advanced shall constitute DIP Loans). The Debtors shall deposit and hold such amounts in a segregated account in trust to pay such then unpaid Allowed Professional Fees prior to any and all other claims (the "**Pre-Carve-Out Trigger Notice Reserve**"). On the Termination Declaration Date, the Trigger Notice shall also (i) first, constitute a demand to the Debtors to utilize all cash on hand as of such date and any available cash thereafter held by the Debtors, after funding the Pre-Carve-Out Trigger Notice Reserve, to fund a reserve in an amount equal to the Carve-Out Cap, and (ii) only after utilizing all available cash on hand as of the Termination Declaration Date to fund the Carve-Out Cap as set forth in (i) of this sentence, be deemed a draw request and notice of borrowing by the Debtors under the DIP Facility, in an amount equal to the Carve-Out Cap (any such amounts actually advanced shall constitute DIP Loans). The Debtors shall deposit and hold such amounts in a segregated account in trust to pay such then unpaid Allowed Professional Fees benefiting from the Carve-Out Cap (the "**Post Carve-Out Trigger Notice Reserve**" and, together

with the Pre Carve-Out Trigger Notice Reserve, the "**Carve-Out Reserves**") prior to any and all other claims. Notwithstanding any restriction on the Debtors' use of Cash Collateral, all funds in the Pre-Carve-Out Trigger Notice Reserve shall be used first to pay the obligations set forth in clauses (i) through (iv) of the definition of Carve-Out set forth above (the "**Pre-Carve-Out Amounts**"), but not, for the avoidance of doubt, the Post-Carve-Out Trigger Notice Cap, until paid in full, and then, to the extent the Pre Carve-Out Trigger Notice Reserve has not been reduced to zero, to pay the DIP Agent for the benefit of the other applicable DIP Secured Parties, unless the DIP Obligations have been indefeasibly paid in full, in cash, and all DIP Commitments have been terminated, in which case any such excess shall be paid to the Administrative Agent for the benefit of the Prepetition Secured Parties. Notwithstanding any restriction on the Debtors' use of Cash Collateral, all funds in the Post-Carve-Out Trigger Notice Reserve shall be used first to pay the obligations set forth in clause (v) of the definition of Carve-Out set forth above (the "**Post-Carve-Out Amounts**"), and then, to the extent the Post Carve-Out Trigger Notice Reserve has not been reduced to zero, to pay the DIP Agent, for the benefit of the other applicable DIP Secured Parties, unless the DIP Obligations have been indefeasibly paid in full, in cash, and all DIP Commitments have been terminated, in which case any such excess shall be paid to the Prepetition Secured Parties. Notwithstanding anything to the contrary in the DIP Documents, or this Interim Order, if either of the Carve-Out Reserves is not funded in full in the amounts set forth in this Paragraph 14, then, any excess funds in one of the Carve-Out Reserves following the payment of the Pre-Carve-Out Amounts and Post-Carve-Out Amounts, respectively, shall be used to fund the other Carve-Out Reserve, up to the applicable amount set forth in this Paragraph 14, prior to making any payments to the DIP Secured Parties, or the Prepetition Secured Parties, as applicable. Notwithstanding anything to the contrary in the DIP Documents or this Interim Order, the DIP

Secured Parties and the Prepetition Secured Parties shall have a security interest in any residual interest in the Carve-Out Reserves, with any excess paid to the DIP Agent or the Administrative Agent for application in accordance with the DIP Documents or Senior Secured Debt Documents, as applicable. Further, notwithstanding anything to the contrary in this Interim Order, (i) disbursements by the Debtors from the Carve-Out Reserves shall not constitute DIP Loans or increase or reduce the DIP Obligations, (ii) under no circumstances shall the DIP Lenders have any obligation to extend DIP Loans in excess of the amounts authorized under this Interim Order, and (iii) under no circumstances shall the DIP Agent have any obligation to extend credit to the Debtors. For the avoidance of doubt and notwithstanding anything to the contrary in this Interim Order, the DIP Facility, or in any facility pursuant to Prepetition Credit Facility, the Carve-Out Reserves shall be reduced on a dollar for dollar basis on account of amounts in the Funded Reserve Account such that such accounts shall be funded without duplication.

(d) Notwithstanding the foregoing, the Carve-Out shall not include, apply to or be available for any fees or expenses incurred by any party in connection with (i) the investigation (other than, before the receipt of a Trigger Notice, as permitted under paragraph 24 of this Interim Order), initiation or prosecution of any claims, causes of action, adversary proceedings or other litigation against any of the DIP Lenders, the DIP Agent, any other DIP Secured Party, and the Prepetition Secured Parties, each in such capacity, and their respective agents, attorneys, advisors or representatives, including challenging the amount, validity, perfection, priority or enforceability of or asserting any defense, counterclaim or offset to, the obligations and the liens and security interests granted under the DIP Documents or the Senior Secured Debt Documents, including the Senior Secured Debt Obligations, (whether in such capacity or otherwise), including, in each case, for lender liability or pursuant to section 105, 506(c), 510, 544, 547, 548, 549, 550, or 552 of the

Bankruptcy Code, applicable non-bankruptcy law or otherwise, (ii) attempts to modify any of the rights granted to the DIP Lenders, the DIP Agent, any other DIP Secured Party, or the Prepetition Secured Parties hereunder or under the applicable DIP Documents or Senior Secured Debt Documents, (iii) attempts to prevent, hinder, or otherwise delay any of the DIP Lenders' or DIP Agent's assertion, enforcement or realization upon any DIP Collateral or Prepetition Collateral in accordance with the DIP Documents, this Interim Order or the Final Order, or (iv) paying any amount on account of any claims arising before the Petition Date unless such payments are approved by an order of the Court and permitted under the DIP Documents, including the Approved Budget.

15. **Protection of DIP Secured Parties' Rights**.

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

(b) Other than as expressly consented to in writing by the DIP Agent, any proceeds of Prepetition Collateral received by the Prepetition Secured Parties in connection with the exercise of any right or remedy (including setoff) relating to the Prepetition Collateral or otherwise received by the Prepetition Secured Parties, in its respective capacity (other than on account of the Adequate Protection Obligations), shall be segregated and held in trust for the benefit of and forthwith paid

over to the DIP Agent for the benefit of the DIP Secured Parties in the same form as received, with any necessary endorsements, or as a court of competent jurisdiction may otherwise direct.

16. **Limitation on Charging Expenses Against Collateral**. Subject to entry of the Final Order, no costs or expenses of administration of the Chapter 11 Cases or any future proceeding that may result therefrom, including liquidation in bankruptcy or other proceedings under the Bankruptcy Code, shall be charged against or recovered from the DIP Collateral (including Cash Collateral) or the Prepetition Collateral pursuant to section 506(c) of the Bankruptcy Code or any similar principle of law. Nothing contained in this Interim Order shall be deemed to be a consent by the DIP Secured Parties or the Prepetition Secured Parties to any charge, lien, assessment or claim against the DIP Collateral or the Prepetition Collateral under section 506(c) of the Bankruptcy Code or otherwise.

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

18. **Consent to Adequate Protection; Right to Seek Additional Adequate Protection; No Admission**. The Prepetition Secured Parties are deemed to have consented to the Adequate Protection Obligations, the priming of the Senior Secured Debt Liens by the DIP Liens, and the use of Cash Collateral provided for herein; provided, however, that such consent is expressly conditioned upon the entry of this Interim Order, and such consent shall not be deemed to extend to any other Cash Collateral usage or other replacement financing or debtor-in-possession financing other than the DIP Facility provided under the DIP Documents; provided

further, however, that such consent shall be of no force and effect in the event this Interim Order is reversed, modified, stayed, or amended (unless such reversal, modification, stay, or amendment is acceptable to the Prepetition Secured Parties in their sole discretion) or the DIP Documents and DIP Facility as set forth herein are not approved. The Adequate Protection Claims provided to the Prepetition Secured Parties hereunder adequately protect the Prepetition Secured Parties as of the date hereof; provided, however, this Interim Order: (a) is without prejudice to, and does not constitute a waiver of, expressly or implicitly, the rights of the Prepetition Secured Parties to request additional or alternative forms of adequate protection from the Debtors; and (b) shall not be deemed an admission, acknowledgement, or stipulation by the Prepetition Secured Parties that the Prepetition Secured Parties are in fact adequately protected by the terms and conditions of this Interim Order or otherwise following the date of this Interim Order.

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

(a) The DIP Secured Parties and the Prepetition Secured Parties are hereby authorized, but not required, to file or record (and to execute in the name of the Debtors, as their true and lawful attorneys, with full power of substitution, to the maximum extent permitted by law) financing statements, trademark filings, copyright filings, mortgages, notices of lien or similar instruments in any jurisdiction, or take possession of or control over cash or securities, or take any other action in order to validate and perfect the liens and security interests granted to them hereunder. Whether or not the DIP Secured Parties or the Prepetition Secured Parties shall, in their sole discretion, choose to file such financing statements, trademark filings, copyright filings, mortgages, notices of lien or similar instruments, or take possession of or control over any cash or securities, or otherwise confirm perfection of the liens and security interests granted to them hereunder, such liens and security interests shall be deemed valid, perfected, allowed, enforceable,

non-avoidable and not subject to challenge, dispute or subordination, at the time and on the date of entry of this Interim Order. Upon the request of the DIP Agent, the Debtors, without any further consent of any party, are authorized to take, execute, deliver and file such instruments (in each case, without representation or warranty of any kind) to enable the DIP Secured Parties to further validate, perfect, preserve and enforce the DIP Liens. All such documents will be deemed to have been recorded and filed as of the Petition Date.

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

(c) Notwithstanding anything to the contrary in the Motion, the DIP Documents or this Interim Order, for purposes of this Interim Order, in no event shall the DIP Collateral include, or the DIP Liens or Adequate Protection Liens attach to, any lease, license, contract or agreement or other property right to which the Debtors are a party, or any such relevant Debtors' rights or interests thereunder, if and for so long as the grant of such security interest would constitute or result in: (i) the abandonment, invalidation, unenforceability or other impairment of any right, title or interest of the Debtors therein or (ii) in a breach or termination pursuant to the terms of, or a default under, any such lease, license, contract or agreement or other property right pursuant to any provision thereof, unless, in the case of each of clauses (i) and (ii), the applicable provision is

rendered ineffective by applicable non-bankruptcy law or the Bankruptcy Code (such leases, licenses, contracts or agreements or other property rights are collectively referred to as the "**Specified Contracts**"); provided, however, the DIP Liens, Adequate Protection Liens, DIP Superpriority Claims, and Adequate Protection 507(b) Claims shall in all events attach to and have recourse from all proceeds, products, offspring or profits from any and all Specified Contracts (including from the sale, transfer, disposition or monetization thereof).

20. **Proceeds of Subsequent Financing**. If the Debtors, any trustee, any examiner, any responsible officer or any other estate representative subsequently appointed in these Chapter 11 Cases or any successor case, shall obtain credit or incur debt pursuant to Bankruptcy Code sections 364(b), 364(c) or 364(d) in violation of the DIP Documents at any time before the repayment in full in cash of (a) all DIP Obligations and the termination of the DIP Lenders' obligation to extend credit under the DIP Facility, and (b) all Senior Secured Debt Obligations, and such financing is secured by any DIP Collateral or Prepetition Collateral, then all of the cash proceeds derived from such credit or debt shall immediately be turned over first to the DIP Agent, to be applied as set forth the DIP Documents, and second to the Prepetition Secured Parties to be applied as set forth in the Senior Secured Debt Documents.

21. **Disposition of DIP Collateral; Rights of DIP Lenders and DIP Agent**. The Debtors shall not sell, transfer, lease, encumber, or otherwise dispose of any DIP Collateral without the prior written consent of the DIP Agent, acting at the direction of the Required Lenders (as defined in the DIP Documents) (and no such consent shall be implied, from any other action, inaction, or acquiescence), except as expressly permitted in the DIP Documents (an "**Approved Sale**"). Upon the consummation of an Approved Sale, (a) from the proceeds of such Approved Sale or (b) to the extent the proceeds of such Approved Sale are insufficient, from cash on hand

or, to the extent cash on hand is insufficient, by drawing on the DIP Facility, the Debtors shall be authorized and directed to transfer $300,000 into a segregated account acceptable to the DIP Agent (the "**Wind Down Reserve Account**"). The amounts in the Wind Down Reserve Account shall only be used to pay the expenses incurred by the Debtors to wind down the Debtors' estates and shall only be used strictly in accordance with the specific line items in the Approved Budget comprising "Wind Down Costs" (the "**Wind Down Costs**"). To the extent there are any remaining amounts in the Wind Down Reserve Account after the payment in full of any Wind Down Costs, all such amounts shall be paid to the DIP Secured Parties in satisfaction of the DIP Obligations or, to the extent the DIP Obligations are paid in full, to the Prepetition Secured Parties in satisfaction of the Senior Secured Debt Obligations.

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

(a) Other than the Carve-Out and other claims and liens expressly granted or permitted by this Interim Order and the DIP Documents, no claim or lien having a priority superior to or *pari passu* with those granted by this Interim Order to the DIP Secured Parties or the Prepetition Secured Parties shall be permitted while any of the DIP Obligations or the Adequate Protection Obligations or Senior Secured Debt Obligations remain outstanding. No lien or security interest shall be granted to any other party in any of the Specified Contracts without first granting such lien or security interest to the DIP Secured Parties or the Prepetition Secured Parties, as applicable.

(b) Notwithstanding the dismissal of the Chapter 11 Cases under section 1112 of the Bankruptcy Code or otherwise: (i) the DIP Superpriority Claims, the Adequate Protection 507(b) Claims, the DIP Liens, and the Adequate Protection Liens shall continue in full force and effect and shall maintain their priorities as provided in this Interim Order until all DIP Obligations and Adequate Protection Obligations shall have been indefeasibly paid in full in cash (and that such

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

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

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

23. **Cash Management**. Unless otherwise agreed by the DIP Agent and the Administrative Agent, in their respective capacities, the Debtors shall maintain its cash management arrangements in all material respects in a manner consistent with that described in

the applicable "first-day" order and the related motion seeking authorization to continue the Debtors' cash management arrangements.

24. **Limitation on Use of DIP Loans and DIP Collateral**. Notwithstanding any other provision of this Interim Order or any other order entered by the Court, no DIP Loans, DIP Collateral, Prepetition Collateral or any portion of the Carve-Out, may be used directly or indirectly by the Debtors, the Committee (if any), or any trustee appointed in the Chapter 11 Cases or any successor case, including any chapter 7 case, or any other person, party or entity (a) in connection with the investigation, initiation or prosecution of any claims, causes of action, adversary proceedings or other litigation (i) against the DIP Secured Parties or the Prepetition Secured Parties or any of their respective Representatives, or any action purporting to do the foregoing in respect of the Senior Secured Debt Obligations, the Senior Secured Debt Liens on the Prepetition Collateral, DIP Obligations, DIP Liens on the DIP Collateral, DIP Superpriority Claims, or the adequate protection obligations, adequate protection liens and superpriority claims granted to the Prepetition Secured Parties, as applicable, under the Interim Order or the Final Order, as applicable, or (ii) challenging the amount, validity, perfection, priority or enforceability of or asserting any defense, counterclaim or offset with respect to, the Senior Secured Debt Obligations, the DIP Obligations, or the liens, claims, rights, or security interests granted under this Interim Order, the Final Order, the DIP Documents, or the Senior Secured Debt Documents including, in each case for lender liability or pursuant to section 105, 510, 544, 547, 548, 549, 550, or 552 of the Bankruptcy Code, applicable non-bankruptcy law or otherwise; provided, however, advisors to any Committee may investigate any potential challenges with respect to the Senior Secured Debt Documents, the Senior Secured Debt Obligations, or Senior Secured Debt Liens during the Challenge Period at an aggregate expense for such investigation, but not litigation,

prosecution, objection or challenge thereto, not to exceed $25,000 in the aggregate; (b) to prevent, hinder, or otherwise delay the Prepetition Secured Parties' or DIP Secured Parties', as applicable, enforcement or realization on the Senior Secured Debt Obligations, Prepetition Collateral, DIP Obligations, DIP Collateral, and the liens, claims, and rights granted to such parties under the Interim Order or the Final Order, each in accordance with the DIP Documents, the Senior Secured Debt Documents, or this Interim Order, or the Final Order, other than, and subject to the notice period set forth in paragraph 12 hereof, to seek a determination that an Event of Default has not occurred or is not continuing; (c) to seek to modify any of the rights and remedies granted to the Prepetition Secured Parties or the DIP Secured Parties under this Interim Order, the Senior Secured Debt Documents or the DIP Documents, as applicable; (d) to apply to the Court for authority to approve superpriority claims or grant liens or security interests in the DIP Collateral or any portion thereof that are senior to, or on parity with, the Carve-Out or the DIP Liens, DIP Superpriority Claims, Adequate Protection Liens, and Superpriority Claims granted to the Prepetition Secured Parties and the DIP Secured Parties unless all DIP Obligations, Senior Secured Debt Obligations, Adequate Protection Obligations, and claims granted to the DIP Secured Parties or Prepetition Secured Parties under this Interim Order, have been refinanced or paid in full in cash or otherwise agreed to in writing by the DIP Agent and the Administrative Agent; or (e) to seek to pay any amount on account of any claims arising before the Petition Date unless such payments are agreed to in writing by the DIP Agent or are otherwise included in the Approved Budget.

25. **Loss or Damage to Collateral**. Nothing in this Interim Order, the DIP Documents, or any other documents related to these transactions shall in any way be construed or interpreted to impose or allow the imposition upon the DIP Secured Parties or the Prepetition Secured Parties of any liability for any claims arising from the prepetition or postpetition activities of the Debtors

in the operation of its business, or in connection with its restructuring efforts. The DIP Secured Parties and the Prepetition Secured Parties shall not, in any way or manner, be liable or responsible for (a) the safekeeping of the DIP Collateral or the Prepetition Collateral, (b) any loss or damage thereto occurring or arising in any manner or fashion from any cause, (c) any diminution in the value thereof, or (d) any act or default of any carrier, servicer, bailee, custodian, forwarding agency or other person, and all risk of loss, damage or destruction of the DIP Collateral and the Prepetition Collateral shall be borne by the Debtors.

26. **Credit Bidding**. Upon entry of this Interim Order, (a) the DIP Secured Parties shall have the unqualified right to credit bid, in accordance with the DIP Documents, up to the full amount of the DIP Obligations in any sale of the Debtors' assets, and (b) subject to paragraph 12 hereof, the Prepetition Secured Parties shall have the right to credit bid up to the full amount of the Senior Secured Debt Obligations in the sale of any of the Debtors' assets, including, but not limited to, pursuant to (with respect to both (a) and (b) above) (i) section 363 of the Bankruptcy Code, (ii) a plan of reorganization or a plan of liquidation under section 1129 of the Bankruptcy Code, or (iii) a sale or disposition by a chapter 7 trustee for the Debtors under section 725 of the Bankruptcy Code. The Debtors agree that each of the DIP Secured Parties and the Prepetition Secured Parties, in their respective capacities, shall be deemed a qualified bidder (or such analogous term) in connection with any such sale. Each of the DIP Secured Parties and the Prepetition Secured Parties shall have the absolute right to assign, sell, or otherwise dispose of their claims and the corresponding right to credit bid on account of such claims to any acquisition entity or joint venture formed in connection with such bid.

27. **Application of Sale Proceeds**. Notwithstanding anything herein: (a) the right of the DIP Agent, on behalf of the DIP Secured Parties, to consent to the sale of any portion of its

collateral, including, without limitation, any Assets, on terms and conditions acceptable to the DIP Agent, are hereby expressly reserved and not modified, waived or impaired and (b) unless otherwise ordered by the Court, including without limitation pursuant to the Sale Order (as defined in the DIP Documents), all cash proceeds generated from the sale of any assets secured by Senior Secured Debt Liens or DIP Liens shall be paid to the DIP Agent, for the benefit of the other DIP Secured Parties, and Prepetition Secured Parties upon the closing of such sale for permanent application against the obligations owing by the Debtors under the DIP Documents and the Senior Secured Debt Documents in accordance with the terms and conditions of the DIP Order, the Senior Secured Debt Documents and the DIP Documents in accordance with the terms of this Order until such time as all DIP Obligations and Senior Secured Debt Obligations have been paid in full in cash.

28. **Interim Order Governs**. In the event of any inconsistency between the provisions of this Interim Order, on the one hand, and the DIP Documents or any other order entered by this Court, on the other hand, the provisions of this Interim Order shall govern. Notwithstanding anything to the contrary in any other order entered by this Court, any payment made pursuant to and any authorization contained in any other order entered by this Court shall be consistent with and subject to the requirements set forth in this Interim Order and the DIP Documents, including the Approved Budget.

29. **Binding Effect; Successors and Assigns**. The DIP Documents and the provisions of this Interim Order, including all findings herein, shall be binding upon all parties in interest in the Chapter 11 Cases, including the DIP Secured Parties, the Prepetition Secured Parties, the Committee (if any), any non-statutory committees appointed or formed in the Chapter 11 Cases, the Debtors, and their respective successors and assigns (including any chapter 7 or chapter 11

trustee hereinafter appointed or elected for the estates of the Debtors, an examiner appointed pursuant to section 1104 of the Bankruptcy Code, or any other fiduciary appointed as a legal representative of the Debtors or with respect to the property of the estates of the Debtors) and shall inure to the benefit of the DIP Secured Parties, the Prepetition Secured Parties, and the Debtors and their respective successors and assigns; provided, however, DIP Secured Parties and the Prepetition Secured Parties shall have no obligation to permit the use of the Prepetition Collateral (including Cash Collateral) by, or to extend any financing to, any chapter 7 trustee, chapter 11 trustee or similar responsible person appointed for the estate of the Debtors.

30. **No Liability to Third Parties**. The DIP Secured Parties and the Prepetition Secured Parties shall not, as a result of its consent to the use of Cash Collateral hereunder or its extension of credit under the DIP Documents or the Senior Secured Debt Documents, (a) be deemed to have liability to any third party or be deemed to be in control of the operation of any of the Debtors or to be acting as a "controlling person," "responsible person," "owner or operator," or "participant" with respect to the operation or management of any of the Debtors (as such term, or any similar terms, are used in the Internal Revenue Code, the United States Comprehensive Environmental Response, Compensation and Liability Act, as amended, or any other federal, state, or applicable international statute or regulation) or (b) owe any fiduciary duty to any of the Debtors, their creditors or estates, or shall constitute or be deemed to constitute a joint venture or partnership with any of the Debtors.

31. **No Standing Granted**. Nothing in this Interim Order vests or confers on any person (as defined in the Bankruptcy Code), including any committee appointed in the Chapter 11 Cases (including the Committee), if any, standing or authority to pursue any challenge or other

cause of action belonging to the Debtors or their estate with respect to the Senior Secured Debt Documents or the Senior Secured Debt Obligations.

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

33. **Proofs of Claim**. Each of the Prepetition Secured Parties and each of the DIP Secured Parties shall not be required to file proofs of claim in the Chapter 11 Cases or any successor case to assert claims on behalf of itself for payment of it's the Senior Secured Debt Obligations or the DIP Obligations, including any principal, unpaid interest (including default interest therein), fees, expenses, and other amounts under the Senior Secured Debt Documents. The statements of claim in respect of the Senior Secured Debt Obligations and the DIP Obligations set forth in this Interim Order, together with any evidence accompanying the Motion and presented at the Interim Hearing, are deemed sufficient to and do constitute proofs of claim in respect of such debt and such secured status. The stipulations of the Debtors set forth in paragraph E hereof shall be deemed to constitute a timely filed proof of claim against each of the Debtors for the Prepetition Secured Parties in respect of all of the Senior Secured Debt Obligations. In addition, the Prepetition Secured Parties and the DIP Secured Parties shall not be required to file any request for allowance or payment of any administrative expenses, and this Interim Order shall be deemed to constitute a timely filed request against each of the Debtors for allowance or payment of any Senior Secured Debt Obligation or DIP Obligation constituting administrative expenses, as applicable.

34. **Insurance**. To the extent that the Prepetition Secured Parties are listed as loss payees under the Debtors' insurance policies, the DIP Agent, for the benefit of the DIP Secured Parties, is also deemed to be the loss payee under such insurance policies and shall act in that capacity and distribute any proceeds recovered or received in respect of any such insurance policies in the order of priorities set forth herein.

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

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

37. **Payments Held in Trust**. Except as expressly permitted in this Interim Order or the DIP Documents, in the event that any person or entity receives any payment on account of a security interest in DIP Collateral, receives any DIP Collateral or any proceeds of DIP Collateral or receives any other payment with respect thereto from any other source before indefeasible payment in full in cash of all DIP Obligations under the DIP Documents, and termination of the DIP Commitments in accordance with the DIP Documents, such person or entity shall be deemed to have received, and shall hold, any such payment or proceeds of DIP Collateral in trust for the benefit of the DIP Agent and the other DIP Secured Parties, and shall immediately turn over such proceeds to the DIP Agent, or as otherwise instructed by this Court, for application in accordance with the DIP Documents and this Interim Order.

38. **Bankruptcy Rules**. The requirements of Local Rule 4001-2 and Bankruptcy Rules 4001, 6003 and 6004, in each case to the extent applicable, are satisfied by the contents of the Motion.

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

40. **Assignment of DIP Obligations**. The DIP Agent or DIP Lenders, as applicable, may assign any or all of their rights or obligations under the DIP Credit Agreement (a) at any time, to any affiliate of the DIP Lenders or the DIP Agent, (b) prior to the occurrence of an Event of Default (under and as defined in the DIP Credit Agreement), to any person with the prior written consent of the Borrower, and (c) during an Event of Default (under and as defined in the DIP Credit Agreement), to any other person without the consent of any Loan Party (under and as defined in the DIP Credit Agreement).

41. **Retention of Jurisdiction**. The Court shall retain jurisdiction to enforce the provisions of this Interim Order.

42. **Final Hearing**. The Final Hearing is scheduled for [●], 2021 at [●] (Prevailing Eastern Time) before this Court.

43. **Objections**. Any party in interest objecting to the relief sought at the Final Hearing shall file and serve written objections, which objections shall be served upon: (a) the Debtor, c/o Avadim Health, Inc., 81 Thompson Street, Asheville, NC 28803 (Attn: Keith Daniels, Chief Restructuring Officer); (b) counsel for the Debtors, (i) Pachulski Stang Ziehl & Jones LLP, 919 N. Market St., 17th Floor, Wilmington, Delaware 19801 (Attn: Laura Davis Jones, Esq., ljones@pszjlaw.com), and (ii) Chapman and Cutler LLP, 1270 Avenue of the Americas, New York, New York 10020 (Attn: Larry G. Halperin, Esq., halperin@chapman.com); (c) counsel for

the DIP Agent and the Administrative Agent, (i) Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, New York 10153 (Attn: David N. Griffiths, Esq. (david.griffiths@weil.com) and Bryan R. Podzius, Esq. (bryan.podzius@weil.com) and (ii) Richards, Layton & Finger, P.A., One Rodney Square, 920 North King Street, Wilmington, Delaware 19801 (Attn: Zachary I. Shapiro, Esq. (shapiro@rlf.com)); (d) Office of the United States Trustee, [●]; and (e) if any statutory committee has been appointed in the Chapter 11 Cases, counsel to such committee, by no later than [●], 2021 at 4:00 p.m. (Prevailing Eastern Time).

Exhibit A

Initial DIP Budget

Avadim Health, Inc. - DIP Budget

in USD thousands unless otherwise noted

Carl Marks Advisors

Last Updated May 31, 2021

	Petition												Emergence	
DIP Budget	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	
Week (t=n)	Week 1	Week 2	Week 3	Week 4	Week 5	Week 6	Week 7	Week 8	Week 9	Week 10	Week 11	Week 12	Week 13	Total
Week Ending Friday	6/4/2021	6/11/2021	6/18/2021	6/25/2021	7/2/2021	7/9/2021	7/16/2021	7/23/2021	7/30/2021	8/6/2021	8/13/2021	8/20/2021	8/27/2021	DIP Period
Beginning Cash	$1,508.9	$500.0	$500.0	$500.0	$500.0	$500.0	$500.0	$500.0	$500.0	$500.0	$547.6	$500.0	$500.0	$1,508.9
Operating Receipts														
Avadim	136.5	251.7	874.3	834.7	682.4	484.1	539.3	704.7	833.0	831.3	827.0	791.2	710.0	8,500.2
Relion	18.5	18.5	18.5	18.5	18.5	18.5	18.5	18.5	18.5	18.5	18.5	18.5	18.5	240.0
Total Operating Receipts	**155.0**	**270.2**	**892.8**	**853.2**	**700.9**	**502.6**	**557.7**	**723.1**	**851.5**	**849.7**	**845.5**	**809.7**	**728.4**	**8,740.2**
Operating Disbursements														
Payroll & Other Employee Disbursements	(344.7)	(18.0)	(343.4)	(143.0)	(277.1)	(18.0)	(277.1)	(161.0)	(277.1)	(18.0)	(277.1)	(161.0)	(527.1)	(2,842.6)
Media & Royalties	(235.8)	(32.7)	(432.7)	(32.7)	(77.0)	(32.7)	(432.7)	(32.7)	(346.7)	(32.7)	(32.7)	(432.7)	(521.9)	(2,675.6)
Materials, Freight, & Logistics	(210.6)	(222.2)	(222.2)	(172.2)	(230.7)	(273.1)	(273.1)	(223.1)	(223.1)	(276.3)	(278.0)	(278.0)	(278.0)	(3,160.2)
Ordinary Course Professionals	-	-	-	-	-	-	-	-	-	(30.0)	(4.0)	-	-	(34.0)
Insurance	(9.5)	-	-	(36.2)	-	-	-	-	(36.2)	-	-	-	(36.2)	(118.1)
Rent	(57.0)	-	-	-	(57.0)	-	-	-	(57.0)	-	-	-	-	(171.1)
Credit Card, Taxes, & Other	(134.0)	(71.7)	(71.7)	(119.7)	(71.7)	(71.7)	(71.7)	(111.7)	(99.7)	(71.7)	(71.7)	(141.7)	(99.7)	(1,208.3)
Total Operating Disbursements	**(991.7)**	**(344.5)**	**(1,069.9)**	**(503.7)**	**(713.5)**	**(395.4)**	**(1,054.5)**	**(528.4)**	**(1,039.8)**	**(428.6)**	**(663.4)**	**(1,013.4)**	**(1,462.8)**	**(10,209.8)**
Non-Operating Disbursements														
Capex & Capital Leases	(23.7)	(23.7)	(23.7)	(23.7)	(23.3)	(23.3)	(23.3)	(23.3)	(23.3)	(21.5)	(21.5)	(21.5)	(21.5)	(297.6)
Restructuring Committee Board Fees	-	-	-	-	-	(77.5)	-	-	-	(77.5)	-	-	-	(155.0)
Total Non-Operating Disbursements	**(23.7)**	**(23.7)**	**(23.7)**	**(23.7)**	**(23.3)**	**(100.8)**	**(23.3)**	**(23.3)**	**(23.3)**	**(99.0)**	**(21.5)**	**(21.5)**	**(21.5)**	**(452.6)**
Restructuring Items														
503(b)(9) Claims	-	-	-	-	-	-	-	-	-	-	-	-	(325.0)	(325.0)
Critical Vendors	-	(110.0)	(110.0)	(110.0)	-	-	(170.0)	-	-	-	-	-	-	(500.0)
Professional Fees	(473.0)	(341.8)	(352.2)	(416.8)	(389.2)	(389.2)	(389.2)	(389.2)	(232.4)	(274.5)	(274.5)	(274.5)	(274.5)	(4,471.2)
U.S. Trustee Fees	-	-	-	-	-	-	-	-	(56.0)	-	-	-	(78.5)	(134.5)
Utility Deposit	(29.0)	-	-	-	-	-	-	-	-	-	-	-	-	(29.0)
Excluded Liabilities	-	-	-	-	-	-	-	-	-	-	-	-	(508.2)	(508.2)
Cure Costs	-	-	-	-	-	-	-	-	-	-	-	-	(75.0)	(75.0)
Wind Down Costs	-	-	-	-	-	-	-	-	-	-	-	-	(200.0)	(200.0)
Total Restructuring Disbursements	**(502.0)**	**(451.8)**	**(462.2)**	**(526.8)**	**(389.2)**	**(389.2)**	**(559.2)**	**(389.2)**	**(288.4)**	**(274.5)**	**(274.5)**	**(274.5)**	**(1,461.2)**	**(6,242.8)**
Total Disbursements	**(1,517.4)**	**(820.1)**	**(1,555.9)**	**(1,054.3)**	**(1,126.1)**	**(885.5)**	**(1,637.1)**	**(941.0)**	**(1,351.5)**	**(802.1)**	**(959.5)**	**(1,309.4)**	**(2,945.5)**	**(16,905.2)**
Cash Flow Before Financing	**(1,362.5)**	**(549.9)**	**(663.1)**	**(201.0)**	**(425.2)**	**(382.9)**	**(1,079.4)**	**(217.9)**	**(500.0)**	**47.6**	**(114.0)**	**(499.7)**	**(2,217.1)**	**(8,165.0)**
Financing:														
Cash Interest	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Net Drawdown/(Repayment)	353.6	549.9	663.1	201.0	425.2	382.9	1,079.4	217.9	500.0	-	66.4	499.7	2,217.1	7,156.2
Total Financing Related Items	**353.6**	**549.9**	**663.1**	**201.0**	**425.2**	**382.9**	**1,079.4**	**217.9**	**500.0**	**-**	**66.4**	**499.7**	**2,217.1**	**7,156.2**
Total Net Change in Cash	**(1,008.9)**	**-**	**-**	**-**	**-**	**-**	**-**	**-**	**-**	**47.6**	**(47.6)**	**-**	**-**	**(1,008.9)**
Ending Cash	**500.0**	**500.0**	**500.0**	**500.0**	**500.0**	**500.0**	**500.0**	**500.0**	**500.0**	**547.6**	**500.0**	**500.0**	**500.0**	**500.0**
(-) Minimum Cash Required	500.0	500.0	500.0	500.0	500.0	500.0	500.0	500.0	500.0	500.0	500.0	500.0	500.0	500.0
Excess Available Cash	**-**	**-**	**-**	**-**	**-**	**-**	**-**	**-**	**-**	**47.6**	**-**	**-**	**-**	**-**
New Money DIP Facility														
Beginning Balance	-	353.6	903.5	1,566.6	1,767.7	2,192.8	2,575.7	3,655.1	3,873.0	4,373.0	4,373.0	4,439.4	4,939.1	-
(+) Drawdown	353.6	549.9	663.1	201.0	425.2	382.9	1,079.4	217.9	500.0	-	66.4	499.7	2,217.1	7,156.2
Ending Net Funded Cash Balance	**353.6**	**903.5**	**1,566.6**	**1,767.7**	**2,192.8**	**2,575.7**	**3,655.1**	**3,873.0**	**4,373.0**	**4,373.0**	**4,439.4**	**4,939.1**	**7,156.2**	**7,156.2**

Case 21-10883-CTG Doc 15-1 Filed 06/01/21 Page 57 of 58

Avadim Health, Inc. - Professional Fee Schedule

Carl Marks Advisors

in USD thousands unless otherwise noted

Last Updated May 31, 2021

	Petition												Emergence	
Professional Fees	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	
Week (t=n)	Week 1	Week 2	Week 3	Week 4	Week 5	Week 6	Week 7	Week 8	Week 9	Week 10	Week 11	Week 12	Week 13	Total
Week Ending Friday	6/4/2021	6/11/2021	6/18/2021	6/25/2021	7/2/2021	7/9/2021	7/16/2021	7/23/2021	7/30/2021	8/6/2021	8/13/2021	8/20/2021	8/27/2021	DIP Period
Company Professionals														
Debtor FA - Carl Marks Advisors	$112.5	$112.5	$112.5	$112.5	$112.5	$112.5	$112.5	$112.5	$29.0	$29.0	$29.0	$29.0	$29.0	$1,045.2
Debtor IB - SSG Capital Advisors	40.0	10.0	10.0	10.0	10.0	10.0	10.0	10.0	10.0	47.5	47.5	47.5	47.5	310.0
Counsel - Chapman & Cutler	50.0	50.0	50.0	50.0	43.8	43.8	43.8	43.8	25.0	25.0	25.0	25.0	25.0	500.0
Counsel - Pachulski Stang Ziehl & Jones	140.0	40.0	40.0	40.0	35.0	35.0	35.0	35.0	20.0	20.0	20.0	20.0	20.0	500.0
Claims Agent - Omni	15.0	15.0	15.0	15.0	12.0	12.0	12.0	12.0	12.0	15.0	15.0	15.0	15.0	180.0
PR Firm - Sitrick and Company	-	-	10.0	-	-	-	-	-	-	-	-	-	-	10.0
Professional's Expenses	5.8	4.6	5.0	4.6	4.0	4.0	4.0	4.0	2.7	4.3	4.3	4.3	4.3	56.0
Total	**363.3**	**232.1**	**242.5**	**232.1**	**217.3**	**217.3**	**217.3**	**217.3**	**98.7**	**140.8**	**140.8**	**140.8**	**140.8**	**2,601.2**
Lender Professionals (Hayfin)														
Counsel - Weil Gotshal & Manges	$100.0	$100.0	$100.0	$100.0	$87.5	$87.5	$87.5	$87.5	$50.0	$50.0	$50.0	$50.0	$50.0	$1,000.0
Professional's Expenses	2.0	2.0	2.0	2.0	1.8	1.8	1.8	1.8	1.0	1.0	1.0	1.0	1.0	20.0
Total	**102.0**	**102.0**	**102.0**	**102.0**	**89.3**	**89.3**	**89.3**	**89.3**	**51.0**	**51.0**	**51.0**	**51.0**	**51.0**	**1,020.0**
U.S. Trustee / UCC / Other Professionals														
UCC FA & Counsel - TBD	-	-	-	$75.0	$75.0	$75.0	$75.0	$75.0	$75.0	$75.0	$75.0	$75.0	$75.0	$750.0
U.S. Trustee	-	-	-	-	-	-	-	-	56.0	-	-	-	78.5	134.5
Other	7.7	7.7	7.7	7.7	7.7	7.7	7.7	7.7	7.7	7.7	7.7	7.7	7.7	100.0
Total	**7.7**	**7.7**	**7.7**	**82.7**	**82.7**	**82.7**	**82.7**	**82.7**	**138.7**	**82.7**	**82.7**	**82.7**	**161.2**	**984.5**
Total Professional Fees	**473.0**	**341.8**	**352.2**	**416.8**	**389.2**	**389.2**	**389.2**	**389.2**	**288.4**	**274.5**	**274.5**	**274.5**	**353.0**	**4,605.6**

Case 21-10883-CTG Doc 15-1 Filed 06/01/21 Page 58 of 58

EXHIBIT B

DIP Credit Agreement

EXECUTION VERSION

SUPERPRIORITY SENIOR SECURED DEBTOR-IN-POSSESSION

CREDIT AGREEMENT

dated as of

May 31, 2021,

Among

AVADIM HEALTH, INC.,
as Borrower, a Debtor and Debtor-In-Possession under Chapter 11 of the Bankruptcy Code

THE LENDERS PARTY HERETO

And

HAYFIN SERVICES LLP,
as Administrative Agent and Collateral Agent

TABLE OF CONTENTS

Page

ARTICLE I DEFINITIONS 1

SECTION 1.01. *Defined Terms* 1
SECTION 1.02. *Terms Generally* 33
SECTION 1.03. *[Reserved]* 34
SECTION 1.04. *Classification of Loans and Borrowings* 34
SECTION 1.05. *Certification* 34
SECTION 1.06. *Exchange Rates* 34
SECTION 1.07. *Judgment Currency* 34

ARTICLE II THE CREDITS 35

SECTION 2.01. *Commitments* 35
SECTION 2.02. *Loans* 35
SECTION 2.03. *Borrowing Procedure* 37
SECTION 2.04. *Withdrawal of Funds from DIP Funding Account* 38
SECTION 2.05. *Evidence of Debt; Repayment of Loans* 40
SECTION 2.06. *[Reserved].* 41
SECTION 2.07. *Interest on Loans* 41
SECTION 2.08. *Default Interest* 41
SECTION 2.09. *Alternate Rate of Interest* 41
SECTION 2.10. *Termination of Commitments* 42
SECTION 2.11. *Continuation of Borrowings* 42
SECTION 2.12. *Repayment of Term Borrowings* 42
SECTION 2.13. *Voluntary Prepayment* 42
SECTION 2.14. *Mandatory Prepayments* 43
SECTION 2.15. *Reserve Requirements; Change in Circumstances* 45
SECTION 2.16. *Change in Legality* 46
SECTION 2.17. *Breakage* 46
SECTION 2.18. *Pro Rata Treatment* 47
SECTION 2.19. *Sharing of Setoffs* 47
SECTION 2.20. *Payments* 48
SECTION 2.21. *Taxes* 49
SECTION 2.22. *Assignment of Loans Under Certain Circumstances; Duty to Mitigate* 54
SECTION 2.23. *Certain Matters Regarding Real Estate* 55
SECTION 2.24. *Inability to Determine Rates* 56
SECTION 2.25. *[Reserved]* 57
SECTION 2.26. *PIK Interest* 57
SECTION 2.27. *Priority of Obligations* 57

ARTICLE III REPRESENTATIONS AND WARRANTIES 58

SECTION 3.01. *Organization; Powers* 58
SECTION 3.02. *Authorization* 58

TABLE OF CONTENTS
(continued)

Page

SECTION 3.03. *Enforceability* 59
SECTION 3.04. *Governmental Approvals* 59
SECTION 3.05. *Financial Statements* 59
SECTION 3.06. *No Default or Material Adverse Effect* 60
SECTION 3.07. *Title to Properties; Possession Under Leases* 60
SECTION 3.08. *Subsidiaries* 60
SECTION 3.09. *Litigation; Compliance with Laws* 61
SECTION 3.10. *Agreements* 62
SECTION 3.11. *Federal Reserve Regulations* 62
SECTION 3.12. *Investment Company Act* 63
SECTION 3.13. *Use of Proceeds* 63
SECTION 3.14. *Tax Returns* 63
SECTION 3.15. *No Material Misstatements* 63
SECTION 3.16. *Employee Benefit Plans* 63
SECTION 3.17. *Environmental Matters* 63
SECTION 3.18. *Insurance* 64
SECTION 3.19. *Security Documents* 64
SECTION 3.20. *Location of Real Property and Leased Premises* 65
SECTION 3.21. *Labor Matters* 65
SECTION 3.22. *[Reserved]* 66
SECTION 3.23. *Sanctions* 66
SECTION 3.24. *Anti-Corruption Laws* 66
SECTION 3.25. *Intellectual Property* 66
SECTION 3.26. *Privacy and Data Security* 67
SECTION 3.27. *Brokers' Fees; Transaction Fees* 67
SECTION 3.28. *Deposit and Other Accounts* 67
SECTION 3.29. *Jurisdiction of Organization; Chief Executive Office* 67
SECTION 3.30. *Capitalization* 67
SECTION 3.31. *Regulatory Matters* 68
SECTION 3.32. *Bonding* 70
SECTION 3.33. *Sale and Lease-Back Transactions* 70
SECTION 3.34. *True and Complete Disclosure* 70
SECTION 3.35. *Prepetition PPP Loan Use of Proceeds* 70
SECTION 3.36. *DIP Funding Account* 71

ARTICLE IV EFFECTIVENESS OF THIS AGREEMENT; CONDITIONS OF LENDING 71

SECTION 4.01. *All Credit Events* 71
SECTION 4.02. *Closing Date* 72

ARTICLE V AFFIRMATIVE COVENANTS 75

SECTION 5.01. *Existence; Compliance with Laws; Businesses and Properties* 75

TABLE OF CONTENTS
(continued)

		Page
SECTION 5.02.	***Insurance***	76
SECTION 5.03.	***Taxes and Other Obligations***	77
SECTION 5.04.	***Financial Statements, Reports, etc***	77
SECTION 5.05.	***Litigation and Other Notices***	79
SECTION 5.06.	***Information Regarding Collateral***	81
SECTION 5.07.	***Maintaining Records; Access to Properties and Inspections***	82
SECTION 5.08.	***Use of Proceeds***	82
SECTION 5.09.	***Compliance with Environmental Laws***	82
SECTION 5.10.	***Preparation of Environmental Reports***	83
SECTION 5.11.	***Further Assurances***	83
SECTION 5.12.	***[Reserved]***	84
SECTION 5.13.	***[Reserved]***	84
SECTION 5.14.	***Product Licenses***	84
SECTION 5.15.	***Maintenance of Regulatory Authorizations, Contracts, Intellectual Property, Etc***	84
SECTION 5.16.	***Post-Closing Matters***	85
SECTION 5.17.	***Approved Budget***	86
SECTION 5.18.	***DIP Funding Account***	87
SECTION 5.19.	***Prepetition PPP Loan Affirmative Covenants***	87
SECTION 5.20.	***[Reserved]***	88
SECTION 5.21.	***Milestones***	88
SECTION 5.22.	***Additional Reporting***	89
ARTICLE VI NEGATIVE COVENANTS		90
SECTION 6.01.	***Indebtedness***	90
SECTION 6.02.	***Liens***	92
SECTION 6.03.	***Sale and Lease-Back Transactions***	94
SECTION 6.04.	***Investments***	95
SECTION 6.05.	***Mergers, Consolidations, Sales of Assets and Acquisitions***	96
SECTION 6.06.	***Restricted Payments; Restrictive Agreement***	97
SECTION 6.07.	***Transactions with Affiliates***	98
SECTION 6.08.	***Business of the Borrower and Subsidiaries***	99
SECTION 6.09.	***Other Indebtedness and Agreements***	99
SECTION 6.10.	***[Reserved.]***	100
SECTION 6.11.	***Fiscal Year***	100
SECTION 6.12.	***Certain Equity Securities***	100
SECTION 6.13.	***Accounting Changes; Jurisdiction of Organization; Organizational Documents***	100
SECTION 6.14.	***Employee Benefits***	100
SECTION 6.15.	***Use of Proceeds***	100
SECTION 6.16.	***Anticorruption Laws, Sanctions and USA PATRIOT Act***	100
SECTION 6.17.	***Hazardous Materials***	101

TABLE OF CONTENTS
(continued)

Page

SECTION 6.18. *Prepetition PPP Loan Negative Covenant* 101
SECTION 6.19. *Licenses; Hiring* 102
SECTION 6.20. *Budget Variance Covenant* 102
SECTION 6.21. *Prohibited Conduct* 103
SECTION 6.22. *Material IP Rights* 105
SECTION 6.23. *DIP Funding Account* 105

ARTICLE VII EVENTS OF DEFAULT 105

SECTION 7.01. *Events of Default* 105

ARTICLE VIII THE ADMINISTRATIVE AGENT AND THE COLLATERAL AGENT. 110

SECTION 8.01. *Appointment* 110
SECTION 8.02. *Rights as a Lender* 111
SECTION 8.03. *Exculpatory Provisions* 111
SECTION 8.04. *Reliance by Agent* 112
SECTION 8.05. *Delegation of Duties* 112
SECTION 8.06. *Resignation of an Agent* 113
SECTION 8.07. *Non-Reliance on Agent and Other Lenders* 113
SECTION 8.08. *Agents May File Proofs of Claim* 114
SECTION 8.09. *Collateral, Guarantee and Other Matters* 114
SECTION 8.10. *Expenses; Indemnity* 115
SECTION 8.11. *Additional Secured Parties* 116
SECTION 8.12. *Other Titled Parties* 117

ARTICLE IX MISCELLANEOUS 117

SECTION 9.01. *Notices; Electronic Communications* 117
SECTION 9.02. *Survival of Agreement* 120
SECTION 9.03. *Binding Effect* 121
SECTION 9.04. *Successors and Assigns* 121
SECTION 9.05. *Expenses; Indemnity* 126
SECTION 9.06. *Right of Setoff* 128
SECTION 9.07. *Applicable Law* 129
SECTION 9.08. *Waivers; Amendment* 129
SECTION 9.09. *Interest Rate Limitation* 131
SECTION 9.10. *Entire Agreement* 131
SECTION 9.11. *WAIVER OF JURY TRIAL* 132
SECTION 9.12. *Severability* 132
SECTION 9.13. *Counterparts* 132
SECTION 9.14. *Headings* 132
SECTION 9.15. *Jurisdiction; Consent to Service of Process* 133
SECTION 9.16. *Confidentiality* 133
SECTION 9.17. *Lender Action* 134

TABLE OF CONTENTS
(continued)

		Page
SECTION 9.18.	***USA PATRIOT Act Notice; Beneficial Ownership Regulation***	135
SECTION 9.19.	***No Fiduciary Relationship***	135
SECTION 9.20.	***Marshaling; Payments Set Aside***	135
SECTION 9.21.	***Lenders' Obligations Several; Independent Nature of Lenders' Rights***	135
SECTION 9.22.	***Acknowledgement Regarding Any Supported OFCs***	135
SECTION 9.23.	***Acknowledgement and Consent to Bail-In of Affected Financial Institutions***	136
SECTION 9.24.	***Orders Control***	137
SECTION 9.25.	***Termination***	137

EXHIBITS

Exhibit A - Form of Assignment and Acceptance
Exhibit B - Form of Borrowing Request
Exhibit C - Form of DIP Funding Withdrawal Notice
Exhibit D - Form of Guarantee and Collateral Agreement
Exhibit E - Form of Compliance Certificate
Exhibit F - Initial Approved Budget
Exhibit G - Form of Variance Report
Exhibit H - Form of Interim Order

SCHEDULES

Schedule 1.01(a) - Excluded Accounts
Schedule 1.01(b) - Material IP Rights
Schedule 2.01 - Lenders; Commitments
Schedule 3.08 - Subsidiaries
Schedule 3.09 - Litigation
Schedule 3.17 - Environmental Matters
Schedule 3.18 - Insurance
Schedule 3.19 - UCC Filing Offices
Schedule 3.20(a) - Owned Real Property
Schedule 3.20(b) - Leased Real Property
Schedule 3.27 - Brokers' Fees; Transaction Fees
Schedule 3.28 - Deposit and Other Accounts
Schedule 3.29 - Jurisdiction of Organization; Chief Executive Office
Schedule 3.30 - Capitalization
Schedule 3.31(e) - Regulatory Authority Notice of Adverse Findings
Schedule 3.32 - Bonding
Schedule 6.01 - Existing Indebtedness
Schedule 6.02(a) - Existing Liens
Schedule 6.02(s) - Subleases on Real Property
Schedule 6.04 - Existing Investments
Schedule 6.06(b) - Restrictive Agreements
Schedule 6.07 - Affiliate Transactions

SUPERPRIORITY SENIOR SECURED DEBTOR-IN-POSSESSION CREDIT AGREEMENT (this "Agreement") dated as of May 31, 2021, among AVADIM HEALTH, INC., a Delaware corporation (the "Borrower") and a debtor and debtor-in-possession under Chapter 11 of the Bankruptcy Code, the Lenders (such term and each other capitalized term used but not defined in this introductory statement having the meanings given them in Article I) and HAYFIN SERVICES LLP (in its individual capacity, "HFS"), as administrative agent for the Lenders (in such capacity, including any successor thereto, the "Administrative Agent") and as collateral agent for the Secured Parties (in such capacity, including any successor thereto, the "Collateral Agent").

PRELIMINARY STATEMENTS

WHEREAS, on May 31, 2021 (the "Petition Date"), (i) the Borrower, (ii) Relion Manufacturing, Inc., a North Carolina corporation ("Relion") and a Subsidiary of the Borrower, (iii) Bionome Properties Corp., a North Carolina corporation ("Bionome") and a Subsidiary of the Borrower, (iv) Quality Assurance Associates, Inc., a North Carolina corporation ("QAA") and a Subsidiary of the Borrower and (v) Avadim Health IP, Inc., a Delaware corporation ("IP Subsidiary") and a Subsidiary of the Borrower (the Persons identified in clauses (i) through (v), collectively, the "Debtors", and each, a "Debtor") filed voluntary petitions with the Bankruptcy Court initiating their respective cases that are pending under Chapter 11 of the Bankruptcy Code (the cases of each of the Borrower and each other Debtor, each a "Case", and collectively the "Cases") and have continued in the possession of their assets and the management of their business pursuant to Sections 1107 and 1108 of the Bankruptcy Code.

WHEREAS, the Borrower has requested that the Lenders provide a senior secured term loan facility denominated in Dollars in an aggregate principal amount not to exceed $7,156,000 (the "Facility"), with all of the Borrower's obligations under the Facility to be guaranteed by each Guarantor pursuant to the Guarantee and Collateral Agreement, and the Lenders have indicated their willingness to lend on the terms and subject to the conditions set forth herein.

WHEREAS, the priority of the Facility with respect to the Collateral shall be as set forth in the Interim Order and the Final Order, in each case, upon entry thereof by the Bankruptcy Court, and in the Security Documents.

WHEREAS, all of the claims and the Liens granted under the Orders and the Loan Documents to the Administrative Agent and the Lenders in respect of the Facility shall be subject to the Carve-Out.

NOW THEREFORE, in consideration of the covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

ARTICLE I

Definitions

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

"Adjusted LIBO Rate" shall mean, with respect to any Eurodollar Loan or Borrowing for any Interest Period, an interest rate per annum equal to the product of (a) the LIBO Rate in effect for such Interest Period and (b) Statutory Reserves; provided that the Adjusted LIBO Rate shall not be less than 1.00% per annum.

"Administrative Agent" shall have the meaning assigned to such term in the introductory statement to this Agreement.

"Administrative Questionnaire" shall mean an Administrative Questionnaire in the form supplied from time to time by the Administrative Agent.

"Affected Financial Institution" means (a) any EEA Financial Institution or (b) any UK Financial Institution.

"Affiliate" shall mean, when used with respect to a specified Person, another Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified; provided, however, that the term "Affiliate" shall also include any Person that directly or indirectly owns 10% or more of any class of Equity Interests of the Person specified or that is an officer or director of the Person specified.

"Agents" shall have the meaning assigned to such term in Article VIII.

"Agreement" shall have the meaning assigned to such term in the introductory statements hereto.

"Agreement Currency" shall have the meaning set forth in Section 1.07.

"Agreement Value" shall mean, for each Hedging Agreement, on any date of determination, the maximum aggregate amount (giving effect to any netting agreements) that the Borrower or any Subsidiary would be required to pay if such Hedging Agreement were terminated on such date.

"Allowed Professional Fees" has the meaning specified in the Interim Order.

"AMLA" means the Anti-Money Laundering Act of 2020.

"Anticorruption Laws" shall mean the U.S. Foreign Corrupt Practices Act of 1977 ("FCPA"), the U.S. Travel Act and any other U.S. law governing bribery; the U.K. Bribery Act 2010; and any other applicable Requirements of Law relating to anti-corruption or anti-bribery, including but not limited to applicable Requirements of Law implementing the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions.

"Applicable Margin" shall mean at all times on and after the Closing Date, with respect to the unpaid principal amount of the Term Loan, 12.00% per annum.

"Approved Budget" shall mean the Initial Approved Budget prepared by the Borrower and initially furnished to the Administrative Agent on the Closing Date and which is approved by, and

in form and substance satisfactory to the Required Lenders, as the same may be updated, modified or supplemented from time to time as provided in Section 5.17(b).

"Asset Sale" shall mean the sale, transfer, assignment, conveyance, license, sub-license, sale and leaseback, or other disposition (including by way of (x) merger, (y) condemnation or casualty events, except transactions where the proceeds therefrom constitute Extraordinary Property Receipts or (z) division of a limited liability company) by the Borrower or any of the Subsidiaries to any Person of (a) any Equity Interests of any of the Subsidiaries (other than directors' qualifying shares and other similar nominal Equity Interests) or (b) any other assets of the Borrower or any of the Subsidiaries other than:

(i) inventory or scrap, damaged, surplus, obsolete or worn-out equipment or assets, in each case disposed of in the ordinary course of business;

(ii) dispositions by means of trade-in of equipment used in the ordinary course of business, so long as such equipment is replaced, substantially concurrently, by like-kind equipment if necessary for the operation of the business of the Borrower and its Subsidiaries;

(iii) so long as (x) no Default or Event of Default has occurred and is continuing and (y) the Borrower has given the Administrative Agent three (3) Business Days advanced written notice thereof, dispositions, forgiveness or releases of accounts receivable in the ordinary course of business in connection with the compromise thereof, in an aggregate amount, since the Petition Date, not to exceed $250,000 (it being understood and agreed that this clause (iii) shall not restrict customer credits, discounts, offsets and returns of inventory in the ordinary course of business),

(iv) the unwinding, disposition or settlement of Hedging Agreements entered into in accordance with the terms of this Agreement;

(v) [reserved];

(vi) to the extent otherwise constituting an Asset Sale, any sale, transfer, disposition or Investment permitted by an express provision of Section 6.02, Section 6.04, Section 6.05 (except Section 6.05(a)(vi) and Section 6.05(b)), Section 6.06, Section 6.07;

(vii) [reserved];

(viii) the expiration of any Patent or Copyright constituting Company IP Rights, in accordance with its statutory term (and following all available renewal terms available under applicable law);

(ix) the lapse or abandonment of Company IP Rights (other than Material IP Rights) in the ordinary course of business which (x) have not previously been used in connection with the business of the Loan Parties or any Product and (y), in the reasonable business judgment of the Borrower, are not material to the conduct of the business of the Loan Parties or any Product;

(x) the disposition of cash and Permitted Investments on fair market terms and in accordance with Sections 5.08, 5.17 and 6.20; and

(xi) (x) dispositions or transfers (1) from the Borrower to any Subsidiary and (2) from any Subsidiary (other than the IP Subsidiary) to any other Subsidiary, in each case of (1) and (2), other than Material IP Rights, and (y) licenses of Intellectual Property rights by the IP Subsidiary to the Borrower in accordance with the terms of the IP License Agreement.

For the avoidance of doubt, the incurrence of Indebtedness (or the making and delivery of an instrument representing Indebtedness) shall not be construed as an Asset Sale by the debtor in respect of such Indebtedness.

"Assignment and Acceptance" shall mean an assignment and acceptance entered into by a Lender and an Eligible Assignee, and accepted by the Administrative Agent, in the form of Exhibit A or such other form as shall be approved by the Administrative Agent.

"Auction" shall have the meaning assigned to such term in the Bidding Procedures Order.

"Bankruptcy Code" shall mean Title 11 of the United States Code entitled "Bankruptcy", as now and/or hereinafter in effect, or any successor thereto.

"Bankruptcy Court" means the United States Bankruptcy Court for the District of Delaware or any other court having jurisdiction over the Cases from time to time.

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

"Bail-In Legislation" means (a) with respect to any EEA Member Country implementing Article 55 of Directive 2014/59/EU of the European Parliament and of the Council of the European Union, the implementing law, regulation rule or requirement for such EEA Member Country from time to time which is described in the EU Bail-In Legislation Schedule and (b) with respect to the United Kingdom, Part I of the United Kingdom Banking Act 2009 (as amended from time to time) and any other law, regulation or rule applicable in the United Kingdom relating to the resolution of unsound or failing banks, investment firms or other financial institutions or their affiliates (other than through liquidation, administration or other insolvency proceedings).

"Beneficial Ownership Certification" means a certification regarding beneficial ownership to the extent required by the Beneficial Ownership Regulation.

"Beneficial Ownership Regulation" means 31 C.F.R. § 1010.230.

"BHC Act Affiliate" shall have the meaning set forth in Section 9.22(b).

"Bid Deadline" shall have the meaning assigned to such term in the Bidding Procedures Order.

"Bidding Procedures Motion" shall mean *Motion for Entry of an Order (A) Authorizing and Approving the Debtors' Entry into the Stalking Horse APA with the Stalking Horse Bidder, Subject to the Bidding Procedures and the Sale Hearing, (B) Approving Bidding Procedures, (C) Scheduling the Bid Deadlines and the Auction, (D) Scheduling a Hearing to Consider the Transaction, (E) Approving the Form and Manner of Notice Thereof, (F) Approving Contract Procedures, and (G) Granting Related Relief* filed with the Bankruptcy Court on or about the Petition Date.

"Bidding Procedures Order" shall mean the order approving the Bidding Procedures Motion in a form acceptable to the Administrative Agent.

"Board" shall mean the Board of Governors of the Federal Reserve System of the United States of America.

"Borrower" shall have the meaning assigned to such term in the introductory statement to this Agreement.

"Borrower Materials" shall have the meaning assigned to such term in Section 9.01.

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

"Borrowing Request" shall mean a request by the Borrower in accordance with the terms of Section 2.03 and substantially in the form of Exhibit B, or such other form as shall be approved by the Administrative Agent.

"Budget Test Period" means with respect to the Permitted Collections Budget Variance, the Permitted Expenditures Budget Variance and the Permitted Debtor Professionals Expenditures Budget Variance, *first*, the period from the Petition Date through the Friday of the second full week following the Petition Date (the "First Budget Test Period"), and *thereafter*, each consecutive seven day period ending on the most recently occurring Friday (it being understood and agreed that each Budget Test Period shall include such Friday on which the Budget Test Period ends).

"Business Day" shall mean any day other than a Saturday, Sunday or day on which banks in New York City and London are authorized or required by law to close; provided, however, that when used in connection with a Eurodollar Loan, the term "Business Day" shall also exclude any day on which banks are not open for dealings in Dollar deposits in the London interbank market.

"Capital Lease Obligations" of any Person shall mean 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 capital leases on a balance sheet of such Person under GAAP, taking into account Sections 1.02(b) and (c), and the amount of such obligations shall be the capitalized amount thereof determined in accordance with GAAP.

"CARES Act" means the Coronavirus Aid, Relief and Economic Security Act, as amended (including any successor thereto), and all requests, rules, guidelines, requirements and directives

thereunder or issued in connection therewith or in implementation thereof, regardless of the date enacted, adopted, issued or implemented.

"Carve-Out" has the meaning specified in the Interim Order or the Final Order, as applicable.

"Carryover" means, for any period, (i) with respect to receipts, the amount of any actual receipts during such period that exceed the projected receipts set forth in the Approved Budget for such period (without giving effect to any Carryover receipts from a prior period) and (ii) with respect to disbursements, the amount of any budgeted disbursements not expended during such period (without giving effect to any Carryover of budgeted disbursements from a prior period). For the avoidance of doubt, (a) the amount of Carryover receipts from any period prior to the first Budget Test Period shall be zero and (b) the amount of Carryover budgeted disbursements from any period prior to the Petition Date shall be zero.

"Case" or "Cases" have the meaning specified in the introductory clause hereto.

"Cash Balance" means, on any Business Day, (a) the collected balance of total cash held by the Borrower and its Subsidiaries, including only those deposited funds that have cleared bank processing, less (b) outstanding payments made by check, debit and wire that have been sent to the payee but not yet cleared bank processing, which is set forth on the "Ending Cash Balance – Book" line item in the Approved Budget (it being understood and agreed that "Cash Balance" and the reference to "receipts" in Sections 5.22(a)(i), 5.22(a)(ii), 6.20(a)(x) and 6.20(a)(y) shall not include (x) any overpayments received in respect of any Products, services, licenses or otherwise or (y) payments in respect of Products not yet shipped to the applicable third party or services or licenses not yet provided to the applicable third party to the extent such applicable third party has a right to clawback, or otherwise receive or be refunded or reimbursed, an amount of cash equal to the cash paid by it in connection therewith (whether under contract, law or otherwise)).

"Cash Collateral" has the meaning specified in the Interim Order or the Final Order, as applicable.

"Change in Control" shall mean:

(a) any "person" or "group" (within the meaning of Rule 13d-5 of the Securities Exchange Act of 1934 as in effect on the date hereof) shall own, directly or indirectly, beneficially or of record, shares representing 20% or more of the aggregate ordinary voting power represented by the issued and outstanding capital stock of the Borrower,

(b) [reserved],

(c) Borrower shall case to, or at any time shall not, directly own, beneficially of record, 100% of the issued and outstanding Equity Interests of each Subsidiary, or

(d) the direct or indirect sale, lease, transfer, conveyance or other disposition, in one or a series of related transactions, of all or substantially all of the properties or assets of the Borrower and its Subsidiaries taken as a whole to any Person (including any "person" as that term is used in Section 13(d)(3) of the Securities Exchange Act of 1934 as in effect on the date hereof)).

"Change in Law" shall mean (a) the introduction or adoption of any Requirement of Law, rule, regulation or treaty after the date of this Agreement, (b) any change in any Requirement of Law, rule, regulation or treaty or in the administration, interpretation, implementation or application thereof by any Governmental Authority after the date of this Agreement or (c) compliance by any Lender (or, for purposes of Section 2.15(a), by any lending office of such Lender or by such Lender's holding company, if any) with any request, rule, guideline or directive (whether or not having the force of law) of any Governmental Authority made or issued after the date of this Agreement; provided that notwithstanding anything herein to the contrary, the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith shall be deemed to be a Change in Law, regardless of the date enacted, adopted or issued; provided, further, that notwithstanding anything herein to the contrary, the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority), in each case pursuant to Basel III, and all requests, rules, guidelines or directives thereunder or issued in connection therewith shall be deemed to be a Change in Law regardless of the date enacted, adopted or issued.

"Charges" shall have the meaning assigned to such term in Section 9.09.

"Closing Date" shall mean the first date upon which all conditions precedent listed in Section 4.02 have been satisfied or waived pursuant to the terms hereof (it being understood and agreed that the date referenced on the cover page and initial paragraph of this Agreement is a reference to the date the initial Lenders, the Administrative Agent and the Collateral Agent executed this Agreement and is not a reference to the Closing Date).

"Code" shall mean the Internal Revenue Code of 1986, as amended from time to time.

"Collateral" shall mean all the assets of the Loan Parties that, pursuant to the Orders, the Guarantee and Collateral Agreement and/or any other Security Document, is subject to a Lien in favor of the Collateral Agent for the benefit of the Secured Parties as security for the Obligations.

"Collateral Agent" shall have the meaning assigned to such term in the introductory statement to this Agreement.

"Committee" shall mean the official statutory unsecured creditors' committee, if any, appointed in the Cases.

"Commitment" shall mean, with respect to any Lender, such Lender's Term Loan Commitment.

"Commodity Exchange Act" shall mean the Commodity Exchange Act (7 U.S.C. § 1 et seq.).

"Common Stock" shall have the meaning assigned to such term in Section 3.30.

"Communications" shall have the meaning assigned to such term in Section 9.01.

"Company Accounts" shall mean all deposit accounts, securities accounts, commodity accounts and similar accounts of any Loan Party or any of their Subsidiaries.

"Company IP Rights" shall mean all Intellectual Property owned or controlled by or licensed to any Loan Party. For the avoidance of doubt, Company IP Rights include Material IP Rights.

"Comparable Treasury Issue" shall mean the United States Treasury security or securities selected by an Independent Investment Banker as having an actual or interpolated maturity comparable to the remaining term of the principal amount of the Loans to be repaid or prepaid that would be utilized, at the time of selection and in accordance with customary financial practice, in pricing new issues of corporate debt securities of a comparable maturity to the remaining term of such principal amount.

"Comparable Treasury Price" shall mean, with respect to any repayment or prepayment date the average of the Reference Treasury Dealer Quotations for such repayment or prepayment date.

"Compliance Certificate" shall have the meaning assigned to such term in Section 5.04(d).

"Control" shall mean 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 ownership of voting securities, by contract or otherwise, and the terms "Controlling" and "Controlled" shall have meanings correlative thereto.

"Copyrights" shall mean all U.S. and foreign copyrightable works and works of authorship, rights in databases and data collections, design rights, registered and unregistered copyrights and applications for registration thereof, including moral rights and rights of attribution and integrity.

"Covered Entity" shall have the meaning set forth in Section 9.22(b).

"Covered Party" shall have the meaning set forth in Section 9.22(a).

"Credit Event" shall have the meaning assigned to such term in Section 4.01.

"Data Protection Laws" shall mean any and all applicable Requirements of Law of any jurisdiction and self-regulatory guidelines, foreign or domestic, concerning the receipt, collection, compilation, use, storage, processing, sharing, disclosure, handling, maintenance, protection, security (technical, physical or administrative), disposal, destruction, transfer (including cross-border) and/or processing of any Personal Information, including without limitation, the following (in each case, together with all implementing or subordinate legislation, regulations, guidance and codes of practice): the Federal Trade Commission Act, the E.U. General Data Protection Regulation (GDPR), the California Consumer Privacy Act (CCPA), the Payment Card Industry Data Security Standard (PCI-DSS), the Health Insurance Portability and Accountability Act of 1996 (HIPAA), and all other applicable Requirements of Law relating to breach notification or marketing in connection with any Personal Information, and any applicable Requirements of Law of any foreign or domestic jurisdiction concerning the use of biometric identifiers.

"Debtor" or "Debtors" has the meaning specified in the introductory clause to this Agreement.

"Default" shall mean any event or condition which upon notice, lapse of time or both would constitute an Event of Default.

"Default Right" shall have the meaning set forth in Section 9.22(b).

"Deficiency Amount" shall have the meaning set forth in Section 6.10(a).

"DIP Funding Account" shall have the meaning set forth in Section 5.16(c) (it being acknowledged and agreed that the the proceeds of the Loans in each such account shall only be made available to the Borrower in accordance with the terms and conditions set forth in Section 2.04).

"DIP Funding Account Control Agreement" shall have the meaning assigned to such term in Section 5.16(c).

"DIP Funding Account Depository Bank" shall have the meaning assigned to such term in Section 5.16(c).

"DIP Funding Account Effective Date" shall have the meaning assigned to such term in Section 5.16(c).

"DIP Funding Withdrawal Notice" has the meaning provided in Section 2.04.

"Disqualified Stock" shall mean 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), or upon the happening of any event (other than a change in control or asset sale, so long as the rights of the holders thereof to require the issuers thereof to redeem such Equity Interests upon the occurrence of a change in control or asset sale shall be subject to the payment in full of all Obligations and the termination of the Commitments), (a) matures (excluding any maturity as the result of an optional redemption by the issuer thereof) or is mandatorily redeemable, pursuant to a sinking fund obligation or otherwise, or is redeemable at the option of the holder thereof, in whole or in part, or requires the payment of any cash dividend or any other scheduled payment constituting a return of capital, in each case at any time on or prior to the date that is 91 days after the Stated Maturity Date, or (b) is convertible into or exchangeable (unless at the sole option of the issuer thereof) for (i) debt securities or (ii) any Equity Interest referred to in clause (a) above, in each case at any time prior to the date that is at least 91 days after the Stated Maturity Date.

"Dollars" or "$" shall mean lawful money of the United States of America.

"Dollar Equivalent" shall mean, with respect to any amount denominated in Dollars, such amount of Dollars, and with respect to any amount denominated in a currency other than Dollars, the amount of Dollars, as of any date of determination, into which such other currency can be converted in accordance with prevailing exchange rates, as determined by Administrative Agent in accordance with Section 1.06 hereof.

"Domestic Subsidiaries" shall mean all Subsidiaries incorporated or organized under the laws of the United States of America, any State thereof or the District of Columbia.

"E-Signature" shall mean the process of attaching to or logically associating with an Electronic Transmission an electronic symbol, encryption, digital signature or process (including the name or an abbreviation of the name of the party transmitting the Electronic Transmission) with the intent to sign, authenticate or accept such Electronic Transmission.

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

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

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

"Electronic Transmission" shall mean each document, instruction, authorization, file, information and any other communication transmitted, posted or otherwise made or communicated by e-mail or otherwise to or from a secure web-based platform or other equivalent service.

"Eligible Assignee" shall mean (i) a Lender, (ii) an Affiliate of a Lender, (iii) a Related Fund of a Lender and (iv) any other Person (other than a natural person) approved by the Administrative Agent. The refusal of Administrative Agent to consent to (A) any holder of Indebtedness subordinated to all or any part of the Obligations or secured by a junior priority lien or (B) the Borrower or any of its Subsidiaries as an Eligible Assignee shall not be deemed to be unreasonable.

"Environmental Laws" shall mean all applicable federal, state, local and foreign laws (including common law), treaties, regulations and legally binding rules, ordinances, and codes, in each case relating to protection of human health, safety and the environment, natural resources or the presence, Release of, or exposure to, Hazardous Materials, or the generation, manufacture, processing, distribution, use, treatment, storage, transport (or arrangement thereof), recycling, disposal or handling of Hazardous Materials.

"Environmental Liability" shall mean all liabilities, obligations, damages, losses, claims, actions, suits, judgments, orders, fines, penalties, fees, expenses and costs (including administrative oversight costs, natural resource damages and remediation costs), whether contingent or otherwise, to the extent arising out of or relating to (a) violation of any Environmental Law, (b) the generation, use, handling, transportation, storage, treatment or disposal of any Hazardous Materials, (c) exposure to any Hazardous Materials, (d) the Release of any Hazardous Materials or (e) any legally binding contract, agreement or other arrangement pursuant to which liability is assumed or imposed with respect to any of the foregoing.

"Equity Interests" shall mean shares of capital stock, partnership interests, membership interests in a limited liability company, beneficial interests in a trust or other equity interests in

any Person, and any option, warrant or other right entitling the holder thereof to purchase or otherwise acquire any such equity interest.

"ERISA" shall mean the Employee Retirement Income Security Act of 1974, as the same may be amended from time to time.

"ERISA Affiliate" shall mean any trade or business (whether or not incorporated) that, together with the Borrower or any other Loan Party, is treated as a single employer under Section 414 of the Code or Section 4001 of ERISA.

"ERISA Event" shall mean any one or more of the following: (a) any "reportable event," as defined in Section 4043(c) of ERISA, with respect to a Plan, as to which the PBGC has not waived the requirement of Section 4043(a) of ERISA that it be notified of such event, (b) with respect to any Plan or Multiemployer Plan, the failure to satisfy the minimum funding standard (as defined in Section 412 or 430 of the Code or Section 303 or 304 of ERISA), whether or not waived, (c) a determination that any Plan is in "at-risk status" or any Multiemployer Plan is in "endangered status" or "critical status" (as each is defined in Section 303 and 305 of ERISA, respectively), (d) the incurrence by the Borrower or any other Loan Party or any of its respective ERISA Affiliates of any liability under Title IV of ERISA with respect to any Plan or Multiemployer Plan (other than premiums due and not delinquent under Section 4007 of ERISA), (e) the receipt by the Borrower or any other Loan Party or any of its respective ERISA Affiliates from the PBGC or a plan administrator of any notice relating to the intention to terminate any Plan or Plans or to appoint a trustee to administer any Plan or the occurrence of any event or condition that might constitute grounds under ERISA for the termination of, or the appointment of a trustee to administer, any Plan, (f) the receipt by the Borrower or any other Loan Party or any of its respective ERISA Affiliates of any notice concerning the imposition of Withdrawal Liability or a determination that a Multiemployer Plan is, or is reasonably expected to be, insolvent, within the meaning of Title IV of ERISA, (g) the failure to make a required contribution to any Plan or Multiemployer Plan that would result in the imposition of a lien or other encumbrance or the provision of security under Section 430 of the Code or Section 303 or 4068 of ERISA, or the arising of such a lien or encumbrance, (h) there being or arising any "unpaid minimum required contribution" or "accumulated funding deficiency" (as defined or otherwise set forth in Section 4971 of the Code or Part 3 of Subtitle B of Title 1 of ERISA), whether or not waived, with respect to any Plan or Multiemployer Plan, (i) the occurrence of an act or omission which could give rise to the imposition on the Borrower or any other Loan Party with respect to any Plan of fines, penalties, taxes or related charges under Chapter 43 of the Code or under Sections 409 or 502(c), (i) or (l) of ERISA, (j) the assertion of a material claim against any Plan or the assets thereof, or against the Borrower or any other Loan Party with respect to any Plan, or (k) the failure of any Plan intended to be qualified under Section 401(a) of the Code to qualify under Section 401(a) of the Code or the failure of any trust forming part of a Plan to qualify for exemption from taxation under 501(a) of the Code.

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

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

"Events of Default" shall have the meaning assigned to such term in Section 7.01.

"Excluded Accounts" means any escrow, fiduciary, payroll, tax withholding or trust account of the Loan Parties listed on Schedule 1.01(a), to the extent, in the case of any escrow or trust account, that the terms of the agreements relating to such account prohibit the Liens granted to the Collateral Agent for the benefit of the Secured Parties pursuant to the applicable Security Documents from attaching to such assets.

"Excluded Property" means (a) any "intent to use" trademark application, solely during the period in which the grant of a security interest therein would impair the validity or enforceability of such intent-to-use trademark application under applicable federal law, (b) any assets securing purchase money obligations or Capitalized Lease Obligations permitted to be incurred hereunder, to the extent that the terms of the agreements relating to such Lien prohibit the security interest hereunder or under any Security Document from attaching to such assets (other than to the extent that such prohibition would be rendered ineffective under or by the UCC, the Interim Order, the Final Order or the Bankruptcy Code or other applicable Requirement of Law or principles of equity), (c) any particular asset, if the pledge thereof or the security interest therein is prohibited by applicable Requirements of Law other than to the extent such prohibition is rendered ineffective under or by virtue of the UCC, the Interim Order, the Final Order or the Bankruptcy Code or other applicable Requirements of Law or principles of equity, (d) any rights of a Loan Party arising under or evidenced by any contract, lease, instrument, license or agreement to the extent the pledge thereof is prohibited or restricted by such contract, lease, license or other agreement, except to the extent the pledge of such rights is deemed ineffective under or by virtue of the UCC, the Interim Order, the Final Order or the Bankruptcy Code or other applicable Requirements of Law or principle of equity, (e) licenses and any other property and assets to the extent that the Collateral Agent may not validly possess a security interest therein under applicable Requirements of Law (including, without limitation, rules and regulations of any Governmental Authority) to the extent such applicable Laws, rules or regulations are not rendered ineffective under or by virtue of the UCC, the Interim Order, the Final Order or the Bankruptcy Code or other applicable Requirements of Law or principles of equity, provided that Excluded Property shall not include, to the maximum extent permitted by applicable Requirements of Law, all rights incident or appurtenant to such licenses, property and assets, (f) any governmental licenses or state or local franchises, charters and authorizations, to the extent security interests in such licenses, franchises, charters or authorizations are prohibited or restricted thereby (except to the extent such prohibition or restriction is deemed ineffective under or by virtue of the UCC, the Interim Order, the Final Order or other applicable Requirements of Law or principle of equity), or (g) any Excluded Account.

"Excluded Taxes" shall mean, with respect to the Administrative Agent, any Lender or any other recipient of any payment to be made by or on account of any obligation of the Loan Parties under any Loan Document (each, a "Recipient"), (a) Taxes imposed on (or measured by) its net income (however denominated), franchise Taxes, and branch profits Taxes, in each case (i) imposed as a result of the Recipient being organized under the laws of, or having its principal office or, in the case of any Lender, its applicable lending office located in, the jurisdiction

imposing such Tax (or any political subdivision thereof) or (ii) that are Other Connection Taxes, (b) in the case of a Lender, U.S. federal withholding Taxes imposed on amounts payable to or for the account of such Lender pursuant to a Requirement of Law in effect on the date on which (i) such Lender becomes a party to this Agreement (other than to the extent pursuant to an assignment request by the Borrower under Section 2.22(a))or (ii) such Lender designates a new lending office, except in each case to the extent that amounts with respect to such Taxes were payable pursuant to Section 2.21 either to such Lender's assignor immediately before such Lender became a party hereto or to such Lender immediately before it changed its lending office, (c) Taxes attributable to such Recipient's failure to comply with Section 2.21(f), and (d) any withholding Tax imposed under FATCA.

"Extraordinary Property Receipt" shall mean any cash received by or paid to or for the account of any Person as proceeds of insurance in connection with a loss of property, casualty event and/or condemnation awards (and payments in lieu thereof), other than in respect of the proceeds of business interruption policies.

"FATCA" shall mean the Foreign Account Tax Compliance Act, specifically (a) Sections 1471 through 1474 of the Code, as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with) and any current or future regulations or official interpretations thereof, (b) any treaty, law, regulation or other official guidance enacted in any other jurisdiction, or relating to an intergovernmental agreement between the United States and any other jurisdiction with the purpose (in either case) of facilitating the implementation of (a) above, or (c) any agreement pursuant to the implementation of paragraphs (a) or (b) above with the IRS, the United States government or any governmental or taxation authority in the United States.

"FCPA" shall have the meaning assigned to such term in the definition of "Anticorruption Laws".

"FDA" shall mean the United States Food and Drug Administration and any successor thereto.

"Federal Flood Insurance" shall mean U.S. federally backed Flood Insurance available under the National Flood Insurance Program to owners of real property improvements located in Special Flood Hazard Areas in a community participating in the National Flood Insurance Program.

"Federal Funds Effective Rate" shall mean, 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 (or, if such day is not a Business Day, on the prior Business Day), as published by the Federal Reserve Bank of New York on the Business Day next succeeding such day, provided that if no such rate is so published on such next succeeding Business Day, the Federal Funds Effective Rate for such day shall be the average rate quoted to the Administrative Agent on such day on such transactions as determined by the Administrative Agent in a commercially reasonable manner.

"FEMA" shall mean the Federal Emergency Management Agency, a component of the U.S. Department of Homeland Security that administers the National Flood Insurance Program.

"Financial Officer" of any Person shall mean the chief financial officer, principal accounting officer, treasurer, assistant treasurer or controller of such Person or any other officer of such Person designated as a Financial Officer by the board of directors or other governing body of such Person.

"Final Order" means an order of the Bankruptcy Court granting the relief provided by the Interim Order on a final basis in form and substance acceptable to the Required Lenders in their sole discretion; provided, that it is agreed that such order shall be acceptable where such order grants the Interim Order on a final basis (a) with (x) those provisions in the Interim Order that are subject to the entry of the Final Order shall be included in the Final Order without such qualification or any other modification, and (y) where appropriate, references to this Interim Order shall be changed to references to the Final Order without any other modification and (b) with respect to any other modifications to the Interim Order, such modifications are consistent with this Agreement and otherwise in form and substance acceptable to the Required Lenders, in their sole discretion.

"First Day Orders" has the meaning set forth in Section 4.02(c).

"Flood Insurance" shall mean, for any real property located in a Special Flood Hazard Area, Federal Flood Insurance or private insurance that meets the requirements set forth by FEMA in its *Mandatory Purchase of Flood Insurance Guidelines*. Flood Insurance shall be in an amount equal to the full, unpaid balance of the Loans and any prior liens on the applicable real property up to the maximum policy limits set under the National Flood Insurance Program, or as otherwise required by Requirements of Law applicable to the Administrative Agent.

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

"Foreign Subsidiary" shall mean any Subsidiary that is not a Domestic Subsidiary.

"FTC" shall mean the United States Federal Trade Commission.

"GAAP" shall mean generally accepted accounting principles in the United States of America, as in effect from time to time, set forth in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants, in the statements and pronouncements of the Financial Accounting Standards Board and in such other statements by such other entity as may be in general use by significant segments of the accounting profession that are applicable to the circumstances as of the date of determination.

"Governmental Authority" shall mean any nation or government, any state or other political subdivision thereof (including any Regulatory Authority), any central bank (or similar monetary or regulatory authority) thereof, any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government, and any corporation or other entity owned or controlled, through stock or capital ownership or otherwise, by any of the foregoing. The term "Governmental Authority" shall further include any institutional review

board, ethics committee, data monitoring committee, or other committee or entity with defined authority to oversee regulatory matters.

"Guarantee" of or by any Person shall mean any obligation, contingent or otherwise, of such Person guaranteeing or having the economic effect of guaranteeing any Indebtedness, lease dividend or other obligation of any other Person (the "primary obligor") in any manner, whether directly or indirectly, and including any obligation of such Person, direct or indirect, (a) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness, (b) to purchase or lease property, securities or services for the purpose of assuring the owner of such Indebtedness of the payment of such Indebtedness, (c) to maintain working capital, equity capital or any other financial statement condition or liquidity of the primary obligor so as to enable the primary obligor to pay such Indebtedness or (d) to protect or indemnify the beneficiary of such obligation against loss in respect thereof; provided, however, that the term "Guarantee" shall not include endorsements for collection or deposit in the ordinary course of business. The amount of any contingent guarantee shall be deemed to be an amount equal to the stated or determinable amount of the primary obligation, or portion thereof, in respect of which such contingent guarantee is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof (assuming such person is required to fully perform thereunder) as determined by such person in good faith.

"Guarantee and Collateral Agreement" shall mean that certain Guarantee and Collateral Agreement, dated as of the Closing Date, by and among, the Loan Parties and the Collateral Agent for the benefit of the Secured Parties, in the form attached hereto as Exhibit D .

"Guarantors" shall mean, collectively, each Subsidiary.

"Hayfin Lender" shall mean (a) the entities listed on Schedule 2.01 hereto and (b) each of their respective Affiliates and funds or partnerships managed or advised by and of them or any of their Affiliates.

"Hazardous Materials" shall mean (a) any petroleum products or by-products and all other hydrocarbons, coal ash, asbestos, toxic mold, urea formaldehyde, greenhouse gases, bio-hazardous or medical substances, and polychlorinated biphenyls and (b) any chemical, material, substance or waste that is prohibited, limited or regulated by or pursuant to any Environmental Law.

"Healthcare Laws" shall mean all applicable laws that govern the sales, marketing, promotion, distribution, research, development, testing, manufacture, handling, packaging, labeling, storage, promotion, marketing, import, export, or any other use of the Products including, but not limited to, the Federal Food, Drug, and Cosmetic Act, as amended ("FDCA"); the Public Health Service Act; the federal False Claims Act; the federal Anti-Kickback Statute; the federal Beneficiary Inducement Law; the federal Stark Law; HIPAA; the Medicare Program (Title XVIII of the Social Security Act); the Medicaid Program (Title XIX of the Social Security Act); the Health Information Technology for Economic and Clinical Health Act ("HITECH"); and all other analogous laws to the foregoing within any other U.S. or foreign jurisdiction, and applicable rules, and regulations issued thereunder.

"Hedging Agreement" shall mean any interest rate protection agreement, foreign currency exchange agreement, commodity price protection agreement or other interest or currency exchange rate or commodity price hedging arrangement.

"Indebtedness" of any Person shall mean, without duplication, (a) all obligations of such Person for borrowed money, (b) all obligations of such Person evidenced by bonds, debentures, notes or similar instruments, (c) all obligations of such Person under conditional sale or other title retention agreements relating to property or assets purchased by such Person, (d) all obligations of such Person issued or assumed as the deferred purchase price of property or services (excluding trade accounts payable and accrued obligations incurred in the ordinary course of business and deferred compensation), (e) all Indebtedness of others secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any Lien on property owned or acquired by such Person, whether or not the obligations secured thereby have been assumed, (f) all Guarantees by such Person of Indebtedness of others, (g) all Capital Lease Obligations of such Person, (h) net obligations of such Person under any Hedging Agreements, valued at the Agreement Value thereof, (i) all obligations of such Person to purchase, redeem, retire, defease or otherwise make any payment in respect of any Disqualified Stock of such Person and (j) all obligations of such Person in respect of bankers' acceptances. The Indebtedness of any Person shall include the Indebtedness of any partnership in which such Person is a general partner, except to the extent the terms of such Indebtedness provide expressly that such Person is not liable thereon.

"Indemnified Taxes" shall mean (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.

"Indemnitee" shall have the meaning assigned to such term in Section 9.05(b).

"Independent Investment Banker" shall mean each of two leading primary United States government securities dealers in New York City designated by the Agent in writing; provided that if any of the foregoing shall cease to be a primary United States government securities dealer in New York City (a "Primary Treasury Dealer"), the Agent shall substitute therefor another Primary Treasury Dealer.

"Information" shall have the meaning assigned to such term in Section 9.16.

"Initial Borrowing" has the meaning set forth in Section 2.01.

"Initial Borrowing Amount" shall mean $2,250,000.

"Initial Lenders" shall mean each of the Lenders party to this Agreement on the Closing Date.

"Intellectual Property" shall mean all (a) Patents, (b) Trademarks, (c) Copyrights, , (d) Trade Secrets, (e) data, including clinical trial data, cell lines, plasmids and other biological or chemical materials, (f) Internet domain names, electronic addresses, uniform resource locators and alphanumeric designations associated therewith and all registrations for any of the foregoing, and all social media accounts, (g) all other intellectual property rights arising from Software and

Technology and (g) and any and all similar, corresponding or equivalent intellectual or proprietary rights anywhere in the world.

"Interest Payment Date" shall mean the last day of the Interest Period applicable to the Borrowing of which such Loan is a part and, in the case of an Interest Period of more than three months' duration, each day that would have been an Interest Payment Date had successive Interest Periods of three months' duration been applicable to such Borrowing.

"Interest Period" shall mean, with respect to any Eurodollar Borrowing, the period commencing on the date of such Borrowing and ending on the numerically corresponding day (or, if there is no numerically corresponding day, on the last day) in the calendar month that is 1 month thereafter, in each case as the Borrower may elect; provided, however, that (a) if any Interest Period would end on a day other than a Business Day, such Interest Period shall be extended to the next succeeding Business Day unless such next succeeding Business Day would fall in the next calendar month, in which case such Interest Period shall end on the next preceding Business Day, (b) any Interest Period that begins on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period) shall end on the last Business Day of the calendar month at the end of such Interest Period and (c) no Interest Period for any Loan shall extend beyond the maturity date of such Loan. Interest shall accrue from and including the first day of an Interest Period to but excluding the last day of such Interest Period. For purposes hereof, the date of a Borrowing initially shall be the date on which such Borrowing is made and thereafter shall be the effective date of the most recent continuation of such Borrowing.

"Interim Order" means an order of the Bankruptcy Court substantially in the form attached hereto as Exhibit H and in form and substance satisfactory to the Required Lenders in their sole discretion.

"Investment" shall mean, as to any Person, (a) any direct or indirect acquisition or investment by such Person, whether by means of (i) the purchase or other acquisition of Equity Interests or debt or other securities of another Person, or (ii) a loan, advance or capital contribution to, Guarantee or assumption of debt of, or purchase or other acquisition of any other debt or equity participation or interest in, another Person, including any partnership or joint venture interest in such other Person and any arrangement pursuant to which the investor incurs Indebtedness in respect of such other Person, or (b) such Person shall hold or permit to exist any such Equity Interests, debt, other securities, loans, advances or Guarantees. 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 but giving effect to any returns or distributions of capital or repayment of principal actually received in case by such Person with respect thereto.

"IP License Agreement" shall mean that certain Intellectual Property License Agreement, dated as of February 20, 2019, by and between the IP Subsidiary, as licensor, and the Borrower, as licensee.

"IP Subsidiary" shall have the meaning set forth in the preliminary statements.

"IRS" shall mean the United States Internal Revenue Service.

"Judgment Currency" shall have the meaning set forth in Section 1.07.

"Lenders" shall mean (a) the Persons listed on Schedule 2.01 (other than any such Person that has ceased to be a party hereto pursuant to an Assignment and Acceptance) and (b) any Person that has become a party hereto pursuant to an Assignment and Acceptance.

"Liabilities" shall mean all claims, actions, suits, judgments, damages, losses, liability, obligations, responsibilities, fines, penalties, sanctions, costs, fees, taxes, commissions, charges, disbursements and expenses, in each case of any kind or nature (including interest accrued thereon or as a result thereto and (i) fees, charges and disbursements of financial, legal and other advisors and consultants, incurred in connection with any default or enforcement of rights hereunder or under any other Loan Document, or (ii) any other reasonable fees, charges and disbursements of financial, legal and other advisors and consultants), whether joint or several, whether or not indirect, contingent, consequential, actual, punitive, treble or otherwise.

"LIBO Rate" shall mean, with respect to any Eurodollar Borrowing for the Interest Period, the offered rate per annum for deposits of Dollars for the applicable Interest Period that appears on Reuters Screen LIBOR01 Page as of 11:00 A.M. (London, England time) two (2) Business Days prior to the first day in such Interest Period; provided that if no such offered rate exists, such rate will be the rate of interest per annum, as determined by the Administrative Agent at which deposits of Dollars in immediately available funds are offered at 11:00 A.M. (London, England time) two (2) Business Days prior to the first day in such Interest Period by major financial institutions reasonably satisfactory to the Administrative Agent in the London interbank market for such Interest Period for the applicable principal amount on such date of determination; provided that if no such offered rate exists, such rate will be the rate of interest per annum, as determined by the Administrative Agent at which deposits of Dollars in immediately available funds are offered at 11:00 A.M. (London, England time) on such day (or if such day is not a Business Day, on the prior Business Day) by major financial institutions reasonably satisfactory to the Administrative Agent in the London interbank market for an Interest Period of one month.

"LIBO Successor Rate" shall have the meaning set forth in Section 2.24.

"LIBO Successor Rate Conforming Changes" shall mean, with respect to any proposed LIBO Successor Rate, any conforming changes to the definition of Interest Period, timing and frequency of determining rates and making payments of interest and other administrative matters as may be appropriate, in the discretion of the Administrative Agent, to reflect the adoption of such LIBO Successor Rate and to permit the administration thereof by the Administrative Agent in a manner substantially consistent with market practice (or, if the Administrative Agent determines that adoption of any portion of such market practice is not administratively feasible or that no market practice for the administration of such LIBO Successor Rate exists, in such other manner of administration as the Administrative Agent reasonably determines in consultation with the Borrower).

"Lien" shall mean, with respect to any asset, (a) any mortgage, deed of trust, lien, pledge, encumbrance, charge or security interest in or on such asset and (b) the interest of a vendor or a

lessor under any conditional sale agreement, capital lease or title retention agreement (or any financing lease having substantially the same economic effect as any of the foregoing) relating to such asset.

"Loan Documents" shall mean (i) this Agreement, (ii) the Orders and the other Security Documents, (iii) the promissory notes, if any, executed and delivered pursuant to Section 2.05(c), (iv) [reserved], (v) each intercreditor agreement entered into by the Administrative Agent in accordance with the terms hereof, (vi) any other document, agreement or instrument designated by the Borrower and the Administrative Agent as a "Loan Document" and (vii) each other agreement, certificate, document or instrument delivered by a Loan Party in connection with any of the foregoing Loan Documents, whether or not specifically mentioned herein or therein.

"Loan Parties" shall mean the Borrower and the Guarantors.

"Loans" shall mean the Term Loans together with any PIK Interest added to the outstanding principal amount of the Loans pursuant to Section 2.26.

"Margin Stock" shall have the meaning assigned to such term in Regulation U.

"Material Adverse Effect" shall mean (a) a materially adverse effect on the condition, business, operations, or performance of the Borrower and the Subsidiaries, taken as a whole, other than as a direct result of the Cases, (b) a material impairment of the ability of the Borrower or any other Loan Party to perform any of its payment obligations under any Loan Document to which it is party or (c) a material impairment of the rights and remedies of or benefits available to the Lenders under any Loan Document.

"Material Indebtedness" shall mean (i) Indebtedness (other than the Obligations) and (ii) obligations in respect of one or more Hedging Agreements, in each case of any one or more of the Borrower or any Subsidiary in an aggregate principal amount exceeding $500,000. For purposes of determining Material Indebtedness, the "principal amount" of the obligations of the Borrower or any Subsidiary in respect of any Hedging Agreement at any time shall be the Agreement Value of such Hedging Agreement at such time.

"Material IP Rights" shall mean all Intellectual Property so designated on Schedule 1.01(b).

"Maturity Date" shall mean the earliest of (a) August 30, 2021, (the "Stated Maturity Date") (b) the consummation of a sale of all or substantially all of the assets of the Debtors pursuant to Bankruptcy Code Section 363 (c) the substantial consummation (as defined in Section 1101 of the Bankruptcy Code and which for purposes hereof shall be no later than the "effective date" thereof) of a plan of reorganization filed in the Case that is confirmed pursuant to an order entered by the Court and (d) the date of acceleration of the Loans and the termination of the Commitments with respect to the Facility pursuant to Section 7.01.

"Maximum Rate" shall have the meaning assigned to such term in Section 9.09.

"Milestones" has the meaning specified in Section 5.21.

"Minimum Amount" shall have the meaning set forth in Section 6.10(a).

"MNPI" shall mean all material non-public information delivered to or otherwise obtained by the Administrative Agent or the Lenders hereunder or pursuant to the Loan Documents concerning the Loan Parties and their Subsidiaries.

"Moody's" shall mean Moody's Investors Service, Inc., or any successor thereto.

"Mortgaged Properties" shall mean each parcel of real property and improvements thereon with respect to which a Mortgage is granted pursuant to Section 5.16 or any other Loan Document but only from and after the date such Mortgage is granted.

"Mortgages" shall mean the mortgages, deeds of trust, assignments of leases and rents, modifications and other security documents delivered pursuant to Section 5.16 or any other Loan Document.

"Multiemployer Plan" shall mean a multiemployer plan as defined in Section 4001(a)(3) of ERISA that the Borrower or any of its ERISA Affiliates sponsors or contributes to, or is required to contribute to, or with respect to which the Borrower or any other Loan Party or any of their respective ERISA Affiliates has or could reasonably be expected to have any liability (contingent or otherwise).

"National Flood Insurance Program" shall mean the program created by the U.S. Congress pursuant to the National Flood Insurance Act of 1968 and the Flood Disaster Protection Act of 1973, as revised by the National Flood Insurance Reform Act of 1994, that mandates the purchase of flood insurance to cover real property improvements located in Special Flood Hazard Areas in participating communities and provides protection to property owners through a U.S. federal insurance program.

"Net Cash Proceeds" shall mean:

(a) with respect to any Asset Sale by any Loan Party or any of its Subsidiaries, the excess, if any, of (i) cash proceeds received in respect of such transaction (including cash proceeds subsequently received (as and when received) in respect of noncash consideration initially received), over (ii) the sum of (A) the principal amount of any Indebtedness that is secured by the applicable asset and that is required to be repaid in connection with such transaction (other than (x) Indebtedness under the Loan Documents and (y) any such Indebtedness assumed by the purchaser of such asset), (B) the out-of-pocket expenses incurred by such Loan Party or such Subsidiary in connection with such transaction (in each case paid to a Person that is not an Affiliate of the Borrower or the Subsidiaries), (C) Taxes paid or reasonably estimated to be actually payable as a result of any gain recognized in connection therewith (including any Taxes that would be imposed on the distribution or repatriation of such proceeds), and (D) any reserve for adjustment in respect of (x) the sale price of such asset or assets established in accordance with GAAP and (y) any liabilities associated with such asset or assets and retained by any Loan Party or any of its Subsidiaries after such sale or other disposition thereof, including pension and other post-employment benefit liabilities and liabilities related to environmental matters or against any indemnification obligations associated with such transaction and reasonably estimated to be payable (provided that upon release of any such reserve, the amount released shall be considered Net Cash Proceeds for purposes of Section 2.14 received on such date);

(b) with respect to the incurrence or issuance of any Indebtedness, other than Permitted Indebtedness, by any Loan Party or any of its Subsidiaries, the excess of (i) the sum of the cash and Permitted Investments received in connection with such transaction over (ii) the underwriting discounts and commissions, and other out-of-pocket fees and expenses, paid in cash by such Loan Party or such Subsidiary (in each case paid to a Person that is not an Affiliate of the Borrower or the Subsidiaries); and

(c) with respect to any Extraordinary Property Receipt, the excess, if any, of (i) the cash proceeds received in respect of the Extraordinary Property Receipt over (ii) the sum of (A) the principal amount of any Indebtedness that is secured by the applicable asset and that is required to be repaid in connection with such proceeds (other than Indebtedness under the Loan Documents), (B) cash actually applied to repair or reconstruct the damaged property or property affected by the condemnation or taking, (C) all of the costs and expense paid in cash in connection with the collection of such proceeds, award or other payments, and (D) any amounts retained by or paid to parties having superior rights to such proceeds, awards or other payments.

"Obligations" means all principal of all Loans outstanding from time to time under this Agreement, all interest on such Loans and fees, premiums, expenses, and indemnifications related thereto and all other amounts liabilities and obligations now or hereafter payable by any Loan Party pursuant to the Loan Documents.

"OFAC" shall have the meaning assigned to such term in the definition of "Sanctions".

"Order" means the Interim Order or the Final Order, whichever is in effect at the time of any determination made hereunder, and "Orders" means the Interim Order and the Final Order, collectively.

"Original Jurisdiction" shall mean, in relation to a Loan Party, the jurisdiction under whose laws that Loan Party is incorporated as at the date of this Agreement or, in the case of a Person that becomes a Loan Party after the date hereof, as at the date on which such Person becomes a Borrower or Guarantor, (as the case may be).

"Other Connection Taxes" shall mean, 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" shall mean any and all present or future stamp, court or documentary, intangible, recording, filing taxes or similar taxes that arise from any payment made under any Loan Document or from the execution, delivery, performance or 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 or designation made pursuant to Section 2.22(a) or 2.22(b)).

"Participant Register" shall have the meaning assigned to such term in Section 9.04(f).

"Patents" shall mean all U.S. and foreign patents and patent applications (including provisional, continuation, divisional, continuation-in-part, reexamination revision, renewal, and reissue patent applications and any patents issuing therefrom, and any extension thereof), utility models and design patents.

"PBGC" shall mean the Pension Benefit Guaranty Corporation referred to and defined in ERISA.

"Permits" shall mean, with respect to any Person, any permit, approval, clearance, authorization, license, registration, certificate, concession, grant, franchise, variance or permission from any Governmental Authority, in each case applicable to or binding upon such Person or any of its property or Products or to which such Person or any of its property or Products is subject, including without limitation all Registrations.

"Permitted Collections Budget Variance" has the meaning set forth in Section 6.20.

"Permitted Debtor Professionals Expenditures Budget Variance" has the meaning set forth in Section 6.20.

"Permitted Expenditures Budget Variance" has the meaning set forth in Section 6.20.

"Permitted Indebtedness" shall mean any Indebtedness of any Loan Party that is not prohibited by Section 6.01 or any other provision of any Loan Document.

"Permitted Investments" shall mean:

(a) direct obligations of, or obligations the principal of and interest on which are unconditionally guaranteed by, the United States of America (or by any agency thereof to the extent such obligations are backed by the full faith and credit of the United States of America), in each case maturing within one year from the date of issuance thereof;

(b) investments in commercial paper maturing within 270 days from the date of issuance thereof and having, at such date of acquisition, the highest credit rating obtainable from S&P or from Moody's;

(c) investments in certificates of deposit, banker's acceptances and time deposits maturing within one year from the date of acquisition thereof issued or guaranteed by or placed with, and money market deposit accounts issued or offered by, the Administrative Agent, any Lender or any domestic office of any commercial bank that has a combined capital and surplus and undivided profits of not less than $500,000,000;

(d) fully collateralized repurchase agreements with a term of not more than one year for securities described in clause (a) above and entered into with a financial institution satisfying the criteria of clause (c) above;

(e) securities with maturities of one year or less from the date of acquisition issued or fully guaranteed by any state, commonwealth or territory of the United States, by any political subdivision or taxing authority of any such state, commonwealth or territory or by any foreign government, the securities of which state, commonwealth, territory, political subdivision, taxing authority or foreign government (as the case may be) are rated at least A by S&P or A by Moody's;

(f) securities with maturities of six months or less from the date of acquisition backed by standby letters issued by any Lender or any commercial bank satisfying the requirement of clause (c) of this definition; and

(g) money market funds that (i) comply with the criteria set forth in SEC Rule 2a-7 under the Investment Company Act of 1940, as amended, (ii) are rated AAA by S&P and Aaa by Moody's and (iii) have portfolio assets of at least $5,000,000,000.

"Permitted Variance" has the meaning set forth in Section 6.20.

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

"Personal Information" shall mean all information in any form or media that identifies, could be used to identify or is otherwise related to an individual person (including any current, prospective, or former customer, end user or employee), in addition to any definition for "personal information" or any similar term provided by applicable Requirements of Law or by the Borrower or any of its Subsidiaries in any of its privacy policies, notices or contracts (e.g., "personal data," "protected health information," "personally identifiable information" or "PII").

"Petition Date" has the meaning specified in the introductory clause hereto.

"PIK Interest" shall mean payment-in-kind of interest in respect of the Loans by increasing the outstanding principal amount thereof by an amount equal to such portion of interest, rather than paying such portion of interest in cash.

"Plan" shall mean any employee pension benefit plan (within the meaning of Section 3(2) of ERISA, and excluding Multiemployer Plans) subject to the provisions of Title IV of ERISA or of the Code or Section 303 of ERISA in respect of which the Borrower or any of its ERISA Affiliates sponsors, contributes to, is required to contribute to or has or could reasonably be expected to have any liability (contingent or otherwise).

"Platform" shall have the meaning assigned to such term in Section 9.01.

"Pledged Collateral" shall have the meaning assigned to such term in Section 3.19(a).

"Pledged Equity Interests" shall have the meaning assigned to such term in the Guarantee and Collateral Agreement.

"PPP Loan Permitted Purposes" means "allowable uses of covered loans" as defined in 15 U.S.C. §636(a)(36)(F) as added by section 1102(a)(2) of the CARES Act.

"Prepetition 2019 Convertible Notes" means those certain convertible notes of the Borrower issued pursuant to the 2019 Convertible Notes Documentation; provided that such Prepetition 2019 Convertible Notes (i) shall at all times remain unsecured, (ii) other than as a result of an acceleration thereof resulting from the filing of the Cases, shall not mature at any time prior to January 4, 2024, (iii) shall not require any cash interest payments prior to maturity and (iv) shall be subordinated in right of payment to the Loans and the other Obligations pursuant to the Orders.

"Prepetition 2019 Convertible Notes Documentation" means the documentation in the form attached as Exhibit A to the Third Amendment to the Prepetition Credit Agreement.

"Prepetition Credit Agreement Administrative Agent" means HFS, as administrative agent for the Prepetition Lenders.

"Prepetition Credit Agreement Collateral Agent" means HFS, as collateral agent for the Secured Parties (as defined in the Prepetition Credit Agreement), including, without limitation, the Prepetition Lenders and the Prepetition Note Holders.

"Prepetition Credit Agreement" means that certain Credit Agreement, dated as of October 5, 2018, among the Borrower, the Prepetition Lenders and the Prepetition Credit Agreement Administrative Agent and the Prepetition Credit Agreement Collateral Agent (as amended by that certain Amendment No. 1 to Credit Agreement, dated as of June 14, 2019, that certain Amendment No. 2 to Credit Agreement and Limited Waiver, dated as of September 25, 2019, that certain Amendment No. 3 to Credit Agreement, dated as of December 31, 2019, that certain Amendment No. 4 to Credit Agreement, Amendment No. 1 to Guarantee and Collateral Agreement and Forbearance Agreement, dated as of April 3, 2020 (as amended by that certain Amendment No. 5 to Credit Agreement and Amendment No. 1 to Amendment No. 4 to Credit Agreement, Amendment No. 1 to Guarantee and Collateral Agreement and Forbearance Agreement, dated as of May 19, 2020 ("Amendment No. 5"), that certain Amendment No. 2 to Amendment No. 4 to

Credit Agreement, Amendment No. 1 to Guarantee and Collateral Agreement and Forbearance Agreement, dated as of October 2, 2020, that certain Amendment No. 3 to Amendment No. 4 to Credit Agreement, Amendment No. 1 to Guarantee and Collateral Agreement and Forbearance Agreement, dated as of November 5, 2020, that certain Amendment No. 4 to Amendment No. 4 to Credit Agreement, Amendment No. 1 to Guarantee and Collateral Agreement and Forbearance Agreement, dated as of November 13, 2020, that certain Amendment No. 6 to Credit Agreement and Amendment No. 5 to Amendment No. 4 to Credit Agreement, Amendment No. 1 to Guarantee and Collateral Agreement and Forbearance Agreement, dated as of March 9, 2021 ("Amendment No. 6"), that certain Amendment No. 6 to Amendment No. 4 to Credit Agreement, Amendment No. 1 to Guarantee and Collateral Agreement and Forbearance Agreement, dated as of April 2, 2021, and that certain Amendment No. 7 to Credit Agreement and Amendment No. 7 to Amendment No. 4 to Credit Agreement, Amendment No. 1 to Guarantee and Collateral Agreement and Forbearance Agreement, dated as of May 5, 2021 ("Amendment No. 7")), Amendment No. 5, Amendment No. 6 and Amendment No. 7 and as further amended, restated, amended and restated, supplemented and/or otherwise modified from time to time.

"Prepetition Indebtedness" means Indebtedness of the Loan Parties outstanding on the Petition Date, including Indebtedness under the Prepetition Credit Agreement and the Prepetition Senior Notes.

"Prepetition Loans" means any term loans of Prepetition Lenders under the Prepetition Credit Agreement (excluding any unfunded commitments).

"Prepetition Lenders" means the several lenders from time to time party to the Prepetition Credit Agreement.

"Prepetition Note Agreement" shall mean that certain Note Agreement, dated as of April 3, 2020, by and among, *inter alios*, the Borrower, the Prepetition Note Holders and HFS, as Note Holder Representative, as the same may be amended, restated, amended and restated, supplemented and/or otherwise modified from time to time.

"Prepetition Note Holder" shall have the meaning ascribed to the term "Holder" in the Prepetition Note Agreement.

"Prepetition Note Holder Representative" shall have the meaning ascribed to the term "Holder Representative" in the Prepetition Note Agreement.

"Prepetition Obligations" means the Prepetition Loans, the interest and fees thereon, the Prepetition Senior Notes, the interest and fees thereon, and the other Obligations (as defined in the Prepetition Credit Agreement).

"Prepetition PPP Lender" means Truist Bank, a North Carolina banking corporation.

"Prepetition PPP Loan" means that certain unsecured term loan in an original principal amount of $2,010,901 that the Borrower borrowed from the PPP Lender, on April 20, 2020, pursuant to that certain Paycheck Protection Program Promissory Note, dated as of April 20, 2020.

"Prepetition Senior Notes" means (i) that certain Secured Note, dated as of April 3, 2020, in the original face amount of $12,000,000.00, (ii) that certain Secured Note, dated as of May 26, 2020, in the original face amount of $5,000,000.00, (iii) that certain Secured Note, dated as of May 5, 2021, in the original face amount of $1,000,000, (iv) that certain Secured Note, dated as of May 12, 2021, in the original face amount of $2,000,000 and (v) that certain Secured Note, dated as of May 20, 2021, in the original face amount of $2,000,000, which the Borrower issued to the Prepetition Note Holders under the Prepetition Note Agreement.

"Pro Forma Basis" shall mean, for purposes of calculating compliance with the Financial Covenant or any other financial ratio or tests, such calculation shall be made in accordance with Section 1.03.

"Professional Fees Account" means the segregated account where the Debtors will deposit and hold amounts in trust to pay unpaid Allowed Professional Fees, in strict compliance with the terms of the Interim Order and the Final Order.

"Product Development and Commercialization Activities" shall mean, with respect to any Product, any combination of research, development, manufacture, importation, use, sale, storage, design, labeling, marketing, promotion, supply, distribution, testing, packaging, purchasing or other commercialization activities, receipt of payment in respect of any of the foregoing, including, without limitation, in respect of licensing, royalty or similar payments, or any similar or other activities the purpose of which is to commercially exploit such Product.

"Products" shall mean any current or future product developed, manufactured, licensed, marketed, sold or otherwise commercialized by the Borrower or any of its Subsidiaries, including any such product in development or which may be developed.

"Public Lender" shall have the meaning assigned to such term in Section 9.01.

"QFC" shall have the meaning set forth in Section 9.22(b).

"QFC Credit Support" shall have the meaning set forth in Section 9.22.

"Qualified Capital Stock" of any Person shall mean any Equity Interest of such Person that is not Disqualified Stock.

"Recipient" shall have the meaning assigned to such term in the definition of "Excluded Taxes".

"Reference Treasury Dealer" shall mean each of two leading primary United States government securities dealers in New York City designated by the Agent in writing; provided that if any of the foregoing shall cease to be a primary United States government securities dealer in New York City (a "Primary Treasury Dealer"), the Agent will substitute therefor another Primary Treasury Dealer.

"Reference Treasury Dealer Quotation" shall mean, with respect to each Reference Treasury Dealer and any repayment or prepayment date, the average, as determined by the Independent Investment Banker, of the bid and asked prices for the Comparable Treasury Issue

(expressed in each case as a percentage of its principal amount) quoted in writing to the Independent Investment Banker by such Reference Treasury Dealer at 3:30 pm New York time on the third business day preceding such repayment or prepayment date.

"Register" shall have the meaning assigned to such term in Section 9.04(d).

"Registered Intellectual Property" shall mean all Copyrights, Patents and Trademarks owned or purported to be owned by any Loan Parties that are the subject of an application or registration before the United States Patent and Trademark Office or the United States Copyright Office or any foreign equivalent.

"Registrations" shall mean all Permits and exemptions issued or allowed by any Governmental Authority held by any Loan Party or any of its Subsidiaries, that are required for the operation of the business of any Loan Party or any of its Subsidiaries or the Products (including, without limitation, the provision of clinical or non-clinical research and related services).

"Regulation U" shall mean Regulation U of the Board as from time to time in effect and all official rulings and interpretations thereunder or thereof.

"Regulation X" shall mean Regulation X of the Board as from time to time in effect and all official rulings and interpretations thereunder or thereof.

"Regulatory Authority" shall mean any Governmental Authority that is concerned with or has regulatory oversight with respect to the use, control, safety, efficacy, reliability, manufacturing, marketing, distribution, sale or other Product Development and Commercialization Activities relating to any Product, including the FDA, the FTC and all equivalents of such entities in other jurisdictions.

"Regulatory Authorizations" shall mean, with respect to the Products, that each Product has been and is lawfully marketed by the Loan Parties either: (i) pursuant to an FDA-approved new drug application or abbreviated new drug application; (ii) in conformity and compliance with an applicable FDA Over-The-Counter Monograph; and/or (iii) in conformity and compliance with all applicable laws, regulations, enforcement and policies of any Regulatory Authority respecting any Product.

"Related Fund" shall mean, with respect to any Lender that is a fund or commingled investment vehicle, any other fund that invests in bank loans and is managed or advised by the same investment advisor or manager as such Lender or by an Affiliate of such investment advisor.

"Related Parties" shall mean, with respect to any specified Person, such Person's Affiliates and the respective directors, trustees, officers, employees, agents and advisors of such Person and such Person's Affiliates.

"Release" shall mean any release, spill, emission, escape, leaking, dumping, injection, pouring, deposit, disposal, discharge, dispersal, leaching or migration into or through the environment or any natural or man-made structure.

"Relevant Jurisdiction" shall mean, in relation to a Loan Party:

(a) its Original Jurisdiction;

(b) any jurisdiction where any asset subject to or intended to be part of the Collateral to be created or granted by it is situated;

(c) any jurisdiction where it conducts its business; and

(d) the jurisdiction whose laws govern the perfection or priority of the Lien granted by any of the Security Documents entered into by it.

"Representative" shall mean at any time, any third-party Person acting for or on behalf of another Person as its representative in connection with a transaction or activity.

"Required Lenders" shall mean, at any time, (a) the Lenders having Loans or unused Commitments representing more than 50% of the sum of all Loans and unused Commitments outstanding at such time and (b) to the extent existing as a Lender on any date of determination, each Hayfin Lender.

"Requirement of Law" shall mean, as to any Person, any law (statutory or common), ordinance, treaty, rule, regulation, order, policy, other legal requirement or determination of an arbitrator or of a Governmental Authority, in each case applicable to or binding upon such Person or any of its property or Products or to which such Person or any of its property or Products is subject.

"Resignation Effective Date" shall have the meaning assigned to such term in Section 8.06(a).

"Resolution Authority" means an EEA Resolution Authority or, with respect to any UK Financial Institution, a UK Resolution Authority.

"Responsible Officer" of any Person shall mean any executive officer or Financial Officer of such Person and any other officer or similar official thereof responsible for the administration of the obligations of such Person in respect of this Agreement.

"Restricted Payment" shall mean (i) any dividend or other distribution (whether in cash, securities or other property) with respect to any Equity Interests in the Borrower or any Subsidiary (but excluding any such dividend or other distribution payable solely in shares of the same Equity Interests) and (ii) any payment (whether in cash, securities or other property), including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, acquisition, cancellation or termination of any Equity Interests in the Borrower or any Subsidiary.

"S&P" shall mean Standard & Poor's Ratings Group, or any successor thereto.

"Sale Order" shall have the meaning assigned to such term in the Stalking Horse APA.

"Sanctioned Jurisdiction" shall mean at any time, a country, region or territory which is itself the subject or target of any comprehensive, jurisdiction-wide Sanctions broadly prohibiting

dealings with such country, region or territory (at the time of this Agreement, the Crimea Region of Ukraine, Cuba, Iran, North Korea and Syria).

"Sanctioned Person" shall mean at any time, any Person with whom dealings are restricted or prohibited under Sanctions, including (a) any Person listed in any publicly-available Sanctions-related list maintained by OFAC, the U.S. Department of State, the U.S. Department of Commerce, the United Nations Security Council, the European Union, any European Union member state, Her Majesty's Treasury of the United Kingdom, or other sanctions enforcement authority with jurisdiction over any of the Loan Parties' acts or transactions under or relating to this Agreement, (b) any Person located, organized or resident in a Sanctioned Jurisdiction, (c) any Person controlled by any such Person or Persons described in the foregoing clauses (a) or (b), or (d) any Person who is 50% or more directly or indirectly owned by one or, in the aggregate more than one Person described in the foregoing clauses (a), (b) or (c).

"Sanctions" shall mean all economic or financial sanctions or trade embargoes imposed, administered or enforced from time to time by (a) the U.S. government, including those administered by the U.S. Department of Treasury's Office of Foreign Assets Control ("OFAC"), the U.S. Department of State or the U.S. Department of Commerce, (b) the United Nations Security Council, (c) the European Union or any European Union member state, (d) Her Majesty's Treasury of the United Kingdom, (e) the government of any other country in which the Borrower or any of its Subsidiaries maintains regular business operations, or (f) any other sanctions enforcement authority with jurisdiction over any of the Loan Parties' acts or transactions under or relating to this Agreement.

"Scheduled Unavailability Date" shall have the meaning assigned to such term in Section 2.24(b).

"Secured Parties" means the Collateral Agent, the Administrative Agent, each Lender, each Indemnitee and each other holder of any Obligation of a Loan Party.

"Security Documents" shall mean the Guarantee and Collateral Agreement and each of the security agreements, the Orders, Mortgages, the DIP Funding Account Control Agreement and other instruments, supplements, replacements, each other agreement pursuant to which any of the Collateral Agent or any of the other Secured Parties is granted a Lien to secure the Obligations, and other documents executed and delivered pursuant to any of the foregoing or pursuant to Section 5.11. The Security Documents (other than the Orders) shall supplement and shall not limit the security interests granted pursuant to the Orders; provided, that in the event of any inconsistency between the Security Documents and the Orders, the Orders shall control in all respects.

"Settlement Date" shall have the meaning assigned to such term in Section 2.20(a).

"Software" means any and all (a) computer programs, including any and all software implementation of algorithms, models and methodologies, whether in source code, object code, human readable form or other form, (b) databases and compilations, including any and all data and collections of data, whether machine readable or otherwise, (c) descriptions, flow charts and other work products used to design, plan, organize and develop any of the foregoing, screens, user

interfaces, report formats, firmware, development tools, templates, menus, buttons and icons and (d) documentation relating to any of the foregoing, including user manuals and other training documentation.

"Special Flood Hazard Area" shall mean an area that FEMA's current flood maps indicate has at least a one percent (1%) chance of a flood equal to or exceeding the base flood elevation (a 100-year flood) in any given year.

"Stalking Horse APA" shall have the meaning assigned to such term in the Bidding Procedures Motion.

"Stalking Horse Transaction" shall have the meaning assigned to the term "Sale" in the Bidding Procedures Motion.

"Statutory Reserves" shall mean 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 Board and any other banking authority, domestic or foreign, to which the Administrative Agent or any Lender (including any branch, Affiliate or other fronting office making or holding a Loan) is subject for Eurocurrency Liabilities (as defined in Regulation D of the Board). Eurodollar Loans shall be deemed to constitute Eurocurrency Liabilities (as defined in Regulation D of the Board) 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. Statutory Reserves shall be adjusted automatically on and as of the effective date of any change in any reserve percentage.

"Subject Property" shall mean the parcel of real property together with fixtures and improvements thereon owned by Bionome Properties Corp. located at 865 Blue Ridge Road, Black Mountain, NC 28711.

"subsidiary" shall mean, with respect to any Person (herein referred to as the "parent"), any corporation, partnership, limited liability company, association or other business entity (a) of which securities or other ownership interests representing more than 50% of the equity or more than 50% of the ordinary voting power or more than 50% of the general partnership interests are, at the time any determination is being made, owned, Controlled or held, or (b) that is, at the time any determination is made, otherwise Controlled, by the parent or one or more subsidiaries of the parent or by the parent and one or more subsidiaries of the parent.

"Subsidiary" shall mean any, direct or indirect, subsidiary of the Borrower, including, without limitation, Relion, Bionome, QAA and the IP Subsidiary.

"Supported QFC" shall have the meaning set forth in Section 9.22.

"Taxes" shall mean any and 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.

"Technology" means, collectively, all Software, information, designs, formulae, algorithms, procedures, methods, techniques, ideas, know-how, research and development, technical data, programs, subroutines, tools, materials, specifications, processes, inventions (whether patentable or unpatentable and whether or not reduced to practice), apparatus, creations, improvements, works of authorship and other similar materials, and all recordings, graphs, drawings, reports, analyses, and other writings, and other tangible embodiments of the foregoing, in any form whether or not specifically listed herein, and all related technology, that are used in, incorporated in, embodied in, displayed by or relate to, or are used in connection with the foregoing.

"Term Borrowing" shall mean a Borrowing comprised of Term Loans.

"Term Lender" shall mean a Lender with a Term Loan Commitment or an outstanding Term Loan.

"Term Loan" shall mean any term loan made by a Lender hereunder pursuant to Section 2.01.

"Term Loan Commitment" shall mean, with respect to each Lender, the commitment of such Lender to make Term Loans hereunder in the amount set forth on Schedule 2.01, or in the Assignment and Acceptance pursuant to which such Lender assumed its Term Loan Commitment, as applicable, as the same may be (a) reduced from time to time pursuant to Section 2.10 and (b) reduced or increased from time to time pursuant to assignments by or to such Lender pursuant to Section 9.04.

"Trade Secrets" shall mean all trade secrets or other confidential or proprietary information, including but not limited to ideas, know-how, discoveries and improvements, testing information, research and development information, invention disclosures, unpatented blueprints, drawings, specifications, proposals and technical data, market surveys, customer lists, forms and types of financial, business, scientific, technical, economic, or engineering information, patterns, plans (including business and marketing plans), compilations, program devices, formulas, designs, prototypes, methods, techniques and processes (including manufacturing techniques and processes), materials, compositions, technologies, inventions, inventor's notes, procedures, programs or codes, whether tangible or intangible.

"Trademarks" shall mean all U.S. and foreign registered and unregistered trademarks, service marks, trade names, brand names, corporate names, logos, slogans, trade dress, trade styles and other similar designations of commercial source or origin, together with all registrations and applications to register, and renewals of the foregoing anywhere in the world, and the goodwill symbolized by any of the foregoing.

"Transaction Fees" shall mean fees and expenses incurred in connection with the Transactions.

"Transactions" shall mean, collectively, (a) the execution, delivery and performance by the Loan Parties of the Loan Documents to which they are a party and the making of the Borrowings hereunder, (b) the creation of the Liens pursuant to the Security Agreements, the Interim Order and the Final Order, and (c) the payment of related fees and expenses.

"Treasury Rate" shall mean, with respect to any repayment or prepayment date, the rate per annum equal to the semiannual equivalent yield to maturity or interpolated maturity (on a day count basis) of the Comparable Treasury Issue, assuming a price for the Comparable Treasury Issue (expressed as a percentage of its principal amount) equal to the Comparable Treasury Price for such repayment or prepayment date.

"Type", when used in respect of any Loan or Borrowing, shall refer to the Rate by reference to which interest on such Loan or on the Loans comprising such Borrowing is determined. For purposes hereof, the term "Rate" shall mean the Adjusted LIBO Rate.

"UCC" means the Uniform Commercial Code as the same may from time to time be in effect in the State of New York or the Uniform Commercial Code (or similar code or statute) of another jurisdiction, to the extent it may be required to apply to any item or items of Collateral.

"U.S. Special Resolution Regimes" shall have the meaning set forth in Section 9.22.

"UK Financial Institution" means any BRRD Undertaking (as such term is defined under the PRA Rulebook (as amended form time to time) promulgated by the United Kingdom Prudential Regulation Authority) or any person falling within IFPRU 11.6 of the FCA Handbook (as amended from time to time) promulgated by the United Kingdom Financial Conduct Authority, which includes certain credit institutions and investment firms, and certain affiliates of such credit institutions or investment firms.

"UK Resolution Authority" means the Bank of England or any other public administrative authority having responsibility for the resolution of any UK Financial Institution.

"Uncovered Day" means any day which (i) occurs after the Closing Date and (ii) is not included in the period covered by either the then in effect Approved Budget or a previously in effect Approved Budget.

"United States" and "U.S." shall mean the United States of America.

"Unused Initial Borrowing Amount" shall mean, on any date of determination, the amount equal to the Initial Borrowing Amount *minus* the aggregate principal amount of Loans made by the Lenders prior to such date of determination.

"USA PATRIOT Act" shall mean The Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (Title III of Pub. L. No. 107-56 (signed into law October 26, 2001)), as amended.

"Withdrawal Liability" shall mean liability to a Multiemployer Plan as a result of a complete or partial withdrawal from such Multiemployer Plan, as such terms are defined in Part I of Subtitle E of Title IV of ERISA.

"Withholding Agent" shall mean any Loan Party and the Administrative Agent.

"Write-Down and Conversion Powers" means, (a) with respect to any EEA Resolution Authority, the write-down and conversion powers of such EEA Resolution Authority from time to

time under the Bail-In Legislation for the applicable EEA Member Country, which write-down and conversion powers are described in the EU Bail-In Legislation Schedule, and (b) with respect to the United Kingdom, any powers of the applicable Resolution Authority under the Bail-In Legislation to cancel, reduce, modify or change the form of a liability of any UK Financial Institution or any contract or instrument under which that liability arises, to convert all or part of that liability into shares, securities or obligations of that person or any other person, to provide that any such contract or instrument is to have effect as if a right had been exercised under it or to suspend any obligation in respect of that liability or any of the powers under that Bail-In Legislation that are related to or ancillary to any of those powers.

SECTION 1.02. ***Terms Generally***. The definitions in Section 1.01 shall apply equally to both 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" and the word "or" shall not be exclusive. The word "will" shall be construed to have the same meaning and effect as the word "shall"; and the words "asset" and "property" shall be construed as having the same meaning and effect and to refer to any and all tangible and intangible assets and properties, real or personal, including cash, securities, accounts and contract rights. All references to "knowledge" or "awareness" of a Loan Party shall mean the actual knowledge of a Responsible Officer thereof. All references herein to Articles, Sections, Exhibits and Schedules shall be deemed references to Articles and Sections of, and Exhibits and Schedules to, this Agreement unless the context shall otherwise require. Except as otherwise expressly provided herein, (a) any reference in this Agreement to any Loan Document (including this Agreement), or any other agreement or document shall mean such document or agreement as amended, restated, supplemented or otherwise modified from time to time, in each case, in a manner not prohibited by the express terms of this Agreement, any reference to a Person shall include its successors and permitted assigns, all references to statutes and related regulations shall include any amendments to the same and any successor statutes and regulations; (b) 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 referred to in Section 3.05(a)(i); provided that, notwithstanding the foregoing, for purposes of determining compliance with any covenant (including the computation of any financial covenant) contained herein, Indebtedness of the Borrower and its Subsidiaries shall be deemed to be carried at 100% of the outstanding principal amount thereof, and the effects of FASB ASC 825 and FASB ASC 470-20 on financial liabilities shall be disregarded; and (c) 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 Administrative 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, (A) such ratio or requirement shall continue to be computed in accordance with GAAP prior to such change therein and (B) the Borrower shall provide to the Administrative 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 that, without limiting the

foregoing, leases (including, without limitation, capital leases) shall continue to be classified and accounted for on a basis consistent with that reflected in the audited financial statements referred to in Section 3.05(a)(i) for all purposes of this Agreement, notwithstanding any change in GAAP relating thereto, unless the parties hereto shall enter into a mutually acceptable amendment addressing such changes, as provided for above. For purposes of preparing financial statements, amounts in any currency other than Dollars will be converted to Dollars based on GAAP, consistently applied, for the purposes of preparing cash flow statements and income statements.

SECTION 1.03. ***[Reserved].***

SECTION 1.04. ***Classification of Loans and Borrowings.*** For purposes of this Agreement, Loans may be classified and referred to by Type (*e.g.*, a "Eurodollar Loan"). Borrowings also may be classified and referred to by Type (*e.g.*, a "Eurodollar Borrowing").

SECTION 1.05. ***Certification.*** All certificates and other statements required to be made by any officer, director or employee of a Loan Party pursuant to any Loan Document are and will be made in its capacity as an officer, director or employee of a Loan Party and not in such officer's, director's or employee's individual capacity.

SECTION 1.06. ***Exchange Rates.*** Unless otherwise expressly set forth herein or therein, wherever in this Agreement or any other Loan Agreement, an amount contained in a representation, warranty, covenant or Event of Default related thereto is expressed in Dollars, but a relevant currency applicable thereto is denominated in another currency, such amount will be deemed to be the Dollar Equivalent thereof. Unless otherwise specified herein, all determinations of Dollar Equivalents shall be determined by reference to the Wall Street Journal published on the Business Day closest in time to the relevant date of determination or for the relevant period of determination (or if such reference is not available, by such other method reasonably determined by Administrative Agent). Any such determination or redetermination by Administrative Agent shall be conclusive and binding for all purposes, absent manifest error. For purposes of determining compliance with Article VI with respect to any amount of Indebtedness, Lien or Investment permitted to be made or incurred in a currency other than Dollars, no Default or Event of Default shall be deemed to have occurred solely as a result of changes in rates of currency exchange occurring after the time such Indebtedness, Lien or Investment is made or incurred (so long as such Indebtedness, Lien or Investment, at the time incurred, made or acquired, was permitted hereunder).

SECTION 1.07. ***Judgment Currency.*** If, for the purposes of obtaining judgment in any court, it is necessary to convert a sum due hereunder or any other Loan Document in one currency into another currency, the rate of exchange used shall be that at which in accordance with normal banking procedures Administrative Agent could purchase the first currency with such other currency on the Business Day preceding that on which final judgment is given. The obligation of any Loan Party in respect of any such sum due from it to Administrative Agent, Collateral Agent, any Lender, any other Secured Party or any Indemnitee hereunder or under the other Loan Documents shall, notwithstanding any judgment in a currency (the "Judgment Currency") other than that in which such sum is denominated in accordance with the applicable provisions of this Agreement (the "Agreement Currency"), be discharged only to the extent that on the Business Day following receipt by Agent of any sum adjudged to be so due in the Judgment Currency,

Administrative Agent may in accordance with normal banking procedures purchase the Agreement Currency with the Judgment Currency. If the amount of the Agreement Currency so purchased is less than the sum originally due from the applicable Loan Parties in the Agreement Currency, such Loan Parties agree, as a separate obligation and notwithstanding any such judgment, to indemnify Administrative Agent or the Person to whom such obligation was owing against such loss.

ARTICLE II

The Credits

SECTION 2.01. ***Commitments***. Subject to the terms and conditions and relying upon the stipulations, representations and warranties set forth herein and in the Orders, each Lender with a Term Loan Commitment agrees, severally and not jointly, upon written request by the Borrower in accordance with this Agreement and the applicable Order, to make Term Loans to the Borrower in an aggregate amount not to exceed such Lender's Term Commitment in mulitple Borrowings (subject to the limitations contained herein and the Orders) on and after the date of entry of the Interim Order and prior to the Maturity Date; provided, that (i) after giving effect to the making of any Term Loans, in no event shall the aggregate principal amount of all Term Loans pending extension exceed the unused portion of the Term Commitments at such time, (ii) the aggregate amount of Term Loans made prior to the entry of the Final Order shall not exceed the Initial Borrowing Amount, (iii) on and after the entry of the Final Order there shall only be one (1) Borrowing of Term Loans (such Borrowing, the "Final Borrowing") and (iv) there shall be no more than one (1) Initial Borrowing in any calendar week. Amounts borrowed under this Section 2.01 that are repaid or prepaid may not be reborrowed.

SECTION 2.02. ***Loans.***

(a) Each Loan shall be made as part of a Borrowing consisting of Loans made by the Lenders ratably in accordance with their applicable Commitments; provided, that the failure of any Lender to make any Loan shall not in itself relieve any other Lender of its obligation to lend hereunder (it being understood, however, that no Lender shall be responsible for the failure of any other Lender to make any Loan required to be made by such other Lender). The Term Loans shall be in Dollars and made by the Lenders in multiple Borrowings (subject to the limitations contained herein and the Orders) on and after the date of entry of the Interim Order and prior to the Maturity Date; provided, that, on and after the entry of the Final Order there shall only be the single Final Borrowing; provided, further that, (i), subject to the following proviso, any Initial Borrowing shall be in a prinicpal amount (x) that is not less than $500,000 and (y) not greater than the lesser of (A) 110% of the aggregate amount of budgeted disbursements set forth in the Approved Budget for the calendar week following immediately after such Initial Borrowing and (B) the applicable Unused Initial Borrowing Amount, (ii) the Final Borrowing shall be in a principal amount that does not exceed the amount of unused Commitments in

effect on the date of such Final Borrowing and (iii) there shall be no more than one (1) Initial Borrowing in any calendar week; provided, further, that if the DIP Funding Account Effective Date occurs prior the entry of the Final Order, there may only be one Initial Borrowing on or after such DIP Funding Account Effective Date and such Initial Borrowing shall be in a principal amount equal to the applicable Unused Initial Borrowing Amount (which shall be funded into the DIP Funding Account in accordance with the final sentence of Section 2.04).

(b) Subject to Sections 2.09 and 2.16, each Borrowing shall be comprised entirely of Eurodollar Loans. Each Lender may at its option make any Eurodollar Loan by causing any domestic or foreign branch or Affiliate of such Lender to make such Loan; provided that any exercise of such option shall not affect the obligation of the Borrower to repay such Loan in accordance with the terms of this Agreement.

(c) Each Lender shall, after having received notice of the requested Borrowing in accordance with Section 2.03, make each Loan to be made by it hereunder on the proposed date thereof by wire transfer of immediately available funds to such account as Administrative Agent may designate not later than 1:00 p.m., New York City time, and Administrative Agent shall promptly credit the amounts so received to an account designated by the Borrower in the applicable Borrowing Request or, if a Borrowing shall not occur on such date because any condition precedent herein specified shall not have been met, return the amounts so received to the respective Lenders. The Administrative Agent and each Lender shall be entitled to rely upon, and shall be fully protected in relying upon, any notices (including, without limitation, Borrowing Requests) from the Borrower believed by such Persons to be genuine. The Administrative Agent and each Lender may assume that each Person executing and delivering such a notice was duly authorized, unless the responsible individual acting thereon for the Administrative Agent or such Lender has actual knowledge to the contrary; provided none of the Administrative Agent or any Lender shall be required to verify the veracity of any such written notice before acting on the same.

(d) Unless the Administrative Agent shall have received notice from a Lender prior to the date of any Borrowing that such Lender will not make available to the Administrative Agent such Lender's portion of such Borrowing, the Administrative Agent may assume that such Lender has made such portion available to the Administrative Agent on the date of such Borrowing in accordance with Section 2.02(c) above and the Administrative Agent may (but

shall be under no obligation to), in reliance upon such assumption, make available to the Borrower on such date a corresponding amount. If the Administrative Agent shall have so made funds available then, to the extent that such Lender shall not have made such portion available to the Administrative Agent, such Lender and the Borrower severally agree to repay to the Administrative Agent forthwith on demand such corresponding amount together with interest thereon, for each day from the date such amount is made available to the Borrower to but excluding the date such amount is repaid to the Administrative Agent at (i) in the case of the Borrower, a rate per annum equal to the interest rate applicable at the time to the Loans comprising such Borrowing and (ii) in the case of such Lender, a rate determined by the Administrative Agent to represent its cost of overnight or short-term funds (which determination shall be conclusive absent manifest error). If such Lender shall repay to the Administrative Agent such corresponding amount, such amount shall constitute such Lender's Loan as part of such Borrowing for purposes of this Agreement.

(e) If the Administrative Agent pays an amount to a Lender under this Agreement in the belief or expectation that a related payment has been or will be received by Administrative Agent from the Borrower and such related payment is not received by Administrative Agent, then Administrative Agent will be entitled to recover such amount from such Lender on demand without setoff, counterclaim or deduction of any kind. If the Administrative Agent determines at any time that any amount received by the Administrative Agent under this Agreement or any other Loan Document must be returned to any Loan Party or paid to any other Person pursuant to any insolvency law or otherwise, then, notwithstanding any other term or condition of this Agreement or any other Loan Document, the Administrative Agent will not be required to distribute any portion thereof to any Lender. In addition, each Lender will repay to the Administrative Agent on demand any portion of such amount that the Administrative Agent has distributed to such Lender, together with interest at such rate, if any, as the Administrative Agent is required to pay to the Borrower or such other Person, without setoff, counterclaim or deduction of any kind, and the Administrative Agent will be entitled to set-off against future distributions to such Lender any such amounts (with interest) that are not repaid on demand.

SECTION 2.03. ***Borrowing Procedure.***

Each Borrowing shall be made upon the Borrower's irrevocable written notice delivered to the Administrative Agent substantially in the form of a Borrowing Request or in a writing in any other form acceptable to the Administrative Agent, which notice must be received by the

Administrative Agent prior to 10:00 a.m. (New York City time) on the day which is (i) five (5) Business Days prior to the requested Borrowing with respect to any Borrowing that occurs prior to the entry of the Final Order (any such Borrowing, an "Initial Borrowing") and (ii) twelve (12) Business Days prior to the requested Borrowing with respect to the Final Borrowing. Such Borrowing Request shall specify:

(a) the amount of the Borrowing, which (i), subject to the following proviso, in the case of any Initial Borrowing shall be in a principal amount (x) that is not less than $500,000 and (y) not greater than the lesser of (A) 110% of the aggregate amount of budgeted disbursements set forth in the Approved Budget for the calendar week following immediately after the proposed Borrowing date of the requested Initial Borrowing and (B) the applicable Unused Initial Borrowing Amount and (ii) in the case of the Final Borrowing shall be in a principal amount that does not exceed the amount of unused Commitments in effect on the proposed Final Borrowing date; provided, that if the DIP Funding Account Effective Date occurs prior the entry of the Final Order, there may only be one Initial Borrowing on or after such DIP Funding Account Effective Date and the amount of the Borrowing requested in the Borrowing Request in respect of such Initial Borrowing shall be in a principal amount equal to the applicable Unused Initial Borrowing Amount (which shall be funded into the DIP Funding Account in accordance with the final sentence of this Section 2.04);

(b) the requested Borrowing date, which shall be a Business Day; and

(c) in the case of any Borrowing that occurs prior to the DIP Funding Account Effective Date, the number and location of the account (which shall be an account of the Borrower which is not an Excluded Account) to which funds are to be disbursed.

Upon receipt of a Borrowing Request, the Administrative Agent will promptly notify each applicable Lender of such Borrowing Request and of the amount of such Lender's portion of the Borrowing. Notwithstanding anything herein to the contrary, the Term Loans funded on any applicable Borrowing date that occurs on or after the DIP Funding Account Effective Date shall be made available to the Borrower by the Administrative Agent depositing the proceeds thereof into the DIP Funding Account.

SECTION 2.04. ***Withdrawal of Funds from DIP Funding Account.***

(a) So long as no Event of Default has occurred and is continuing, the Borrower shall have the right to withdraw the proceeds of the Loans on deposit in the DIP Funding Account from time to time at any time on or after the DIP Funding Account Effective Date (but (x) not more frequently than one time in any calendar week period and (y) only if an Initial Borrowing has not occurred during such calendar week period) by delivering a written notice at least two (2)

Business Days prior to the applicable Withdrawal Date to the Administrative Agent and the Collateral Agent in substantially the form attached as Exhibit C hereto (each such notice, a "DIP Funding Withdrawal Notice"); provided, that the amount of each such proposed withdrawal shall not exceed 110% of the aggregate amount of budgeted disbursements set forth in the Approved Budget for the calendar week following immediately thereafter. Each DIP Funding Withdrawal Notice shall specify the following information;

(i) the amount of such withdrawal;

(ii) the date of such proposed withdrawal (which shall be on the Wednesday of each week following the delivery of a DIP Funding Withdrawal Notice) (the "Withdrawal Date"); and

(iii) the wiring instructions of the account of the Borrower to which the proceeds of such withdrawal are to be disbursed.

(b) On the Withdrawal Date specified in the DIP Funding Withdrawal Notice (to the extent delivered in accordance with the foregoing clause (a)), the Administrative Agent or the Collateral Agent shall send instructions to the applicable DIP Funding Account Depository Bank to disburse funds from the DIP Funding Account to the account of the Borrower specified in the DIP Funding Withdrawal Notice in an aggregate principal amount equal to the lesser of (x) the amount specified in such DIP Funding Withdrawal Notice and (y) the amount of proceeds of the Loans on deposit in the DIP Funding Account on such date.

(c) With respect to any disbursement, withdrawal, transfer, or application of funds from the DIP Funding Account hereunder, the Administrative Agent and the Collateral Agent shall be entitled to (but shall not be required to) conclusively rely upon, and shall be fully protected in relying upon, any DIP Funding Withdrawal Notice submitted by the Borrower as evidence that all conditions precedent to a withdrawal and disbursement from the DIP Funding Account to the Borrower have been satisfied. Notwithstanding anything herein to the contrary, neither the Administrative Agent nor the Collateral Agent shall have any obligation to disburse (or instruct the applicable DIP Funding Account Depository Bank to disburse) any amount from the DIP Funding Account in excess of the amount of the proceeds of the Loans then held in the DIP Funding Account.

(d) For the avoidance of doubt, (i) all amounts held in the DIP Funding Account shall constitute proceeds of funded Loans for all purposes hereunder and shall be available to the Borrower as provided by Section **Error! Reference source not found.**, and, notwithstanding that the proceeds of such Loans are held in the DIP

Funding Account, shall bear interest in accordance with this Agreement and shall be subject to all other terms and provisions of this Agreement and the other Loan Documents to the same extent as all other Loans, and (ii) there shall be no conditions precedent to making any withdrawal from the DIP Funding Account other than as set forth in this Section **Error! Reference source not found.**4.

(e) The Borrower shall not deposit any amounts in the DIP Funding Account other than the Borrowings as described herein.

SECTION 2.05. ***Evidence of Debt; Repayment of Loans.***

(a) The Borrower hereby unconditionally promises to pay to the Administrative Agent for the account of each Lender the principal amount of each Term Loan of such Lender as provided in Section 2.12.

(b) Each Lender shall maintain in accordance with its usual practice an account or accounts evidencing the indebtedness of the Borrower to such Lender resulting from each Loan made by such Lender from time to time, including the amounts of principal and interest payable and paid to such Lender from time to time under this Agreement.

(c) The Administrative Agent shall maintain accounts in which it will record (i) the amount of each Loan made hereunder and the Type thereof and, if applicable, the Interest Period applicable thereto, (ii) the amount of any principal or interest due and payable or to become due and payable from the Borrower to each Lender hereunder and (iii) the amount of any sum received by the Administrative Agent hereunder from the Borrower or any Guarantor and each Lender's share thereof.

(d) Subject to the provisions of the Register, which shall be controlling, the entries made in the accounts maintained pursuant to clauses (a) and (b) above shall be prima facie evidence of the existence and amounts of the obligations therein recorded; provided, however, that the failure of any Lender or the Administrative Agent to maintain such accounts or any error therein shall not in any manner affect the obligations of the Borrower to repay the Loans in accordance with their terms.

(e) Any Lender may request in writing that Loans made by it hereunder be evidenced by a promissory note. In such event, the Borrower shall execute and deliver to such Lender a promissory note payable to such Lender and its registered assigns and in a form and substance reasonably acceptable to the Administrative Agent and

the Borrower. Notwithstanding any other provision of this Agreement, in the event any Lender shall request and receive such a promissory note, the interests represented by such promissory note shall at all times (including after any assignment of all or part of such interests pursuant to Section 9.04) be represented by one or more promissory notes payable to the payee named therein or its registered assigns.

SECTION 2.06. ***[Reserved].***

SECTION 2.07. ***Interest on Loans.***

(a) Subject to the provisions of Section 2.08, the Loans comprising each Borrowing shall bear interest (computed on the basis of the actual number of days elapsed over a year of 360 days) at a rate per annum equal to the Adjusted LIBO Rate for the Interest Period in effect for such Borrowing *plus* the Applicable Margin.

(b) Interest on each Loan shall be payable on the Interest Payment Dates applicable to such Loan in accordance with Section 2.26, except as otherwise provided in this Agreement. The applicable Adjusted LIBO Rate for each Interest Period or day within an Interest Period, as the case may be, shall be determined by the Administrative Agent, and such determination shall be conclusive absent manifest error.

SECTION 2.08. ***Default Interest.*** Subject to Section 6.10(e)(v), if any Event of Default shall have occurred and be continuing and the Administrative Agent or Required Lenders shall have elected that default interest be applied in connection with such Event of Default, then until such Event of Default shall have been cured or waived, all amounts payable hereunder shall bear interest (after as well as before judgment), payable on demand, at the rate otherwise applicable to such Loan (or, with respect to other amounts, a Loan bearing an Interest Period of one-month pursuant to Section 2.07), in each case, *plus* 2.00% per annum.

SECTION 2.09. ***Alternate Rate of Interest.*** In the event, and on each occasion, that on the day two (2) Business Days prior to the commencement of any Interest Period for a Eurodollar Borrowing the Administrative Agent shall have determined that Dollar deposits in the principal amounts of the Loans comprising such Borrowing are not generally available in the London interbank market, or that the rates at which such Dollar deposits are being offered will not adequately and fairly reflect the cost to the majority of the Lenders of making or maintaining Eurodollar Loans during such Interest Period, or that reasonable means do not exist for ascertaining the Adjusted LIBO Rate, the Administrative Agent shall, as soon as practicable thereafter, give written or email notice of such determination to the Borrower and the Lenders. In the event of any such determination, until the Administrative Agent shall have advised the Borrower and the Lenders that the circumstances giving rise to such notice no longer exist (which the Administrative Agent agrees to do as soon as practicable after such circumstances cease to exist), any request by the Borrower for a Eurodollar Borrowing pursuant to Section 2.03 or 2.11 shall be deemed to be a

request for a Borrowing at an alternate rate of interest as reasonably determined by the Administrative Agent. Each determination by the Administrative Agent under this Section 2.09 shall be conclusive absent manifest error.

SECTION 2.10. ***Termination of Commitments***. Each Lender's Commitment shall (x) automatically and permanently be reduced by the amount of each Loan made by it hereunder and (y) terminate immediately and without further action on the Maturity Date.

SECTION 2.11. ***Continuation of Borrowings***. With respect to each Borrowing, at the end of the Interest Period applicable thereto (unless repaid pursuant to the terms hereof), such Borrowing shall automatically be continued as a Eurodollar Borrowing with an Interest Period of one month's duration.

SECTION 2.12. ***Repayment of Term Borrowings***.

(a) Except as provided in Section 2.14 or upon an acceleration of Loans pursuant to Section 7.01, the Borrower shall not be required to pay any portion of the principal amount of the Term Loans (as adjusted from time to time pursuant to Sections 2.13, 2.14 and 2.26) prior to the Maturity Date.

(b) To the extent not previously paid, all Term Loans shall be due and payable on the Maturity Date, in accordance with, but not subject to, the Orders, without further application to or order of the Bankruptcy Court, together with (x) all accrued and unpaid interest on the principal amount to be paid to but excluding the date of payment, and (y) all other outstanding Obligations. Any remaining balance in the DIP Funding Account on the Maturity Date shall be applied by the Administrative Agent towards repayment of the Obligations.

(c) All repayments pursuant to this Section 2.12 shall be subject to Sections 2.17 and 2.25, but shall otherwise be without premium or penalty.

SECTION 2.13. ***Voluntary Prepayment***.

(a) The Borrower shall have the right at any time and from time to time to prepay any Borrowing, in whole or in part, upon at least five (5) Business Days' prior written, email notice (or telephone notice promptly confirmed by written or email notice) to the Administrative Agent before 10:00 a.m., New York City time; provided, however, that each partial prepayment, shall be in an amount that is an integral multiple of $500,000 or in the aggregate principal amount of such Borrowing.

(b) Subject to Section 2.18, voluntary prepayments of Term Loans shall be applied pro rata to the Term Loan based on the outstanding principal balances thereof.

(c) Each notice of prepayment shall specify the prepayment date and the principal amount of each Borrowing (or portion thereof) to be prepaid, shall be irrevocable and shall commit the Borrower to prepay such Borrowing by the amount stated therein on the date stated therein. All prepayments under this Section 2.13 shall be subject to Section 2.17 but otherwise without premium or penalty other than as set forth in Section 2.25. All prepayments under this Section 2.13 shall be accompanied by accrued and unpaid interest on the principal amount to be prepaid to but excluding the date of payment. Notwithstanding the foregoing, a notice of prepayment that states that such notice is conditioned upon the effectiveness of other credit facilities or other transactions may be revoked by 12:00 p.m. New York City time on the effective date (or such prepayment may be extended by the Borrower by notice to the Administrative Agent on or prior to by 12:00 p.m. New York City time on the specified effective date) if such condition is not satisfied on such date; provided that the provisions of Section 2.17 shall apply with respect to any such revocation or extension to the extent applicable.

SECTION 2.14. ***Mandatory Prepayments***.

(a) Not later than five (5) Business Days following the receipt of Net Cash Proceeds by the Borrower or any Subsidiary in respect of any Asset Sale, the Borrower shall prepay outstanding Loans in accordance with Section 2.14(e) in an amount equal to 100% of such Net Cash Proceeds.

(b) [reserved].

(c) In the event that any Loan Party or Subsidiary shall receive Net Cash Proceeds from the issuance or incurrence of Indebtedness for money borrowed of any Loan Party (other than Indebtedness expressly permitted to be incurred or issued pursuant to Section 6.01) the Borrower shall prepay an aggregate principal amount of Term Loans equal to 100% of such Net Cash Proceeds received therefrom immediately upon receipt thereof by such Loan Party or such Subsidiary.

(d) Upon the receipt by any Loan Party or any of its Subsidiaries of Net Cash Proceeds in respect of any Extraordinary Property Receipt, if not otherwise included in Section 2.14(a), the Borrower shall prepay an aggregate principal amount of Term Loans

equal to 100% of such Net Cash Proceeds within five (5) Business Days of receipt thereof by such Loan Party or such Subsidiary.

(e) Each prepayment of Loans required by Section 2.14(a), (c) and (d) shall be applied to the Term Loan based on the outstanding principal balances thereof, applied pro rata to the remaining payments due in respect of the Term Loans.

(f) With respect to each prepayment of Term Loans, the Borrower will, not later than the fourth Business Day prior to the date specified in Section 2.14(a), (c) or (d), as applicable, for making such prepayment, give the Administrative Agent telephonic notice (promptly confirmed in writing or by e-mail pursuant to Section 2.14(h)) requesting that the Administrative Agent provide notice of such prepayment to each Lender of Term Loans and the Administrative Agent will promptly provide such notice to each Lender of Term Loans.

(g) Mandatory prepayments shall be applied on a pro rata basis to the then outstanding Loans being prepaid; provided that notwithstanding a Term Lender's right to refuse a given mandatory prepayment of the Term Loans pursuant to Section 2.14(e), with respect to such mandatory prepayment, the Borrower may designate the Types of Loans that are to be prepaid and the specific Borrowing(s) pursuant to which such Loans were made; provided further that the Borrower shall pay any amounts required to be paid pursuant to Section 2.17 with respect to prepayments of Eurodollar Loans made on any date other than the last day of the applicable Interest Period; provided further, that if the Borrower fails to make such designation, the amount of such mandatory prepayment shall be applied in a manner that minimizes the amount of any payments required to be made by the Borrower pursuant to Section 2.17.

(h) The Borrower shall deliver to the Administrative Agent, at least four (4) days prior to the time of each prepayment required under this Section 2.14, (i) a certificate signed by a Financial Officer of the Borrower setting forth in reasonable detail the calculation of the amount of such prepayment and (ii) written or email notice of such prepayment. Each notice of prepayment shall specify the prepayment date, the Type of each Loan being prepaid and the principal amount of each Loan (or portion thereof) to be prepaid. All prepayments of Borrowings under this Section 2.14 shall be subject to Section 2.17 but otherwise without premium or penalty other than as set forth in Section 2.25, and shall be accompanied by accrued and unpaid interest on the principal amount to be prepaid to but excluding the date of payment.

SECTION 2.15. ***Reserve Requirements; Change in Circumstances.***

(a) Notwithstanding any other provision of this Agreement, if any Change in Law shall impose, modify or deem applicable any reserve, special deposit or similar requirement against assets of, deposits with or for the account of or credit extended by any Lender (except any such reserve requirement which is reflected in the Adjusted LIBO Rate) or shall impose on such Lender or the London interbank market any other condition affecting this Agreement or Eurodollar Loans made by such Lender (except for the imposition of Indemnified Taxes and Taxes described in clauses (b) through (d) of the definition Excluded Taxes), and the result of any of the foregoing shall be to increase the cost to such Lender of making or maintaining any Eurodollar Loan or increase the cost to any Lender or to reduce the amount of any sum received or receivable by such Lender hereunder (whether of principal, interest or otherwise) in respect of the Eurodollar Loans made or maintained by such Lender by an amount deemed by such Lender to be material, then the Borrower will pay to such Lender such additional amount or amounts as will reasonably compensate such Lender for such additional costs incurred or reduction suffered.

(b) If any Lender shall have reasonably determined that any Change in Law regarding capital adequacy has or would have the effect of reducing the rate of return on such Lender's capital or on the capital of such Lender's holding company, if any, as a consequence of this Agreement or the Loans made pursuant hereto 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) by an amount deemed by such Lender to be material, then from time to time the Borrower shall 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) A certificate of a Lender setting forth the amount or amounts necessary to compensate such Lender or its holding company, as applicable, as specified in clauses (a) or (b) above shall be delivered to the Borrower and shall be conclusive absent manifest error. The Borrower shall pay such Lender the amount shown as due on any such certificate delivered by it within ten (10) days after its receipt of the same.

(d) Failure or delay on the part of any Lender to demand compensation pursuant to this Section shall not constitute a waiver of such Lender's right to demand such compensation; provided that

the Borrower shall not be under any obligation to compensate any Lender under clauses (a) or (b) above with respect to increased costs or reductions with respect to any period prior to the date that is 180 days prior to such request; provided, further that the foregoing limitation shall not apply to any increased costs or reductions arising out of the retroactive application of any Change in Law within such 180-day period.

SECTION 2.16. ***Change in Legality***.

(a) Notwithstanding any other provision of this Agreement, if any Change in Law shall make it unlawful for any Lender to make or maintain any Eurodollar Loan or to give effect to its obligations as contemplated hereby with respect to any Eurodollar Loan, then, by written notice to the Borrower and to the Administrative Agent:

(i) such Lender may declare that Eurodollar Loans will not thereafter (for the duration of such unlawfulness) be made by such Lender hereunder (or be continued for additional Interest Periods), whereupon any request for a Eurodollar Borrowing (or to continue a Eurodollar Borrowing for an additional Interest Period) shall, as to such Lender only, be deemed a request for a Loan (or a request to continue a Loan as such for an additional Interest Period) in an alternate rate of interest as reasonably determined by the Administrative Agent and such Lender, unless such declaration shall be subsequently withdrawn (and Lender agrees to withdraw any such declaration promptly following the cessation of such unlawfulness); and

(ii) such Lender may require that all outstanding Eurodollar Loans made by it be converted to Loans in the alternate rate described in paragraph (i), in which event all such Eurodollar Loans shall be automatically converted to Loans at such alternate rate as of the effective date of such notice as provided in clause (b) below.

In the event any Lender shall exercise its rights under (i) or (ii) above, all payments and prepayments of principal that would otherwise have been applied to repay the Eurodollar Loans that would have been made by such Lender or the converted Eurodollar Loans of such Lender shall instead be applied to repay the Loans at such alternate rate of interest made by such Lender in lieu of, or resulting from the conversion of, such Eurodollar Loans.

(b) For purposes of this Section 2.16, a notice to the Borrower by any Lender shall be effective as to each Eurodollar Loan made by such Lender, if lawful, on the last day of the Interest Period then applicable to such Eurodollar Loan; in all other cases such notice shall be effective on the date of receipt by the Borrower.

SECTION 2.17. ***Breakage***. The Borrower shall compensate each Lender, upon demand from such Lender to the Borrower (with copy to the Administrative Agent), that includes a

reasonably detailed calculation thereof, for all loss or expense (including, in each case, those incurred by reason of the liquidation or redeployment of deposits or other funds acquired by such Lender to prepare to fund, to fund or to maintain the Eurodollar Loans of such Lender to the Borrower) that such Lender may incur (A) to the extent a proposed Borrowing does not occur on a date specified therefor in a Borrowing Request or in a similar request made by telephone or email by the Borrower, (B) to the extent any Eurodollar Loan is paid (whether through a scheduled, voluntary or mandatory prepayment) on a date that is not the last day of the applicable Interest Period or (C) as a consequence of any failure by the Borrower to repay Eurodollar Loans when required by the terms hereof. For purposes of this Section 2.17 each Lender shall be deemed to have funded each Eurodollar Loan made by it using a matching deposit or other borrowing in the London interbank market. A certificate of any Lender setting forth any amount or amounts which such Lender is entitled to receive pursuant to this Section 2.17 and a reasonably detailed calculation thereof, shall be delivered to the Borrower and shall be conclusive absent manifest error. The Borrower shall pay such Lender the amount shown as due on any such certificate within ten (10) days after receipt thereof.

SECTION 2.18. ***Pro Rata Treatment***. Except as otherwise expressly required or permitted under this Agreement, each Borrowing, each payment or prepayment of principal of any Borrowing, each payment of interest on the Loans, each reduction of the Term Loan Commitments and each continuation of any Borrowing as a Borrowing of any Type shall be allocated pro rata among the Lenders in accordance with their respective Commitments (or, if such Commitments shall have expired or been terminated, in accordance with the respective principal amounts of their outstanding Loans). Each Lender agrees that in computing such Lender's portion of any Borrowing to be made hereunder, the Administrative Agent may, in its discretion, round each Lender's percentage of such Borrowing to the next higher or lower whole Dollar amount.

SECTION 2.19. ***Sharing of Setoffs***. Each Lender agrees that if it shall, through the exercise of a right of banker's lien, setoff or counterclaim against the Borrower or any other Loan Party, or pursuant to a secured claim under Section 506 of the Bankruptcy Code or other security or interest arising from, or in lieu of, such secured claim, received by such Lender under any applicable bankruptcy, insolvency or other similar Requirement of Law or otherwise, or by any other means, obtain payment (voluntary or involuntary) in respect of any Loan or Loans as a result of which the unpaid principal portion of its Loans shall be proportionately less than the unpaid principal portion of the Loans of any other Lender, it shall be deemed simultaneously to have purchased from such other Lender at face value, and shall promptly pay to such other Lender the purchase price for, a participation in the Loans of such other Lender, so that the aggregate unpaid principal amount of the Loans held by each Lender shall be in the same proportion to the aggregate unpaid principal amount of all Loans then outstanding as the principal amount of its Loans prior to such exercise of banker's lien, setoff or counterclaim or other event was to the principal amount of all Loans outstanding prior to such exercise of banker's lien, setoff or counterclaim or other event; provided that (i) if any such purchase or purchases or adjustments shall be made pursuant to this Section 2.19 and the payment giving rise thereto shall thereafter be recovered, such purchase or purchases or adjustments shall be rescinded to the extent of such recovery and the purchase price or prices or adjustment restored without interest, and (ii) the provisions of this Section 2.19 shall not be construed to apply to any payment made by any Loan Party pursuant to and in accordance with the express terms of this Agreement or any payment obtained by a Lender as

consideration for the assignment of or sale of a participation in any of its Loans to any assignee or participant. The Borrower expressly consents to the foregoing arrangements.

SECTION 2.20. ***Payments***.

(a) The Borrower shall make each payment (including principal of or interest on any Borrowing or any Fees or other amounts) hereunder and under any other Loan Document not later than 12:00 p.m., New York City time, on the date when due in immediately available Dollars by wire transfer or ACH transfer (which shall be the exclusive means of payment hereunder), without setoff, recoupment, defense, deduction or counterclaim of any kind. Each such payment shall be made to the Administrative Agent at the address for payment specified on its signature page hereto (or such other address as the Administrative Agent may notify the Borrower in writing from time to time). Any payment which is received by the Administrative Agent later than 1:00 p.m. New York City time may in the Administrative Agent's discretion be deemed to have been received on the immediately succeeding Business Day and any applicable interest or Fee shall continue to accrue. At least once each calendar month or more frequently at the Administrative Agent's election (each, a "Settlement Date"), the Administrative Agent shall advise each Lender by telephone of the amount of such Lender's pro rata share of principal, interest and Fees paid for the benefit of the Lenders with respect to each applicable Loan. Except as provided to the contrary herein the Administrative Agent shall pay to each Lender such Lender's pro rata share of principal, interest and Fees paid by the Borrower since the previous Settlement Date for the benefit of such Lender on the Loans held by it; provided, however, that in the case of any payment of principal received by the Administrative Agent from the Borrower in respect of any Term Loan prior to 10:00 a.m. New York City time on any Business Day, the Administrative Agent shall pay to each applicable Lender such Lender's pro rata share of such payment on such Business Day, and, in the case of any payment of principal received by the Administrative Agent from the Borrower in respect of any Term Loan later than 10:00 a.m. New York City time on any Business Day, the Administrative Agent shall pay to each applicable Lender such Lender's pro rata share of such payment on the next Business Day. Except as provided in the preceding proviso with respect to Term Loan payments, such payments shall be made by wire transfer to such Lender not later than 2:00 p.m. (New York City time) on the next Business Day following each Settlement Date.

(b) Except as otherwise expressly provided herein, whenever any payment (including principal of or interest on any Borrowing or any Fees or other amounts) hereunder or under any

other Loan Document shall become due, or otherwise would occur, on a day that is not a Business Day, such payment may be made on the next succeeding Business Day, and such extension of time shall in such case be included in the computation of interest or Fees, if applicable.

SECTION 2.21. ***Taxes***.

(a) Any and all payments by or on account of any obligation of the Borrower or any other Loan Party hereunder or under any other Loan Document shall be made free and clear of and without deduction or withholding for any Taxes, except as required by applicable Requirements of Law. If any applicable Requirements of Law (as determined in the good faith discretion of the applicable Withholding Agent) requires the deduction or withholding of any Tax from any such payment by the applicable Withholding Agent, then the applicable Withholding Agent shall be entitled to make such deduction or withholding and shall timely pay the full amount deducted or withheld to the relevant Governmental Authority in accordance with applicable Requirements of Law and, if such Tax is an Indemnified Tax, then the sum payable by the applicable Loan Party shall be increased as necessary so that after such deduction or withholding has been made (including such deductions and withholdings applicable to additional sums payable under this Section) the applicable Recipient receives an amount equal to the sum it would have received had no such deduction or withholding been made. For purposes of this Section 2.21, the term "applicable Requirements of Law" includes FATCA.

(b) Without duplication, the Borrower shall timely pay to the relevant Governmental Authority in accordance with applicable Requirements of Law, or at the option of the Administrative Agent timely reimburse it for the payment of, any Other Taxes.

(c) The Borrower shall indemnify each Recipient, within ten (10) days after written 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) 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 Administrative Agent), or by the

Administrative Agent on behalf of itself or a Lender, shall be conclusive absent manifest error.

(d) Each Lender shall severally indemnify, within 30 days after demand therefor, the Administrative Agent for any Indemnified Taxes attributable to such Lender (but only to the extent that any Loan Party has not already indemnified the Administrative Agent for such Indemnified Taxes and without limiting the obligation of the Loan Parties to do so), for any Taxes attributable to such Lender's failure to comply with the provisions of Section 9.04(f) relating to the maintenance of a Participant Register and any Excluded Taxes attributable to such Lender, in each case, that are payable or paid by the Administrative Agent in connection with any Loan Document, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Lender by the Administrative Agent shall be conclusive absent manifest error. Each Lender hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Lender under any Loan Document or otherwise payable by the Administrative Agent to the Lender from any other source against any amount due to the Administrative Agent under this Section 2.21(d).

(e) As soon as practicable after any payment of Taxes by the Borrower or any other Loan Party to a Governmental Authority pursuant to this Section, the Borrower shall deliver to the Administrative Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Administrative Agent.

(f) (i) Any Lender (which for purposes of this Section 2.21(f) shall include the Administrative Agent) 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 Administrative Agent such properly completed and executed documentation prescribed by applicable Requirements of Law and reasonably requested by the Borrower or the Administrative Agent as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender, if reasonably requested by the Borrower or the Administrative Agent, shall deliver such other documentation prescribed by applicable law or reasonably requested by the Borrower or the Administrative Agent as will enable the Borrower or the Administrative Agent to determine whether or not such Lender is subject to backup withholding or

information reporting requirements. Notwithstanding any other provision of this Section 2.21(f), the completion, execution, and submission of such documentation (other than such documentation set forth in Section 2.21(f)(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 "United States person" as defined in Section 7701(a)(30) of the Code shall deliver to the Borrower and the Administrative Agent on or prior to the date on which such Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), executed copies of IRS Form W-9 certifying that such Lender is not subject to 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 Administrative 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 Administrative Agent), whichever of the following is applicable:

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

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

(3) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Code, (x) a certificate substantially 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 copies of IRS Form W-8BEN or W-8BEN-E (or applicable successor form); or

(4) to the extent a Foreign Lender is not the beneficial owner, executed copies of IRS Form W-8IMY, accompanied by IRS Form W-8ECI, IRS Form W-8BEN or W-8BEN-E (or applicable successor form), a U.S. Tax Compliance Certificate, 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 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 Administrative 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 Administrative Agent), executed copies of any other form prescribed by applicable Requirements of 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 Requirements of Law to permit the Borrower or the Administrative Agent to determine the withholding or deduction required to be made; and

(D) if a payment made to a Lender under any Loan Document would be subject to U.S. federal withholding Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Lender shall deliver to the Borrower and the Administrative Agent at the time or times prescribed by law and at such time or times reasonably requested by the Borrower or the Administrative Agent such documentation prescribed by applicable Requirements of 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 Administrative Agent as may be necessary for the Borrower and the Administrative Agent to comply with their obligations under FATCA and to determine that such Lender has complied with such Lender's obligations under FATCA or to determine the amount, if any, to deduct and withhold from such payment. Solely for purposes of this clause (D), "FATCA" shall include any amendments made to FATCA after the date of this Agreement.

Each Lender agrees that if any form or certification it previously delivered expires or becomes obsolete or inaccurate in any respect, it shall update such form or certification or promptly notify the Borrower and the Administrative Agent in writing of its legal inability to do so. If the Lender is a disregarded entity for U.S. federal income tax purposes, it shall provide the appropriate withholding form of its owner (together with appropriate supporting documentation).

(g) If a Lender or the Administrative Agent determines, in its sole discretion exercised in good faith that it has received a refund in respect of any Indemnified Taxes as to which it has been indemnified by the Borrower or with respect to which the Borrower has paid additional amounts pursuant to this Section 2.21, it shall within 60 days from the date of such receipt pay over the amount of such refund to the Borrower (but only to the extent of indemnity payments made under this Section with respect to the Taxes giving rise to such refund), net of all reasonable out-of-pocket expenses (including Taxes) of such Lender or the Administrative Agent and without interest (other than interest paid by the relevant taxation authority with respect to such refund); provided that the Borrower, upon the request of such Lender or the Administrative Agent agrees to repay the amount paid over to the Borrower (*plus* penalties, interest or other charges imposed by the relevant Governmental Authority) to such Lender or the Administrative Agent in the event such Lender or the Administrative Agent is required to repay such refund to such taxation authority. Notwithstanding anything to the contrary in this Section 2.21(g), in no event will any Lender or the Administrative Agent or be required to pay any amount to the Borrower the payment of which would place such Lender or the Administrative Agent in a less favorable net after-Tax position than such Lender or the Administrative Agent would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. This Section 2.21(g) shall not be construed to require the Administrative Agent or any Lender to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to the Borrower or any other Person.

(h) Each party's obligations under this Section 2.21 shall survive the resignation or replacement of the Administrative Agent or any assignment of rights by, or the replacement of, a Lender, the termination of the Commitments and the repayment, satisfaction or discharge of all obligations under any Loan Document.

SECTION 2.22. ***Assignment of Loans Under Certain Circumstances; Duty to Mitigate.***

(a) In the event (i) any Lender delivers a certificate requesting compensation pursuant to Section 2.15, (ii) any Lender delivers a notice described in Section 2.16(a), or (iii) the Borrower is required to pay any additional amount (including, for purposes of this Section 2.22, indemnification payments pursuant to Section 2.21(c)) to any Lender or any Governmental Authority on account of any Lender pursuant to Section 2.21(a), upon notice to such Lender and the Administrative Agent, require such Lender to transfer and assign, without recourse (in accordance with and subject to the restrictions contained in Section 9.04), all of its interests, rights and obligations under this Agreement to an Eligible Assignee that shall assume such assigned (which assignee may be another Lender, if a Lender accepts such assignment); provided that (x) such assignment shall not conflict with any Requirement of Law, rule or regulation or order of any court or other Governmental Authority having jurisdiction, (y) the Borrower shall have received the prior written consent of the Administrative Agent, which consents shall not unreasonably be withheld or delayed, and (z) the Borrower or such assignee shall have paid to the affected Lender in immediately available funds an amount equal to the sum of the principal of and interest accrued to the date of such payment on the outstanding Loans of such Lender, *plus* all Fees and other amounts accrued for the account of such Lender hereunder with respect thereto (including any amounts under Sections 2.15 (a) and 2.17); provided further that, if prior to any such transfer and assignment the circumstances or event that resulted in such Lender's claim for compensation under Section 2.15(a), notice under Section 2.16(a) or the amounts paid pursuant to Section 2.21(a), as the case may be, cease to cause such Lender to suffer increased costs or reductions in amounts received or receivable or reduction in return on capital, or cease to have the consequences specified in Section 2.16(a), or cease to result in amounts being payable under Section 2.21(a), as the case may be (including as a result of any action taken by such Lender pursuant to clause (a) below), or if such Lender shall waive its right to claim further compensation under Section 2.15(a) in respect of such circumstances or event or shall withdraw its notice under Section 2.16(a) or shall waive its right to further payments under Section 2.21(a) in respect of such circumstances or event, as the case may be, then such Lender shall not thereafter be required to make any such transfer and assignment hereunder. Each Lender hereby grants to the Administrative Agent an irrevocable power of attorney (which power is coupled with an interest) to execute and deliver, on behalf of such Lender as assignor, any Assignment and Acceptance necessary to

effectuate any assignment of such Lender's interests hereunder in the circumstances contemplated by this Section 2.22(a).

(b) If (i) any Lender shall request compensation under Section 2.15, (ii) any Lender delivers a notice described in Section 2.16 or (iii) the Borrower is required to pay any additional amount to any Lender or any Governmental Authority on account of any Lender, pursuant to Section 2.21, then such Lender shall use reasonable efforts (which shall not require such Lender to incur an unreimbursed loss or unreimbursed cost or expense or otherwise take any action inconsistent with its internal policies or legal or regulatory restrictions or suffer any disadvantage or burden deemed by it to be significant) (x) to file any certificate or document reasonably requested in writing by the Borrower or (y) to assign its rights and delegate and transfer its obligations hereunder to another of its offices, branches or affiliates, if such filing or assignment would reduce its claims for compensation under Section 2.15 or enable it to withdraw its notice pursuant to Section 2.16 or would reduce amounts payable pursuant to Section 2.21, as the case may be, in the future. The Borrower hereby agrees to pay all reasonable costs and expenses incurred by any Lender in connection with any such filing or assignment, delegation and transfer.

SECTION 2.23. ***Certain Matters Regarding Real Estate.***

(a) From time to time, if the Administrative Agent requires, and at any time if a Default or an Event of Default shall have occurred and be continuing, the Administrative Agent may, or may require the Borrower to, in either case at the Borrower's expense, obtain appraisals in form and substance and from appraisers reasonably satisfactory to the Administrative Agent stating the then current fair market value or such other value as reasonably required by the Administrative Agent (for example, replacement cost for purposes of Flood Insurance) of any real property of any Loan Party that is or that is required pursuant to Section 5.11 to become a Mortgaged Property.

(b) With respect to each Mortgaged Property, at the time such real property becomes Mortgaged Property, the Borrower shall within 120 days following receipt of a written request of the Administrative Agent (including with respect to any Phase I environmental site assessment requested pursuant to clause (b)(iv) hereof) (or such longer period as shall be agreed to by the Administrative Agent) execute and deliver, or cause the applicable Loan Party to execute and deliver, to the Administrative Agent, a counterpart of the Mortgage in a form approved by the Administrative Agent, provided that if mortgage recording or similar

tax is due upon granting of such Mortgage then the total amount of debt secured by such Mortgage may be limited in the sole discretion of the Administrative Agent, together with (i) an A.L.T.A. lender's title insurance policy, and such endorsements, coinsurance and reinsurance as the Administrative Agent may reasonably request and to the extent available in each applicable jurisdiction, issued by a nationally recognized title insurer satisfactory to the Administrative Agent, in form and substance and in an amount determined by the Administrative Agent (not to exceed 110% of the fair market value of such Mortgaged Property) insuring that the Mortgage is a valid and enforceable first priority Lien (junior only to Liens permitted under Section 6.02) on the respective property, free and clear of all Liens other than Liens permitted under Section 6.02, (ii) surveys prepared by a licensed surveyor sufficient to allow the issuer of the lender's title insurance policy to issue such policy without a standard survey exception, (iii) such legal opinions as the Administrative Agent may request with respect to any such Mortgage, (iv) a Phase I environmental site assessment prepared by a qualified firm reasonably acceptable to the Administrative Agent, in form and substance reasonably satisfactory to the Administrative Agent, and (v) such lien searches and other documents as the Administrative Agent may reasonably require in connection with consummation of the Mortgage. In addition to the foregoing, within 20 days (or such longer period as shall be agreed to by the Administrative Agent) after receipt of written notice from the Administrative Agent to the Borrower that any Mortgaged Property is located in a Special Flood Hazard Area, the Borrower shall obtain Flood Insurance covering such Mortgaged Property (it being understood that, notwithstanding anything in this Agreement to the contrary, Flood Insurance shall not be required for any real property not located in a Special Flood Hazard Area.

SECTION 2.24. ***Inability to Determine Rates***. Notwithstanding anything to the contrary in this Agreement or any other Loan Document, if Administrative Agent determines (which determination shall be conclusive absent manifest error), or the Required Lenders notify Administrative Agent (with, in the case of the Required Lenders, a copy to Borrower) that the Required Lenders (as applicable) have determined, that:

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

(b) the administrator of the LIBO Screen Rate or a Governmental Authority having jurisdiction over Administrative Agent has made a public statement identifying a specific date after

which the LIBO Rate or the LIBO 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

(c) 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 the LIBO Rate,

then, reasonably promptly after such determination by Administrative Agent or receipt by Administrative Agent of such notice, as applicable, Administrative Agent may amend this Agreement to replace the LIBO Rate with an alternate benchmark rate (including any mathematical or other adjustments to the benchmark (if any) incorporated therein) (any such proposed rate, a "LIBO Successor Rate"), together with any proposed LIBO Successor Rate Conforming Changes and any such amendment shall become effective at 5:00 p.m. (New York time) on the fifth Business Day after Administrative Agent shall have posted such proposed amendment to all Lenders and Borrower unless, prior to such time, Lenders comprising the Required Lenders have delivered to Administrative Agent written notice that such Required Lenders do not accept such amendment.

If no LIBO Successor Rate has been determined and the circumstances under the clause above exist or the Scheduled Unavailability Date has occurred (as applicable), Administrative Agent will promptly so notify Borrower and each Lender. Thereafter, the obligation of the Lenders to make or maintain Eurodollar Loans shall be suspended (to the extent of the affected Eurodollar Loans or Interest Periods). Upon receipt of such notice, Borrower may revoke any pending request for a borrowing of Eurodollar Loans (to the extent of the affected Eurodollar Loans or Interest Periods) or, failing that, will be deemed to have converted such request into a request for a borrowing of Loans at an alternate rate of interest as reasonably determined by the Administrative Agent in the amount specified therein.

Notwithstanding anything else herein, any definition of LIBO Successor Rate shall provide that in no event shall such LIBO Successor Rate be less than 1.00% for purposes of this Agreement.

SECTION 2.25. ***[Reserved]***.

SECTION 2.26. ***PIK Interest***. With respect to any Interest Payment Date occurring after the Closing Date, the Borrower shall pay all of the interest accrued for the Interest Period ending on such Interest Payment Date as PIK Interest. PIK Interest accrued pursuant to this Section 2.26 shall be capitalized and added to the outstanding principal amount of the Loans on the applicable Interest Payment Date. For purposes of this Agreement and the other Loan Documents, the amounts so capitalized pursuant to the foregoing sentence will constitute a portion of the outstanding principal amount of the Loans and will bear interest (which shall be due and payable) in accordance with Sections 2.07, 2.08 and 2.09.

SECTION 2.27. ***Priority of Obligations***. The priority of Obligations and the Collateral Agent's Liens on the Collateral owned by the Loan Parties shall be set forth in the applicable Order.

ARTICLE III

Representations and Warranties

The Borrower represents and warrants to the Administrative Agent, the Collateral Agent and each of the Lenders that:

SECTION 3.01. ***Organization; Powers***. Each of the Loan Parties (a) is duly organized, validly existing and, to the extent applicable, in good standing under the laws of the jurisdiction of its organization, (b) subject to the entry of the Interim Order and subject to the terms thereof and any restrictions arising on account of any Loan Party's status as "debtor" under the Bankruptcy Code, has all requisite power and authority to own its property and assets and to carry on its business as now conducted and as proposed to be conducted, to the extent the failure to do so would not reasonably be expected to have a Material Adverse Effect, (c) except as result of the commencement of the Cases, is qualified to do business in, and is in good standing in, every jurisdiction where such qualification is required, except where the failure so to qualify would not reasonably be expected to result in a Material Adverse Effect, and (d) has the power and authority to execute, deliver and perform its obligations under each of the Loan Documents and each other agreement or instrument delivered or to be delivered thereunder to which it is or will be a party and, in the case of the Borrower, to borrow hereunder.

SECTION 3.02. ***Authorization***. Subject to the entry of the Interim Order and subject to the terms of the Order then in effect, the Transactions (a) have been duly authorized by all requisite corporate or other organizational powers and, if required under the laws of the jurisdiction of its organization, any provision of the certificate or articles of incorporation or articles of association or other constitutive documents or by-laws, as applicable, stockholder action with respect to the Loan Parties and their Subsidiaries and (b) will not (i) violate (A) any provision of Requirements of Law, statute, rule or regulation, (B) any provision of the certificate or articles of incorporation or articles of association or other constitutive documents or by-laws, as applicable, of the Borrower or any Subsidiary, (C) the Prepetition Credit Agreement, the Prepetition Note Agreement or the Prepetition Senior Notes (other than any violation that the exercise of remedies in respect thereof is stayed pursuant to an order of the Bankruptcy Court under the Cases) (D) any applicable order of any Governmental Authority or (E) any provision of any indenture, agreement or other instrument to which the Borrower or any Subsidiary is a party or by which any of them or any of their property is or may be bound (other than any violation that the exercise of remedies in respect thereof is stayed pursuant to an order of the Bankruptcy Court under the Cases), (ii) be in conflict with, result in a material breach of or constitute (alone or with notice or lapse of time or both) a default under, or give rise to any right to accelerate or to require the prepayment, repurchase or redemption of any obligation under any such material indenture, agreement or other instrument governing Indebtedness (other than any violation that the exercise of remedies in respect thereof is stayed pursuant to an order of the Bankruptcy Court under the Cases) or (iii) result in the creation or imposition of any Lien upon or with respect to any property or assets now owned or hereafter acquired by the Borrower or any Subsidiary (other than any Lien created hereunder or under the Security Documents), except (1) in the case of clauses (b)(i)(A), (b)(i)(D) and (b)(ii) to the extent such violation would not reasonably be expected to have a Material Adverse Effect and (2) in the case of clause (b)(ii), to the extent such Lien is expressly permitted hereunder.

SECTION 3.03. ***Enforceability***. This Agreement has been duly executed and delivered by the Borrower and, subject to the entry of the Interim Order and subject to the terms of the Order then in effect with respect to the Debtors, constitutes, and each other Loan Document when executed and delivered by the Loan Party party thereto will constitute, a legal, valid and binding obligation of such Loan Party enforceable against such Loan Party in accordance with its terms, subject to applicable bankruptcy, insolvency, fraudulent conveyance, reorganization and other similar Requirements of Law relating to or affecting creditors' rights generally, concepts of reasonableness and general equitable principles. The choice of governing law set forth in each of the Loan Documents will be recognized and enforced in its Relevant Jurisdictions, and any judgment obtained in relation to a Loan Document in the jurisdiction of the governing law of that Loan Document will be recognized and enforced the applicable Relevant Jurisdictions.

SECTION 3.04. ***Governmental Approvals***. Subject to the entry of the Interim Order and subject to the terms of the Order then in effect, no action, consent or approval of, registration or filing with or any other action by any Governmental Authority is or will be required in connection with the execution, delivery and performance of the Loan Documents, except for (a) the filing of UCC financing statements and filings of Intellectual Property Security Agreements (as defined in the Guarantee and Collateral Agreement) with the United States Patent and Trademark Office and the United States Copyright Office, (b) the recordation of each Mortgage, (c) such as have been made or obtained and are in full force and effect and (d) such actions, consents, approvals, registrations or filings, the failure of which to make or obtain could not reasonably be expected to result in a Material Adverse Effect.

SECTION 3.05. ***Financial Statements***.

(a) Borrower has heretofore furnished to the Administrative Agent for distribution to the Lenders its (i) audited consolidated balance sheets and the related statement of income of the Borrower and its Subsidiaries for the fiscal year ended December 31, 2020 and (ii) unaudited consolidated balance sheets and the related statement of income of the Borrower and its Subsidiaries for each subsequent fiscal quarter ended not less than forty-five (45) days prior to the Closing Date. Such financial statements present fairly in all material respects the financial condition and results of operations of the Borrower and its Subsidiaries as of such dates and for such periods in accordance with GAAP, subject, in the case of such financial statements referred to in clause (ii), to year-end audit adjustments and the absence of footnotes.

(b) Borrower has heretofore furnished to the Administrative Agent the Approved Budget, and such Approved Budget was prepared in good faith upon assumptions the Borrower believed to be reasonable assumptions on the date of delivery of the then applicable Approved Budget. Each modification, supplement, and/or update to the Approved Budget, made in accordance with Section 5.17 shall be prepared in good faith upon assumptions the

Borrower believes to be reasonable assumptions on the date of delivery of such update.

SECTION 3.06. ***No Default or Material Adverse Effect.*** (i) No Default or Event of Default exists or would result from the incurring of any Obligations by any Loan Party or the grant or perfection of Collateral Agent's Liens on the Collateral, and (ii) no event, change or condition has occurred since the Petition Date that has had a Material Adverse Effect.

SECTION 3.07. ***Title to Properties; Possession Under Leases.***

(a) Each of the Borrower and the Subsidiaries has good and marketable title to, or valid leasehold interests in, all its properties and assets that are material to its business (including all Mortgaged Property, if any), except to the extent that the failure to do so would not be expected to result in a Material Adverse Effect. The interests of the Borrower and its Subsidiaries in such material properties and assets are free and clear of Liens, other than Liens expressly permitted by Section 6.02. Each of the Borrower and the Subsidiaries is the sole legal and beneficial owner of the respective assets over which it purports to grant a Lien pursuant to the Loan Documents.

(b) Except to the extent that the failure to comply or enjoy could not reasonably be expected to result in a Material Adverse Effect, (i) each of the Borrower and the Subsidiaries has complied in all respects with all obligations under all leases to which it is a party and all such leases are in full force and effect and (ii) each of the Borrower and the Subsidiaries enjoys peaceful and undisturbed possession under all such leases.

SECTION 3.08. ***Subsidiaries.*** Schedule 3.08 sets forth as of the Closing Date a list of all Subsidiaries and the percentage ownership interest of the Borrower therein and any other Equity Interests of any other Person owned by the Borrower or any of its Subsidiaries. The Equity Interests so indicated on Schedule 3.08 are fully paid and non-assessable and are, as of the Closing Date, owned by the Borrower, directly or indirectly, free and clear of all Liens (other than Liens created under the Security Documents or Liens permitted by Section 6.02). All such securities were issued in compliance with all applicable state and federal laws concerning the issuance of securities except where the failure to do so would not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect. Except as set forth in Schedule 3.08, as of the Closing Date, no Loan Party and no Subsidiary of any Loan Party is engaged in any joint venture or partnership with any other Person. Except as (x) set forth in Schedule 3.08 and (y) the Warrants and Warrant Certificates (each as defined in the Prepetition Credit Agreement) as of the Closing Date, there are no pre-emptive or other outstanding rights to purchase, options, warrants or similar rights or agreements pursuant to which any Loan Party may be required to issue, sell, repurchase or redeem any of its Equity Interests or any Equity Interests of its Subsidiaries. As of the Closing Date, each Subsidiary is a Loan Party.

SECTION 3.09. ***Litigation; Compliance with Laws.***

(a) Except for the Cases, there are no actions, suits or proceedings at law or in equity or by or before any Governmental Authority now pending or, to the knowledge the Borrower, threatened in writing against or affecting the Borrower or any Subsidiary or any business, property or rights of any such Person (i) that involve any Loan Document or (ii) that would reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect.

(b) None of the Borrower or any of the Subsidiaries or any of their respective material properties or assets is in violation of any applicable Requirements of Law, rule or regulation (including any zoning, building, Environmental Law, Healthcare Law, ordinance, code or approval or any building permits, the Trading with the Enemy Act, as amended, each of the foreign assets control regulations of the United States Treasury Department (31 CFR, Subtitle B, Chapter V, as amended) and any other enabling legislation or executive order relating thereto and the USA PATRIOT Act)) or any restrictions of record or agreements affecting any Mortgaged Property, or is in default with respect to any judgment, writ, injunction, decree or order of any Governmental Authority, except where such violation or default would not reasonably be expected to result in a Material Adverse Effect.

(c) Except to the extent that the failure to have any such certificates or Permits would not reasonably be expected to result in a Material Adverse Effect, certificates of occupancy and Permits are in effect for each Mortgaged Property as currently constructed, and true and complete copies of such certificates of occupancy have been delivered to the Collateral Agent as mortgagee with respect to each Mortgaged Property.

(d) Except to the extent that such non-compliance would not reasonably be expected to result in a Material Adverse Effect, each of the Loan Parties and Subsidiaries is and has been in compliance, with all applicable Data Protection Laws. Without limiting the foregoing, each of the Loan Parties and Subsidiaries holds and maintains all Registrations and provided all notifications to and made all filings with, Governmental Authorities which are necessary to engage in the business conducted by it, as required by applicable Data Protection Laws except as would not reasonably be expected to result in a Material Adverse Effect.

(e) Except as would not reasonably be expected to result in a Material Adverse Effect, no Loan Party or Subsidiary is or has

been a party to any claims or has received any written complaints from or regarding data subjects or customers in respect of any actual or alleged material violation of applicable Data Protection Laws.

(f) No notices have been received by any of the Loan Parties or Subsidiaries from any data protection authority or other Governmental Authority in respect of any actual or alleged material violation of applicable Data Protection Laws.

(g) Except as would not reasonably be expected to result in a Material Adverse Effect, there has been no data breach affecting any Loan Party or Subsidiary as to which notification is required to be given under (1) applicable Data Protection Laws or (2) contractual requirements to which a Loan Party or any of the Subsidiaries is subject.

(h) Except as would not reasonably be expected to result in a Material Adverse Effect, each Loan Party and Subsidiary, has complied with all applicable data protection obligations contained within written customer or vendor agreements (including, but not limited to, any agreement incorporating the Standard Contractual Clauses adopted by the EU Commission under Article 25 of the EU Data Protection Directive 95/46/EC). Except as would not reasonably be expected to result in a Material Adverse Effect, each Loan Party and Subsidiary has complied and is in compliance with the terms of the privacy policies and formal security program of such Loan Party or Subsidiary.

SECTION 3.10. ***Agreements***. None of the Borrower or any of the Subsidiaries is in default in any manner under any provision of any indenture or other agreement or instrument evidencing Indebtedness, or any other material agreement or instrument to which it is a party or by which it or any of its properties or assets are or may be bound, (other than to the extent the exercise of remedies in respect thereof is stayed pursuant to an order of the Bankruptcy Court under the Cases) where such default would reasonably be expected to result in a Material Adverse Effect after giving effect thereto.

SECTION 3.11. ***Federal Reserve Regulations***.

(a) None of the Borrower or any of the Subsidiaries is engaged principally, or as one of its important activities, in the business of extending credit for the purpose of buying or carrying Margin Stock.

(b) No part of the proceeds of any Loan will be used, whether directly or indirectly, and whether immediately, incidentally or ultimately, for any purpose that entails a violation of, or that is inconsistent with, the provisions of Regulation U or Regulation X.

SECTION 3.12. ***Investment Company Act***. Neither the Borrower nor any of its Subsidiaries is an "investment company" or is "controlled" by an "investment company," as such terms are defined in, or subject to regulation under, the Investment Company Act of 1940, as amended.

SECTION 3.13. ***Use of Proceeds***. The Borrower will use the proceeds of the Loans in all cases, solely in accordance with Section 5.08.

SECTION 3.14. ***Tax Returns***. Each of the Borrower and the Subsidiaries has filed or caused to be filed all Federal and all material state, local and foreign tax returns or reports required to have been filed by it and has paid or caused to be paid all taxes shown to be due and payable by it on such returns, and all other material taxes or assessments that are due and payable, except taxes that are being contested in good faith by appropriate proceedings and for which the Borrower or such Subsidiary, as applicable, shall have set aside on its books adequate reserves as determined in accordance with GAAP.

SECTION 3.15. ***No Material Misstatements***. No written information, report, financial statement, exhibit or schedule furnished by or on behalf of the Borrower to the Administrative Agent or any Lender in connection with the negotiation of any Loan Document or included therein or delivered pursuant thereto (other than information of a general economic or industry nature), when taken as a whole, contained any material misstatement of fact or omitted any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not materially misleading; provided that to the extent any such information, report, financial statement, exhibit or schedule was based upon or constitutes a forecast or projection, the Borrower represents only that it acted in good faith and utilized reasonable assumptions and due care in the preparation of such information, report, financial statement, exhibit or schedule (it being recognized by the Administrative Agent and the Lenders that such forecasts or projections as to future events are not to be viewed as facts and that actual results during the period or periods covered by any such forecasts or projections may differ materially and adversely from the forecasted or projected results).

SECTION 3.16. ***Employee Benefit Plans***. Each Plan has been established and administered in compliance in form and operation with its terms and with ERISA and the Code (including without limitation the Code provisions compliance with which is necessary for any intended favorable tax treatment) and all other applicable laws and regulations, except to the extent any failure to be in compliance would not reasonably be expected to result in a Material Adverse Effect. No ERISA Event has occurred, or is reasonably expected to occur that, individually or in the aggregate, would reasonably be expected to result in a Material Adverse Effect. The assets of the Borrower do not constitute "plan assets" within the meaning of Section 3(42) of ERISA.

SECTION 3.17. ***Environmental Matters***. Except as disclosed on Schedule 3.17 and except with respect to matters that, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect, none of the Borrower or any of the Subsidiaries (i) has actually or allegedly 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 written notice of any claim with respect to such Environmental Liability, (iv) has Released, permitted the Release or

become aware of the presence of Hazardous Materials at any location for which the Borrower or any of the Subsidiaries could reasonably be expected to be a responsible party or that could otherwise be reasonably expected to result in any Environmental Liabilities, (v) knows of any material facts or circumstances related to environmental conditions concerning the Subject Property that have not been disclosed to the Administrative Agent prior to the date hereof or (vi) knows of any facts or circumstances that could be reasonably expected to result in any such Environmental Liability.

SECTION 3.18. ***Insurance***. Schedule 3.18 sets forth a true, complete and correct description of all material insurance maintained by the Borrower for its Subsidiaries as of the Closing Date. As of the Closing Date, such insurance is in full force and effect and all premiums have been duly paid. The Borrower and its Subsidiaries have insurance in such amounts and covering such risks and liabilities as are in accordance with normal industry practice.

SECTION 3.19. ***Security Documents***.

(a) The Guarantee and Collateral Agreement, upon execution and delivery thereof by the parties thereto, will create in favor of the Collateral Agent, for the ratable benefit of the Secured Parties, a legal, valid and enforceable security interest in the Collateral (as defined in the Guarantee and Collateral Agreement) and the proceeds thereof and (i) when the Interim Order is entered, the Lien created under the Guarantee and Collateral Agreement shall constitute a fully perfected Lien on, and security interest in, all right, title and interest of the Loan Parties in the Pledged Certificated Security (as defined in the Guarantee and Collateral Agreement), with the priorities provided by the Orders (ii) when financing statements in appropriate form are filed in the offices specified on Schedule 3.19 (or, for any filings after the Closing Date, in such other offices as described to the Administrative Agent in writing), upon the entry of the Interim Order, the Lien created under the Guarantee and Collateral Agreement will constitute a fully perfected Lien on, and security interest in, all right, title and interest of the Loan Parties in such Collateral to the extent that such security interest can be perfected by the filing of financing statements under the Uniform Commercial Code, in each case with the priorities provided by the Orders.

(b) Upon the recordation of the applicable Intellectual Property Security Agreement (as such term is defined in the Guarantee and Collateral Agreement) with the United States Patent and Trademark Office and the United States Copyright Office, together with the Uniform Commercial Code financing statements in appropriate form filed in the offices specified on Schedule 3.19 (or, for any filings after the Closing Date, in such other offices as provided to the Administrative Agent in writing), upon the entry of the Interim Order, the Lien created under the Guarantee and

Collateral Agreement shall constitute a fully perfected Lien on, and security interest in, all right, title and interest of the Loan Parties in the Registered Intellectual Property constituting Collateral in which a security interest may be perfected by filing in the United States Patent and Trademark Office or the United States Copyright Office and Intellectual Property other than Registered Intellectual Property constituting Collateral in which a security interest may be perfected by the filing of financing statements under the Uniform Commercial Code, according to the priorities provided by the Orders (it being understood that subsequent recordings in the United States Patent and Trademark Office and the United States Copyright Office may be necessary to perfect a Lien on Registered Intellectual Property acquired by the Loan Parties after the date hereof).

SECTION 3.20. ***Location of Real Property and Leased Premises.***

(a) Schedule 3.20(a) sets forth a complete and correct list (including the address) as of the Closing Date of all real property owned by the Borrower and the Subsidiaries. As of the Closing Date, the Borrower and the Subsidiaries own good, valid and marketable fee simple title to all the real property set forth on Schedule 3.20(a), free and clear of all Liens except for Liens permitted under Section 6.02.

(b) Schedule 3.20(b) sets forth a complete and correct list (including the address) as of the Closing Date of all real property leased or subleased by the Borrower and the Subsidiaries. As of the Closing Date, the Borrower and the Subsidiaries have a valid, existing, binding and enforceable leasehold interest in all the real property set forth on Schedule 3.20(b), free and clear of all Liens, except for Liens permitted under Section 6.02.

SECTION 3.21. ***Labor Matters.*** As of the Closing Date, there are no strikes, lockouts or slowdowns against the Borrower or any Subsidiary pending or, to the knowledge of the Borrower, threatened except as would not be expected to result in a Material Adverse Effect. The hours worked by and payments made to employees of the Borrower and the Subsidiaries by the Borrower and the Subsidiaries, have not been in violation of the Fair Labor Standards Act or any other applicable Federal, state or local Requirements of Law dealing with such matters, except for such violations that would not reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect. Except as would not be expected to result in a Material Adverse Effect, the Borrower and each Subsidiary are in compliance with all Laws governing labor and employment, including all such Laws relating to wages, hours, worker classification (including but not limited to exempt/non-exempt and independent contractor/employee), the provision and administration of meal and rest periods/breaks, immigration, collective bargaining, discrimination, harassment, retaliation, civil rights, background checks and screenings, privacy and biometric screening laws, paid sick days/leave entitlements and benefits (including but not limited to the federal Emergency Paid Sick Leave Act and any applicable state or local laws concerning COVID-

19-related paid sick leave or other benefits), family and medical leave and other leaves of absence (including but not limited to the federal Emergency Family and Medical Leave Expansion Act), safety and health (including but not limited to the federal Occupational Safety and Health Act and any applicable state or local laws concerning COVID-19-related health and safety issues) and workers' compensation. The consummation of the Transactions will not give rise to any right of termination or right of renegotiation on the part of any union under any collective bargaining agreement to which the Borrower or any Subsidiary is bound, except for such rights of termination or renegotiation that would not reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect.

SECTION 3.22. ***[Reserved]***.

SECTION 3.23. ***Sanctions***. The Borrower, each Subsidiary, and each director, officer, employee, Representative or Affiliate of the Borrower or any Subsidiary is, and has been at all times, in compliance with all applicable Sanctions. Neither the Borrower, its Subsidiaries, nor any director, officer, employee, Representative or Affiliate of the Borrower or any Subsidiary (i) is a Sanctioned Person or (ii) is a Person who is otherwise the target of applicable Sanctions such that a U.S. Person cannot engage in the relevant dealing or transaction with such Person without a license, exemption or other authorization from a relevant Governmental Authority. No part of the proceeds of any Loan will be used, directly or indirectly, for any payments to any Person or pursuant to any other dealing or transaction in contravention of any applicable Sanctions. The Borrower and its Subsidiaries have instituted and maintain policies and procedures designed to ensure compliance with applicable Sanctions.

SECTION 3.24. ***Anti-Corruption Laws***. (a) None of the Borrower, any Subsidiary, or any director, officer, employee, Representative or Affiliate of the Borrower or any Subsidiary is aware of or has taken any action, directly or indirectly, that would result in a violation by such Person of applicable Anticorruption Laws, including, without limitation, making use of the mails or any other means or instrumentality of interstate commerce corruptly in furtherance of an offer, payment, promise to pay, authorization of, or transfer of anything of value to, for the benefit of or from any Person in contravention of any applicable Anticorruption Laws, and (b) the Borrower and its Subsidiaries have conducted their business in compliance with all applicable Anticorruption Laws. No part of the proceeds of any Loan will be used, directly or indirectly, to improperly obtain, retain or direct business or obtain any other improper advantage, in any such case, in contravention of any applicable Anticorruption Law. The Borrower and its Subsidiaries have instituted and maintain policies and procedures designed to ensure compliance with applicable Anticorruption Laws.

SECTION 3.25. ***Intellectual Property***. A Loan Party owns or has a valid right to use all Company IP Rights necessary for the operations of their respective businesses as currently conducted. To the knowledge of the Loan Parties, (a) the conduct and operations of the business of the Loan Parties as currently conducted does not infringe, dilute, misappropriate, or otherwise violate any Intellectual Property owned by any other Person and (b) no other Person has contested any right, title or interest of the Loan Parties in, or relating to, any Company IP Rights owned or purported to be owned by any Loan Party and, to the knowledge of the Loan Parties, there are no facts or circumstances that would constitute grounds for any such claims or allegations. In addition, (x) there are no pending (or, to the knowledge of any Loan Party, threatened) actions,

suits, claims, demands, disputes or proceedings affecting any Loan Party with respect to material Company IP Rights, (y) no judgment or order regarding any such claim with respect to material Company IP Rights has been rendered by any competent Governmental Authority, and (z) no settlement agreement, dispute resolution agreement, release, waiver, covenant not to sue or license governing resolution of an action, suit, claim, demand, dispute or proceeding with respect to material Company IP Rights has been entered into by any Loan Party.

SECTION 3.26. ***Privacy and Data Security***. Each Loan Party has materially complied with (a) all applicable Data Protection Laws, (b) all of such Loan Party's policies and notices regarding Personal Information, and (c) all of such Loan Party's contractual obligations with respect to Personal Information. No Loan Party has received any written notice of any claims of or investigations related to, or been charged with, the violation of any Data Protection Laws, applicable privacy policies, or contractual commitments with respect to Personal Information. Each Loan Party has implemented and at all times maintained reasonable technical and organizational safeguards to protect Personal Information and other confidential data in its possession or under its control against loss, theft, or unauthorized access, use, modification, alteration, destruction or disclosure. To the knowledge of the Loan Parties, there have been no breaches, security incidents, or unauthorized access to or disclosure of any Personal Information in the possession or control of any Loan Party.

SECTION 3.27. ***Brokers' Fees; Transaction Fees***. Except as disclosed on Schedule 3.27 and except for fees payable to the Administrative Agent and the Lenders, on the Closing Date, none of the Loan Parties has any obligation to any Person in respect of any finder's, broker's or investment banker's fee in connection with the Transactions.

SECTION 3.28. ***Deposit and Other Accounts***. Schedule 3.28 lists all bank and other financial institutions at which any Loan Party maintains deposit, securities, commodities or other accounts as of the Closing Date, and such schedule correctly identifies the name and address with respect to each depository, the name in which the account is held, a description of the purpose of the account and the complete account number therefor. Each deposit account listed on Schedule 1.01(a) is solely used as an escrow, fiduciaries, payroll, tax withholding or trust account.

SECTION 3.29. ***Jurisdiction of Organization; Chief Executive Office***. Schedule 3.29 lists each Loan Party's jurisdiction of organization, legal name and organizational identification number, if any, and the location of such Loan Party's chief executive office or sole place of business, in each case as of the Closing Date.

SECTION 3.30. ***Capitalization***.

(a) The authorized capital of the Borrower consists, immediately after giving effect to the Transactions on the Closing Date, of: (i) 200,000,000 shares of common stock, $0.001 par value per share (the "Common Stock"), shares of which are issued and outstanding as provided in Section 3.30 below; (ii) 2,000,000 shares of Series A Preferred Stock, none of which are issued and outstanding; and (iii) 100 shares of Series W Preferred Stock, none of which are issued and outstanding immediately prior to the Closing

Date. All of the outstanding shares of Common Stock have been duly authorized, are fully paid and nonassessable and were issued in compliance with all applicable federal and state securities laws. The Borrower holds no Common Stock in its treasury.

(b) Such capitalization of the Borrower immediately following the Closing Date (and after giving effect to the transactions contemplated by this Agreement) is as set forth on Schedule 3.30, which sets forth the name of each Person holding securities, the name and amount of all securities owned by each Person and by all directors and officers of the Borrower as a group, classes, types and amounts of all securities of the Borrower issued and outstanding, reserved, and/or issuable upon exercise, conversion and/or exchange of all Common Stock equivalents. Except (x) as set forth in Schedule 3.30, (y) for the Warrants and Warrant Certificates (each as defined in the Prepetition Credit Agreement) and (z) the Prepetition 2019 Convertible Notes, there are no outstanding options, warrants, rights (including conversion or preemptive rights and rights of first refusal or similar rights) or agreements, orally or in writing, to purchase or acquire from the Borrower any shares of Common Stock, Series A Preferred Stock or Series W Preferred Stock, or any securities convertible into or exchangeable for shares of Common Stock, Series A Preferred Stock or Series W Preferred Stock.

SECTION 3.31. ***Regulatory Matters.***

(a) The Borrower, each of its Subsidiaries and the Borrower's agents and the agents of each of the Borrower's Subsidiaries are in compliance in all material respects with all applicable laws and regulations (including all Healthcare Laws and Regulatory Authorizations) of all applicable Governmental Authorities, including the FDA and all other Regulatory Authorities, with respect to each Product and all Product Development and Commercialization Activities related thereto. The Borrower and each of its Subsidiaries have and maintains in full force and effect all material Regulatory Authorizations. The Borrower and each of its Subsidiaries are in compliance in all material respects with all applicable registration and listing requirements set forth in the FDCA or equivalent regulation of each other Governmental Authority having jurisdiction over such Person. The Borrower and each of its Subsidiaries adhere in all material respects to all applicable regulations of all Regulatory Authorities with respect to the Products and all Product Development and Commercialization Activities, labeling, advertising, promotion, Product descriptions and claims for the Products related thereto.

(b) All notices, registrations and listings, supplemental applications or notifications, reports (including field alerts, medical reports or other reports of adverse experiences) and other filings required by any Regulatory Authority with respect to the Products have been filed with the FDA and any other applicable Governmental Authority.

(c) Neither the Borrower nor any of its Subsidiaries has introduced into commercial distribution any Products manufactured by or on behalf of the Borrower or its Subsidiaries that were upon their shipment by the Borrower or any of its Subsidiaries adulterated or misbranded and all Products are and have been labeled, promoted, and advertised in accordance with their Registrations and approved labeling or within the scope of an exemption from obtaining such Registration.

(d) (i) The Borrower and its Subsidiaries and, to their knowledge, their respective suppliers are, and have been in material compliance with, and each Product in current commercial distribution is designed, manufactured, prepared, assembled, packaged, labeled, stored, installed, serviced, and processed in material compliance with, the applicable Regulatory Authority manufacturing requirements; and (ii) the Borrower and its Subsidiaries are in material compliance with the written procedures, record-keeping and reporting requirements required by the FDA or any other applicable Governmental Authority pertaining to the reporting of adverse events involving the Products, including, as the case may be, the FDA's Safety Reporting Portal, the FDA's MedWatch, or the FDA's Center for Food Safety and Applied Nutrition Adverse Event Reporting System (CAERS).

(e) Except as provided in Schedule 3.31(e), neither the Borrower nor any of its Subsidiaries has received from any Regulatory Authority any notice of adverse findings with respect to any Product or any Product Development and Commercialization Activities related thereto, including any FDA Form 483 inspectional observations, notices of violations, warning letters, criminal proceeding notices under Section 305 of the FDCA, or any other similar communication from any Regulatory Authority. There have been no seizures conducted or threatened by any Regulatory Authority with respect to any Product, and no recalls, market withdrawals, field notifications, notifications of misbranding or adulteration or safety alerts conducted, requested or threatened by any Regulatory Authority with respect to any Product, and no recalls, market withdrawals, field notifications, notifications of misbranding or adulteration or safety alerts have been conducted requested or threatened by any Regulatory Authority relating to any Products.

Neither the Borrower nor any of its Subsidiaries has received any written notification that remains unresolved from the FDA or any other Regulatory Authority indicating any breach or violation of any applicable Regulatory Authorization, including that any of the Products is misbranded or adulterated as defined in the FDCA or the rules and regulations promulgated thereunder.

(f) Neither the Borrower nor any of its Subsidiaries nor any officer, employee or agent thereof, has made an untrue statement of a material fact or fraudulent statements to the FDA or any other Regulatory Authority, failed to disclose a material fact required to be disclosed to the FDA or any other Regulatory Authority, or committed an act, made a statement, or failed to make a statement that, at the time such disclosure was made (or was not made), could reasonably be expected to provide a basis for the FDA or any other Regulatory Authority to invoke its policy respecting Fraud, Untrue Statements of Material Facts, Bribery and Illegal Gratuities, set forth in 56 Fed. Reg. 46191 (September 10, 1991) or any similar policy.

(g) The transactions contemplated by the Loan Documents (or contemplated by the conditions to effectiveness of any Loan Document) will not impair the Borrower's or any of its Subsidiaries' ownership of or rights under (or the license or the right to use, as the case may be) any Regulatory Authorizations relating to the Products in any material manner, and no consent or other authorization of any Governmental Authority is required in connection with the transactions contemplated hereby, including the Liens granted in connection herewith and the exercise of rights and remedies with respect thereto.

SECTION 3.32. ***Bonding***. Except as set forth in Schedule 3.32, as of the Closing Date, no Loan Party is a party to or bound by any surety bond agreement, indemnification agreement therefor or bonding requirement with respect to Products or services sold by it.

SECTION 3.33. ***Sale and Lease-Back Transactions***. No Loan Party has entered, directly or indirectly, into any agreement or arrangement providing for the sale or transfer by it of any property (now owned or hereafter acquired) to a Person and the subsequent lease or rental of such property or other similar property from such Person.

SECTION 3.34. ***True and Complete Disclosure***. The information included in each Beneficial Ownership Certification (as may be supplemented by the Borrower from time to time) provided to any Lender in connection with this Agreement is true and correct in all respects.

SECTION 3.35. ***Prepetition PPP Loan Use of Proceeds***. All of the proceeds of the Prepetition PPP Loan were used prior to the Closing Date for PPP Loan Permitted Purposes and as of the Closing Date, no Loan Party holds or otherwise owns any proceeds in respect of the Prepetition PPP Loans.

SECTION 3.36. ***DIP Funding Account***. On and after the DIP Funding Account Effective Date, other than the direct proceeds of the Loans, there is no cash, cash equivalents or other assets on deposit in the DIP Funding Account.

ARTICLE IV

Effectiveness of this Agreement; Conditions of Lending

SECTION 4.01. ***All Credit Events***. The obligations of the Lenders to make Loans hereunder are subject to (x) the occurrence of the Closing Date on or before June 2, 2021 and (y) the satisfaction, on the date of the applicable Borrowing (other than a continuation of a Borrowing) (each such event being called a "Credit Event") of the following conditions:

(a) The Administrative Agent shall have received a notice of such Borrowing as required by Section 2.03.

(b) The representations and warranties set forth in Article III and in each other Loan Document and certificate or instrument delivered pursuant hereto and thereto shall be true and correct in all material respects (other than to the extent such representations and warranties are already qualified by "materiality" or "Material Adverse Effect", in which case such representations and warranties shall be true and correct in all respects) on and as of the date of such Credit Event with the same effect as though made on and as of such date, except to the extent such representations and warranties expressly relate to an earlier date, in which case they shall be true and correct in all material respects as of such earlier date (other than to the extent such representations and warranties are already qualified by "materiality" or "Material Adverse Effect", in which case such representations and warranties shall be true and correct in all respects as of such earlier date).

(c) At the time of and immediately after such Credit Event, no Default or Event of Default shall have occurred and be continuing.

(d) The Orders (or in the case of any Initial Borrowing, only the Interim Order) shall be in full force and effect and shall not have been vacated, reversed, modified, amended or subject to a stay without the prior written consent of the Required Lenders.

(e) There shall be no order, injunction or decree of any Governmental Authority restraining or prohibiting the funding of the Facility.

(f) To the extent the applicable Credit Event is proposed to occur on or after thirty (30) days after the Petition Date, the Final Order (i) shall have been entered and shall be in full force and effect

and (ii) shall not have been amended, supplemented, appealed altered, stayed, vacated, rescinded or otherwise modified, without the prior written consent of the Required Lenders.

(g) At the time of, and immediately after any Credit Event that occurs on or after the DIP Funding Account Effective Date, (x) the Collateral Agent shall have sole dominion and exclusive control over the DIP Funding Account and (y) the DIP Funding Account Control Agreement shall be in full force and effect.

(h) Solely with respect to a Credit Event that is the Final Borrowing, the DIP Funding Account Effective Date shall have occurred prior to the date of such Final Borrowing.

(i) The Administrative Agent shall have received a certificate of a Financial Officer of the Borrower certifying as to the compliance with the conditions precedent set forth in the foregoing clauses (b), (c), (d), (e), (f), (g) and (h) (in the case of a Credit Event that is the Final Borrowing).

SECTION 4.02. ***Closing Date***. The effectiveness of this Agreement is subject to the satisfaciton of the following conditions:

(a) The Administrative Agent's receipt of the following, each of which shall be originals or telecopies or ".pdf" or ".tif" copies unless otherwise specified, each properly executed by a Responsible Officer of the signing Loan Party, each dated the Closing Date (or, in the case of certificates of governmental officials, a recent date before the Closing Date):

(i) executed counterparts of this Agreement, sufficient in number for distribution to the Administrative Agent, each Lender and the Borrower;

(ii) the Guarantee and Collateral Agreement duly executed by the Borrower and each Subsidiary, together with:

(A) [reserved];

(B) Financing Statements in form appropriate for filing under the Uniform Commercial Code in the jurisdictions of organization of the Loan Parties in order to perfect the Liens created under the Guarantee and Collateral Agreement;

(C) certified copies of UCC, tax and judgment lien searches, or equivalent reports or searches, each of a recent date listing all effective financing statements, lien notices or comparable documents (together with copies of such financing statements and documents) that name any Loan Party as debtor and that are filed in those state and county jurisdictions in

which any Loan Party is organized or, solely with respect to tax and judgment lien searches, maintains its principal place of business, and accompanied by evidence reasonably satisfactory to the Collateral Agent that the Liens indicated in any such financing statement (or similar document) would be permitted under Section 6.02 or have been or will be contemporaneously released or terminated; and

(iii) [reserved];

(iv) a copy of, or a certificate as to coverage under, the insurance policies referred to in Section 5.02 and the applicable provisions of the Security Documents, each of which shall name the Collateral Agent, on behalf of the Secured Parties, as additional insured or lender loss payee, in form and substance reasonably satisfactory to the Collateral Agent;

(v) (1) a certificate of the Secretary, Assistant Secretary or other Responsible Officer of each Loan Party dated the Closing Date and certifying (A) that attached thereto is a copy of the certificate or articles of incorporation or organization or articles of association or other constituting document, including all amendments thereto, of each Loan Party, as certified as of a recent date by the Secretary of State of the state of its organization, (B) that attached thereto is a true and complete copy of the by-laws or other governing document of such Loan Party as in effect on the Closing Date and at all times since a date prior to the date of the resolutions described in clause (C) below, (C) that attached thereto is a true and complete copy of resolutions duly adopted by the Board of Directors or similar governing body of such Loan Party authorizing the execution, delivery and performance of the Loan Documents to which such Person is a party and, in the case of the Borrower, the borrowings hereunder, and that such resolutions have not been modified, rescinded or amended and are in full force and effect, (D) that the certificate or articles of incorporation or organization or other constituting documents of such Loan Party have not been amended since the date of the last amendment thereto shown on the certificate or articles of incorporation or organization furnished pursuant to clause (A) above, (E) the attached thereto is a true and complete copy of the Interim Order and (F) to the extent applicable in the Relevant Jurisdiction, as to the incumbency and signature of each officer executing any Loan Document or any other document delivered in connection herewith on behalf of such Loan Party and (2) to the extent applicable in the Relevant Jurisdiction, a certificate of another officer as to the incumbency and signature of the Secretary, Assistant Secretary or other Responsible Officer executing the certificate pursuant to clause (1) above; and

(vi) all documentation and other information with respect to the Borrower and the Guarantors required by regulatory authorities under applicable "know your customer" and anti-money laundering rules and regulations, including without limitation the USA PATRIOT Act at least three (3) days prior to the Closing Date (or such later date as the Administrative Agent may agree) to the

extent requested by the Administrative Agent or an Initial Lender at least five (5) days in advance of the Closing Date.

(b) The Interim Order (i) shall have been entered within two (2) days of the Petition Date (or such longer period as the Required Lenders may agree in their sole discretion) and shall be in full force and effect and (ii) shall not have been amended, supplemented, appealed, altered, stayed, vacated, rescinded or otherwise modified, without the prior written consent of the Required Lenders.

(c) The "first day" orders (including a cash management order), which shall be in form and substance satisfactory to the Administrative Agent (at the written direction of the Required Lenders), shall have been entered upon an application or motion of the Loan Parties in form and substance reasonably satisfactory to the Administrative Agent (at the written direction of the Required Lenders) (the "First Day Orders").

(d) The Administrative Agent and the Required Lenders shall have received and approved the Initial Approved Budget.

(e) The representations and warranties set forth in Article III and in each other Loan Document and certificate or instrument delivered pursuant hereto and thereto shall be true and correct in all material respects (other than to the extent such representations and warranties are already qualified by "materiality" or "Material Adverse Effect", in which case such representations and warranties shall be true and correct in all 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 they shall be true and correct in all material respects as of such earlier date (other than to the extent such representations and warranties are already qualified by "materiality" or "Material Adverse Effect", in which case such representations and warranties shall be true and correct in all respects as of such earlier date); and

(f) At the time of, and immediately after the occurrence of, the Closing Date, no Default or Event of Default shall have occurred and be continuing.

(g) The Administrative Agent and the Lenders shall have received, without duplication, (x) all Fees and other amounts due and payable on or prior to the Closing Date pursuant to Section 2.06 of this Agreement and (y) reimbursement or payment of all other fees, costs and expenses required to be reimbursed or paid by the Borrower, hereunder or under any other Loan Document.

(h) The Collateral Agent on behalf of the Secured Parties shall have a security interest in the Collateral of the type and priority described in the Guarantee and Collateral Agreement (subject to the Orders) to the extent required thereby.

(i) The Administrative Agent shall have received a certificate of a Financial Officer of the Borrower certifying as to the compliance with the conditions precedent set forth in the foregoing clauses (e) and (f).

(j) The conditions precedent set forth in clauses (a) through (i) of this Section 4.02 shall have been satisfied on or before June 2, 2021.

ARTICLE V

Affirmative Covenants

The Borrower covenants and agrees with each Lender that 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 (other than contingent indemnification, yield protection, tax gross-up and expense reimbursement obligations, in each case in respect of which no claim has been asserted) shall have been paid in full, unless the Required Lenders shall otherwise consent in writing, the Borrower shall, and shall cause each of the Subsidiaries to:

SECTION 5.01. ***Existence; Compliance with Laws; Businesses and Properties.***

(a) Do or cause to be done all things necessary to preserve, renew and keep in full force and effect its legal existence, except as otherwise expressly permitted under Section 6.05.

(b) Except, in the cases of clauses (i) and (ii), to the extent failure to do so would not reasonably be expected to have a Material Adverse Effect, (i) do or cause to be done all things reasonably necessary to obtain, preserve, renew, extend and keep in full force and effect the material licenses, Permits, franchises, authorizations, Patents, Copyrights, Trademarks and trade names and Trade Secrets necessary to the conduct of its business, (ii)maintain and operate such business in substantially the manner in which it is presently conducted and operated and comply with the obligations, covenants and conditions contained in contractual obligations of the Borrower and the Subsidiaries, and (iii) at all times maintain and preserve all property material to the conduct of such business and keep such property in good repair, working order and condition.

(c) Each Loan Party shall, and shall cause each of its Subsidiaries to, comply with all Requirements of Law and Permits (including without limitation, all Registrations) of any Governmental

Authority having jurisdiction over it or its business, except where failures to comply would not reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect. Without limiting the generality of the foregoing, each Loan Party and its Subsidiaries shall comply with all Healthcare Laws, Data Protection Laws and all lawful requests of any Governmental Authority applicable to it or its business except where failures to comply would not reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect.

SECTION 5.02. ***Insurance.***

(a) Keep its insurable properties insured at all times by financially sound and reputable insurers to such extent and against such risks as is customary with companies in the same or similar businesses operating in the same or similar locations.

(b) Cause all such policies covering any Collateral or business of the Loan Parties to be endorsed or otherwise amended to include a customary lender's loss-payable or additional insured endorsement, as appropriate, in form and substance reasonably satisfactory to the Administrative Agent and the Collateral Agent; at the request of the Administrative Agent or the Collateral Agent, deliver original or certified copies of all such policies to the Collateral Agent; use commercially reasonable efforts to cause each such policy to provide that it shall not be canceled, modified or not renewed (i) by reason of nonpayment of premium upon not less than ten (10) days' prior written notice thereof by the insurer to the Administrative Agent and the Collateral Agent (giving the Administrative Agent and the Collateral Agent the right to cure defaults in the payment of premiums) or (ii) for any other reason upon not less than 30 days' prior written notice thereof by the insurer to the Administrative Agent and the Collateral Agent.

(c) To the extent that a Mortgage is required to be provided with respect to any real property pursuant to Section 2.23, Section 5.11, Section 5.16 or pursuant to the terms of any other Loan Documents, as promptly as practicable after the request of the Collateral Agent, to the extent applicable in the Relevant Jurisdiction provide the Collateral Agent (i) a completed standard flood hazard determination form and (ii) if any portion of the Mortgaged Property is located in a Special Flood Hazard Area, evidence that such Federal Flood Insurance has been obtained.

SECTION 5.03. ***Taxes and Other Obligations.***

(a) Pay and discharge promptly when due all federal and all other material taxes, assessments and governmental charges or levies imposed upon it or upon its income or profits or in respect of its property, before the same shall become delinquent or in default; provided, however, that such payment and discharge shall not be required with respect to any such tax, assessment, charge or levy so long as the validity or amount thereof shall be contested in good faith by appropriate proceedings and the Borrower shall have set aside on its books adequate reserves with respect thereto in accordance with GAAP and such contest operates to suspend collection of the contested obligation, tax, assessment or charge.

(b) Pay, discharge and perform as the same shall become due and payable or required to be performed all of their other respective obligations and liabilities, including (i) all lawful claims which, if unpaid, would by law become a Lien upon its property unless the same are being contested in good faith by appropriate proceedings diligently prosecuted which stay the imposition or enforcement of any Lien and for which adequate reserves in accordance with GAAP are being maintained by such Person; (ii) all Indebtedness, as and when due and payable, but subject to any subordination provisions contained herein, in any other Loan Documents and/or in any instrument or agreement evidencing such Indebtedness; (iii) the performance of all obligations under any contractual obligation to such Loan Party or any of its Subsidiaries is bound, or to which it or any of its property is subject, except where the failure to perform would not reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect; and (iv) payments to the extent necessary to avoid the imposition of a Lien with respect to, or the involuntary termination of any underfunded Plan.

SECTION 5.04. ***Financial Statements, Reports, etc.*** In the case of the Borrower:

(a) furnish to the Administrative Agent (to be furnished by the Administrative Agent to each Lender) within ninety (90) days after the end of each fiscal year, (i) the consolidated balance sheet and related statements of income, stockholders' equity and cash flows showing the consolidated financial condition of the Borrower and its consolidated subsidiaries as of the close of such fiscal year and the consolidated results of its operations and the operations of such subsidiaries during such year, together with comparative figures for the immediately preceding fiscal year, all audited by KPMG LLP or other independent public accountants reasonably acceptable to the Administrative Agent and accompanied by an opinion of such

accountants (which opinion shall be without qualification or exception as to the scope of such audit) to the effect that such consolidated financial statements fairly present the financial condition and results of operations of the Borrower and its consolidated subsidiaries on a consolidated basis in accordance with GAAP;

(b) commencing with financial statements for the fiscal quarter ending June 30, 2021, furnish to the Administrative Agent (to be furnished by the Administrative Agent to each Lender) within forty-five (45) days after the end of each fiscal quarter the consolidated balance sheet and related statements of income, stockholders' equity and cash flows showing the financial condition of the Borrower and its consolidated subsidiaries as of the close of such fiscal quarter and the results of its operations and the operations of such subsidiaries during such fiscal quarter and the then elapsed portion of the fiscal year, together with comparative figures for the same periods for the immediately preceding fiscal year, all certified by one of its Financial Officers as fairly presenting the financial condition and results of operations of the Borrower and its consolidated subsidiaries on a consolidated basis in accordance with GAAP, subject to the absence of footnotes and normal year-end audit adjustments;

(c) [reserved];

(d) furnish to the Administrative Agent (to be furnished by the Administrative Agent to each Lender) concurrently with any delivery of financial statements under clauses (a) and (b) above, a certificate of a Financial Officer in the form of Exhibit E (a "Compliance Certificate") certifying that no Default or Event of Default has occurred and is continuing or, if such an Default or Event of Default has occurred and is continuing, specifying the nature and extent thereof and any corrective action taken or proposed to be taken with respect thereto;

(e) [reserved];

(f) furnish to the Administrative Agent (to be furnished by the Administrative Agent to each Lender) promptly after the same become publicly available, copies of all periodic and other reports, proxy statements and other materials filed by the Borrower or any Subsidiary with the Securities and Exchange Commission, or any Governmental Authority succeeding to any or all of the functions of said Commission, or with any national securities exchange, or distributed to its public shareholders, as the case may be;

(g) [reserved];

(h) furnish to the Administrative Agent concurrently with any delivery of financial statements under Section 5.04(a), to the extent that any insurance coverage has been modified or replaced since the date of the then most recent certificate(s) of insurance delivered to the Administrative Agent, a certificate of insurance with respect to all material insurance coverage maintained as of the date thereof by any Loan Party, together with such other related documents and information as the Administrative Agent may reasonably require;

(i) [reserved];

(j) furnish to the Administrative Agent, which shall furnish to each Lender within five (5) Business Days following the receipt thereof by the Borrower or any of the Subsidiaries, a copy of any "management letter" received by any such Person from its certified public accountants and the management's response thereto;

(k) furnish to the Administrative Agent, which shall furnish to each Lender reasonably promptly after the request by any Lender, all documentation and other information that such Lender reasonably requests in order to comply with its ongoing obligations under applicable "know your customer" and anti-money laundering rules and regulations, including the USA PATRIOT Act; and

(l) furnish to the Administrative Agent, which shall furnish to each Lender promptly, from time to time, such other information regarding the operations, business affairs and financial condition of the Borrower or any Subsidiary, or compliance with the terms of any Loan Document, as the Administrative Agent or any Lender may reasonably request.

SECTION 5.05. ***Litigation and Other Notices***. Furnish to the Administrative Agent, which shall furnish to each Lender, within five (5) Business Days (or such shorter period as described below) of a Responsible Officer becoming aware thereof, written notice of the following:

(a) (i) any Event of Default or, to the extent any Responsible Officer of the Borrower is aware of such occurrence, any Default that has occurred and is continuing, specifying the nature and extent thereof and the corrective action (if any) taken or proposed to be taken with respect thereto, (ii) any event that has resulted in a mandatory payment of all or any portion of the Obligations pursuant to Section 2.14, stating the material terms and conditions of such transaction and estimating the Net Cash Proceeds thereof, (iii) any

event or occurrence of the nature described in Section 7.01(f) or (iv) any change in the information provided in the Beneficial Ownership Certification delivered to a Lender that (x) would result in a change to the list of beneficial owners identified in such certification and (y) is required to maintain compliance with the Beneficial Ownership Regulation.

(b) the filing or commencement of, or any threat in writing of any Person to file or commence of which any Loan Party is aware, any action, suit or proceeding, whether at law or in equity or by or before any Governmental Authority, against the Borrower or any Subsidiary that would reasonably be expected to result in, individually or in the aggregate, a Material Adverse Effect;

(c) the commencement of, or any material development in, any litigation or proceeding affecting any Loan Party or its Subsidiaries or any property or Product of any Loan Party or its Subsidiaries, of which any Loan Party is aware (i) in which the amount of damages claimed is $500,000 (or its equivalent in another currency or currencies) or more, (ii) if adversely determined, would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, (iii) in which the relief sought is an injunction or other stay of the performance of this Agreement or any other Loan Document or (iv) alleges potential or actual violations of any Healthcare Laws;

(d) as soon as reasonably practicable upon knowledge by any Responsible Officer of any Loan Party of: (i) unpermitted Releases by any Loan Party, (ii) the receipt by any Loan Party of any notice of violation of or potential liability under any Environmental Law; (iii) the commencement of, or any material change to, any action, investigation, suit, proceeding, audit, claim, demand or dispute alleging a violation of or liability under any Environmental Law and relating to any Loan Party or any Mortgaged Property; (iv) the receipt by any Loan Party of any correspondence regarding any environmental conditions, remediation, claims or related matters concerning the Subject Property (together with copies of such correspondence); and (v) the receipt by any Loan Party of notification that any currently owned property of any Loan Party is subject to any Lien in favor of any Governmental Authority securing, in whole or in part, Environmental Liabilities, except any such Release, violation or potential liability, action, investigation, suit, proceeding, audit, claim, demand or dispute or Lien that would not reasonably be expected to result in any Loan Party incurring material Environmental Liabilities or a material adverse impact on the value or use of any Mortgaged Property;

(e) any development that has resulted in, or would reasonably be expected to result in, a Material Adverse Effect;

(f) (i) promptly after any officer of the Borrower, any other Loan Party or any ERISA Affiliate knows or has reason to know that (1) a request for a minimum funding waiver under Section 412 of the Code has been filed with respect to any Plan or Multiemployer Plan, or (2) an ERISA Event has occurred or is reasonably likely to occur, a notice describing such ERISA Event, and any action that the Borrower, any other Loan Party or any ERISA Affiliate, as applicable, proposes to take with respect thereto, together with a copy of any notices received from or filed with the PBGC, IRS, Multiemployer Plan or other Plan pertaining thereto, and (ii) promptly following receipt of the request thereof, copies of such documents or governmental reports or filings relating to any Plan or Multiemployer Plan as any Loan Party shall reasonably request;

(g) any Loan Party or Subsidiary has received written notice by a Governmental Authority or customer of any actual or alleged material violation of applicable Data Protection Laws;

(h) any Loan Party or Subsidiary has received written notice of the commencement of any investigation, audit, inquiry or other material proceeding affecting any Loan Party or Subsidiary by any data protection authority or other Governmental Authority charged with enforcement of applicable Data Protection Laws;

(i) any material data breach affecting any Loan Party or Subsidiary as to which notification is required to be given under (1) applicable Data Protection Laws or (2) contractual requirements to which the Loan Party or Subsidiaries are subject; and

(j) (i) any notice that the FDA or any other similar Governmental Authority is limiting, suspending or revoking any Registration, or considering any of the foregoing; or (ii) any Loan Party or any of its Subsidiaries becoming the subject of any administrative or regulatory action, FDA Form 483 observation, warning letter, notice of violation letter of the FDA or any comparable Governmental Authority.

SECTION 5.06. ***Information Regarding Collateral.*** Furnish to the Administrative Agent thirty (30) days' prior written notice of any change (i) in any Loan Party's corporate name, (ii) in the jurisdiction of organization or formation of any Loan Party, (iii) in any Loan Party's identity or corporate structure or (iv) in any Loan Party's Federal Taxpayer Identification Number. The Borrower agrees not to effect or permit any change referred to in the preceding sentence unless all filings have been made under the Uniform Commercial Code or otherwise that are required in order for the Collateral Agent to continue at all times following such change to have a valid, legal

and perfected security interest in all the Collateral. The Borrower also agrees promptly to notify the Administrative Agent if any material portion of the Collateral is damaged or destroyed which would reasonably be expected to have a Material Adverse Effect.

SECTION 5.07. ***Maintaining Records; Access to Properties and Inspections***. Keep proper books of record and account in which full, true and correct entries in all material respects in conformity with GAAP consistently applied and all Requirements of Law are made of all dealings and transactions in relation to its business and activities. Each Loan Party will, and will cause each of its subsidiaries to, permit during business hours upon at least five (5) Business Days' prior written notice, any representatives designated by the Administrative Agent or any Lender to visit and reasonably inspect the financial records and the properties of such Person at reasonable times and to make extracts from and copies of such financial records, and permit any representatives designated by the Administrative Agent or any Lender to discuss the affairs, finances and condition of such Person with the officers thereof and independent accountants therefor. The Administrative Agent and each Lender may exercise rights under this Section 5.07 from time to time, but not more than once per year at the Borrower's expense absent the continuance of an Event of Default.

SECTION 5.08. ***Use of Proceeds***. The proceeds of the Loans will be used solely in accordance with the terms of the Orders, the Loan Documents and the Approved Budget, including: (i) to pay amounts due to Lenders and the Agents hereunder and professional fees and expenses (including legal, financial advisor, appraisal and valuation-related fees and expenses) incurred by Lenders and the Agents, including those incurred in connection with the preparation, negotiation, documentation and court approval of the transactions contemplated hereby in accordance with the Approved Budget and (ii) to provide working capital, and for other general corporate purposes of the Loan Parties, and to pay administration costs of the Cases and to fund the Professional Fees Account in accordance with the Orders in accordance with the Approved Budget.

SECTION 5.09. ***Compliance with Environmental Laws***. Except to the extent that the failure to do so would not reasonably be expected to result in any Loan Party incurring material Environmental Liabilities or a material adverse impact on the value or use of any Mortgaged Property, comply, and use commercially reasonable efforts to cause all of its lessees occupying its properties to comply, with all Environmental Laws applicable to its operations and properties; obtain and renew all Permits required under Environmental Law necessary for its operations and properties; and conduct any remedial action required or permitted by applicable Environmental Laws to achieve compliance with the standard required for Borrower's use of the property under said applicable Environmental Laws; provided, however, that none of the Borrower or any Subsidiary shall be required to undertake any remedial action required to comply with applicable Environmental Law to the extent that (i) its obligation to do so is being contested in good faith and by proper proceedings and appropriate reserves are being maintained with respect to such circumstances in accordance with GAAP or (ii) failure to comply could not reasonably be expected to result in a material liability or an imminent threat to human health or safety.

SECTION 5.10. ***Preparation of Environmental Reports.***

(a) Use commercially reasonable efforts to cause environmental consultants for any parties responsible for any remediation of environmental conditions impacting the Subject Property to cooperate with the Administrative Agent and the Lenders in obtaining reports, updates and other information related to such remediation and environmental conditions as the Administrative Agent or any Lender may reasonably request.

(b) If an Event of Default caused by reason of a breach of Section 3.17 or Section 5.09 that relates to a Mortgaged Property occurs and continues for more than 10 days without the Borrower or any Subsidiary commencing activities reasonably likely to cure such Event of Default, at the written request of the Required Lenders through the Administrative Agent while any such Event of Default is continuing, provide to the Lenders within 20 days after such request, at the expense of the Loan Parties, an environmental site assessment report regarding the matters that are the subject of such Event of Default prepared by an environmental consulting firm reasonably acceptable to the Administrative Agent, and shall thereafter expeditiously take any and all actions to cure the Event of Default.

SECTION 5.11. ***Further Assurances.***

(a) Subject to Section 5.11(b), execute any and all further documents, financing statements, agreements and instruments, and take all further action (including filing Uniform Commercial Code and other financing statements, mortgages and deeds of trust) that may be required under applicable Requirements of Law, or that the Required Lenders, the Administrative Agent or the Collateral Agent may reasonably request, in order to effectuate the transactions contemplated by the Loan Documents and in order to grant, preserve, protect and perfect the validity and priority of the security interests created or intended to be created by the Security Documents (including in respect of after-acquired property and Persons that become Subsidiaries of any Loan Party after the Closing Date); provided that unless separately requested by the Collateral Agent in writing, no leasehold mortgages will be required.

(b) Borrower will cause any subsequently acquired, organized or formed (by division or otherwise) Subsidiary to become a Loan Party by executing the Guarantee and Collateral Agreement and each applicable Security Document in favor of the Collateral Agent on the date of such acquisition or formation. In addition, from time to time, the Borrower will, at its cost and expense, promptly secure the Obligations by pledging or creating, or causing to be

pledged or created, perfected security interests with respect to such of its assets and properties as the Administrative Agent or the Required Lenders shall designate, other than Excluded Property (it being understood that it is the intent of the parties that the Obligations shall be secured by substantially all the assets of the Borrower and its Subsidiaries (subject to the proviso in Section 5.11(a)). Such security interests and Liens will be created under the Security Documents and other security agreements, Mortgages, deeds of trust and other instruments and documents in form and substance reasonably satisfactory to the Collateral Agent, and subject to Section 2.23, the Borrower shall deliver or cause to be delivered to the Lenders all such instruments and documents (including customary legal opinions), title insurance policies and lien searches, in each case in a form and substance customarily delivered in transactions of this type with respect to substantially similar collateral) as the Collateral Agent shall reasonably request to evidence compliance with this Section. The Borrower agrees to provide such evidence as the Collateral Agent shall reasonably request as to the perfection and priority status of each such security interest and Lien. In furtherance of the foregoing, the Borrower will give within ten (10) days following the acquisition thereof, a written notice to the Administrative Agent of the acquisition by it or any of the Subsidiaries of any fee interest in real property.

SECTION 5.12. ***[Reserved].***

SECTION 5.13. ***[Reserved].***

SECTION 5.14. ***Product Licenses***. The Borrower and each of its Subsidiaries shall (i) maintain each Permit necessary and material to the Borrower's and such Subsidiaries' business, including each Regulatory Authorization, from, or file any notice or registration in, each jurisdiction in which the Borrower or any of its Subsidiaries are required to obtain any Permit or Regulatory Authorization or to file any notice or registration, in order to sell or distribute the Products and (ii) promptly provide evidence of same to the Agent.

SECTION 5.15. ***Maintenance of Regulatory Authorizations, Contracts, Intellectual Property, Etc***. With respect to the Products, the Borrower and each of its Subsidiaries will (i) maintain in full force and effect all material Regulatory Authorizations, contract rights, or other rights necessary for the operations of its business, (ii) notify the Administrative Agent, promptly after learning thereof, of any material product recalls, safety alerts, corrections, withdrawals, marketing suspensions, removals or the like conducted, to be undertaken or issued by the Borrower or any of its Subsidiaries or its respective suppliers whether or not at the request, demand or order of any Governmental Authority or otherwise with respect to any Product, or any basis for undertaking or issuing any such action or item, (iii) maintain in full force and effect, and pay all costs and expenses relating to, all material Company IP Rights owned or purported to be owned or Controlled by the Borrower or any of its Subsidiaries and all material agreements necessary or customary for the operation of the business of the Borrower or any of the Subsidiaries, (iv) notify

the Agent, within five (5) Business Days after learning thereof, of any infringement or other violation by any Person of its Intellectual Property and aggressively pursue any such infringement or other violation except in any specific circumstances where both (x) the Borrower or any of its Subsidiaries is able to demonstrate that it is not commercially reasonable to do so and (y) where not doing so does not materially adversely affect any Product, (v) use commercially reasonable efforts to pursue and maintain in full force and effect legal protection for all new material Intellectual Property developed or Controlled by the Borrower or any of its Subsidiaries necessary or customary for the operation of the business of the Borrower or any of the Subsidiaries and (vi) notify the Administrative Agent, promptly after learning thereof, of (x) any material claim by any Person that the conduct of the Borrower's or any of its Subsidiaries' business (including the development, manufacture, use, sale or other commercialization of any Product) infringes any Intellectual Property of the Borrower or any of its Subsidiaries and, if requested by the Agent, use commercially reasonable efforts to resolve such claim, or (y) any event, circumstance, act or omission that could reasonably be expected to cause any representation or warranty contained in Section 6.17 to be incorrect in any material respect if such representation or warranty was to be made at the time the Borrower or any of its Subsidiaries learned of such event, circumstance, act or omission.

SECTION 5.16. ***Post-Closing Matters.*** Execute and deliver the documents and complete the tasks set forth below in this Section 5.16, in each case within the time limits specified herein (or such longer period of time as determined by the Administrative Agent in its sole discretion):

(a) No later than 30 days after the Closing Date (or such later date that the Administrative Agent may agree to in its sole discretion), the Borrower shall submit to the Prepetition PPP Lender a request for forgiveness (such request, a "Loan Forgiveness Request") for the maximum portion of the principal amount of the Prepetition PPP Loan as is permitted in accordance with the CARES Act – Title I.

(b) No later than 30 days after the Closing Date (or such later date that the Administrative Agent may agree to in its sole discretion), insurance endorsements which shall indicate that the insurance policies referred to in Section 5.02 and the applicable provisions of the Security Documents have been endorsed or otherwise amended to include "standard" lender's loss-payable endorsement and shall name the Collateral Agent, on behalf of the Secured Parties, as additional insured or lender loss payee, in form and substance reasonably satisfactory to the Collateral Agent.

(c) No later than the earlier of (x) 30 days after the Petition Date and (y) the entry of the Final Order by the Bankruptcy Court (or such later date that the Administrative Agent may agree to in its sole discretion), the Borrower shall cause the Collateral Agent to have sole dominion and exclusive control over a deposit account of the Borrower (which deposit account is a zero balance account

immediately prior to the DIP Funding Account Effective Date) at a depsository bank approved by the Adminstrative Agent in its reasonable discretion (it being understood and agreed that Truist Bank is a reasonably acceptable depository bank) pursuant to an executed and effective blocked account control agreement that is in form and substance satisfactory to the Administrative Agent in its sole discretion (such blocked account control agreement, the "DIP Funding Account Control Agreement"; the applicable deposit account of the Borrower, the "DIP Funding Account"; the depository bank at which the DIP Funding Account is held, the "DIP Funding Account Depository Bank" and the date this clause (c) is satisfied, the "DIP Funding Account Effective Date").

(d) No later than the earlier of (x) 30 days after the Petition Date and (y) the entry of the Final Order by the Bankruptcy Court (or such later date that the Administrative Agent may agree to in its sole discretion), the Borrower shall deliver to the Collateral Agent (i) executed counterpart of a Mortgage in a form approved by the Collateral Agent with respect to the Subject Property, (ii) a copy of the existing deed evidencing the ownership of the Subject Property, (iii) copies of the existing survey and title insurance policy previously obtained by the Borrower for the Subject Property, (iv) evidence of property insurance and, if applicable, flood insurance, for the Subject Property, and (v) such legal opinions as the Collateral Agent may require with respect to such Mortgage.

The representations and warranties, conditions precedent, covenants and each other provision of this Agreement, the Security Documents and the other Loan Documents shall be deemed modified solely to the extent necessary to give effect to this Section 5.16(a), (b) and (d) and the timing of the deliveries and actions contemplated by Section 5.16(a), (b) and (d).

SECTION 5.17. ***Approved Budget.***

(a) The Initial Approved Budget shall depict, (on a weekly basis, Cash Balances, disbursements and receipts (together with such other information contained in Exhibit F) for the 13-week period following the Closing Date (the "Initial Weekly Budget Period"), and such Initial Approved Budget is attached hereto as Exhibit F (the "Initial Approved Budget"). The Initial Approved Budget may be updated from time to time in accordance with Section 5.17(b) to reflect any update, modification or supplement requested by the Borrower in writting to the Administrative Agent (any such proposed budget, a "Proposed Budget").

(b) Notwithstanding anything to the contrary, the Required Lenders may approve all, none or only a portion of such update, modification or supplement to the Proposed Budget for any

period covered by such update, modification or supplement as determined by the Required Lenders in their sole discretion; provided, however, that the Required Lenders shall either approve or reject such update, modification or supplement to the Proposed Budget within four (4) Business Days following receipt in writing thereof by the Administrative Agent and its counsel, Weil, Gotshal & Manges LLP via email in accordance with Section 9.01 of this Agreement, from the Borrower (and any failure to respond within such four (4) Business Day period shall be deemed to be an approval by the Required Lenders); provided, further, however, once any period or any portion of a Proposed Budget has been approved it may not later be rejected, modified or supplemented by the Required Lenders. To the extent any such Proposed Budget is approved by the Required Lenders, such Proposed Budget shall thereafter be the Approved Budget for such period contained therein and for all purposes hereunder. No such Proposed Budget shall become an Approved Budget until so approved by the Required Lenders in their sole discretion. The then existing Approved Budget shall remain the Approved Budget for the projection period, without giving effect to any update, modification or supplement (with appropriate adjustments for the timing of monthly or semi-monthly disbursements), until such time as a Proposed Budget is approved by the Required Lenders in their sole discretion.

SECTION 5.18. ***DIP Funding Account***. The Borrower shall, and shall cause the Loan Parties, to take all actions and do all things, to ensure that the DIP Funding Account remains under the sole dominion and exclusive control of the Collateral Agent.

SECTION 5.19. ***Prepetition PPP Loan Affirmative Covenants***.

(a) Cooperate in good faith with the Prepetition PPP Lender to facilitate the processing of the Loan Forgiveness Request for the purpose of receiving a decision on such Loan Forgiveness Request from the PPP Lender as soon as practicable in accordance with the terms, rules and regulations of the CARES Act – Title I;

(b) Use best efforts to seek to obtain forgiveness of any outstanding Prepetition PPP Loan within the time periods set forth, and to the extent provided, in CARES Act – Title I;

(c) Promptly provide to the Administrative Agent copies of any (x) amendments, modifications, waivers, supplements or consents executed and delivered with respect to the Prepetition PPP Loan upon execution and delivery thereof and (y) (A) notices of default (or other notices) received by any Loan Party with respect to the Prepetition PPP Loan and (B) any notices or decisions it receives or becomes aware of with respect to the Loan Forgiveness Request;

(d) [Reserved]; and

(e) Keep proper detailed records with respect to the Prepetition PPP Loan, as well as maintain all related documentation (including, without limitation, payroll processor records and payroll tax filings), in all cases, in a manner that is (x) sufficient to allow 100% of the Prepetition PPP Loan to be forgiven in accordance with CARES Act – Title I and (y) consistent with best practices for businesses that have incurred loans (or other debt) under and pursuant to the CARES Act – Title I.

SECTION 5.20. ***[Reserved].***

SECTION 5.21. ***Milestones***. The Debtors shall achieve the following milestones in accordance with the deadlines specified below, which deadlines in all cases may be extended by the Administrative Agent, in its sole discretion (collectively, the "Milestones"):

(a) No later than the Petition Date, (i) the Debtors shall file with the Bankruptcy Court a motion seeking entry of the Interim Order, (ii) the Debtors shall file the Bidding Procedures Motion in the Bankruptcy Court, and (iii) the Debtors shall have entered into the Stalking Horse APA.

(b) On or before the date that is two (2) Business Days after the Petition Date, the Bankruptcy Court shall have entered the Interim Order.

(c) On or before the date that is twenty-one (21) days after the Petition Date, the Bankruptcy Court shall have entered the Bidding Procedures Order.

(d) On or before the date that is thirty (30) days after the Petition Date, the Bankruptcy Court shall have entered the Final Order.

(e) On or before the date that is fifty-six (56) days after the Petition Date, the Bid Deadline shall have occurred.

(f) On or before the date that is fifty-eight (58) days after the Petition Date, the Debtors shall have commenced the Auction, if necessary.

(g) On or before the date that is sixty (60) days after the Petition Date, a hearing shall have occurred in the Bankruptcy Court to consider approval of the Stalking Horse APA and the Stalking Horse Transaction, or another alternative transaction pursuant to the Bidding Procedures.

(h) On or before the date that is sixty (60) days after the Petition Date, the Bankruptcy Court shall have entered the Sale Order.

(i) On or before the date that is seventy (70) days after the Petition Date, the Stalking Horse Transaction or another sale transaction approved in the Sale Order shall be consummated and closed.

SECTION 5.22. ***Additional Reporting***. The Borrower will furnish to the Administrative Agent (which shall promptly make such information available to the Lenders in accordance with its customary practice):

(a) Variance Report. On or before 5:00 p.m. (New York Time) on the Wednesday immediately following each Budget Test Period, a report in form and substance reasonably acceptable to the Required Lenders (it being understood and agreed that the form attached hereto as Exhibit G is a form that is acceptable to the Required Lenders), reflecting variances in actual receipts, and/or disbursements from the Approved Budget on a line by line and aggregate basis, which report shall include an explanation of any variances and shall detail the following (a "Variance Report"):

(i) the actual amount of receipts (to the extent not excluded as receipts pursuant to clauses (x) and (y) in the definition of Cash Balance) of the Debtors during the Budget Test Period most recently ended;

(ii) any variance (whether plus or minus and expressed as a percentage) between (x) the aggregate, and line by line, amount of actual receipts (to the extent not excluded as receipts pursuant to clauses (x) and (y) in the definition of Cash Balance) of the Debtors during such Budget Test Period against (y) the aggregate, and line by line, amount of receipts set forth in the Approved Budget for such Budget Test Period;

(iii) the actual amount of disbursements of the Debtors during the Budget Test Period most recently ended; and

(iv) any variance (whether plus or minus and expressed as a percentage) between (x) the aggregate, and line by line, amount of actual disbursements of the Debtors during such Budget Test Period against (y) the aggregate, and line by line, amount of disbursements set forth in the Approved Budget for such Budget Test Period.

(b) Court Filings. Prior to the filing thereof with the Bankruptcy Court, copies of the monthly operating reports required to be filed with the Bankruptcy Court. As soon as reasonably practicable in advance of filing, delivery or submission to the Bankruptcy Court, U.S. Trustee or the Committee, the Debtors shall deliver to counsel to the Administative Agent, no later than the earlier of (unless impracticable, in which case, as soon as reasonably practicable prior to filing, delivery or submission, as the case may be) (x) three (3) Business Days prior to any filing with the Court or (y) contemporaneous delivery to the Committee or the United States Trustee for the District of Delaware, copies of all pleadings, motions and applications (which shall include all proposed orders and pleadings related to the Loans, the Commitments and the Loan

Documents, any sale or other disposition of Collateral outside the ordinary course, cash management, adequate protection, any plan of reorganization and/or any disclosure statement related thereto), other than professional retention applications, to be filed by or on behalf of the Loan Parties with the Bankruptcy Court or provided to the U.S. Trustee (or any monitor or interim receiver, if any, appointed in the Cases) or the Committee; provided, that any such pleadings, notices, or documents, except as otherwise provided herein, shall be in a form reasonably acceptable to the Administrative Agent.

(c) Weekly Conference Calls. No less than once per week, upon written request of the Administrative Agent, the Borrower shall make its senior management and its financial advisor available via teleconference to discuss the financial position, cash flows, variances and operations of the Borrower and its Subsidiaries.

ARTICLE VI

Negative Covenants

The Borrower covenants and agrees with each Lender that 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 (other than contingent indemnification, yield protection, tax gross-up and expense reimbursement obligations, in each case, in respect of which no claim has been asserted) shall have been paid in full, unless the Required Lenders shall otherwise consent in writing, the Borrower shall not, nor shall the Borrower permit any of the Subsidiaries to:

SECTION 6.01. ***Indebtedness***. Incur, create, assume or permit to exist any Indebtedness, except:

(a) Indebtedness existing on the date hereof and set forth in Schedule 6.01;

(b) Indebtedness created hereunder or under the other Loan Documents, (ii) the Carve-Out, (iii) obligations outstanding under the Prepetition Credit Agreement the outstanding principal of which not to exceed the aggregate amount thereof as of the Petition Date and (iv) obligations outstanding under the Prepetition Senior Notes the outstanding principal amount of which not to exceed the aggregate amount thereof as of the Petition Date;

(c) intercompany Indebtedness of the Borrower to any Subsidiary to the extent permitted by Section 6.04(c), and unsecured Guarantees made in the ordinary course of business by the Borrower of obligations of any Subsidiary or made by any Subsidiary (other

than the IP Subsidiary) in the ordinary course of business of such Subsidiary of the obligations of any other Subsidiary;

(d) [reserved];

(e) [reserved];

(f) Indebtedness (including obligations in respect of bank guarantees or similar instruments for the benefit of) owed to any Person providing workers' compensation, health, disability or other employee benefits to the Borrower or any Subsidiary, pursuant to reimbursement or indemnification obligations to such Person;

(g) Indebtedness in respect of Hedging Agreements that are not speculative in nature and are incurred to hedge foreign currency, commodities or interest rate exposure in the ordinary course of business;

(h) Indebtedness of the Borrower consisting of repurchase obligations in respect of capital stock of the Borrower issued to directors, consultants, managers, officers and employees of the Borrower and its subsidiaries arising upon the death, disability or termination of employment of such director, consultant, manager, officer or employee to the extent such repurchase is permitted by Section 6.06(a), so long as such Indebtedness is unsecured;

(i) Indebtedness at any time incurred in connection with financing insurance premiums in the ordinary course of business consistent with past practice;

(j) Indebtedness in respect of performance, surety, statutory, insurance, appeal or similar bonds obtained in the ordinary course of business; provided that, in the case of any such Indebtedness of the Borrower, no Subsidiary shall have guaranteed such Indebtedness;

(k) Indebtedness incurred by Loan Parties in the ordinary course of business in connection with cash pooling, netting and cash management arrangements consisting of overdrafts or similar arrangements; provided that any such Indebtedness (i) does not consist of Indebtedness for borrowed money, (ii) is owed to the financial institutions providing such arrangements and (iii) is extinguished within three (3) Business Days of its incurrence;

(l) other Indebtedness of the Borrower or any Guarantor in an aggregate principal amount not to exceed $1,000,000 at any time outstanding; provided that the aggregate principal amount of Indebtedness incurred pursuant to this clause (l) and secured by a

Lien shall not exceed $500,000; provided, further that each such Lien (x) shall also be permitted by Section 6.02(l) and (y) shall not encumber any (A) Company IP Rights, (B), Equity Interests or (C) cash, cash equivalents or Company Accounts; provided, further that, in the case of any such Indebtedness of the Borrower, no Subsidiary shall have guaranteed such Indebtedness;

(m) Indebtedness resulting from a bank or other financial institution honoring a check, draft or similar instrument (other than resulting from any overdraft) in the ordinary course of business and

(n) Guarantees by the Borrower of Indebtedness of a Subsidiary or guarantees by a Subsidiary (other than the IP Subsidiary) of Indebtedness of another Subsidiary with respect, in each case, to Indebtedness otherwise permitted to be incurred pursuant to this Section;

(o) solely with respect to the Borrower, the Prepetition 2019 Convertible Notes (as in effect on the Closing Date) in an aggregate principal amount not to exceed $6,400,000;

(p) The Prepetition PPP Loan (as in effect on the Closing Date) in a principal amount not to exceed $2,010,901.

SECTION 6.02. ***Liens***. Create, incur, assume or permit to exist any Lien on any property or assets (including Equity Interests or other securities of any Person, including the Borrower or any Subsidiary) now owned or hereafter acquired by it or on any income or revenues or rights in respect of any thereof, except:

(a) Liens on property or assets of the Borrower and its Subsidiaries existing on the date hereof and set forth in Schedule 6.02(a);

(b) any Lien created under the Orders, this Agreement and other Loan Documents and any Lien securing the Prepetition Obligations;

(c) [reserved];

(d) Liens for Taxes not yet due and payable or that are being contested in accordance with Section 5.03;

(e) (i) Liens of landlords arising by statute or otherwise imposed by Requirements of Law, and (ii) suppliers', carriers', warehousemen's, mechanics', materialmen's, repairmen's or other like Liens arising in the ordinary course of business or imposed by Requirements of Law and securing obligations that are not due and

payable (or not yet delinquent by more than thirty (30) days) or which are being contested in compliance with Section 5.03;

(f) pledges and deposits made in the ordinary course of business in compliance with workers' compensation, unemployment insurance and other social security laws or regulations (or to secure letters of credit issued in the ordinary course of business to support such obligations);

(g) deposits to secure the performance of bids, trade contracts (other than for Indebtedness), leases (other than Capital Lease Obligations), statutory, regulatory or similar government obligations, surety and appeal bonds, performance bonds, return of money bonds and deposits to secure letters of credit provided in connection with any of the foregoing and other obligations of a like nature, in each case, incurred in the ordinary course of business;

(h) zoning and land use (or similar) restrictions, licenses, easements, rights-of-way, covenants, conditions and other restrictions on the use or occupancy of real property, encroachments and other immaterial survey defects and imperfections in title, which do not materially interfere with the conduct and operation of the business of the Borrower or any of its Subsidiaries or real property as presently conducted or, in the case of any Subsidiary acquired after the Closing Date, as conducted at acquisition by the Borrower or any Subsidiary thereof;

(i) purchase money security interests in real property, improvements thereto, equipment or other assets hereafter acquired (or, in the case of improvements, constructed) by the Borrower or any Guarantor; provided that (i) such security interests secure Indebtedness permitted by Section 6.01(d), (ii) such security interests are incurred, and the Indebtedness secured thereby is created, within 270 days after such acquisition (or construction) (or in the case of the first or any successive extensions, renewals or refinancings of the underlying Indebtedness, such security interests are incurred and the security is created within thirty (30) days after the incurrence of such new Indebtedness), (iii) the Indebtedness secured thereby does not exceed the cost of such real property, improvements or equipment at the time of such acquisition (or construction) and (iv) such security interests do not apply to any other property or assets of the Borrower or any Subsidiary;

(j) judgment Liens securing judgments which do not constitute an Event of Default under Section 7.01;

(k) [reserved]

(l) other Liens on real estate or equipment securing liabilities in an aggregate amount not to exceed $500,000 at any time outstanding;

(m) [reserved];

(n) any interest or title of a lessor under any lease entered into by the Borrower or any of the Subsidiaries in the ordinary course of business and covering only the assets so leased;

(o) Liens in favor of customs and revenue authorities arising as a matter of law which secure payment of customs duties in connection with the importation of goods;

(p) Liens arising solely by virtue of any statutory or common law provision relating to bankers' liens, rights of set-off or similar rights;

(q) set-off rights in connection with repurchase obligations in favor of the counterparty to such obligations in connection with Permitted Investments of a type referred to in clause (d) of the definition thereof;

(r) rights of set-off or bankers' Liens on deposits of cash in favor of banks or another depository institution created in the ordinary course of business in connection with the establishment of depository relations with such bank or depository institution and not in connection with the issuance of Indebtedness;

(s) leases, subleases or licenses on any real properties owned or leased by the Borrower or any of the Subsidiaries in the ordinary course of the business of the Borrower or any of the Subsidiaries, including the subleases set forth on Schedule 6.02(s);

(t) [reserved]; and

(u) purported Liens evidenced by the filing of precautionary UCC financing statements relating solely to fixtures or operating leases of personal property entered into in the ordinary course of business;

provided that no Lien on any asset or property of a Subsidiary otherwise permitted under this Section shall secure any obligations of the Borrower except as provided in clauses (a) and (b) of this Section.

SECTION 6.03. ***Sale and Lease-Back Transactions***. Enter into any arrangement, directly or indirectly, with any Person whereby it shall sell or transfer any property, real or personal, used or useful in its business, whether now owned or hereafter acquired, and thereafter

rent or lease such property or other property which it intends to use for substantially the same purpose or purposes as the property being sold or transferred.

SECTION 6.04. ***Investments***. Make any Investments, except:

(a) (i) Investments by the Borrower and the Subsidiaries existing on the date hereof, including Investments by the Borrower on the date hereof in the Equity Interests of the Subsidiaries and (ii) additional Investments by the Borrower and the Subsidiaries in the Equity Interests of their respective Subsidiaries;

(b) Permitted Investments;

(c) loans or advances made by the Borrower to any Subsidiary or by any Subsidiary to any other Subsidiary; provided that (i) if any such loans and advances made by a Loan Party shall be evidenced by a promissory note in an individual amount in excess of $250,000, such promissory note shall be pledged to the Collateral Agent for the ratable benefit of the Secured Parties pursuant to the Guarantee and Collateral Agreement and (ii) such loans and advances shall be unsecured;

(d) 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;

(e) [reserved];

(f) [reserved];

(g) the existing Investments described on Schedule 6.04 hereto;

(h) [reserved];

(i) Investments arising from (i) deposits made in the ordinary course of business securing obligations or performance under real estate or personal property leases and (ii) deposits described in Section 6.02(k);

(j) Investments consisting of prepaid expenses, negotiable instruments held for collection or deposit, security deposits with utilities, landlords and other like Persons and deposits in connection with workers' compensation and similar deposits, in each case made in the ordinary course of business;

(k) Indebtedness incurred pursuant to Section 6.01(c);

(l) to the extent constituting an Investment, the Guarantees of the Subsidiaries of the Obligations;

(m) investments by the Borrower in Hedging Agreements permitted under Section 6.01(g);

(n) Guarantees by any Loan Party (other than the IP Subsidiary) of any obligations (other than the Prepetition 2019 Convertible Notes) of any other Loan Party that are not prohibited by this Agreement; and

(o) in addition to Investments permitted by clauses (a) through (n) above, additional Investments by the Borrower and the Subsidiaries (other than Investments by any Subsidiary in the Borrower) so long as the aggregate amount of all Investments made pursuant to this clause (o), net of any return of principal or capital, does not exceed $250,000 in the aggregate during the term of this Agreement; provided that no Event of Default shall have occurred and be continuing and such Investment is in accordance with the Approved Budget;

provided that neither the Borrower nor any Subsidiary shall organize or acquire any Foreign Subsidiary.

SECTION 6.05. ***Mergers, Consolidations, Sales of Assets and Acquisitions.***

(a) Merge into or consolidate with any other Person, or permit any other Person to merge into or consolidate with it, sell, transfer, lease or otherwise dispose of, including, without limitation, by division of a limited liability company (in one transaction or in a series of transactions), all or substantially all the assets (whether now owned or hereafter acquired) of the Borrower or any of its Subsidiaries or the Equity Interests of any Subsidiary (including in connection with a liquidation, winding up, dissolution or similar proceeding), or purchase, lease or otherwise acquire (by division or otherwise) (in one transaction or a series of transactions) all or any substantial part of the assets of any other Person or assets constituting a business unit, line of business or division of such Person, except that:

(i) the Borrower and any Subsidiary may (x) purchase and sell inventory, (y) lease or sublease real property as tenant or license real property as licensee in the ordinary course of business and (z) lease, sublease or license any real properties owned or leased by the Borrower or any of its Subsidiaries that are not used in the ordinary conduct of the business of the Borrower or any of its Subsidiaries, and sell or otherwise disposed of used, worn-out, obsolete or surplus equipment;

(ii) [reserved];

(iii) [reserved];

(iv) the Borrower and the Subsidiaries (other than the IP Subsidiary) may transfer or otherwise dispose of any property to any Subsidiary;

(v) [reserved]

(vi) [reserved]; and

(vii) the Borrower and the Subsidiaries may make Investments permitted under Section 6.04.

(b) Make any Asset Sale.

SECTION 6.06. ***Restricted Payments; Restrictive Agreement.***

(a) Declare or make, or agree to declare or make, directly or indirectly, any Restricted Payment, or incur any obligation (contingent or otherwise) to do so; provided, however, that,:

(i) any Loan Party (other than the Borrower) may declare and pay dividends or make other distributions ratably to its equity holders that are Loan Parties; provided that the IP Subsidiary may declare and pay dividends or make such distributions solely in the form of cash; and

(ii) the Borrower may make repurchases of its Equity Interests deemed to occur upon the cashless exercise of stock options and warrants.

(b) Enter into, incur or permit to exist any agreement or other arrangement that prohibits, restricts or imposes any condition upon (i) the ability of the Borrower or any Subsidiary to create, incur or permit to exist any Lien upon any of its property or assets to secure the Obligations, or (ii) the ability of any Subsidiary to pay dividends or other distributions with respect to any of its Equity Interests or to make or repay loans or advances to the Borrower or any other Subsidiary or to Guarantee Indebtedness of the Borrower or any other Subsidiary; provided that:

(A) the foregoing shall not apply to the agreements or other arrangements existing on the Closing Date and set forth on Schedule 6.06(b);

(B) the foregoing shall not apply to restrictions and conditions imposed by Requirements of Law, the Orders or by any Loan Document;

(C) [reserved];

(D) clause (b)(i) of the foregoing shall not apply to restrictions or conditions imposed by any agreement relating to secured Indebtedness permitted by this Agreement if such restrictions or conditions apply only to the property or assets securing such Indebtedness;

(E) [reserved];

(F) clause (b)(i) above shall not apply to customary provisions in leases and licenses and other contracts restricting the assignment or pledge thereof;

(G) clause (b)(i) above shall not apply to restrictions on cash or other deposits or net worth imposed by customers under contracts entered into in the ordinary course of business; and

(H) the foregoing shall not apply to any encumbrances or restrictions imposed by any amendments, modifications, restatements, renewals, increases, supplements, refundings, replacements or refinancings that are otherwise permitted by the Loan Documents of the contracts, instruments or obligations referred to in clauses (A) through (G) above; provided that such amendments, modifications, restatements, renewals, increases, supplements, refundings, replacements or refinancings are not materially more restrictive in the good faith judgment of the Borrower with respect to such encumbrances and restrictions than those that existed prior to such amendment, modifications, restatements, renewals, increases, supplements, refundings, replacements or refinancing.

SECTION 6.07. ***Transactions with Affiliates***. Sell or transfer any property or assets to, or purchase or acquire (by division or otherwise) any property or assets from, or otherwise engage in any other transactions with, any of its Affiliates, except that the Borrower or any Subsidiary may engage in any of the foregoing transactions in the ordinary course of business at prices and on terms and conditions not less favorable to the Borrower or such Subsidiary than could be obtained on an arm's-length basis from unrelated third parties; provided that the foregoing restriction shall not apply to:

(a) Indebtedness incurred pursuant to Section 6.01(c) and (h);

(b) Investments permitted by Section 6.04(a) and (c);

(c) Restricted Payments permitted by Section 6.06;

(d) any payment of compensation or fees to, or the provision of loans to, employees, officers or, directors or shareholders made in the ordinary course of business and in accordance with the Approved Budget; provided that the Borrower may make monthly payments of cash compensation to members of the restructuring committee of the Borrower's board of directors in

an amount not to exceed (i) to the chairman of the restructuring committee, $9,500 for the months of May 2021 and June 2021, and $12,500 for each month thereafter, (ii) to Steve Panagos, $11,250 for May 2021, $22,500 for June 2021 and $25,000 for each month thereafter, and (iii) to each other member of the restructuring committee, $7,500 for the months of May 2021 and June 2021, and $10,000 for each month thereafter;

(e) transactions between or among the Borrower and the Guarantors; and

(f) transactions set forth on Schedule 6.07.

SECTION 6.08. ***Business of the Borrower and Subsidiaries***. Engage at any time in any business or business activity other than the business currently conducted by it and business activities reasonably incidental or related thereto and reasonable extensions thereof.

SECTION 6.09. ***Other Indebtedness and Agreements***.

(a) Permit any waiver, supplement, modification or amendment of any Loan Party's certificate of incorporation, by-laws, operating, management or partnership agreement or other organizational documents.

(b) Directly or indirectly change, waive, amend or otherwise modify the terms of the Prepetition 2019 Convertible Notes, the Prepetition 2019 Convertible Notes Documents, the Prepetition Credit Agreement, the Prepetition Senior Notes, the Prepetition Note Agreement or the Prepetition Obligations and any other Indebtedness subordinated to all or any portion of the Obligations (if any), without the prior written consent of the Administrative Agent.

(c) Make any distribution, whether in cash, property, securities or a combination thereof, in respect of, or pay, or commit to pay, or directly or indirectly redeem, repurchase, retire or otherwise acquire for consideration, or set apart any sum for the aforesaid purposes, any Indebtedness subordinated to all or any portion of the Obligations (including the Prepetition 2019 Convertible Notes) or Indebtedness secured by a junior priority Lien (other than the Prepetition Obligations), except (i) regularly scheduled payments of interest paid in-kind as and when due; provided that such payment is not prohibited by any subordination provisions applicable thereto and (ii) payments of intercompany Indebtedness permitted under Section 6.01, in each case to the extent permitted by the Orders and the Approved Budget.

SECTION 6.10. ***[Reserved.]***

SECTION 6.11. ***Fiscal Year***. Change the manner of determining the last day of their fiscal year from their historical practice without the consent of the Administrative Agent (not to be unreasonably delayed, denied or conditioned).

SECTION 6.12. ***Certain Equity Securities***. Issue any Equity Interest that is not Qualified Capital Stock.

SECTION 6.13. ***Accounting Changes; Jurisdiction of Organization***; ***Organizational Documents***. Materially change, nor shall any Loan Party materially change, its (a) accounting treatment or reporting practices, except as required by GAAP or any other applicable Requirement of Law, rule or regulation, (b) without ten (10) days' prior written notice to the Administrative Agent, its name as it appears in official filings in its jurisdiction of organization, (c) without thirty (30) days' prior written notice to the Administrative Agent, its jurisdiction of organization; provided that (i) such new jurisdiction of organization shall be one of the states of the United States of America or the District of Columbia and (ii) the Administrative Agent shall have provided its consent in writing to any change in the jurisdiction of incorporation of the Borrower or any other Loan Party, or (d) in the case of the Borrower, its certificate of incorporation or by laws in any manner (i) that affects the terms of the Series W Preferred Stock (as defined in the Prepetition Credit Agreement), including, without limitation, reducing the voting rights of the Series W Preferred Stock (as defined in the Prepetition Credit Agreement), or (ii) that is adverse to the Agents or the Lenders.

SECTION 6.14. ***Employee Benefits***. Except as would not reasonably be expected to result in a Material Adverse Effect, (i) cause or suffer to exist any event that could result in the imposition of a Lien on any Plan or any asset of a Loan Party or a Subsidiary of a Loan Party with respect to any Plan or Multiemployer Plan or (ii) fail to administer any Plan in compliance with its terms and with ERISA and the Code and all other applicable laws and regulations.

SECTION 6.15. ***Use of Proceeds.*** Use any portion of the Loan proceeds, (i) directly or indirectly, to purchase or carry Margin Stock or repay or otherwise refinance Indebtedness of any Loan Party or others incurred to purchase or carry Margin Stock, or (ii) except as would not be reasonably be expected to result in a Material Adverse Effect, in any manner which is in contravention of any Requirement of Law or (iii) in any manner constituting a material violation of this Agreement. The Borrower and its Subsidiaries shall not, and shall ensure that their respective directors, officers, employees, Representatives and Affiliates shall not, directly or indirectly, use any portion of the Loan proceeds (i) in furtherance of an offer, payment, promise to pay or transfer or authorization of an offer, payment, promise to pay or transfer of money, or anything else of value, to any Person in violation of any applicable Anticorruption Laws, (ii) to undertake, engage in, fund, finance or facilitate any activity, business or transaction of or with any Sanctioned Person or in any Sanctioned Jurisdiction, in violation of applicable laws, or (iii) in any other manner that would result in the violation of Sanctions by any party hereto.

SECTION 6.16. ***Anticorruption Laws, Sanctions and USA PATRIOT Act***. Fail to comply with, or permit any of their Subsidiaries, directors, officers, employees, Representatives

or Affiliates to fail to comply with, the USA PATRIOT Act, the AMLA, the Beneficial Ownership Regulation Sanctions, or Anticorruption Laws.

SECTION 6.17. ***Hazardous Materials***. (a) Cause or suffer to exist, or permit any of their Subsidiaries to cause or suffer to exist, a Release of any Hazardous Material at, on, under, to or from any real estate that would form the basis for any material Environmental Liabilities or otherwise materially and adversely affect the value or marketability of any real estate (whether or not owned by any Loan Party or any Subsidiary of any Loan Party), t or (b) be determined to be a "potentially responsible party" (as defined in applicable Environmental Laws) by any Governmental Authority having jurisdiction over the Subject Property with respect to any Environmental Liabilities related to the Subject Property.

SECTION 6.18. ***Prepetition PPP Loan Negative Covenant***.

(a) Use the proceeds of the Prepetition PPP Loans for any purpose other than PPP Loan Permitted Purposes; *provided*, that, and for the avoidance of doubt, in no event shall such proceeds be used to repay or prepay any Indebtedness (or interest or fees thereon) other than the Obligations;

(b) Agree to any amendment, restatement, supplement, waiver or other modification of the Prepetition PPP Loan (as in effect on the Closing Date) (or any documentation related thereto) without the prior written consent of the Administrative Agent (acting at the direction of the Required Lenders) if the effect of such amendment, restatement, supplement, waiver or other modification would be adverse to the Loan Parties (taken as a whole) or the Lenders (it being understood and agreed that any amendment, restatement, supplement, waiver or other modification that could reasonably be expected to cause less than 100% of the Prepetition PPP Loan from being forgiven in accordance with the CARES Act – Title I is adverse to the Lenders);

(c) Assign, transfer or novate any of its rights or obligations under the Prepetition PPP Loan;

(d) Permit the principal amount of Indebtedness outstanding under the Prepetition PPP Loan to exceed $2,010,901;

(e) Guarantee, directly or indirectly, the obligations of the Borrower under the Prepetition PPP Loan;

(f) Create, incur, assume or permit to exist any Lien on any of its assets to secure the Prepetition PPP Loan; or

(g) Make any distribution, whether in cash, property, securities or a combination thereof, in respect of, or pay, or commit to pay, or directly or indirectly redeem, repurchase, retire or

otherwise acquire for consideration, or set apart any sum for the aforesaid purposes, the Prepetition PPP Loan.

SECTION 6.19. ***Licenses; Hiring***. Enter into any (i) distribution, marketing, supply, licensing, development or other commercial agreement or (ii) employment, consulting or similar agreement, in each case, without the prior written consent of the Administrative Agent (which may be provided or withheld in the sole discretion of the Administrative Agent); provided, that such written consent shall not be required in the case of any agreement described in the foregoing clause (i) if (x) the counterparty to such agreement is not a current or former officer, director, manager or employee of the Borrower or any of its Subsidiaries (or Person controlled or related to such officer, director, manager or employee) and (y) such agreement is entered into in the ordinary course of business of the Borrower or the applicable Subsidiary, on an arm's length basis and on fair market terms.

SECTION 6.20. ***Budget Variance Covenant***. Pay any expenses or other disbursements other than in accordance with the Approved Budget, subject to the Permitted Variance.

(a) As of the end of each Budget Test Period, the sum of (x) the Debtors' aggregate receipts (to the extent not excluded as receipts pursuant to clauses (x) and (y) in the definition of Cash Balance) for such Budget Test Period, *plus* (y) the amount of any Carryover receipts (to the extent not excluded as receipts pursuant to clauses (x) and (y) in the definition of Cash Balance) from the immediately preceding Budget Test Period which are not included in the current Budget Test Period, shall not be in the case of each Budget Test Period, less than (i) in the case of the First Budget Test Period, 85% of the projected receipts set forth in the Approved Budget for such Budget Test Period and (ii) in the case of each Budget Test Period that is not the First Budget Test Period, 90% of the projected receipts set forth in the Approved Budget for such Budget Test Period (the permitted variances from the Approved Budget set forth above, the "Permitted Collections Budget Variance").

(b) As of the end of each Budget Test Period, the Debtors' aggregate disbursements, for such Budget Test Period, shall not be greater than (i) in the case of the First Budget Test Period, the sum of (x) 115% of the budgeted disbursements set forth in the Approved Budget for such Budget Test Period, *plus* (y) the amount of any Carryover budgeted disbursements from the immediately preceding Budget Test Period which are not included in the current Budget Test Period and (ii) in the case of each Budget Test Period that is not the First Budget Test Period, the sum of (x) 110% of the budgeted disbursements set forth in the Approved Budget for such Budget Test Period, *plus* (y) the amount of any Carryover budgeted disbursements from the immediately preceding Budget Test Period which are not included in the current Budget Test Period (the

foregoing permitted variances from the Approved Budget described above, the "Permitted Expenditures Budget Variance").

(c) As of the end of each Budget Test Period, the Debtor's disbursements for (u) the unsecured creditors committee's financial advisor and counsel, (v) Carl Marks Advisors, (w) SSG Capital Advisors, (x) Chapman & Cutler LLP, (y) Pachulski Stang Ziehl & Jones LLP and (z) Sitrick and Company, on a line by line basis, shall not be greater than in the case of each Budget Test Period 110% of the applicable budgeted line by line disbursements set forth in the Approved Budget for such Budget Test Period (the foregoing permitted variances from the Approved Budget described above, the "Permitted Debtor Professionals Expenditures Budget Variance"); and together with the Permitted Collections Budget Variance and Permitted Expenditures Budget Variance, collectively, the "Permitted Variance").

(d) The date of determination as to whether the Debtors are in compliance with the Variance Covenants set forth in this Section 6.20 shall be the scheduled date of delivery of the Variance Report required pursuant to Section 5.22(a).

SECTION 6.21. ***Prohibited Conduct***. Without the prior written consent of the Administrative Agent (at the direction of the Required Lenders), no Loan Party shall, nor shall it permit any of its Subsidiaries to, do any of the following:

(a) object to or contest the validity or enforceability of any Order, any Liens granted to the Collateral Agent and Lenders therein or pursuant to any other Security Document, or any terms of the Loan Documents or cooperate with any party with respect to such an objection or contest; or

(b) seek directly or indirectly to modify any of the rights granted under the Orders to any of the Administrative Agent, the Collateral Agent or the Lenders in any manner adverse to the Administrative Agent, the Collateral Agent or the Lenders (including incurring, creating, assuming or suffering to exist or permit any other superpriority claim which is pari passu with or senior to the super priority claims of the Administrative Agent, the Collateral Agent and the Lenders hereunder, except for the Carve-Out).

(c) incur, create, assume, suffer or permit any claim or Lien or encumbrance against its or any of its property or assets in the Case to be pari passu with or senior to the claims of the Lenders against the Loan Parties in respect of the Obligations hereunder, or apply to the Court for authority to do so;

(d) assert any claim against Lender under Section 506(c) of the Bankruptcy Code;

(e) use any portion of proceeds of the Loans, directly or indirectly, for the purpose of (i) objecting to, contesting, preventing, hindering, or delaying any of the Secured Parties' rights, remedies, claims, defenses, or realization upon any of the Collateral or enforcement of any of their respective rights thereto; (ii) objecting to, contesting, preventing, hindering, or delaying any of the Prepetition Secured Parties' rights, remedies, claims, defenses, or realization upon any of the Prepetition Collateral (as defined in the Orders) or enforcement of any of their respective rights thereto; (iii) any purpose that is prohibited under the Orders, the Loan Documents, the Prepetition Credit Agreement, the Loan Documents (as defined in the Prepetition Credit Agreement), the Prepetition Senior Notes, the Prepetition Note Agreement or the Bankruptcy Code; (iv) prosecuting or financing in any way any adversary action, suit, arbitration, proceeding, application, motion, or other litigation of any type adverse to the interests of any or all of the Secured Parties, the Prepetition Secured Parties or their respective rights and remedies under the Prepetition Credit Agreement, the Loan Documents (as defined in the Prepetition Credit Agreement), the Prepetition Senior Notes, the Prepetition Note Agreement, the Orders, including, without limitation, any actions under chapter 5 of the Bankruptcy Code, section 724(a) of the Bankruptcy Code, or any other avoidance actions under the Bankruptcy Code or applicable state law equivalents; (v) the payment of fees, expenses, interest, or principal under the Prepetition Credit Agreement, the Prepetition Senior Notes and/or the Prepetition Note Agreement (in each case, other than payments on account of the Adequate Protection Obligations (as defined in the Orders)); (vi) except as permitted by the Approved Budget, making any payment in settlement of any claim, action, or proceeding without the prior written consent of the Required Lenders; (vii) seeking to amend or modify any of the rights granted to the Secured Parties or the Prepetition Secured Parties under the Orders, the Loan Documents (as defined in the Prepetition Credit Agreement), the Prepetition Senior Notes, the Prepetition Note Agreement, the Obligations or the Prepetition Obligations; (viii) objecting to or challenging in any way the claims, liens, or interests held by or on behalf of the Secured Parties or the Prepetition Secured Parties or (ix) prosecuting an objection to, contest in any manner, or raise any defenses to, the validity, extent, amount, perfection, priority, or enforceability of, or seek equitable relief from, any of the Obligations, the Liens of the Collateral Agent, the Prepetition Obligations, the Senior Secured Debt Liens (as defined in the Orders), or any other rights or interests of the Secured Parties or the Prepetition Secured Parties.

SECTION 6.22. ***Material IP Rights.*** Notwithstanding anything herein to the contrary, the Borrower shall not, nor shall it permit any other Loan Party to, transfer or exclusively license any Material IP Rights to any subsidiary of the Borrower that is not a Loan Party.

SECTION 6.23. ***DIP Funding Account.*** The Borrower shall not, nor shall it permit any Loan Party or any other Person (other than the Administrative Agent or the Collateral Agent), to (a) transfer or deposit (or otherwise permit there to be on deposit) any cash, cash equivalents or other assets in the DIP Funding Account other than the direct proceeds of the Loans; (b) withdraw or direct the disposition of funds in, or otherwise exercise any form of control over, the DIP Funding Account; or (c) on or after the DIP Funding Account Effective Date, (x) dispute or challenge the validity or enforceability of the DIP Funding Account Control Agreement or (y) dispute or challenge, or seek to nullify or unwind, the deposit of the proceeds of any Loans in the DIP Funding Account.

ARTICLE VII

Events of Default

SECTION 7.01. ***Events of Default.*** In case of the happening of any of the following events ("Events of Default"):

(a) any representation or warranty made or deemed made in or pursuant to any Loan Document or the borrowings hereunder, or any representation or warranty contained in any report, certificate, financial statement or other instrument furnished pursuant to any Loan Document, shall prove to have been false or misleading in any material respect when so made, deemed made or furnished;

(b) default shall be made in the payment of any principal of any Loan when and as the same shall become due and payable, whether at the due date thereof or at a date fixed for prepayment thereof or by acceleration thereof or otherwise;

(c) default shall be made in the payment of any interest on any Loan or any Fee or any other amount (other than an amount referred to in (b) above) due under any Loan Document, when and as the same shall become due and payable, and such default shall continue unremedied for a period of three (3) Business Days;

(d) default shall be made in the due observance or performance by the Borrower or any Subsidiary of any covenant, condition or agreement contained in Sections 5.01(a) (with respect to the Borrower only), 5.04(a), (b), (c), (d), (h), (m) or (n), 5.05(a)(i) 5.08, 5.11(b), 5.16, 5.17, 5.18 or 5.19, 5.21, 5.22 or in Article VI;

(e) default shall be made in the due observance or performance by the Borrower or any Subsidiary of any covenant, condition or agreement contained in any Loan Document (other than

those specified in (b), (c) or (d) above) and such default shall continue unremedied for a period of thirty (30) days after the earlier of (i) notice thereof from the Administrative Agent to the Borrower (which notice may be given at the discretion of the Administrative Agent and shall be given at the request of any Lender) or (ii) actual knowledge thereof of the Borrower;

(f) Bankruptcy Matters. Any of the following shall occur:

(i) The filing of a motion, taking of any action or the filing of any plan of reorganization or disclosure statement attendant thereto by any of the Loan Parties in the Cases or the entry of an order in the Cases authorizing any of the Loan Parties: (A) to obtain additional financing under Section 364(c) or Section 364(d) of the Bankruptcy Code not otherwise permitted pursuant to this Agreement; (B) to grant any Lien upon or affecting any Collateral that is pari passu with or senior to the Liens securing the Obligations; or (C) except as provided in the Interim Order or Final Order, as the case may be, to use cash collateral of the Collateral Agent and the other Secured Parties under Section 363(c) of the Bankruptcy Code without the prior written consent of the Collateral Agent or as permitted by the Orders;

(ii) The filing of any plan of reorganization that is not in a form acceptable to the Administrative Agent or disclosure statement attendant thereto, or any direct or indirect amendment to such chapter 11 plan or disclosure statement, by a Loan Party or any other Person to which the Administrative Agent does not consent, in each case, where, in the case of a filing by a Person other than a Loan Party, such filing is not withdrawn after three Business Days' written notice;

(iii) The entry of an order in any of the Cases confirming a plan of reorganization that (A) is not in a form acceptable to the Administrative Agent or (B) does not contain a provision for termination of the Commitments and repayment in full in cash of all of the Obligations under this Agreement on or before the effective date of such plan or plans;

(iv) The entry of an order amending, supplementing, staying, vacating or otherwise modifying this Agreement, the other Loan Documents, the Interim Order or the Final Order without the written consent of Administrative Agent or the filing of a motion by a Loan Party for reconsideration with respect to the Interim Order or the Final Order, or the Interim Order or the Final Order shall otherwise not be in full force and effect;

(v) Any Loan Party shall seek or consent to any stay, reversal, vacatur, amendment, supplement or any other modification of any of the terms of the Orders pursuant to a motion or pleading filed with the Bankruptcy Court or to otherwise modify this Agreement or any other Loan Document or the Secured Parties' rights, benefits, privileges or remedies under the Orders, this Agreement or any other Loan

Document, in each case, without the prior written consent of the Administrative Agent;

(vi) The filing of a pleading in the Bankruptcy Court, taking any action by any of the Loan Parties seeking, or the entry of an order in the Cases authorizing: (A) the appointment of an interim or permanent trustee in the Cases or the appointment of a receiver or an examiner in the Cases with expanded powers to operate or manage the financial affairs, the business, or reorganization of the Loan Parties; or (B) the sale without Administrative Agent's, Collateral Agent's and Lenders' consent, of all or substantially all of the Loan Parties' assets either through a sale under Section 363 of the Bankruptcy Code, through a confirmed plan of reorganization in the Cases or otherwise, that does not provide for payment in full in cash all of the Obligations under this Agreement at the closing of such sale or initial payment of the purchase price or effectiveness of such plan, as applicable;

(vii) The filing of a pleading in the Bankruptcy Court , taking any action by any of the Loan Parties seeking, or the entry of an order in the Cases authorizing (A) the dismissal of the Cases; or (B) the conversion of the Cases from one under Chapter 11 to one under Chapter 7 of the Bankruptcy Code;

(viii) Any Loan Party shall file a motion seeking, or the Bankruptcy Court shall enter an order granting, relief from or modifying the automatic stay of Section 362 of the Bankruptcy Code (A) to allow any creditor (other than the Collateral Agent) to execute upon or enforce a Lien on the Collateral or (B) with respect to any Lien of or the granting of any Lien on any Collateral to any federal, state or local environmental or regulatory agency or authority which is pari passu or senior to the Liens securing the Obligations;

(ix) The entry of an order in the Cases avoiding or permitting recovery of any portion of the payments made on account of the Obligations owing under this Agreement or the other Loan Documents;

(x) The failure of the Borrower to achieve any of the Milestones unless otherwise extended in accordance with Section 5.21 hereof;

(xi) Any Loan Party shall take any action or file any document or pleaded that (A) does not comply with the terms of the Loan Documents, the Interim Order, the Final Order or (B) seeks to establish any date or deadline that does not comply with the Milestones;

(xii) The failure of any Loan Party to perform any of its obligations under the Interim Order, the Final Order or any other order of the Bankruptcy Court; or

(xiii) Subject to the Carve-Out, the entry of an order in the Cases granting any other super priority administrative claim or Lien equal or superior to that granted to the Collateral Agent, on behalf of itself and the Secured Parties, other than as expressly set forth in the Interim Order (or the Final Order, when applicable);

(g) (i) the Borrower or any Subsidiary shall fail to pay any principal or interest, regardless of amount, due in respect of any Material Indebtedness, when and as the same shall become due and payable or within any applicable grace period, to the extent not subject to the automatic stay, or (ii) any other event or condition occurs that results in any Material Indebtedness, to the extent not subject to the automatic stay, becoming due prior to its scheduled maturity or that enables or permits (with or without any further giving of notice, or lapse of time, or both) the holder or holders of any such Material Indebtedness or any trustee or agent on its or their behalf to cause any such Material Indebtedness to become due, or to require the prepayment, repurchase, redemption or defeasance thereof, prior to its scheduled maturity;

(h) the occurrence or existence of an Uncovered Day;

(i) On and after the DIP Funding Account Effective Date, the DIP Funding Account (x) is closed, terminated or otherwise ceases to exist, or any Loan Party or any other Person (other than the Administrative Agent or the Collateral Agent) takes any action or step (or omits to take any action) that could reasonably be expected to result in the closure, termination or cessation of existence of the DIP Funding Account, or (y) ceases to be, or otherwise is not, under the sole dominion and exclusive control of the Collateral Agent, or any Loan Party or any other Person (other than the Administrative Agent or the Collateral Agent) takes any action or step (or omits to take any action) that could reasonably be expected to result in the DIP Funding Account not being under the sole dominion and exclusive control of the Collateral Agent;

(j) one or more judgments shall be rendered against the Borrower, any Subsidiary or any combination thereof (in each case to extent not fully covered by a solvent independent third-party insurance company as to which the insurer has been notified of the potential claim and such insurer has affirmed coverage in writing for such claim) and the same shall remain undischarged for a period of 30 consecutive days during which execution shall not be effectively stayed by means of the automatic stay of Section 362 of the Bankruptcy Code, or any action shall be legally taken by a judgment creditor to levy upon assets or properties of the Borrower or any Subsidiary to enforce any such judgment and such judgment either (i) is for the payment of money in an aggregate amount in excess of $1,500,000 (net of amounts reimbursable under an enforceable insurance policy for which the applicable insurer has been notified and has not denied or contested coverage in writing) or (ii) is for injunctive relief and would reasonably be expected to result in a Material Adverse Effect;

(k) (i) an ERISA Event shall have occurred that, when taken together with all other such ERISA Events, would reasonably be expected to result in a Material Adverse Effect, or (ii) the assets of the Borrower or any other Loan Party shall constitute "plan assets" within the meaning of Section 3(42) of ERISA;

(l) any Guarantee under the Guarantee and Collateral Agreement or the Orders for any reason shall cease to be in full force and effect (other than in accordance with its terms), or any Guarantor shall deny in writing that it has any further liability under the Guarantee and Collateral Agreement or the Orders;

(m) any security interest purported to be created by the Orders or any other Security Document shall cease to be, or shall be asserted in writing by the Borrower or any other Loan Party not to be, a valid, perfected, first priority (except as otherwise expressly provided in this Agreement or such Security Document) security interest in the securities, assets or properties covered thereby to the extent required thereby;

(n) there shall have occurred a Change in Control;

(o) (i) the FDA or any other Governmental Authority (A) issues a letter or other communication asserting any Product lacks a required Regulatory Authorization, or (B) initiates enforcement action against, or issues a warning letter with respect to the Borrower, or any of its Subsidiaries or any of their Products or the manufacturing facilities therefor, that (with respect to clauses (A) or (B)) causes the Borrower or any of its Subsidiaries to discontinue marketing or withdraw any of its material Products, or causes a delay in the manufacture of any of its material Products, which discontinuance, withdrawal or delay could reasonably be expected to last for more than 60 days, (ii) there is a recall of any Product (including all derivative and other names relating to each franchise in any jurisdiction) which in the aggregate generates revenue representing 10% or more of the revenue of the Borrower and any of its Subsidiaries in the aggregate over any consecutive twelve (12) month period or (iii) the Borrower or any of its Subsidiaries enters into a settlement agreement with the FDA or any other Governmental Authority that results in aggregate liability as to any single or related series of transactions, incidents or conditions, in excess of $1,000,000;

(p) The DIP Funding Account Control Agreement (as in effect on the DIP Funding Account Effective Date) is amended, restated, amended and restated, supplemented, modified, replaced,

waived or terminated without the express written consent of the Collateral Agent acting at the direction of all Lenders; or

(q) On or after the DIP Funding Account Effective Date, the DIP Funding Account Depository Bank exercises any right of set off, or otherwise seeks reimbursements, charges or other payments, from or in respect of the DIP Funding Account or any of the cash, cash equivalents or other assets on deposit therein (or directly from the Collateral Agent, the Lenders any Secured Party or any of their Affiliates).

then, and in every such event, and at any time thereafter during the continuance of such event, the Administrative Agent may, and upon the written notice of the Required Lenders shall, by notice to the Borrower, take any or all of the following actions, at the same or different times: (i) terminate forthwith the Commitments, (ii) declare the Loans then outstanding to be forthwith due and payable in whole or in part, whereupon the principal of the Loans so declared to be due and payable, together with accrued interest thereon, any premium thereon and any unpaid accrued Fees and all other liabilities of the Borrower accrued hereunder and under any other Loan Document, shall become forthwith due and payable, without presentment, demand, protest or any other notice of any kind, all of which are hereby expressly waived by the Borrower, anything contained herein or in any other Loan Document to the contrary notwithstanding; and (iii) exercise any other remedies which may be available under the Loan Documents or applicable law; and in any event with respect to the Borrower described in clauses (g) or (h) above, the Commitments shall automatically terminate and the principal of the Loans then outstanding, together with accrued interest thereon and any unpaid accrued Fees and all other liabilities of the Borrower accrued hereunder and under any other Loan Document, shall automatically become due and payable, without presentment, demand, protest or any other notice of any kind, all of which are hereby expressly waived by the Borrower, anything contained herein or in any other Loan Document to the contrary notwithstanding. Any premium (and any component thereof) payable as set forth in this Agreement shall be presumed to be the liquidated damages sustained by each Lender as the result of early prepayment, and the Borrower, on behalf of itself and its Subsidiaries, agrees that it is reasonable under the circumstances currently existing. Any premium (and any component thereof) shall also be payable in the event that the Loans are satisfied or released by foreclosure (whether by power of judicial proceeding, deed in lieu of foreclosure or by other means) following an Event of Default.

ARTICLE VIII

The Administrative Agent and the Collateral Agent.

SECTION 8.01. ***Appointment***. Each of the Lenders hereby irrevocably appoints Hayfin Services LLP to act on its behalf as the Administrative Agent and Collateral Agent (collectively, the "Agents") hereunder and under the other Loan Documents and authorizes each Agent to take such actions on its behalf and to exercise such powers as are delegated to such Agent by the terms hereof or thereof, together with such actions and powers as are reasonably incidental thereto. The provisions of this Article VIII are solely for the benefit of the Agents and the Lenders, and none of the Borrower or any of its Subsidiaries will 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 any Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable law. Instead such term is used as a matter of market custom, and is intended to create or reflect only an administrative relationship between contracting parties.

SECTION 8.02. ***Rights as a Lender***. The Person serving as an Agent hereunder will 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 an Agent, and the term "Lender" or "Lenders" will, unless otherwise expressly indicated or unless the context otherwise requires, include the Person serving as an Agent hereunder in its individual capacity. Such Person and its Affiliates may accept deposits from, lend money to, own securities of, act as the financial advisor or in any other advisory capacity for, and generally engage in any kind of business with, the Borrower or any of its Affiliates as if such Person were not an Agent hereunder and without any duty to account therefor to the Lenders.

SECTION 8.03. ***Exculpatory Provisions***.

(a) Neither Agent will have any duties or obligations except those expressly set forth herein and in the other Loan Documents, and its duties hereunder are administrative in nature. Without limiting the generality of the foregoing, no Agent:

(i) will be subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing;

(ii) will 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 Required Lenders (or such other number or percentage of the Lenders as will be expressly provided for herein or in the other Loan Documents); provided that no Agent will be required to take any action that, in its opinion or the opinion of its counsel, may expose such Agent to liability or that is contrary to any Loan Document or applicable law, including for the avoidance of doubt any action that may be in violation of the automatic stay under any debtor relief law; and

(iii) will, except as expressly set forth herein and in the other Loan Documents, have any duty to disclose, and will not be liable for the failure to disclose, any information relating to the Borrower or any of its Subsidiaries or Affiliates that is communicated to or obtained by the Person serving as an Agent or any of its Affiliates in any capacity.

(b) No Agent will be liable for any action taken or not taken by it (i) with the consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as will be necessary, or as such Agent believes in good faith will be necessary, under the circumstances) or (ii) in the absence of its own

gross negligence or willful misconduct as determined by a court of competent jurisdiction by final and nonappealable judgment. No Agent will be deemed to have knowledge of any Default unless and until notice describing such Default is given to such Agent in writing by a Loan Party or a Lender.

(c) No Agent will be responsible for or have any duty to ascertain 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, (iv) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Loan Document or any other agreement, instrument or document or (v) 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.

SECTION 8.04. ***Reliance by Agent***. Each Agent will be entitled to rely upon, and will not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing (including 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. Each 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 will not incur any liability for relying thereon. In determining compliance with any condition hereunder to the making of the Loans that by its terms must be fulfilled to the satisfaction of a Lender, each Agent may presume that such condition is satisfactory to such Lender unless such Agent has received notice to the contrary from such Lender prior to the making of such Loans. Each Agent may consult with legal counsel (who may be counsel for the Borrower), independent accountants and other experts selected by it, and will not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

SECTION 8.05. ***Delegation of Duties***. Each 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 such Agent. Each 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 Affiliates. The exculpatory provisions of this Article will apply to any such sub-agent and to the Affiliates of each Agent and any such sub-agent, and will apply to their respective activities in connection with the syndication of the facility as well as activities as the applicable Agent. No Agent will 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 nonappealable judgment that such Agent acted with gross negligence or willful misconduct in the selection of such sub-agents.

SECTION 8.06. ***Resignation of an Agent.***

(a) Each Agent may at any time give notice of its resignation to the Lenders and the Borrower. Upon receipt of any such notice of resignation, the Required Lenders will have the right, in consultation with the Borrower, to appoint a successor. If no such successor will have been so appointed by the Required Lenders and will have accepted such appointment within 30 days after the retiring Agent gives notice of its resignation (or such earlier day as will be agreed by the Required Lenders) (the "Resignation Effective Date"), then the retiring Agent may (but will not be obligated to), on behalf of the Lenders, appoint a successor Agent meeting the qualifications set forth above. Whether or not a successor has been appointed, such resignation will become effective in accordance with such notice on the Resignation Effective Date.

(b) With effect from the Resignation Effective Date (i) the retiring Agent will be discharged from its duties and obligations hereunder and under the other Loan Documents (except that in the case of any Collateral held by the Collateral Agent on behalf of the Secured Parties under any of the Loan Documents, the retiring Collateral Agent will continue to hold such Collateral until such time as a successor Collateral Agent is appointed) and (ii) if such retiring Agent is the Administrative Agent, except for any indemnity payments owed to the retiring Agent, all payments, communications and determinations provided to be made by, to or through the Administrative Agent will instead be made by or to each Lender directly, until such time, if any, as the Required Lenders appoint a successor Administrative Agent as provided for above. Upon the acceptance of a successor's appointment as Administrative Agent or Collateral Agent, as applicable, hereunder, such successor will succeed to and become vested with all of the rights, powers, privileges and duties of the applicable retiring Agent (other than any rights to indemnity payments owed to such retiring Agent), and the retiring Agent will be discharged from all of its duties and obligations hereunder or under the other Loan Documents. The fees payable by the Borrower to a successor Agent will be the same as those payable to its predecessor unless otherwise agreed among the Borrower and such successor. After the retiring Agent's resignation hereunder and under the other Loan Documents, the provisions of this Article VIII and Section 9.05 will continue in effect for the benefit of such retiring Agent, its sub-agents and their respective Affiliates in respect of any actions taken or omitted to be taken by any of them while the retiring Agent was acting as Agent.

SECTION 8.07. ***Non-Reliance on Agent and Other Lenders.*** Each Lender acknowledges that it has, independently and without reliance upon any Agent or any other Lender

or any of their Affiliates 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 any Agent or any other Lender or any of their Affiliates and based on such documents and information as it will 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.

SECTION 8.08. ***Agents May File Proofs of Claim***. In case of the pendency of any insolvency proceeding or any other judicial proceeding relative to the Borrower or any other Loan Party (including the Cases), the Agents (irrespective of whether the principal of the Loans will then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Agent has made any demand on the Borrower or any other Loan Party) will be entitled and empowered (but not obligated), by intervention in such proceeding or otherwise:

(a) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans and all other Obligations that are owing and unpaid hereunder or under any other Loan Document to file such other documents as may be necessary or advisable in order to have the claims of the Lenders and the Agents (including any claim for the reasonable compensation, expenses, disbursements and advances of the Lenders and the Agents and their respective agents and counsel and all other amounts due the Lenders and the Agents under Sections 2.06, 2.17, 8.10 and 9.05) 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 each Agent and, in the event that the Administrative Agent consents to the making of such payments directly to the Lenders, to pay to the Administrative Agent any amount due for the reasonable compensation, expenses, disbursements and advances of the Administrative Agent and its agents and counsel, and any other amounts due the Agent under Sections 2.06, 2.17 and 9.05.

SECTION 8.09. ***Collateral, Guarantee and Other Matters***.

(a) Without limiting the provisions of Section 8.08, the Lenders irrevocably authorize the Collateral Agent, at its option and in its discretion, subject to the terms of the Guarantee and Collateral Agreement:

(i) to release any Lien on any property granted to or held by the Collateral Agent under any Loan Document (A) on the Maturity Date so long as no Obligations are outstanding (or such earlier date on which 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 and all other Obligations shall have been paid in full) or (B) subject to Section 9.08, if approved, authorized or ratified in writing by the Required Lenders; and

(ii) to release any Guarantor from its obligations under its Guarantee if such Person ceases to be a Subsidiary as a result of a transaction permitted under the Loan Documents.

Upon request by the Collateral Agent at any time, the Required Lenders will confirm in writing the Agent's authority to release or subordinate its interest in particular types or items of Collateral, or to release any Guarantor from its obligations under its Guarantee pursuant to this Section 8.09.

(b) The Collateral Agent will not be responsible for or have a duty to ascertain or inquire into any representation or warranty regarding the existence, value or collectability of the Collateral, the existence, priority or perfection of the Collateral Agent's Lien thereon, or any certificate prepared by the Borrower or any other Loan Party in connection therewith, nor will the Collateral Agent be responsible or liable to the Lenders for any failure to monitor or maintain any portion of the Collateral.

(c) The Collateral Agent is authorized on behalf of all the Lenders, without the necessity of any notice to or further consent from the Lenders, from time to time to take any action with respect to any Collateral or any Security Document which may be necessary to perfect and maintain perfected the Liens on the Collateral granted pursuant to any such Security Document or protect and preserve the Collateral Agent's ability to enforce the Liens or realize upon the Collateral.

(d) Notwithstanding anything to the contrary contained in this Agreement or in the Guarantee and Collateral Agreement or in any other Security Document, the parties hereto acknowledge and agree that the Liens granted to the Collateral Agent pursuant to any Security Document shall not be released, discharged or otherwise terminated (other than as set forth in the foregoing clause (a)(i)(B) or (C)), nor shall any Guarantor be released from its obligations under its Guarantee (other than as set forth in the foregoing clause (a)(ii)) until the payment in full in cash of all Obligations.

SECTION 8.10. ***Expenses; Indemnity***. Each Lender agrees to reimburse an Agent and each of its Related Parties (to the extent not reimbursed by any Loan Party) promptly upon demand, severally and ratably, for any costs and expenses (including (i) fees, charges and disbursements of financial, legal and other advisors and consultants and taxes paid in the name of, or on behalf of, any Loan Party in connection with any default or enforcement of rights hereunder or under any other Loan Document, or (ii) any other reasonable fees, charges and disbursements of financial,

legal and other advisors and consultants and taxes paid in the name of, or on behalf of, any Loan Party) that may be incurred by such Agent or any of its Related Parties in connection with the preparation, syndication, execution, delivery, administration, modification, consent, waiver or enforcement (whether through negotiations, through any work-out, bankruptcy, restructuring or other legal or other proceeding or otherwise) of, or legal advice in respect of its rights or responsibilities under, any Loan Document. Each Lender further agrees to indemnify an Agent and each of its Related Parties (to the extent not reimbursed by any Loan Party), severally and ratably, from and against Liabilities (including taxes, interest and penalties imposed for not properly withholding or backup withholding on payments made to or for the account of any Lender) that may be imposed on, incurred by or asserted against an Agent or any of its Related Parties in any matter relating to or arising out of, in connection with or as a result of any Loan Document or any other act, event or transaction related, contemplated in or attendant to any such document, or, in each case, any action taken or omitted to be taken by such Agent or any of its Related Parties under or with respect to any of the foregoing; provided, however, that no Lender shall be liable to an Agent or any of its Related Parties to the extent such liability has resulted primarily from the gross negligence or willful misconduct of such Agent or, as the case may be, such Related Party, as determined by a court of competent jurisdiction in a final non-appealable judgment or order. To the extent required by any applicable Requirements of Law, an Agent may withhold from any payment to any Lender under a Loan Document an amount equal to any applicable withholding tax (including withholding taxes imposed under Chapters 3 and 4 of subtitle A of the Code). If the IRS or any other Governmental Authority asserts a claim that an Agent did not properly withhold tax from amounts paid to or for the account of any Lender (because the appropriate certification form was not delivered, was not properly executed, or fails to establish an exemption from, or reduction of, withholding tax with respect to a particular type of payment, or because such Lender failed to notify an Agent or any other Person of a change in circumstances which rendered the exemption from, or reduction of, withholding tax ineffective, or for any other reason), or an Agent reasonably determines that it was required to withhold taxes from a prior payment but failed to do so, such Lender shall promptly indemnify such Agent fully for all amounts paid, directly or indirectly, by such Agent as tax or otherwise, including penalties and interest, and together with all expenses incurred by such Agent, including reasonable legal expenses, allocated internal costs and out-of-pocket expenses. Each Agent may offset against any payment to any Lender under a Loan Document, any applicable withholding tax that was required to be withheld from any prior payment to such Lender but which was not so withheld, as well as any other amounts for which such Agent is entitled to indemnification from such Lender under this Section 8.10.

SECTION 8.11. ***Additional Secured Parties***. The benefit of the provisions of the Loan Documents directly relating to the Collateral or any Lien granted thereunder shall extend to and be available to any Secured Party that is not a Lender party hereto as long as, by accepting such benefits, such Secured Party agrees, as among Agents and all other Secured Parties, that such Secured Party is bound by (and, if requested by an Agent, shall confirm such agreement in a writing in form and substance acceptable to such Agent) this Article VIII, Sections 2.19, 2.21, 9.01, 9.04 and 9.16 and the decisions and actions of Agents and the Required Lenders (or, where expressly required by the terms of this Agreement, a greater proportion of the Lenders or other parties hereto as required herein) to the same extent a Lender is bound; provided, however, that, notwithstanding the foregoing, (i) such Secured Party shall be bound by Section 8.10 only to the extent of Liabilities, costs and expenses with respect to or otherwise relating to the Collateral held for the

benefit of such Secured Party, in which case the obligations of such Secured Party thereunder shall not be limited by any concept of pro rata share or similar concept, (ii) each of the Agents and the Secured Parties party hereto shall be entitled to act at their sole discretion, without regard to the interest of such Secured Party, regardless of whether any Obligation to such Secured Party thereafter remains outstanding, is deprived of the benefit of the Collateral, becomes unsecured or is otherwise affected or put in jeopardy thereby, and without any duty or liability to such Secured Party or any such Obligation and (iii) except as otherwise set forth herein, such Secured Party shall not have any right to be notified of, consent to, direct, require or be heard with respect to, any action taken or omitted in respect of the Collateral or under any Loan Document.

SECTION 8.12. ***Other Titled Parties***. Notwithstanding any other provision of this Agreement or any provision of any other Loan Document, any syndication agent and any documentation agent are named as such for recognition purposes only, and in their respective capacities as such shall have no duties, responsibilities or liabilities with respect to this Agreement or any other Loan Document; it being understood and agreed that any syndication agent and any documentation agent shall be entitled to all indemnification and reimbursement rights in favor of the Agents provided herein and in the other Loan Documents. Without limitation of the foregoing, no syndication agent nor any documentation agent in their respective capacities as such shall, by reason of this Agreement or any other Loan Document, have any fiduciary relationship in respect of any Lender, Loan Party or any other Person.

ARTICLE IX

Miscellaneous

SECTION 9.01. ***Notices; Electronic Communications***. All notices and other communications required or expressly authorized to be made by this Agreement shall be given in writing, unless otherwise expressly specified herein, and (i) addressed to the address set forth on the applicable signature page hereto (or with respect to a Lender, in its Administrative Questionnaire) or (ii) addressed to such other address as shall be notified in writing (A) in the case of the Borrower, the Administrative Agent and Collateral Agent, to the other parties hereto and (B) in the case of all other parties, to the Borrower and the Administrative Agent. Transmissions made by electronic mail to the Administrative Agent shall be effective only (x) for notices where such transmission is specifically authorized by this Agreement, (y) if such transmission is delivered in compliance with procedures of the Administrative Agent applicable at the time and previously communicated to the Borrower, and (z) if receipt of such transmission is acknowledged by the Administrative Agent.

All communications described in the preceding paragraph and all other notices, demands, requests and other communications made in connection with this Agreement shall be effective and be deemed to have been received (i) if delivered by hand, upon personal delivery, (ii) if delivered by overnight courier service, one (1) Business Day after delivery to such courier service, (iii) if delivered by mail, three (3) Business Days after deposit in the mail, and (iv) if delivered by electronic mail, upon sender's receipt of confirmation of proper transmission; provided, however, that no communications to the Administrative Agent pursuant to Article II shall be effective until received by the Administrative Agent. Each Lender shall notify the Administrative Agent in writing of any changes in the address to which notices to such Lender should be directed, of the

addresses of its lending office, of payment instructions in respect of all payments to be made to it hereunder and of such other administrative information as the Administrative Agent shall reasonably request.

The Borrower hereby agrees, unless directed otherwise by the Administrative Agent or unless a working electronic mail address has not been provided by the Administrative Agent to the Borrower, that it will, or will cause its Subsidiaries to, provide to the Administrative Agent all information, documents and other materials that it is obligated to furnish to the Administrative Agent pursuant to the Loan Documents or to the Lenders under Article V, including all notices, requests, financial statements, financial and other reports, certificates and other information materials, but excluding any such communication that (i) is or relates to a Borrowing Request, a notice pursuant to Section 2.11, (ii) relates to the payment of any principal or other amount due under this Agreement prior to the scheduled date therefor, (iii) provides notice of any Default or Event of Default under this Agreement or any other Loan Document or (iv) is required to be delivered to satisfy any condition precedent to the effectiveness of this Agreement and/or any Borrowing or other extension of credit hereunder (all such non-excluded communications being referred to herein collectively as "Communications"), by transmitting the Communications in an electronic/soft medium that is properly identified in a format reasonably acceptable to the Administrative Agent to an electronic mail address as directed by the Administrative Agent. In addition, the Borrower agrees, and agrees to cause its Subsidiaries, to continue to provide the Communications to the Administrative Agent or the Lenders, as the case may be, in the manner specified in the Loan Documents but only to the extent requested by the Administrative Agent. Subject to the terms of the preceding sentence and the provisions of the first paragraph of this Section 9.01, each of the Administrative Agent, the Lenders, each Loan Party and each of their Related Parties, is authorized (but not required) to transmit, post or otherwise make or communicate, in its sole discretion, Electronic Transmissions in connection with any Loan Document and the transactions contemplated therein. Each Loan Party and each Secured Party hereto acknowledges and agrees that the use of Electronic Transmissions is not necessarily secure and that there are risks associated with such use, including risks of interception, disclosure and abuse and each indicates it assumes and accepts such risks by hereby authorizing the transmission of Electronic Transmissions.

Subject to the provisions of the first paragraph of this Section 9.01, (i)(A) each E-Signature on any such posting shall be deemed sufficient to satisfy any requirement for a "signature" and (B) each such posting shall be deemed sufficient to satisfy any requirement for a "writing", in each case including pursuant to any Loan Document, any applicable provision of any Uniform Commercial Code, the federal Uniform Electronic Transactions Act, the Electronic Signatures in Global and National Commerce Act and any substantive or procedural Requirement of Law governing such subject matter, (ii) each such posting that is not readily capable of bearing either a signature or a reproduction of a signature may be signed, and shall be deemed signed, by attaching to, or logically associating with such posting, an E-Signature, upon which the Administrative Agent, each other Secured Party and each Loan Party may rely and assume the authenticity thereof, (iii) each such posting containing a signature, a reproduction of a signature or an E-Signature shall, for all intents and purposes, have the same effect and weight as a signed paper original and (iv) each party hereto or beneficiary hereto agrees not to contest the validity or enforceability of any E-Signature under the provisions of any applicable Requirements of Law requiring certain documents to be in writing or signed; provided, however, that nothing herein shall limit such

party's or beneficiary's right to contest whether any E-Signature has been altered after transmission.

The Borrower hereby acknowledges that (a) the Administrative Agent may make available to the Lenders materials and/or information provided by or on behalf of the Borrower hereunder (collectively, the "Borrower Materials") by posting the Borrower Materials on a secure web-based platform (the "Platform") and (b) certain of the Lenders may be "public-side" Lenders (i.e., Lenders that do not wish to receive MNPI with respect to the Borrower or its securities) (each, a "Public Lender"). The Borrower hereby agrees that (w) all Borrower Materials that are to be made available to Public Lenders shall be clearly and conspicuously marked "PUBLIC" which, at a minimum, means that the word "PUBLIC" shall appear prominently on the first page thereof; (x) by marking the Borrower Materials "PUBLIC," the Borrower shall be deemed to have authorized the Administrative Agent and the Lenders to treat such Borrower Materials as not containing any MNPI with respect to the Borrower or its securities for purposes of United States federal and state securities laws (provided, however, that to the extent such Borrower Materials constitute Information, they shall be treated as set forth in Section 9.16); (y) all Borrower Materials marked "PUBLIC" are permitted to be made available through a portion of the Platform designated as "Public Investor;" and (z) the Administrative Agent shall be entitled to treat any Borrower Materials that are not marked "PUBLIC" as being suitable only for posting on a portion of the Platform not marked as "Public Investor." Notwithstanding the foregoing, the following Borrower Materials shall be deemed to be marked "PUBLIC", unless the Borrower notifies the Administrative Agent promptly that any such document contains MNPI: (1) the Loan Documents, including all schedules thereto, and administrative materials of a customary nature prepared by the Loan Parties or the Administrative Agent, (2) notification of changes in the terms of the Facility and (3) all financial statements and certificates delivered pursuant to Sections 5.04(a), (b), (c) and (d).

Each Public Lender agrees to cause at least one individual at or on behalf of such Public Lender to at all times have selected the "Private Side Information" or similar designation on the content declaration screen of the Platform in order to enable such Public Lender or its delegate, in accordance with such Public Lender's compliance procedures and applicable Requirements of Law, including United States Federal and state securities laws, to make reference to Communications that are not made available through the "Public Side Information" portion of the Platform and that may contain MNPI with respect to the Borrower or its securities for purposes of United States Federal or state securities laws.

THE PLATFORM AND ALL ELECTRONIC TRANSMISSIONS ARE PROVIDED "AS IS" AND "AS AVAILABLE". NEITHER THE ADMINISTRATIVE AGENT NOR ANY OF ITS RELATED PARTIES WARRANTS THE ACCURACY OR COMPLETENESS OF THE COMMUNICATIONS OR THE ADEQUACY OF THE PLATFORM OR ELECTRONIC TRANSMISSIONS AND EACH EXPRESSLY DISCLAIMS LIABILITY FOR ERRORS OR OMISSIONS IN THE COMMUNICATIONS AND ELECTRONIC TRANSMISSIONS. NO WARRANTY OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF THIRD PARTY RIGHTS OR FREEDOM FROM VIRUSES OR OTHER CODE DEFECTS IS MADE BY THE ADMINISTRATIVE AGENT OR ANY OF ITS RELATED PARTIES IN CONNECTION WITH THE COMMUNICATIONS OR THE

PLATFORM OR ELECTRONIC TRANSMISSIONS. IN NO EVENT SHALL THE ADMINISTRATIVE AGENT OR ANY OF ITS RELATED PARTIES HAVE ANY LIABILITY TO ANY LOAN PARTY, ANY LENDER OR ANY OTHER PERSON FOR DAMAGES OF ANY KIND, WHETHER OR NOT BASED ON STRICT LIABILITY AND INCLUDING DIRECT OR INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, LOSSES OR EXPENSES (WHETHER IN TORT, CONTRACT OR OTHERWISE) ARISING OUT OF ANY LOAN PARTY'S OR THE ADMINISTRATIVE AGENT'S TRANSMISSION OF COMMUNICATIONS OR ELECTRONIC TRANSMISSIONS THROUGH THE INTERNET, EXCEPT TO THE EXTENT THE LIABILITY OF ANY SUCH PERSON IS FOUND IN A FINAL RULING BY A COURT OF COMPETENT JURISDICTION TO HAVE RESULTED FROM SUCH PERSON'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. THE BORROWER, EACH OTHER LOAN PARTY EXECUTING THIS AGREEMENT, EACH LENDER AND EACH OTHER SECURED PARTY AGREES THAT ADMINISTRATIVE AGENT AND ITS RELATED PARTIES HAVE NO RESPONSIBILITY FOR MAINTAINING OR PROVIDING ANY EQUIPMENT, SOFTWARE, SERVICES OR ANY TESTING REQUIRED IN CONNECTION WITH ANY ELECTRONIC TRANSMISSION.

The Administrative Agent agrees that the receipt of the Communications by the Administrative Agent by Electronic Transmission to its e-mail address provided for such purpose shall constitute effective delivery of the Communications to the Administrative Agent for purposes of the Loan Documents. Each Lender agrees that receipt of notice to it (as provided in the next sentence) specifying that the Communications have been posted to the Platform shall constitute effective delivery of the Communications to such Lender for purposes of the Loan Documents. Each Lender agrees to notify the Administrative Agent in writing (including by electronic communication) from time to time of such Lender's e-mail address to which the foregoing notice may be sent by Electronic Transmission and that the foregoing notice may be sent to such e-mail address.

Nothing herein shall prejudice the right of the Administrative Agent or any Lender to give any notice or other communication pursuant to any Loan Document in any other manner specified in such Loan Document. Furthermore, the Administrative Agent is hereby authorized by each Loan Party and each Lender to establish procedures (and to amend such procedures from time to time) to facilitate administration and servicing of the Loans and other matters incidental thereto. Without limiting the generality of the foregoing, the Administrative Agent is hereby authorized to establish procedures to make available or deliver, or to accept, notices, documents and similar items on, by posting to or submitting and/or completion, on a secure web-based platform.

SECTION 9.02. ***Survival of Agreement.*** All covenants, agreements, representations and warranties made by the Borrower herein and in the certificates or other instruments prepared or delivered in connection with or pursuant to this Agreement or any other Loan Document shall be considered to have been relied upon by the Lenders and shall survive the making by the Lenders of the Loans, regardless of any investigation made by the Lenders or on their behalf, and shall continue in full force and effect as long as the principal of or any accrued interest on any Loan or any Fee or any other amount payable under this Agreement or any other Loan Document (other than contingent indemnification, yield protection, tax gross-up and expense reimbursement obligations, in each case, in respect of which no claim has been asserted) is outstanding and unpaid

and so long as the Commitments have not been terminated. The provisions of Sections 2.15, 2.17, 2.21, 9.05 and 9.06 shall remain operative and in full force and effect regardless of the expiration of the term of this Agreement, the consummation of the transactions contemplated hereby, the repayment of any of the Loans, the expiration of the Commitments, the invalidity or unenforceability of any other term or provision of this Agreement or any other Loan Document, or any investigation made by or on behalf of the Administrative Agent, the Collateral Agent or any Lender.

SECTION 9.03. ***Binding Effect.*** This Agreement shall become effective when it shall have been executed by the Borrower and the Administrative Agent and when the Administrative Agent shall have received counterparts hereof which, when taken together, bear the signatures of each of the other parties hereto.

SECTION 9.04. ***Successors and Assigns.***

(a) Whenever in this Agreement any of the parties hereto is referred to, such reference shall be deemed to include the permitted successors and assigns of such party; and all covenants, promises and agreements by or on behalf of the Borrower (or any other Loan Party), the Administrative Agent, the Collateral Agent or the Lenders that are contained in this Agreement shall bind and inure to the benefit of their respective successors and assigns.

(b) Each Lender may assign to one or more Eligible Assignees, all or a portion of its interests, rights and obligations under this Agreement (including all or a portion of its Commitment and the Loans at the time owing to it); provided, however, that:

(i) the amount of the Commitment or Loans of the assigning Lender subject to each such assignment (determined as of the date the Assignment and Acceptance with respect to such assignment is delivered to the Administrative Agent) shall be in an integral multiple of, and not less than, $500,000 (or, if less, the entire remaining amount of such Lender's Commitment or Loans); provided that this clause (i) shall not apply to an assignment made to an existing Lender or an Affiliate or Related Fund of any existing Lender and simultaneous assignments by or to two or more Affiliates or Related Funds shall be combined for purposes of determining whether the minimum assignment requirement is met in this clause (i);

(ii) the parties to each assignment shall (A) execute and deliver to the Administrative Agent an Assignment and Acceptance via an electronic settlement system acceptable to the Administrative Agent or (B) if previously agreed with the Administrative Agent, manually execute and deliver to the Administrative Agent an Assignment and Acceptance, and, in each case, shall pay to the Administrative Agent a processing and recordation fee of $3,500; provided that such fee may be waived or reduced in the sole discretion of the Administrative Agent;

(iii) the assignee, if it shall not be a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire (in which the assignee shall designate one or more credit contacts to whom all syndicate-level information (which may contain MNPI about the Loan Parties and their Related Parties or their respective securities) will be made available and who may receive such information in accordance with the assignee's compliance procedures and applicable Requirements of Laws, including Federal and state securities laws) and all applicable tax forms (including all tax forms requested pursuant to Section 2.21(f)); and

(iv) notwithstanding any provision to the contrary herein, assignments shall not be required to be pro rata between the Facility.

(c) By executing and delivering an Assignment and Acceptance, the assigning Lender thereunder and the assignee thereunder shall be deemed to confirm to and agree with each other and the other parties hereto as follows: (i) such assigning Lender warrants that it is the legal and beneficial owner of the interest being assigned thereby, free and clear of any adverse claim, and that its Term Loan Commitment, and the outstanding balances of its Term Loans, in each case without giving effect to assignments thereof which have not become effective, are as set forth in such Assignment and Acceptance, (ii) except as set forth in (i) above, such assigning Lender makes no representation or warranty and assumes no responsibility with respect to any statements, warranties or representations made in or in connection with this Agreement, or the execution, legality, validity, enforceability, genuineness, sufficiency or value of this Agreement, any other Loan Document or any other instrument or document furnished pursuant hereto, or the financial condition of the Borrower or any Subsidiary or the performance or observance by the Borrower or any Subsidiary of any of its obligations under this Agreement, any other Loan Document or any other instrument or document furnished pursuant hereto; (iii) such assignee represents and warrants that it is an Eligible Assignee legally authorized to enter into such Assignment and Acceptance; (iv) such assignee confirms that it has received a copy of this Agreement, together with copies of the most recent financial statements referred to in Section 3.05(a) or delivered pursuant to Section 5.04 and such other documents and information as it has deemed appropriate to make its own credit analysis and decision to enter into such Assignment and Acceptance; (v) such assignee will independently and without reliance upon the Administrative Agent, the Collateral Agent, such assigning Lender or any other Lender and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under this Agreement; (vi) such assignee appoints and authorizes the Administrative Agent and the Collateral

Agent to take such action as agent on its behalf and to exercise such powers under this Agreement as are delegated to the Administrative Agent and the Collateral Agent, respectively, by the terms hereof, together with such powers as are reasonably incidental thereto; and (vii) such assignee agrees that it will perform in accordance with their terms all the obligations which by the terms of this Agreement are required to be performed by it as a Lender.

(d) The Administrative Agent, acting for this purpose as a non-fiduciary agent of the Borrower solely with respect to the actions described in this Section 9.04(d), shall maintain a copy of each Assignment and Acceptance delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Commitment of, and principal amount (and related 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 in the absence of manifest error and the Borrower, the Administrative Agent, the Collateral Agent and the Lenders shall 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. Information contained in the Register with respect to any Lender shall be available for access by the Borrower, the Administrative Agent, Collateral Agent, such Lender during normal business hours and from time to time upon at least one Business Day's prior notice. This Section 9.04(d), Section 9.04(e) and Section 9.04(f) below shall be construed so that the Loans are at all times maintained in "registered form" within the meaning of Sections 163(f), 871(h)(2) and 881(c)(2) of the Code.

(e) (i) Upon its receipt of a duly completed Assignment and Acceptance executed by an assigning Lender and an assignee, an Administrative Questionnaire completed in respect of the assignee (unless the assignee shall already be a Lender hereunder), the processing and recordation fee referred to in clause (a) above, if applicable, and, if required, the written consent of the Administrative Agent and, if required, the Borrower, to such assignment and any applicable tax forms, the Administrative Agent shall (i) accept such Assignment and Acceptance and (ii) record the information contained therein in the Register. No assignment shall be effective unless it has been recorded in the Register as provided in this clause (e).

(ii) Upon acceptance and recording pursuant to this Section 9.04(e), from and after the effective date specified in each Assignment and Acceptance, (A) the assignee thereunder shall be a party hereto and, to the extent of the interest assigned by such Assignment and Acceptance, have the rights and obligations of a

Lender under this Agreement; provided that no assignee (including an assignee that is already a Lender hereunder at the time of the assignment) shall be entitled on the date of assignment to receive any greater amount pursuant to Section 2.15 or 2.21 than that to which the assigning Lender would have been entitled had no such assignment occurred (it being understood that nothing in this provision shall be construed to deny such assignee any increase subsequent to the date of assignment in the amount that such assignee is entitled to receive under Section 2.15 or 2.21 on account of increases in deduction for Taxes after the date of such assignment) and (B) the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Acceptance, be released from its obligations under this Agreement (and, in the case of an Assignment and Acceptance covering all or the remaining portion of an assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto but shall continue to be entitled to the benefits of Sections 2.15, 2.17, 2.21 and 9.05, as well as to any fees accrued for its account and not yet paid).

(f) Each Lender may without the consent of the Borrower or the Administrative Agent sell participations to one or more banks or other Persons (other than a natural person, the Borrower or the Borrower's Affiliates) in all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitment and the Loans owing to it); provided, however, that (i) such Lender's obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations, (iii) the participating banks or other Persons shall be entitled to the benefit of the cost protection provisions contained in Sections 2.15, 2.17 and 2.21 to the same extent as if they were Lenders (but, with respect to any particular participant, to no greater extent than the Lender that sold the participation to such participant except to the extent such entitlement to receive a greater payment results from a Change in Law that occurs after the participant acquired the applicable participation); provided that such Person agrees to be subject to the obligations of such provisions to the same extent as if it were a Lender (it being understood that the documentation required under Section 2.21(f) shall be delivered to the participating Lender), and (iv) the Borrower, the Administrative Agent and the Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement, and such Lender shall retain the sole right to enforce the obligations of the Borrower relating to the Loans and to approve any amendment, modification or waiver of any provision of this Agreement (other than amendments, modifications or waivers set forth in Sections 9.08(b)(i), (b)(ii) and (b)(iii) (subject in each case to the exceptions and provisos set forth therein)). To the extent permitted by Requirements of Law, each participating bank or other Person also shall be entitled to the benefits of Section 9.06 as though it were a

Lender, provided such participating bank or other Person agrees to be subject to Section 2.19 as though it were a Lender. Each Lender that sells a participation, acting for this purpose as a non-fiduciary agent of the Borrower solely with respect to the actions described in this Section 9.04(f), shall maintain a register for the recordation of the names and addresses of its participants 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 any Commitments, 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 Commitment, Loan or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations or such disclosure is otherwise required hereunder. 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 notice to the contrary. For the avoidance of doubt, the Administrative Agent (in its capacity as Administrative Agent) shall have no responsibility for maintaining a Participant Register.

(g) Any Lender or participant may, in connection with any assignment or participation or proposed assignment or participation pursuant to this Section 9.04, disclose to the assignee or participant or proposed assignee or participant any information relating to the Borrower furnished to such Lender by or on behalf of the Borrower; provided that each such assignee or participant or proposed assignee or participant shall execute an agreement whereby such assignee or participant shall agree (subject to customary exceptions) to preserve the confidentiality of such confidential information on terms no less restrictive than those applicable to the Lenders pursuant to Section 9.16.

(h) Any Lender may at any time pledge or assign all or any portion of its rights under this Agreement to secure extensions of credit to such Lender or in support of obligations owed by such Lender; provided that no such assignment shall release a Lender from any of its obligations hereunder or substitute any such assignee for such Lender as a party hereto.

(i) The Borrower shall not assign or delegate any of its rights or duties hereunder without the prior written consent of the

Administrative Agent and each Lender, and any attempted assignment without such consent shall be null and void.

SECTION 9.05. ***Expenses; Indemnity.***

(a) Any action taken by any Loan Party under or with respect to any Loan Document, even if required under any Loan Document or at the request of the Administrative Agent, Collateral Agent or Required Lenders, shall be at the expense of such Loan Party, and none of the Administrative Agent, Collateral Agent or any other Secured Party shall be required under any Loan Document to reimburse any Loan Party or any Subsidiary of any Loan Party therefor except as expressly provided therein. The Borrower agrees to pay on the Closing Date, and thereafter from time to time, upon presentation of a reasonably detailed statement, (1) all reasonable and documented expenses incurred by HFS, the Lenders, the Administrative Agent and the Collateral Agent (including, but not limited to, the reasonable and documented costs of consultants, professionals and one primary external legal counsel, one regulatory counsel and one local counsel in each jurisdiction and, solely in the case of a conflict of interest, one additional counsel in each applicable jurisdiction to each affected group similarly situated taken as a whole, to HFS, the Lenders, the Administrative Agent and the Collateral Agent) in connection with the syndication of the Facility and the preparation, documentation, negotiation and administration of this Agreement and the other Loan Documents and the Orders or in connection with any amendments, modifications or waivers of the provisions hereof or thereof (whether or not the transactions hereby or thereby contemplated shall be consummated) and (2) incurred by HFS, the Administrative Agent, the Collateral Agent or any Lender in connection with the enforcement or protection of its rights in connection with this Agreement and the other Loan Documents or in connection with the Loans made hereunder or that otherwise relate to the Cases, including the reasonable and documented fees, charges and disbursements of Weil, Gotshal & Manges LLP and Richards Layton & Finger PA, counsel and local counsel, respectively, for the Administrative Agent and the Collateral Agent, and, in connection with any such enforcement or protection, the fees, charges and disbursements of one firm of local counsel in each relevant jurisdiction and one firm of regulatory counsel, in each case, for the Agents and one firm of local counsel in each relevant jurisdiction and one firm of regulatory counsel, in each case, for the Lenders (as a group), and, in the case of a conflict of interest, one additional separate counsel, regulatory counsel and local counsel, as applicable, for each group of similarly affected parties, after notice to the Borrower.

(b) The Borrower agrees to indemnify the Administrative Agent, the Collateral Agent, each Lender and each Related Party of any of the foregoing Persons (each such Person being called an "Indemnitee") against, and to hold each Indemnitee harmless from, any and all losses, claims, damages, liabilities and related expenses, including reasonable and documented counsel fees, charges and disbursements (subject to the limitations set forth in Section 9.05(a)), incurred by or asserted against any Indemnitee arising out of, in any way connected with, or as a result of (i) the execution or delivery of this Agreement or any other Loan Document or any agreement or instrument contemplated thereby, the performance by the parties thereto of their respective obligations thereunder or the consummation of the Transactions and the other transactions contemplated thereby (including the syndication of the Facility), (ii) the Cases, (iii) the use of the proceeds of the Loans, (iv) any claim, litigation, investigation or proceeding relating to any of the foregoing, whether or not any Indemnitee is a party thereto (and regardless of whether such matter is initiated by a third party or by the Borrower, any other Loan Party or any of their respective Affiliates), or (v) to the extent relating to any of the foregoing, any actual or alleged exposure to, presence on or Release of Hazardous Materials on or from any property currently or formerly owned or operated by the Borrower or any of the Subsidiaries, or any Environmental Liability related in any way to the Borrower or the Subsidiaries; provided that such indemnity shall not, as to any Indemnitee, apply to losses, claims, damages, liabilities or related expenses to the extent (A) determined by a court of competent jurisdiction in a final and non-appealable judgment (i) to have resulted from the willful misconduct or gross negligence of such Indemnitee or (ii) to have arisen out of any claim, litigation, investigation or proceeding that does not involve an act or omission of any Loan Party and that is brought by an Indemnitee against another Indemnitee (excluding any such claims against the relevant Indemnitee in its capacity or in fulfilling its role as Agent or any similar role relating to the Facility), (B) they arise from any settlement entered into by such Indemnitee without the Borrower's written consent (such consent not to be unreasonably withheld, conditioned or delayed) or (C) they arise out of acts first occurring or conditions first existing after any foreclosure proceeding, granting of a deed-in-lieu of foreclosure or similar transfer of title or possession of the Collateral.

(c) To the extent that the Borrower fails to pay any amount required to be paid by them to the Administrative Agent, the Collateral Agent under clauses (a) or (b) of this Section, each Lender severally agrees to pay to the Administrative Agent, the Collateral Agent, as the case may be, such Lender's pro rata share (determined

as of the time that the applicable unreimbursed expense or indemnity payment is sought) of such unpaid amount; provided that the unreimbursed expense or indemnified loss, claim, damage, liability or related expense, as the case may be, was incurred by or asserted against the Administrative Agent, the Collateral Agent in its capacity as such. For purposes hereof, a Lender's "pro rata share" shall be determined based upon its share of the sum of the outstanding Term Loans and unused Commitments at the time.

(d) Each party hereto agrees that no Indemnitee shall have any liability (whether direct or indirect, in contract or tort or otherwise) to the Borrower or its subsidiaries, affiliates, equityholders or creditors arising out of, related to or in connection with any aspect of the Transactions, except to the extent of direct damages (as opposed to indirect, special, punitive or consequential damages) determined in a final, non-appealable judgment by a court of competent jurisdiction to have resulted from such Indemnitee's gross negligence or willful misconduct.

(e) The provisions of this Section 9.05 shall remain operative and in full force and effect regardless of the expiration of the term of this Agreement, the consummation of the transactions contemplated hereby, the repayment of any of the Loans, the expiration of the Commitments, the invalidity or unenforceability of any other term or provision of this Agreement or any other Loan Document, or any investigation made by or on behalf of the Administrative Agent, the Collateral Agent or any Lender. All amounts due under this Section 9.05 shall be payable within three (3) Business Days of written demand therefor (other than the reimbursement of costs, fees and expenses incurred prior to the Closing Date and that are required to be reimbursed in accordance with clause (a) of Section 9.05, which such reimbursement of costs, fees and expenses shall be paid on the Closing Date).

(f) This Section 9.05 shall not apply with respect to Taxes, other than any Taxes that represent losses, claims, damages or similar amounts arising from any non-Tax claim.

SECTION 9.06. ***Right of Setoff.*** Each Lender shall, upon the occurrence and continuance of any Event of Default described in Section 7.01(g) or Section 7.01(h) or, with the consent of the Administrative Agent, upon the occurrence and continuance of any other Event of Default, have the right at any time and from time to time, except to the extent prohibited by Requirements of Law, to set off and apply any and all deposits (general or special, time or demand, provisional or final) at any time held and other indebtedness at any time owing by such Lender to or for the credit or the account of the Borrower against any of and all the obligations of the Borrower now or hereafter existing under this Agreement and other Loan Documents held by such Lender that are then due, irrespective of whether or not such Lender shall have made any demand

under this Agreement or such other Loan Document, provided that any such appropriation and application shall be subject to the provisions of Section 2.19. Each Lender agrees promptly to notify the Borrower and the Administrative Agent after any such setoff and application made by such Lender; provided that the failure to give such notice shall not affect the validity of such setoff and application. The rights of each Lender under this Section 9.06 are in addition to other rights and remedies (including other rights of setoff) which such Lender may have.

SECTION 9.07. ***Applicable Law***. THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS (OTHER THAN AS EXPRESSLY SET FORTH IN OTHER LOAN DOCUMENTS) AND ANY CLAIMS, CONTROVERSY, DISPUTE OR CAUSE OF ACTION (WHETHER IN CONTRACT OR TORT OR OTHERWISE) BASED UPON, ARISING OUT OF OR RELATING THERETO SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE INTERNAL LAWS OF THE STATE OF NEW YORK (INCLUDING FOR SUCH PURPOSE SECTIONS 5-1401 AND 5-1402 OF THE GENERAL OBLIGATIONS LAW OF THE STATE OF NEW YORK), AND, TO THE EXTENT APPLICABLE, THE BANKRUPTCY CODE.

SECTION 9.08. ***Waivers; Amendment.***

(a) No failure or delay of the Administrative Agent, the Collateral Agent or any Lender in exercising any power or right hereunder or under any other Loan Document shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such a right or power, preclude any other or further exercise thereof or the exercise of any other right or power. The rights and remedies of the Administrative Agent, the Collateral Agent and the Lenders hereunder and under the other Loan Documents are cumulative and are not exclusive of any rights or remedies that they would otherwise have. No waiver of any provision of this Agreement or any other Loan Document or consent to any departure by the Borrower or any other Loan Party therefrom shall in any event be effective unless the same shall be permitted by clause (b) below, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. No notice or demand on the Borrower in any case shall entitle the Borrower to any other or further notice or demand in similar or other circumstances.

(b) Neither this Agreement, nor any other Loan Document nor any provision hereof or thereof may be waived, amended or modified except pursuant to an agreement or agreements in writing entered into by the Borrower and the Required Lenders (or, in the case of any Loan Document other than this Agreement, pursuant to an agreement or agreement in writing entered into by each of the parties hereto with the written consent of the Required Lenders) provided, however, that no such agreement shall:

(i) decrease the principal amount of, or extend the maturity of or any scheduled principal payment date or date for the payment of any interest on any Loan, or waive or excuse any such payment or any part thereof, or decrease the rate of interest (other than any waiver of default interest imposed pursuant to Section 2.08) on any Loan, without the prior written consent of each Lender directly adversely affected thereby;

(ii) increase or extend the Commitment (or reinstate any terminated Commitment) or decrease or extend the date for payment of any Fees of any Lender without the prior written consent of such Lender, provided that it is understood and agreed that a waiver of any condition precedent set forth in Section 4.01 or the waiver of any Default, Event of Default, mandatory prepayment or mandatory reduction of the Commitments shall not constitute an extension or increase of any Commitment of any Lender;

(iii) amend or modify the pro rata requirements of Section 2.18 (other than for the purpose of permitting non-pro rata purchases of Loans by the Borrower when no Default exists pursuant to arrangements reasonably acceptable to the Administrative Agent that require (x) such purchases to be offered to all Lenders on a ratable basis and (y) that any Loans so purchased by the Borrower will be cancelled), the provisions of Section 9.04(i) or the provisions of this Section or release or discharge the Borrower or all or substantially all of the Guarantors or release, discharge or subordinate Agent's Lien on all or substantially all of the Collateral (other than pursuant to the express provisions of the Loan Documents), without the prior written consent of each Lender;

(iv) amend or modify the provisions of any Loan Document in a manner that imposes any additional restriction on any Lender's ability to assign any of its Loans or Commitments or other rights or obligations under the Loan Documents, without the prior written consent of each Lender directly adversely affected thereby;

(v) [reserved];

(vi) amend Section 2.14(e) of this Agreement or Section 15(a) of the Guarantee and Collateral Agreement, in each case without the prior written consent of each Lender;

(vii) amend the definition of the term "Required Lenders" without the prior written consent of each Lender; or

(viii) change the percentage of the Commitments or of the aggregate unpaid principal amount of the Loans which shall be required for the Lenders or any of them to take any action hereunder, or any provision providing for consent or other action by all Lenders, without the prior written consent of each Lender directly adversely affected thereby; provided further that no such agreement shall amend, modify or otherwise affect the rights or duties of the Administrative Agent

or the Collateral Agent hereunder or under any other Loan Document without the prior written consent of the Administrative Agent or the Collateral Agent, as the case may be.

(c) Notwithstanding the foregoing, this Agreement and any other Loan Document may be amended solely with the consent of the Administrative Agent and the Borrower without the need to obtain the consent of any other Lender if such amendment is delivered in order (x) to correct or cure obvious errors, omissions, defects or errors and omissions of a technical nature or (y) to fix incorrect cross references or similar inaccuracies in this Agreement or the applicable Loan Document, in each case, so long as the Lenders shall have received at least five (5) Business Days prior written notice thereof and the Required Lenders shall not have objected thereto. The Security Documents, each intercreditor agreement entered into by the Administrative Agent from time to time in accordance with the terms hereof and related documents executed in connection with this Agreement and the other Loan Documents may be in a form reasonably determined by the Administrative Agent and may be, together with this Agreement, amended and waived with the consent of the Administrative Agent at the request of the Borrower without the need to obtain the consent of any other Lender if such amendment or waiver is delivered in order to comply with local law or advice of local counsel, to cure obvious omissions, inconsistencies or defects or to cause such Security Document, intercreditor agreement or other document to be consistent with this Agreement and the other Loan Documents.

SECTION 9.09. ***Interest Rate Limitation***. Notwithstanding anything herein to the contrary, if at any time the interest rate applicable to any Loan, together with all fees, charges and other amounts which are treated as interest on such Loan under applicable Requirements of Law (collectively the "Charges"), shall exceed the maximum lawful rate (the "Maximum Rate") which may be contracted for, charged, taken, received or reserved by the Lender holding such Loan or participation in accordance with applicable Requirements of Law, the rate of interest payable in respect of such Loan or participation hereunder, together with all Charges payable in respect thereof, shall be limited to the Maximum Rate and, to the extent lawful, the interest and Charges that would have been payable in respect of such Loan or participation but were not payable as a result of the operation of this Section 9.09 shall be cumulated and the interest and Charges payable to such Lender in respect of other Loans or participations or periods shall be increased (but not above the Maximum Rate therefor) until such cumulated amount, together with interest thereon at the Federal Funds Effective Rate to the date of repayment, shall have been received by such Lender.

SECTION 9.10. ***Entire Agreement***. This Agreement and the other Loan Documents constitute the entire contract between the parties relative to the subject matter hereof. Any other previous agreement among the parties with respect to the subject matter hereof is superseded by this Agreement and the other Loan Documents. Nothing in this Agreement or in the other Loan

Documents, expressed or implied, is intended to confer upon any Person (other than the parties hereto and thereto, their respective successors and assigns permitted hereunder and, to the extent expressly contemplated hereby, the Related Parties of each of the Administrative Agent, the Collateral Agent and the Lenders) any rights, remedies, obligations or liabilities under or by reason of this Agreement or the other Loan Documents.

SECTION 9.11. ***WAIVER OF JURY TRIAL***. EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ANY OF THE OTHER LOAN DOCUMENTS. EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY 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, AS APPLICABLE, BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 9.11.

SECTION 9.12. ***Severability***. In the event any one or more of the provisions contained in this Agreement or in any other Loan Document should be held invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein and therein shall not in any way be affected or impaired thereby (it being understood that the invalidity of a particular provision in a particular jurisdiction shall not in and of itself affect the validity of such provision in any other jurisdiction). The parties shall endeavor in good-faith negotiations to replace the invalid, illegal or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the invalid, illegal or unenforceable provisions.

SECTION 9.13. ***Counterparts***. This Agreement may be executed in counterparts (and by different parties hereto on different counterparts), each of which shall constitute an original but all of which when taken together shall constitute a single contract, and shall become effective as provided in Section 9.03. Delivery of an executed signature page to this Agreement by electronic transmission (including ".pdf" or ".tif") shall be as effective as delivery of a manually signed counterpart of this Agreement. The words "execution," "signed," "signature" and words of like import in any Loan Document shall be deemed to include electronic signatures (including in ".pdf" format) or the keeping of records in electronic form, each of which shall be of the same legal effect, validity and enforceability as a manually executed signature or the use of a paper-based recordkeeping systems, as the case may be, to the extent and as provided for in any applicable law, including, without limitation, any state law based on the Uniform Electronic Transactions Act.

SECTION 9.14. ***Headings***. Article and Section headings and the Table of Contents used herein are for convenience of reference only, are not part of this Agreement and are not to affect the construction of, or to be taken into consideration in interpreting, this Agreement.

SECTION 9.15. ***Jurisdiction; Consent to Service of Process.***

(a) Each party to this Agreement hereby irrevocably and unconditionally submits, for itself and its property, to the jurisdiction of the Bankruptcy Court, and any appellate court thereof, in any action or proceeding arising out of or relating to this Agreement or the other Loan Documents, or for recognition or enforcement of any judgment, and each of the parties hereto hereby irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding may be heard and determined in the Bankruptcy Court or any appellate court thereof. Each of the parties hereto agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing in this Agreement shall affect any right that the Administrative Agent, the Collateral Agent or any Lender may otherwise have to bring any action or proceeding relating to this Agreement or the other Loan Documents against the Borrower, the Subsidiaries or their respective properties in the courts of any jurisdiction.

(b) Each party to this Agreement hereby irrevocably and unconditionally waives, to the fullest extent it may legally and effectively do so, any objection which it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this Agreement or the other Loan Documents in the Bankruptcy Court. Each of the parties 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.

(c) Each party to this Agreement irrevocably consents to service of process in the manner provided for notices in Section 9.01. Nothing in this Agreement will affect the right of any party to this Agreement to serve process in any other manner permitted by law.

SECTION 9.16. ***Confidentiality.*** Each of the Administrative Agent, the Collateral Agent and the Lenders agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (a) to its Affiliates and its and its Affiliates' officers, directors, employees and agents, including accountants, legal counsel and other advisors any numbering, administrative or settlement service providers (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 or quasi-regulatory authority (such as the National Association of Insurance Commissioners), (c) to the extent required by applicable Requirements of Laws or regulations or by any subpoena or similar legal process or requested or demanded by any Governmental Authority, (d) in connection with the exercise of any remedies hereunder or under the other Loan Documents or any suit, action or proceeding relating to the enforcement of its rights hereunder or

thereunder, (e) subject to an agreement containing provisions substantially the same as those of this Section 9.16, to (i) any actual or prospective assignee of or participant in any of its rights or obligations under this Agreement and the other Loan Documents or (ii) any actual or prospective counterparty (or its advisors) to any swap or derivative transaction relating to the Borrower or any Subsidiary or any of their respective obligations, (f) with the consent of the Borrower, (g) to the extent such Information becomes publicly available other than as a result of a breach of this Section 9.16, (h) to any credit insurer or reinsurer, nationally recognized rating agency or to the extent necessary or customary for inclusion in league table measurements, the CUSIP Service Bureau or any similar agency in connection with the issuance and monitoring of CUSIP numbers with respect to the facilities or market data collectors, similar service providers to the lending industry and service providers to the Administrative Agent in connection with the administration, settlement and management of this Agreement and the Loan Documents and to any other party hereto. For the purposes of this Section, "Information" shall mean all information received from the Borrower and related to the Borrower or any Subsidiary or their business, other than any such information that was available to the Administrative Agent, the Collateral Agent or any Lender on a nonconfidential basis prior to its disclosure by the Borrower. Any Person required to maintain the confidentiality of Information as provided in this Section 9.16 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 accords its own confidential information. The Borrower shall not, and neither shall the Borrower permit any of its Affiliates to, issue any press release or other public disclosure (other than any document filed with any Governmental Authority relating to a public offering of securities of any Loan Party) using the name, logo or otherwise referring to HFS or of any of its Affiliates, without the prior consent of HFS except to the extent required to do so under applicable Requirements of Laws, rules, regulations and decrees and orders of any Governmental Authority and then, to the extent permitted under applicable Requirements of Law, only after consulting with HFS. Notwithstanding anything above, the Lenders and/or any Affiliate thereof may disclose: the type of business in which the Loan Parties are engaged; any agent, arranger or similar title; the class, percentage of class, cost basis and fair value of any Loans held by such Lender and or any Affiliate under this Agreement and the amount of such Loans; and the relationship of such Lender and its Affiliates to the Loan Parties in respect of this Agreement; provided that no such disclosure shall include, or in any way describe, the sales or earnings results or projections of the Loan Parties (except in connection with general statistical summaries or analyses of the portfolio investments that do not specify or identify any of the Loan Parties), or any terms of any contracts to which any Loan Party is a party or any counterparty thereto and the terms of such contracts, in each case without the prior consent of the Borrower.

SECTION 9.17. ***Lender Action***. Each Lender agrees that it shall not take or institute any actions or proceedings, judicial or otherwise, for any right or remedy against any Loan Party or any other obligor under any of the Loan Documents (including the exercise of any right of setoff, rights on account of any banker's lien or similar claim or other rights of self-help), or institute any actions or proceedings, or otherwise commence any remedial procedures, with respect to any Collateral or any other property of any such Loan Party, unless expressly provided for herein or in any other Loan Document, without the prior written consent of the Administrative Agent. The provisions of this Section 9.17 are for the sole benefit of the Lenders and shall not afford any right to, or constitute a defense available to, any Loan Party.

SECTION 9.18. ***USA PATRIOT Act Notice; Beneficial Ownership Regulation***. Each Lender and the Administrative Agent (for itself and not on behalf of any Lender) hereby notifies the Borrower that pursuant to the requirements of the USA PATRIOT Act and the Beneficial Ownership Regulation, it is required to obtain, verify and record information that identifies the Borrower and the other Loan Parties, which information includes the name and address of the Borrower and the other Loan Parties and other information that will allow such Lender or the Administrative Agent, as applicable, to identify the Borrower and the other Loan Parties in accordance with the USA PATRIOT Act or the Beneficial Ownership Regulation.

SECTION 9.19. ***No Fiduciary Relationship***. Notwithstanding anything to the contrary herein or in any Loan Document, no provision in the Loan Documents and no course of dealing between the parties shall be deemed to create any fiduciary duty owing to any Loan Party by the Agents or any Lender.

SECTION 9.20. ***Marshaling; Payments Set Aside***. None of the Administrative Agent, the Collateral Agent or any Lender shall be under any obligation to marshal any assets in payment of any or all of the Obligations. To the extent that the Borrower makes payment(s) or the Collateral Agent enforces its Liens or the Administrative Agent, the Collateral Agent or any Lender or any exercises its right of set-off, and such payment(s) or the proceeds of such enforcement or set-off is subsequently invalidated, declared to be fraudulent or preferential, set aside, or required to be repaid by anyone, then to the extent of such recovery, the Obligations or part thereof originally intended to be satisfied, and all Liens, rights and remedies therefor, shall be revived and continued in full force and effect as if such payment had not been made or such enforcement or set off had not occurred.

SECTION 9.21. ***Lenders' Obligations Several; Independent Nature of Lenders' Rights***. The obligation of each Lender hereunder is several and not joint and no Lender shall be responsible for the obligation or commitment of any other Lender hereunder. In the event that any Lender at any time should fail to make a Loan as herein provided, the Lenders, or any of them, at their sole option, may make the Loan that was to have been made by the Lender so failing to make such Loan. Nothing contained in any Loan Document and no action taken by the Administrative Agent, the Collateral Agent or any Lender pursuant hereto or thereto shall be deemed to constitute Lenders to be a partnership, an association, a joint venture or any other kind of entity. The amounts payable at any time hereunder to each Lender shall be a separate and independent debt.

SECTION 9.22. ***Acknowledgement Regarding Any Supported OFCs***. To the extent that the Loan Documents provide support, through a guarantee or otherwise, for Hedging Agreements or any other agreement or instrument that is a QFC (such support, "QFC Credit Support" and each such QFC a "Supported QFC"), the parties acknowledge and agree as follows with respect to the resolution power of the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act and Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (together with the regulations promulgated thereunder, the "U.S. Special Resolution Regimes") in respect of such Supported QFC and QFC Credit Support (with the provisions below applicable notwithstanding that the Loan Documents and any Supported QFC may in fact be stated to be governed by the laws of the State of New York and/or of the United States or any other state of the United States):

(a) In the event a Covered Entity that is party to a Supported QFC (each, a "Covered Party") becomes subject to a proceeding under a U.S. Special Resolution Regime, the transfer of such Supported QFC and the benefit of such QFC Credit Support (and any interest and obligation in or under such Supported QFC and such QFC Credit Support, and any rights in property securing such Supported QFC or such QFC Credit Support) from such Covered Party will be effective to the same extent as the transfer would be effective under the U.S. Special Resolution Regime if the Supported QFC and such QFC Credit Support (and any such interest, obligation and rights in property) were governed by the laws of the United States or a state of the United States. In the event a Covered Party or a BHC Act Affiliate of a Covered Party becomes subject to a proceeding under a U.S. Special Resolution Regime, Default Rights under the Loan Documents that might otherwise apply to such Supported QFC or any QFC Credit Support that may be exercised against such Covered Party are permitted to be exercised to no greater extent than such Default Rights could be exercised under the U.S. Special Resolution Regime if the Supported QFC and the Loan Documents were governed by the laws of the United States or a state of the United States.

(b) As used in this Section 9.22, the following terms have the following meanings:

(i) "BHC Act Affiliate" of a party means an "affiliate" (as such term is defined under, and interpreted in accordance with, 12 U.S.C. 1841(k)) of such party.

(ii) "Covered Entity" means any of the following:

(A) a "covered entity" as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 252.82(b);

(B) a "covered bank" as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 47.3(b); or

(C) a "covered FSI" as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 382.2(b).

(iii) "Default Right" has the meaning assigned to that term in, and shall be interpreted in accordance with, 12 C.F.R. §§ 252.81, 47.2 or 382.1, as applicable.

(iv) "QFC" has the meaning assigned to the term "qualified financial contract" in, and shall be interpreted in accordance with, 12 U.S.C. 5390(c)(8)(D).

SECTION 9.23. ***Acknowledgement and Consent to Bail-In of Affected Financial Institutions***. Notwithstanding anything to the contrary in any Loan Document or in any other

agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any Affected Financial Institution arising under any Loan Document, to the extent such liability is unsecured, may be subject to the write-down and conversion powers of the applicable Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

(a) the application of any Write-Down and Conversion Powers by the applicable Resolution Authority to any such liabilities arising hereunder which may be payable to it by any party hereto that is an Affected Financial Institution; and

(b) the effects of any Bail-In Action on any such liability, including, if applicable:

(i) a reduction in full or in part or cancellation of any such liability;

(ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such Affected Financial Institution, its parent undertaking, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Loan Document; or

(iii) the variation of the terms of such liability in connection with the exercise of the write-down and conversion powers of the applicable Resolution Authority.

SECTION 9.24. ***Orders Control***. It is acknowledged and agreed that in the event of any conflict or inconsistency between this Agreement and the Orders, the Orders shall control in all respects, including without limitation, the Carve-Out.

SECTION 9.25. ***Termination***. Notwithstanding anything to the contrary contained herein, if (x) the Closing Date has not occurred on or prior to June 2, 2021 at 11:59 PM New York City time and (y) no Obligations are outstanding on June 3, 2021, this Loan Agreement, the Commitments hereunder and all other Loan Documents shall automatically terminate on June 3, 2021 (other than those provisions herein which by their express terms survive termination). The parties hereto acknowledge and agree that each party hereto executed and delivered this Agreement after the filing of the Cases.

[Remainded of the Page was Intentionally Left Blank]