

**ENTERED**

March 06, 2023

Nathan Ochsner, Clerk

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

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In re:	)	
	)	Chapter 11
	)	
NIELSEN & BAINBRIDGE, LLC, <i>et al.</i> , <sup>1</sup>	)	Case No. 23-90071 (DRJ)
	)	
Debtors.	)	(Jointly Administered)
	)	

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

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

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<sup>1</sup> A complete list of each of the Debtors in these chapter 11 cases may be obtained on the website of the Debtors’ proposed claims and noticing agent at <https://omniagentsolutions.com/NBGHome>. The Debtors’ service address in these chapter 11 cases is: 12303 Technology Boulevard, Suite 950, Austin, TX 78727.

<sup>2</sup> Capitalized terms used but not defined herein are given the meanings ascribed to such terms in the DIP Motion or DIP Credit Agreement (as defined herein).

interim order (the “**Interim Order**”) and this final order (the “**Final Order**” and, together with the Interim Order, the “**DIP Orders**”) among other things:

- authorizing the Borrower to obtain postpetition financing (“**DIP Financing**”) pursuant to a secured, superpriority, priming debtor in possession multi-draw term loan facility (the “**DIP Facility**”) subject to the terms and conditions set forth in the Interim Order, this Final Order, and that certain Senior Secured Superpriority Debtor-in-Possession Credit Agreement attached to the Interim Order as **Exhibit 1** (as amended, restated, amended and restated, supplemented, or otherwise modified from time to time, the “**DIP Credit Agreement**”) by and among the Borrower, the DIP Guarantors (as defined below), the financial institutions or other entities from time to time party thereto as “**Lenders**” (the “**DIP Lenders**”), and KKR Loan Administration Services, LLC, as administrative agent and collateral agent (in such capacity, together with its successors and permitted assigns, the “**DIP Agent**” and, together with the DIP Lenders, the “**DIP Secured Parties**”), consisting of (i) new money term loans (the “**New Money DIP Term Loans**”) in an aggregate principal amount of \$30 million, of which \$10 million was made available upon entry of the Interim Order (the “**Interim Draw**”), and the remainder will be available upon the entry of this Final Order (subject to certain conditions), and (ii) \$30 million of DIP Roll-Up Loans (as defined below), which will be deemed rolled up and converted into DIP Obligations (as defined below) on a dollar-for-dollar basis based on the amount of New Money DIP Term Loans actually funded and on such day as the New Money DIP Term Loans are actually funded (the loans to be made available under the foregoing clauses (i) and (ii), the “**DIP Loans**” and the commitments therefor, the “**DIP Commitments**”);
- authorizing the Borrower to incur, and the other Debtors to jointly and severally guarantee (such Debtors, in this capacity, the “**DIP Guarantors**” and, together with the Borrower, the “**DIP Loan Parties**”) the DIP Loans and all extensions of credit, financial accommodations, reimbursement obligations, fees and premiums (including, without limitation, commitment fees or premiums and administrative agency fees), costs, expenses and other liabilities and obligations (including indemnities and similar obligations, whether contingent or absolute) due or payable under the DIP Documents (as defined below) (collectively, the “**DIP Obligations**”);
- authorizing the DIP Loan Parties to execute, deliver and perform under the DIP Credit Agreement and all other documents and instruments that may be reasonably requested by the DIP Secured Parties in connection with the DIP Facility (in each case, as amended, restated, supplemented, waived or otherwise modified from time to time in accordance with the terms thereof and hereof, together with the DIP Credit Agreement, the “**DIP Documents**”);
- subject to the Carve-Out (as defined below) and otherwise solely to the extent set forth herein, granting to the DIP Agent, for the benefit of the DIP Secured Parties, allowed superpriority administrative expense claims pursuant to section 364(c)(1) of the Bankruptcy Code;

- granting to the DIP Agent, for the benefit of the DIP Secured Parties, valid, enforceable, non-avoidable and automatically perfected liens pursuant to sections 364(c)(2), 364(c)(3), and 364(d) of the Bankruptcy Code on the DIP Collateral (as defined below), on the terms described herein;
- authorizing the DIP Agent, acting at the direction of the Required DIP Lenders, to take all commercially reasonable actions to implement the terms of this Final Order;
- waiving (a) the Debtors' right to surcharge the Prepetition ABL Collateral (as defined below) and the DIP Collateral (as defined below) pursuant to section 506(c) of the Bankruptcy Code and (b) any "equities of the case" exception under section 552(b) of the Bankruptcy Code;
- waiving the equitable doctrine of "marshaling" and other similar doctrines (a) with respect to the DIP Collateral for the benefit of any party other than the DIP Secured Parties and (b) with respect to the Prepetition Collateral (including the Cash Collateral) for the benefit of any party other than the Prepetition Secured Parties (as defined below);
- authorizing the Debtors to use proceeds of the DIP Facility and Cash Collateral (as defined below) solely in accordance with the DIP Orders and the DIP Documents;
- authorizing the Debtors to pay the DIP Obligations as they become due and payable in accordance with the DIP Documents;
- subject to the restrictions set forth in the DIP Documents and the DIP Orders, authorizing the Debtors to use Prepetition Collateral and provide adequate protection to the Prepetition Secured Parties for any diminution in value of their respective interests in the applicable Prepetition Collateral (including Cash Collateral), for any reason provided for in the Bankruptcy Code (collectively, the "**Diminution in Value**");
- vacating and modifying the automatic stay to the extent necessary to permit the Debtors, the DIP Secured Parties, and the Prepetition Secured Parties to implement and effectuate the terms and provisions of the DIP Orders and the DIP Documents; and
- waiving any applicable stay (including under Bankruptcy Rule 6004) and providing for immediate effectiveness of this Final Order.

The Court having considered the relief requested in the DIP Motion, the exhibits attached thereto, the *Declaration of Stuart Erickson in Support of the Debtors' Emergency Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to (A) Obtain Postpetition Financing and (B) Use Cash Collateral, (II) Granting Liens and Providing Superpriority Administrative Expense Claims, (III) Granting Adequate Protection to Prepetition Secured Parties, (IV) Modifying the*

*Automatic Stay, (V) Scheduling a Final Hearing, and (VI) Granting Related Relief* [Docket No. 19] (the “**Original Erickson Declaration**”), the *Declaration of Amy Lee, Chief Transformation Officer of Nielsen & Bainbridge LLC, in Support of Chapter 11 Petitions and First Day Pleadings* [Docket No. 16] (the “**First Day Declaration**”), the *Supplemental Declaration of Stuart Erickson in Support of the Debtors’ Emergency Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to (A) Obtain Postpetition Financing and (B) Use Cash Collateral, (II) Granting Liens and Providing Superpriority Administrative Expense Claims, (III) Granting Adequate Protection to Prepetition Secured Parties, (IV) Modifying the Automatic Stay, (V) Scheduling a Final Hearing, and (VI) Granting Related Relief* (the “**Supplemental Erickson Declaration**”), the *Declaration of Amy Lee, Chief Transformation Officer of Nielsen & Bainbridge, LLC, in Support of the Debtors’ Emergency Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to (A) Obtain Postpetition Financing and (B) Use Cash Collateral, (II) Granting Liens and Providing Superpriority Administrative Expense Claims, (III) Granting Adequate Protection to Prepetition Secured Parties, (IV) Modifying the Automatic Stay, (V) Scheduling a Final Hearing, and (VI) Granting Related Relief* [Docket No. 19] (the “**Lee Declaration**” and, together with the Original Erickson Declaration, the First Day Declaration, and the Supplemental Erickson Declaration, the “**Declarations**”), the available DIP Documents, and the evidence submitted and arguments made at the interim hearing held on February 9, 2023 (the “**Interim Hearing**”); and the Court having entered the Interim Order on February 10, 2023 [Docket No. 67]; and the Court having considered the DIP Motion, the exhibits attached thereto, the Declarations, and the evidence submitted and arguments made at the final hearing held on March 1, 2023 (the “**Final Hearing**”); and due and sufficient notice of the Final Hearing having been given in accordance with Bankruptcy Rules 2002, 4001(b), (c) and (d), and all applicable

Bankruptcy Local Rules; and the Final Hearing having been held and concluded; and all objections, if any, to the final relief requested in the DIP Motion having been withdrawn, resolved or overruled by the Court; and it appearing that approval of the final relief requested in the DIP Motion is fair and reasonable, in the best interests of the Debtors and their estates, and essential for the continued operation of the Debtors' businesses and the preservation of the value of the Debtors' assets; and it appearing that the DIP Loan Parties' entry into the DIP Documents is a sound and prudent exercise of the Debtors' business judgment; and after due deliberation and consideration, and good and sufficient cause appearing therefor.

**BASED UPON THE RECORD ESTABLISHED AT THE INTERIM AND FINAL HEARING, THE COURT MAKES THE FOLLOWING FINDINGS OF FACT AND CONCLUSIONS OF LAW:<sup>3</sup>**

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

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

C. *Jurisdiction and Venue.* This Court has core jurisdiction over these cases, the DIP Motion, and the parties and property affected hereby pursuant to 28 U.S.C. §§ 157(a)–(b) and the *Amended Standing Order of Reference from the United States District Court for the Southern District of Texas*, dated May 24, 2012. Consideration of the DIP Motion constitutes a core

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

proceeding pursuant to 28 U.S.C. § 157(b)(2). The Court may enter a final order approving the relief sought in the DIP Motion consistent with Article III of the United States Constitution. Venue for these cases and proceedings on the DIP Motion is proper before this Court pursuant to 28 U.S.C. § 1408. The predicates for the relief sought herein are sections 105, 361, 362, 363(b), 363(c), 363(e), 363(m), 364(c), 364(d)(1), 364(e), 503 and 507 of the Bankruptcy Code, Bankruptcy Rules 2002, 4001, 6003, 6004 and 9014, and Bankruptcy Local Rules 2002-1, 4001-1(b), 4002-1(i), and 9013-1.

D. *Committee Formation.* On February 18, 2023, the United States Trustee for the Southern District of Texas (the “**U.S. Trustee**”) appointed an official committee of unsecured creditors in these cases (a “**Creditors’ Committee**”) pursuant to section 1102 of the Bankruptcy Code [Docket No. 123].

E. *Notice.* Proper, timely, adequate and sufficient notice of the DIP Motion and the Final Hearing has been provided in accordance with the Bankruptcy Code, Bankruptcy Rules and Bankruptcy Local Rules, and no other or further notice was required under the circumstances.

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

G. *Debtors’ Stipulations.* Subject to the provisions and limitations contained in paragraph 17 hereof, and after consultation with their attorneys, the Debtors admit, stipulate and agree that:

(i) *Prepetition 1L Term Loan.* Pursuant to that certain First Lien Credit Agreement dated as of April 26, 2017 (as amended, supplemented, restated or otherwise modified

prior to the Petition Date, the “**Prepetition 1L Credit Agreement**” and, collectively with the other “Loan Documents” (as defined in the Prepetition 1L Credit Agreement) and any other agreements and documents executed or delivered in connection therewith, each as may be amended, restated, amended and restated, supplemented, waived, or otherwise modified prior to the Petition Date, the “**Prepetition 1L Loan Documents**”) by and among (a) NBG Intermediate Holdings Inc. (“**Holdings**”), (b) NGB Acquisition Inc., as initial borrower, (c) KNB Holdings Corporation, as borrower (the “**Prepetition 1L Borrower**”), (d) the guarantors party thereto (the “**Prepetition 1L Guarantors**” and, together with the Prepetition 1L Borrower, the “**Prepetition 1L Loan Parties**”) (e) Deutsche Bank AG New York Branch, as administrative and collateral agent (the “**Prepetition 1L Agent**”), and (f) the lenders party thereto from time to time (the “**Prepetition 1L Lenders**” and, together with the Prepetition 1L Agent, the “**Prepetition 1L Secured Parties**”), Prepetition 1L Borrower and Prepetition 1L Guarantors incurred “Obligations” (as defined in the Prepetition 1L Credit Agreement, the “**Prepetition 1L Obligations**”) to the Prepetition 1L Secured Parties on a joint and several basis;

(ii) *Prepetition 2L Term Loan.* Pursuant to that certain Second Lien Credit Agreement dated as of April 26, 2017 (as amended, supplemented, restated or otherwise modified prior to the Petition Date, the “**Prepetition 2L Credit Agreement**” and, collectively with the other “Loan Documents” (as defined in the Prepetition 2L Credit Agreement) and any other agreements and documents executed or delivered in connection therewith, each as may be amended, restated, amended and restated, supplemented, waived, or otherwise modified prior to the Petition Date, the “**Prepetition 2L Loan Documents**”) by and among (a) Holdings, (b) NGB Acquisition Inc., as initial borrower, (c) KNB Holdings Corporation, as borrower (the “**Prepetition 2L Borrower**”), (d) the guarantors party thereto (the “**Prepetition 2L Guarantors**” and, together with the

Prepetition 2L Borrower, the “**Prepetition 2L Loan Parties**”), (e) Cortland Capital Market Services LLC, as administrative and collateral agent (the “**Prepetition 2L Agent**”), and (f) the lenders party thereto from time to time (the “**Prepetition 2L Lenders**” and, together with the Prepetition 2L Agent, the “**Prepetition 2L Secured Parties**”), the Prepetition 2L Borrower and the Prepetition 2L Guarantors incurred “Obligations” (as defined in the Prepetition 2L Credit Agreement, the “**Prepetition 2L Obligations**”) to the Prepetition 2L Secured Parties on a joint and several basis;

(iii) *Term Intercreditor Agreement.* Pursuant to (and to the extent set forth in) that certain Term Intercreditor Agreement, dated as of April 26, 2017 (the “**Prepetition Term Intercreditor Agreement**”), by and among the Prepetition 1L Agent and Prepetition 2L Agent, the parties thereto agreed, among other things, to: (a) consent to, or not oppose, certain actions taken, or rights asserted, by the Prepetition 1L Secured Parties or Prepetition 2L Secured Parties, as applicable, and (b) refrain from taking certain actions with respect to the Shared Collateral (as defined therein);

(iv) *Prepetition ABL Facility.* Pursuant to that certain ABL Credit Agreement dated as of April 26, 2017 (as amended, supplemented, restated or otherwise modified prior to the Petition Date, the “**Prepetition ABL Credit Agreement**” and, collectively with the other “Loan Documents” (as defined in the Prepetition ABL Credit Agreement) and any other agreements and documents executed or delivered in connection therewith, each as may be amended, restated, amended and restated, supplemented, waived or otherwise modified prior to the Petition Date, the “**Prepetition ABL Loan Documents**” and the credit facilities evidenced thereby, collectively, the “**Prepetition ABL Facility**”) among (a) KNB Holdings Corporation, as administrative borrower (together with the other borrowers party thereto, the “**Prepetition ABL Borrowers**”),



(b) Holdings, as guarantor (the “**Prepetition ABL Guarantor**” and, together with the Prepetition ABL Borrowers, the “**Prepetition ABL Loan Parties**” and, together with the Prepetition 1L Loan Parties and the Prepetition 22L Loan Parties, the “**Prepetition Loan Parties**”), (c) Wells Fargo Bank, National Association, as administrative agent and collateral agent (the “**Prepetition ABL Agent**” and, together with the Prepetition 1L Agent and Prepetition 2L Agent, the “**Prepetition Agents**”), and (f) the lenders from time to time party thereto (the “**Prepetition ABL Lenders**” and (i) together with the Prepetition ABL Agent and all other holders of Prepetition ABL Obligations (as defined below), the “**Prepetition ABL Secured Parties**”, (ii) together with the Prepetition 1L Lenders and Prepetition 2L Lenders, the “**Prepetition Lenders**”; the Prepetition 1L Secured Parties, Prepetition 2L Secured Parties, and Prepetition ABL Secured Parties, collectively, the “**Prepetition Secured Parties**”), the Prepetition ABL Borrowers and the Prepetition ABL Guarantor incurred the Prepetition ABL Obligations (as defined below) to the Prepetition ABL Lenders on a joint and several basis;

(v) *ABL Intercreditor Agreement.* Pursuant to (and to the extent set forth in) that certain ABL Intercreditor Agreement, dated as of April 26, 2017 (as amended, restated, amended and restated, supplemented, waived or otherwise modified from time to time, the “**Prepetition ABL Intercreditor Agreement**” and, together with the Prepetition 1L Loan Documents, the Prepetition 2L Loan Documents, the Prepetition Term Intercreditor Agreement, and the Prepetition ABL Loan Documents, the “**Prepetition Loan Documents**”) by and among the Prepetition ABL Agent, the Prepetition 1L Agent, and the Prepetition 2L Agent, the parties thereto agreed, among other things: (a) that the Prepetition ABL Liens (as defined below) on the Prepetition ABL Priority Collateral (as defined below) are senior to the Prepetition 1L Liens and Prepetition 2L Liens (as defined below) on such collateral; and (b) that the Prepetition 1L Liens

and Prepetition 2L Liens on the Prepetition Term Priority Collateral (as defined below) are senior to the Prepetition ABL Liens on such collateral;

(vi) *Prepetition 1L Obligations.* As of the Petition Date, the Prepetition 1L Loan Parties were justly and lawfully indebted and liable to the Prepetition 1L Secured Parties without defense, challenge, objection, claim, counterclaim, or offset of any kind, for Loans (as defined in the Prepetition 1L Credit Agreement) in the aggregate principal amount of not less than \$282,262,097.00, plus accrued and unpaid interest thereon and any fees, expenses and disbursements (including attorneys' fees, accountants' fees, appraisers' fees, auditors' fees, and financial advisors' fees), costs, charges, indemnities, and other Prepetition 1L Obligations incurred under the Prepetition 1L Loan Documents;

(vii) *Prepetition 2L Obligations.* As of the Petition Date, the Prepetition 2L Loan Parties were justly and lawfully indebted and liable to the Prepetition 2L Secured Parties without defense, challenge, objection, claim, counterclaim, or offset of any kind, for Loans (as defined in the Prepetition 2L Credit Agreement) in the aggregate principal amount of not less than \$73,359,377.00, plus accrued and unpaid interest thereon and any fees, expenses and disbursements (including any attorneys' fees, accountants' fees, appraisers' fees, auditors' fees, and financial advisors' fees), costs, charges, indemnities, and other Prepetition 2L Obligations incurred under the Prepetition 2L Loan Documents;

(viii) *Prepetition ABL Obligations.* As of the Petition Date, the Prepetition ABL Loan Parties were justly and lawfully indebted and liable to the Prepetition ABL Secured Parties without defense, challenge, objection, claim, counterclaim, or offset of any kind, for not less than \$57,700,000 in outstanding principal amount of Loans (as defined in the Prepetition ABL Credit Agreement) plus any accrued but unpaid interest thereon, fees, expenses (including attorneys',

accountants', appraisers', and financial advisors' fees and expenses), any reimbursement obligations (contingent or otherwise) in respect of letters of credit and bankers' acceptances, treasury, cash management, bank product and derivative obligations, indemnification obligations, guarantee obligations, costs, charges, indemnities, and any other "Obligations" (as defined in the Prepetition ABL Credit Agreement) incurred under the Prepetition ABL Loan Documents (collectively, the "**Prepetition ABL Obligations**") and, together with the Prepetition 1L Obligations and Prepetition 2L Obligations, the "**Prepetition Secured Obligations**";

(ix) *Validity of Prepetition Secured Obligations.* The Prepetition Secured Obligations constitutes legal, valid, binding, and non-avoidable obligations of the Prepetition Loan Parties, as applicable, enforceable in accordance with the respective terms of the relevant documents, and no portion of the Prepetition Secured Obligations or any payment made to the Prepetition Secured Parties or applied to or paid on account of the Prepetition Secured Obligations prior to the Petition Date is subject to any contest, attack, rejection, recovery, reduction, defense, counterclaim, offset, subordination, recharacterization, avoidance or other claim (as such term is defined in the Bankruptcy Code), cause of action (including any avoidance actions under Chapter 5 of the Bankruptcy Code), chases in action or other challenge of any nature under the Bankruptcy Code or any applicable non-bankruptcy law;

(x) *Validity, Perfection and Priority of Prepetition 1L Liens.* As of the Petition Date, pursuant to the Prepetition 1L Loan Documents, the Prepetition 1L Loan Parties granted to the Prepetition 1L Agent, for the benefit of the Prepetition 1L Secured Parties, a security interest in and continuing lien on (the "**Prepetition 1L Liens**") substantially all of their respective assets and property, including (but, for the avoidance of doubt, not including any Excluded Assets (as defined in the Prepetition 1L Loan Documents)) (i) a valid, binding, properly perfected,

enforceable, non-avoidable first priority security interest in and continuing lien on the Term Priority Collateral (as defined in the Prepetition ABL Intercreditor Agreement), which, for the avoidance of doubt, includes Cash Collateral, and all proceeds, products, accessions, rents, and profits thereof, in each case whether then owned or existing or thereafter acquired or arising (collectively, the “**Prepetition 1L Priority Collateral**”), and (ii) a valid, binding, properly perfected, enforceable, non-avoidable security interest in and continuing lien on the Prepetition ABL Priority Collateral (as defined below), which, for the avoidance of doubt, includes Cash Collateral, and all proceeds, products, accessions, rents, and profits thereof, in each case whether then owned or existing or thereafter acquired or arising (the “**Prepetition 1L Junior Collateral**” and, together with the Prepetition 1L Priority Collateral, the “**Prepetition 1L Collateral**”), junior, subject and subordinate only to the liens of Prepetition ABL Agent and the liens permitted by the Prepetition 1L Loan Documents, solely to the extent such permitted liens are (a) valid, perfected and non-avoidable on the Petition Date, or (b) valid liens in existence on the Petition Date that are perfected subsequent to the Petition Date in accordance with section 546(b) of the Bankruptcy Code (collectively, the “**Prepetition 1L Permitted Senior Liens**”);

(xi) *Validity, Perfection and Priority of Prepetition 2L Liens.* As of the Petition Date, pursuant to the Prepetition 2L Loan Documents, the Prepetition 2L Loan Parties granted to the Prepetition 2L Agent, for the benefit of the Prepetition 2L Secured Parties, a security interest in and continuing lien on (the “**Prepetition 2L Liens**”) substantially all of their assets and property, including (but, for the avoidance of doubt, not including any Excluded Assets (as defined in the Prepetition 2L Loan Documents)) (i) a valid, binding, properly perfected, enforceable, non-avoidable second priority security interest in and continuing lien on the Term Priority Collateral and all proceeds, products, accessions, rents, and profits thereof, in each case whether then owned

or existing or thereafter acquired or arising (collectively, the “**Prepetition 2L Priority Collateral**” and, together with the Prepetition 1L Priority Collateral, the “**Prepetition Term Priority Collateral**”), and (ii) a valid, binding, properly perfected, enforceable, non-avoidable priority security interest in and continuing lien on the Prepetition ABL Priority Collateral and all proceeds, products, accessions, rents, and profits thereof, in each case whether then owned or existing or thereafter acquired or arising (the “**Prepetition 2L Junior Collateral**” and, together with the Prepetition 2L Priority Collateral, the “**Prepetition 2L Collateral**”), subject and subordinate only to the liens of Prepetition ABL Agent and Prepetition 1L Agent on the Prepetition ABL Priority Collateral, the liens of the Prepetition 1L Agent on the Prepetition Term Priority Collateral, and liens permitted by the Prepetition 2L Loan Documents, solely to the extent such permitted liens are (a) valid, perfected and non-avoidable on the Petition Date, or (b) valid liens in existence on the Petition Date that are perfected subsequent to the Petition Date in accordance with section 546(b) of the Bankruptcy Code (the “**Prepetition 2L Permitted Senior Liens**”);

(xii) *Validity, Perfection and Priority of Prepetition ABL Liens.* As of the Petition Date, pursuant to the Prepetition ABL Loan Documents, the Prepetition ABL Loan Parties granted to the Prepetition ABL Agent, for the benefit of the Prepetition ABL Secured Parties, a security interest in and continuing lien on (the “**Prepetition ABL Liens**” and, together with the Prepetition 1L Liens and Prepetition 2L liens, the “**Prepetition Liens**”) substantially all of their assets and property, including (but, for the avoidance of doubt, not including any Excluded Assets (as defined in the Prepetition ABL Loan Documents)) (i) a valid, binding, properly perfected, enforceable, first priority security interest in and continuing lien on the ABL Priority Collateral (as defined in the Prepetition ABL Intercreditor Agreement), which, for the avoidance of doubt, includes Cash Collateral, and all proceeds, products, accessions, rents, and profits thereof, in each

case whether then owned or existing or thereafter acquired or arising (collectively, the “**Prepetition ABL Priority Collateral**”), and (ii) a valid, binding, properly perfected, enforceable, junior priority security interest in and continuing lien on the Prepetition Term Priority Collateral and all proceeds, products, accessions, rents, and profits thereof, in each case whether then owned or existing or thereafter acquired or arising (the “**Prepetition ABL Junior Collateral**” and, together with the Prepetition ABL Priority Collateral, the “**Prepetition ABL Collateral**” and, together with the Prepetition 1L Collateral and Prepetition 2L Collateral, the “**Prepetition Collateral**”), junior, subject and subordinate only to the liens of the Prepetition 1L Agent and Prepetition 2L Agent on the Prepetition Term Priority Collateral and liens permitted by the Prepetition ABL Loan Documents, solely to the extent any such permitted liens are (a) valid, perfected and non-avoidable on the Petition Date, or (b) valid liens in existence on the Petition Date that are perfected subsequent to the Petition Date in accordance with section 546(b) of the Bankruptcy Code (the “**Prepetition ABL Permitted Senior Liens**” and, together with the Prepetition 1L Permitted Senior Liens and Prepetition 2L Permitted Senior Liens, the “**Prepetition Permitted Senior Liens**”);<sup>4</sup>

(xiii) *Waiver of Challenge*. None of the Prepetition Liens are subject to any contest, attack, rejection, recovery, reduction, defense, counterclaim, subordination, recharacterization, avoidance or other cause of action (including any avoidance actions under Chapter 5 of the Bankruptcy Code), chases in action or other challenge of any nature under the Bankruptcy Code or any applicable non-bankruptcy law;

(xiv) *No Control*. None of the Prepetition Secured Parties control (or have in the past controlled) any of the Debtors or their respective properties or operations, have authority to

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<sup>4</sup> For the avoidance of doubt, no reference to the “Prepetition Permitted Senior Liens” shall refer to or include the Prepetition Liens.

determine the manner in which any Debtor's operations are conducted or are control persons or insiders of any Debtor by virtue of any actions taken with respect to, in connection with, related to or arising from any Prepetition Loan Documents;

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

(xvi) *Release.* Each of the Debtors and (subject to the provisions of paragraph 17 hereof) each of their estates, on its own behalf and on behalf of its and their respective predecessors, successors, heirs, and past, present and future subsidiaries and assigns, hereby (a) reaffirms the releases granted pursuant to paragraph G(xvi) of the Interim Order, and (b) absolutely, unconditionally and irrevocably releases and forever discharges and acquits the Prepetition Secured Parties, the DIP Secured Parties, and each of their respective Representatives (solely in their capacities as such) (collectively, the "**Released Parties**"), from any and all liability to the Debtors (and their successors and assigns) and from any and all claims, counterclaims, demands, defenses, offsets, debts, accounts, contracts, liabilities, actions and causes of action of any kind, nature and description, whether matured or unmatured, known or unknown, asserted or unasserted, foreseen or unforeseen, accrued or unaccrued, suspected or unsuspected, liquidated or unliquidated, pending or threatened, arising in law or equity, in contract or tort, in each case arising out of or related to the Prepetition Loan Documents, the DIP Facility, the DIP Documents, the DIP Roll-Up Loans, the negotiation thereof and the transactions and agreements reflected thereby, that the Debtors at any time had, now have or may have, or that their predecessors, successors or assigns

at any time had or hereafter may have against any of the Released Parties for or by reason of any act, omission, matter, or cause arising at any time on or prior to the date of this Final Order; *provided* that the release set forth in this section shall not release (i) any claims against or liabilities of a Released Party that a court of competent jurisdiction determines has resulted from such Released Party's bad faith, fraud, gross negligence or willful misconduct or (ii) any DIP Lenders from honoring its obligations to the Debtors under the DIP Documents.

H. *Findings Regarding DIP Financing and Use of Cash Collateral.*

(i) Good and sufficient cause has been shown for the entry of this Final Order and for authorization of the DIP Loan Parties to obtain financing pursuant to the DIP Documents.

(ii) The Debtors have demonstrated a critical need to obtain the DIP Financing and to use Prepetition Collateral (including Cash Collateral) in order to permit, among other things, the orderly continuation of the operation of their businesses, to maintain business relationships with vendors, suppliers and customers, to make payroll, to satisfy other working capital and operational needs, and to fund administrative expenses of these chapter 11 cases. Access to sufficient working capital and liquidity under the DIP Documents and other financial accommodations provided under the DIP Documents, as well as through the use of Cash Collateral and other Prepetition Collateral, is necessary for the Debtors' estates and for the preservation and maintenance of their going concern value.

(iii) The Debtors are unable to obtain adequate unsecured credit allowable under section 503(b)(1) of the Bankruptcy Code as an administrative expense or secured financing on more favorable terms from sources other than the DIP Lenders under the DIP Documents. The Debtors are also unable to obtain secured credit without granting to the DIP Secured Parties the DIP Liens and the DIP Superpriority Claims (each as defined below) and incurring the Adequate



Protection Obligations (as defined herein) on the terms and subject to the conditions set forth in the DIP Orders and in the DIP Documents.

(iv) The Debtors continue to collect cash, rents, income, offspring, products, proceeds, and profits generated by the Prepetition Collateral and acquire equipment, inventory and other personal property, all of which constitutes Prepetition Collateral and the Prepetition Secured Parties' Cash Collateral under section 363(a) of the Bankruptcy Code. The Debtors desire and need to use the Prepetition Secured Parties' Cash Collateral for general corporate purposes.

(v) Based on the DIP Motion, the Declarations, the findings set forth in the Interim Order and this Final Order, and the record made during the Interim Hearing and the Final Hearing, the terms of the DIP Financing, the terms of the adequate protection granted to the Prepetition Secured Parties as provided in paragraphs 12 – 14 of this Final Order (collectively, the “**Adequate Protection**”), and the terms on which the Debtors may continue to use Prepetition Collateral (including Cash Collateral) pursuant to the DIP Orders and the DIP Documents are consistent with the Bankruptcy Code, including section 506(b) thereof, are fair and reasonable, and reflect the DIP Loan Parties' exercise of prudent business judgment consistent with their fiduciary duties under the circumstances.

(vi) The DIP Orders, the DIP Financing, the Adequate Protection, and the use of the Prepetition Collateral (including Cash Collateral) have been negotiated in good faith and at arm's length among the DIP Loan Parties, the DIP Secured Parties, and the Prepetition Secured Parties (each of whom acted in good faith in negotiating such documents), and all of the loans and other financial accommodations extended by the DIP Secured Parties to the DIP Loan Parties under, in respect of, or in connection with, the DIP Financing and the DIP Documents (including the granting of the ABL Adequate Protection Liens (as defined below) and adequate protections

provided herein), shall be deemed to have been extended by the DIP Secured Parties in good faith, as that term is used in section 364(e) of the Bankruptcy Code and in express reliance upon the protections offered by section 364(e) of the Bankruptcy Code, and the DIP Secured Parties (and their respective successors and assigns) shall be entitled to the full protection of section 364(e) of the Bankruptcy Code in the event that the Interim Order, this Final Order or any provision thereof or hereof is vacated, reversed or modified, on appeal or otherwise.

(vii) The Prepetition Secured Parties and the DIP Secured Parties have acted in good faith and without negligence, misconduct, or violation of public policy or law, in respect of all actions taken by them in connection with or related in any way to negotiating, implementing, documenting, or obtaining requisite approvals of the Interim Order, this Final Order, the DIP Facilities and the use of Cash Collateral, including in respect of the granting of the DIP Liens and the ABL Adequate Protection Liens, any challenges or objections to the DIP Facilities or the use of Cash Collateral, the DIP Documents, and all other documents related to and all transactions contemplated by the foregoing. Accordingly, without limitation to any other right to indemnification, the Prepetition Secured Parties and the DIP Secured Parties shall be and hereby are indemnified (as applicable) as provided in the Prepetition Loan Documents and the DIP Documents, as applicable, including, without limitation, Section 10.05 of the DIP Credit Agreement.

(viii) The Prepetition Secured Parties are entitled to the Adequate Protection as and to the extent set forth herein pursuant to sections 361, 362, 363 and 364 of the Bankruptcy Code. Based on the DIP Motion and on the record presented to the Court, the terms of the proposed Adequate Protection are fair and reasonable, reflect the Debtors' prudent exercise of business

judgment and constitute reasonably equivalent value and fair consideration for the use of Prepetition Collateral, including Cash Collateral.

(ix) To the extent their consent is required, the requisite Prepetition Secured Parties have consented or are deemed to have consented to the use of Prepetition Collateral, including Cash Collateral and the (i) priming of the Prepetition 1L Liens, Prepetition 2L Liens, and Prepetition ABL Liens on the Prepetition Term Priority Collateral by the DIP Liens, and (ii) priming of the Prepetition 1L Liens and Prepetition 2L Liens, on the Prepetition ABL Priority Collateral by the DIP Liens, in each case on the terms set forth in the DIP Orders and the DIP Documents; *provided* that nothing in the DIP Orders or the DIP Documents shall (x) be construed as the affirmative consent by any of the Prepetition Secured Parties for the use of Cash Collateral other than on the terms set forth in the DIP Orders and in the context of the DIP Financing authorized by the DIP Orders, (y) be construed as a consent by any party to the terms of any other financing or any other lien encumbering Prepetition Collateral (whether senior or junior) other than as contemplated by the DIP Orders, or (z) prejudice, limit or otherwise impair the rights of any Prepetition Secured Party to seek new, different or additional adequate protection or assert any other right, and the rights of any other party in interest, including the DIP Loan Parties, to object to such relief are hereby preserved.

(x) The Debtors prepared and delivered to the advisors to the DIP Secured Parties an initial budget (the “**Initial DIP Budget**”), attached to the Interim Order as Schedule 1. The Initial DIP Budget reflected, among other things, the Debtors’ anticipated operating receipts, operating disbursements, non-operating disbursements, net operating cash flow, and liquidity for each calendar week covered thereby. The Interim Order provided that the Initial DIP Budget may be modified, amended, extended, and updated from time to time in accordance with the DIP Credit

Agreement. Each subsequent budget, once approved by the Required DIP Lenders (in accordance with the DIP Credit Agreement), shall modify, replace, supplement or supersede, as applicable, the Initial DIP Budget for the periods covered thereby (the Initial DIP Budget and each subsequent approved budget, an “**Approved Budget**”). The current Approved Budget is attached hereto as Schedule 1.

(xi) Each of the Prepetition ABL Secured Parties shall be entitled to all of the rights and benefits of section 552(b) of the Bankruptcy Code and the “equities of the case” exception under section 552(b) of the Bankruptcy Code shall not apply to the Prepetition ABL Secured Parties with respect to proceeds, product, offspring, or profits of any of the Prepetition ABL Collateral.

I. *Relief Essential; Best Interest.* The Final Hearing was held in accordance with Bankruptcy Rules 4001(b)(2) and (c)(2) and Bankruptcy Local Rule 4001-1(b). Consummation of the DIP Financing and continued use of Prepetition Collateral (including Cash Collateral), in accordance with the DIP Orders and the DIP Documents, are in the best interests of the Debtors’ estates and consistent with the Debtors’ exercise of their fiduciary duties. The DIP Motion and this Final Order comply with the requirements of Bankruptcy Local Rule 4001-1(b).

J. *Prepetition Permitted Senior Liens; Continuation of Prepetition Liens.* Nothing herein constitutes a finding or ruling by this Court that any alleged Prepetition Permitted Senior Lien is valid, senior, enforceable, prior, perfected, or non-avoidable. Moreover, nothing herein shall prejudice the rights of any party-in-interest, including, but not limited to, the Debtors, the DIP Secured Parties, or the other Prepetition Secured Parties to challenge the validity, priority, enforceability, seniority, avoidability, perfection, or extent of any alleged Prepetition Permitted Senior Lien. For the avoidance of doubt, the right of a seller of goods to reclaim goods under

section 546(c) of the Bankruptcy Code does not constitute a Prepetition Permitted Senior Lien, and such right is expressly subject to the DIP Liens (as defined herein) and Prepetition Liens. The Prepetition Liens and the DIP Liens are continuing liens and the DIP Collateral is and will continue to be encumbered by such liens.

K. *Intercreditor Agreements.* Pursuant to Section 510 of the Bankruptcy Code, the Prepetition Term Intercreditor Agreement and the Prepetition ABL Intercreditor Agreement and any other applicable intercreditor or subordination provisions contained in any of the other Prepetition Loan Documents (collectively, the “Intercreditor Agreements”) shall (i) remain in full force and effect, (ii) continue to govern the relative priorities, rights, and remedies of the Prepetition Secured Parties (including the relative priorities, rights and remedies of such parties with respect to replacement liens, administrative expense claims and superpriority administrative expense claims or amounts payable in respect thereof), and (iii) not be deemed to be amended, altered or modified by the terms of the DIP Orders or the DIP Documents, unless expressly set forth herein or therein.

L. *DIP Roll-Up Loans.* Upon entry of the Interim Order or this Final Order, as applicable, but subject to the provisions of paragraph 17 of the Interim Order and this Final Order, the Prepetition 1L Obligations shall be rolled up, and converted into DIP Obligations (the “**DIP Roll-Up Loans**”), on a dollar-for-dollar basis based on the amount of New Money DIP Term Loans actually funded and on such day as the New Money DIP Term Loans are actually funded.<sup>5</sup> The Prepetition 1L Lenders that are also DIP Lenders (or affiliates thereof) would not have consented to extend the DIP Financing or other financial accommodations to the Debtors without the inclusion of the DIP Roll-Up Loans in the DIP Obligations. Thus, the roll-up is consideration

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<sup>5</sup> For example, if the DIP Lenders only fund \$15 million of the New Money DIP Term Loan, only \$15 million of Prepetition 1L Obligations will become DIP Roll-Up loans.

for, and solely on account of, the agreement of the DIP Lenders (or affiliates thereof) to extend the New Money DIP Term Loans.

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

**IT IS HEREBY ORDERED THAT:**

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

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

(a) The DIP Loan Parties were, by the Interim Order, and are hereby authorized on a final basis to execute, deliver, enter into and perform all of their obligations under the DIP Documents and perform such other acts as may be necessary, appropriate or desirable in connection therewith. The Borrower was, by the Interim Order, and is hereby authorized on a final basis to borrow up to \$60 million pursuant to the DIP Credit Agreement, and the DIP Guarantors were, by the Interim Order, and are hereby authorized to guarantee the Borrower's obligations, subject to any limitations set forth in the DIP Documents. The proceeds of the DIP Loans shall be used for all purposes permitted under the DIP Documents and the DIP Orders, subject to and in accordance with the Approved Budget (subject to any permitted variances).

(b) Upon entry of the Interim Order, each dollar of Prepetition 1L Obligations was deemed rolled up, on a dollar-for-dollar basis based on the amount of New Money DIP Term Loans actually funded (and on such day as the New Money DIP Term Loans are actually funded) up to the total amount of \$30 million (the "**Roll-Up Amount**"), subject to the provisions of paragraph 17 hereof. The Debtors are authorized to take such acts as shall be necessary or desirable

to effect the roll-up and conversion of the Prepetition 1L Obligations beneficially owned by the DIP Lenders in the Roll-Up Amount.

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

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

(ii) the execution and delivery of, and performance under, one or more amendments, waivers, consents or other modifications to and under the DIP Documents, in each case, in such form as the DIP Secured Parties may accept, it being understood that no further approval of this Court shall be required for any such amendments, waivers, consents or other modifications or the payment of any fees, including attorneys', accountants', appraisers' and financial advisors' fees, and other expenses, charges, costs, indemnities and other like obligations in connection therewith) that do not shorten the maturity of the DIP Facility, increase the aggregate DIP Commitments, increase the rate of interest or fees payable thereunder, or release any DIP Liens. Updates, modifications, and supplements to the Approved Budget shall not require any further approval of this Court;

(iii) the non-refundable payment to any of the DIP Secured Parties of any fees in connection with the DIP Facility, whether paid pursuant to the Interim Order or this

Final Order, including any amendment fees, premiums, servicing fees, audit fees, liquidator fees, structuring fees, administrative agent's, collateral agent's or security trustee's fees, upfront fees, closing fees, commitment premiums, exit fees, closing date fees, prepayment fees or agency fees), and any amounts due in respect of any indemnification and expense reimbursement obligations, including, without limitation, reasonable and documented fees and expenses of professionals retained by, or on behalf of, any of the DIP Secured Parties (including, without limitation, those of Milbank LLP, PJT Partners, Inc., and any one local legal counsel or other advisors in any foreign jurisdiction, and any other advisors as permitted under the DIP Documents), in each case, as provided in the DIP Documents (collectively, the "**DIP Fees and Expenses**"), without the need to file retention or fee applications; the payment of the foregoing amounts shall be irrevocable, and was and shall be, and was and shall be deemed to have been approved upon entry of the Interim Order or the Final Order, as applicable, whether any such obligations arose before or after the Petition Date, and whether or not the transactions contemplated hereby are consummated, and upon payment thereof, shall not be subject to any contest, attack, rejection, recoupment, reduction, defense, counterclaim, offset, subordination, recharacterization, avoidance, disallowance, impairment, or other claim, cause of action or other challenge of any nature under the Bankruptcy Code or applicable non-bankruptcy law.

3. *DIP Obligations.* Upon execution and delivery of the DIP Documents, the DIP Documents constituted (and, as of the date of the entry of this Final Order, continue to constitute) legal, valid, binding and non-avoidable obligations of the DIP Loan Parties, enforceable against each DIP Loan Party and their estates in accordance with their respective terms and this Final Order, and any successors thereto, including any trustee appointed in these chapter 11 cases, or in any case under chapter 7 of the Bankruptcy Code upon conversion of any of these cases, or in any



other proceedings superseding or related to any of the foregoing (collectively, the “**Successor Cases**”). Upon execution and delivery of the DIP Documents, the DIP Obligations included (and, as of the date of entry of this Final Order, continue to include) all loans and any other indebtedness or obligations, contingent or absolute, which may from time to time be owing by any of the DIP Loan Parties to any of the DIP Secured Parties, in such capacities, in each case, under the DIP Documents, the terms and conditions of the DIP Orders, including all principal, interest, costs, fees, expenses, premiums, indemnities and other amounts. The DIP Loan Parties shall be jointly and severally liable for the DIP Obligations. Except as permitted hereby, no obligation, payment, transfer, or grant of security hereunder or under the DIP Documents to the DIP Agent and/or the other DIP Secured Parties shall be stayed, restrained, voidable, avoidable, or recoverable, under the Bankruptcy Code or under any applicable law (including, without limitation, under sections 502(d), 544, and 547 to 550 of the Bankruptcy Code or under any applicable state Uniform Voidable Transactions Act, Uniform Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act, or similar statute or common law), or subject to any defense, avoidance, reduction, setoff, recoupment, offset, recharacterization, subordination (whether equitable, contractual, or otherwise), disallowance, impairment, claim, counterclaim, cross-claim, or any other challenge under the Bankruptcy Code or any applicable law or regulation by any person or entity.

4. *Carve-Out.*

(a) As used herein, the “**Carve-Out**” means the sum of (i) all fees required to be paid to the Clerk of the Court and to the Office of the United States Trustee under section 1930(a) of title 28 of the United States Code plus interest at the statutory rate pursuant to 31 U.S.C. § 3717 (without regard to the notice set forth in (iii) below); (ii) all reasonable fees and expenses up to \$50,000 incurred by a trustee under section 726(b) of the Bankruptcy Code (without

regard to the notice set forth in (iii) below); (iii) to the extent allowed at any time, whether by interim order, procedural order, or otherwise, all unpaid fees and expenses (the “**Allowed Professional Fees**”) incurred by persons or firms retained by the Debtors pursuant to section 327, 328, or 363 of the Bankruptcy Code (the “**Debtor Professionals**”) and the Creditors’ Committee pursuant to section 328 or 1103 of the Bankruptcy Code (the “**Committee Professionals**” and, together with the Debtor Professionals, the “**Professional Persons**”) at any time before or on the first business day following delivery by the DIP Agent or the Prepetition ABL Agent of a Carve Out Trigger Notice (as defined below), whether allowed by the Court prior to or after delivery of a Carve Out Trigger Notice; and (iv) Allowed Professional Fees of Professional Persons in an aggregate amount not to exceed \$3,500,000 incurred after the first business day following delivery by the DIP Agent or the Prepetition ABL Agent of the Carve Out Trigger Notice, to the extent allowed at any time, whether by interim order, procedural order, or otherwise, which (for the avoidance of doubt, includes all amounts required to be paid to Guggenheim Securities, LLC on account of any Transaction Fee under that certain engagement letter between Guggenheim Securities, LLC, Kirkland & Ellis LLP, and the Debtors, dated November 14, 2022, incurred at any time before or after delivery by the DIP Agent of a Carve Out Trigger Notice, any amounts payable under sections 328, 330, and/or 331 of the Bankruptcy Code, to the extent not yet paid or due as of the date of the delivery of the Carve Out Trigger Notice and allowed by order of this Court at any time) (the amounts set forth in this clause (iv) the “**Post-Carve Out Trigger Notice Cap**”). For purposes of the foregoing, “**Carve Out Trigger Notice**” shall mean a written notice delivered by email (or other electronic means) by the DIP Agent or the Prepetition ABL Agent to the Debtors, their lead restructuring counsel, the U.S. Trustee, and counsel to the Creditors’ Committee, which notice may be delivered following the occurrence and

during the continuation of an Event of Default and acceleration of the DIP Obligations under the DIP Facility, stating that the Post-Carve Out Trigger Notice Cap has been invoked.

(b) Carve Out Reserves. On the day on which a Carve Out Trigger Notice is given by the DIP Agent or the Prepetition ABL Agent to the Debtors with a copy to counsel to the Creditors' Committee (the "**Termination Declaration Date**"), the Carve Out Trigger Notice shall (i) be deemed a draw request and notice of borrowing by the Debtors for New Money DIP Term Loans under the DIP Commitment (each, as defined in the DIP Credit Agreement) (on a pro rata basis based on the then outstanding DIP Commitment), in an amount equal to the then unpaid amounts of the Allowed Professional Fees (any such amounts actually advanced shall constitute New Money DIP Term Loans) and (ii) also constitute a demand to the Debtors to utilize all cash on hand as of such date and any available cash thereafter held by any Debtor to fund a reserve in an amount equal to the then unpaid amounts of the Allowed Professional Fees. The Debtors shall deposit and hold such amounts in a segregated account at the DIP Agent in trust to pay such then unpaid Allowed Professional Fees (the "**Pre-Carve Out Trigger Notice Reserve**") prior to any and all other claims. On the Termination Declaration Date, the Carve Out Trigger Notice shall also (i) be deemed a request by the Debtors for New Money DIP Term Loans under the DIP Commitment (on a pro rata basis based on the then outstanding DIP Commitment), in an amount equal to the Post-Carve Out Trigger Notice Cap (any such amounts actually advanced shall constitute New Money DIP Term Loans) and (ii) constitute a demand to the Debtors to utilize all cash on hand as of such date and any available cash thereafter held by any Debtor, after funding the Pre-Carve Out Trigger Notice Reserve, to fund a reserve in an amount equal to the Post-Carve Out Trigger Notice Cap. The Debtors shall deposit and hold such amounts in a segregated account at the DIP Agent in trust to pay such Allowed Professional Fees benefiting from the Post-Carve

Out Trigger Notice 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. On the first business day after the DIP Agent or the Prepetition ABL Agent gives such notice to such DIP Lenders, notwithstanding anything in the DIP Credit Agreement to the contrary, including with respect to the existence of a Default (as defined in the DIP Credit Agreement) or Event of Default, the failure of the Debtors to satisfy any or all of the conditions precedent for New Money DIP Term Loans under the DIP Facility, any termination of the DIP Commitment following an Event of Default, or the occurrence of the Maturity Date, each DIP Lender shall be obligated to make New Money DIP Term Loans to the Borrower to fully fund the Carve Out Reserves in an amount not to exceed the aggregate outstanding amount of New Money Delayed Draw Commitments (as defined in the DIP Credit Agreement) on the Closing Date. All funds in the Pre-Carve Out Trigger Notice Reserve shall be used first to pay the obligations set forth in clauses (i) through (iii) 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 DIP Lenders, 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 and the Prepetition ABL Agent in accordance with their rights and priorities as set forth in this Final Order. All funds in the Post-Carve Out Trigger Notice Reserve shall be used first to pay the obligations set forth in clause (iv) 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 DIP Lenders, 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 in accordance with their rights and priorities as set forth in this Final Order. Notwithstanding anything to the contrary in the DIP Orders or the DIP Documents, if either of the Carve Out Reserves is not funded in full in the amounts set forth in this paragraph 4, 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 4, prior to making any payments to the DIP Agent or the Prepetition Secured Parties, as applicable. Notwithstanding anything to the contrary in the DIP Documents or the DIP Orders, following delivery of a Carve Out Trigger Notice, the DIP Agent and the Prepetition Agents shall not sweep or foreclose on cash (including cash received as a result of the sale or other disposition of any assets) of the Debtors until the Carve Out Reserves have been fully funded, but shall have a security interest in any residual interest in the Carve Out Reserves, with any excess paid to the DIP Agent for application in accordance with the DIP Documents and the DIP Orders. Further, notwithstanding anything to the contrary in this Final Order, (i) disbursements by the Debtors from the Carve Out Reserves shall not constitute New Money DIP Term Loans or increase or reduce the DIP Obligations, (ii) the failure of the Carve Out Reserves to satisfy in full the Allowed Professional Fees shall not affect the priority of the Carve Out, and (iii) in no way shall the Initial Budget, Budget, Carve-Out, Post-Carve Out Trigger Notice Cap, Carve Out Reserves, or any of the foregoing be construed as a cap or limitation on the amount of the Allowed Professional Fees due and payable by the Debtors. For the avoidance of doubt and notwithstanding anything to the contrary in this Final Order, the DIP Facility, or in any Prepetition Loan Document, the Carve-Out shall be senior to all liens and claims securing the DIP Facility, the ABL Adequate Protection

Liens, and the ABL 507(b) Claims, and any and all other forms of adequate protection, liens, or claims securing the DIP Obligations or the Prepetition Secured Obligations.

(c) Payment of Allowed Professional Fees Prior to the Termination Declaration Date. Any payment or reimbursement made prior to the occurrence of the Termination Declaration Date in respect of any Allowed Professional Fees shall not reduce the Carve-Out.

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

(e) Payment of Carve-Out On or After the Termination Declaration Date. Any payment or reimbursement made on or after the occurrence of the Termination Declaration Date in respect of any Allowed Professional Fees shall permanently reduce the Carve-Out on a dollar-for-dollar basis. Any funding of the Carve-Out shall be added to, and made a part of, the DIP Obligations secured by the DIP Collateral and shall be otherwise entitled to the protections granted under the DIP Orders, the DIP Documents, the Bankruptcy Code, and applicable law.

5. *DIP Superpriority Claims.* Pursuant to section 364(c)(1) of the Bankruptcy Code, all of the DIP Obligations, including the DIP Roll-Up Loans, shall constitute allowed superpriority administrative expense claims (the “**DIP Superpriority Claims**”) against the DIP Loan Parties on a joint and several basis (without the need to file any proof of claim) with priority over any and all

claims against the DIP Loan Parties (but for the avoidance of doubt, junior to the Carve-Out), now existing or hereafter arising, of any kind whatsoever, including, without limitation, all administrative expenses of the kind specified in sections 503(b) and 507(b) of the Bankruptcy Code and any and all administrative expenses or other claims arising under sections 105, 326, 327, 328, 330, 331, 365, 503(b), 506(c), 507(a), 507(b), 726, 1113, or 1114 of the Bankruptcy Code (including the Adequate Protection Obligations), whether or not such expenses or claims may become secured by a judgment lien or other non-consensual lien, levy or attachment. The DIP Superpriority Claims shall be payable from, and have recourse to, all prepetition and postpetition property of the DIP Loan Parties and all proceeds thereof (excluding (x) the Carve-Out Reserves and amounts held therein other than the Debtors' reversionary interest therein and (y) claims and causes of action under sections 502(d), 544, 545, 547, 548 and 550 of the Bankruptcy Code, or any other avoidance actions under the Bankruptcy Code (collectively, the "**Avoidance Actions**"), but including any proceeds or property recovered as a result of any Avoidance Actions, whether by judgment, settlement or otherwise (the "**Avoidance Proceeds**")), subject only to the Carve-Out and, solely in respect of any assets that constitute Prepetition ABL Priority Collateral, the ABL 507(b) Claim (as defined below) and the Prepetition ABL Obligations. The DIP Superpriority Claims shall be entitled to the full protection of section 364(e) of the Bankruptcy Code in the event that this Final Order or any provision hereof is vacated, reversed or modified, on appeal or otherwise. Notwithstanding anything to the contrary contained herein, the DIP Secured Parties and the Prepetition ABL Secured Parties shall use commercially reasonable efforts to collect from all DIP Collateral other than the Avoidance Proceeds first before turning to Avoidance Proceeds.

6. *DIP Liens.* As security for the DIP Obligations, effective and automatically properly perfected on the date the Interim Order was entered, and without the necessity of

execution, recordation or filing of any perfection document or instrument, or the possession or control by the DIP Agent of, or over, any Collateral, without any further action by the DIP Secured Parties, the following valid, binding, continuing, fully perfected, enforceable and non-avoidable security interests and liens (the “**DIP Liens**”) were, by the Interim Order, and hereby are granted to the DIP Agent for the benefit of the DIP Secured Parties (all property identified in clauses (a) through (c) below being collectively referred to as the “**DIP Collateral**,” and, together with the Prepetition Collateral, the “**Collateral**”):

(a) *Liens on Unencumbered Property.* Pursuant to section 364(c)(2) of the Bankruptcy Code, a first priority lien on and security interest in (subject only to the Carve-Out) all tangible and intangible prepetition and postpetition property of the DIP Loan Parties, whether existing on the Petition Date or thereafter acquired, and the proceeds, products, rents, and profits thereof, that, on or as of the Petition Date, is not subject to (i) a valid, perfected and non-avoidable lien or (ii) a valid and non-avoidable lien in existence as of the Petition Date that is perfected subsequent to the Petition Date as permitted by section 546(b) of the Bankruptcy Code, other than the Avoidance Actions and the Carve-Out Reserves (and any amounts held therein), but including the Avoidance Proceeds (collectively, the “**Unencumbered Property**”).

(b) *Liens Priming Certain Prepetition Secured Parties’ Liens.* Pursuant to section 364(d)(1) of the Bankruptcy Code, a valid, binding, continuing, enforceable, fully-perfected first priority senior priming security interest (subject to the Carve-Out) in, and lien upon, all tangible and intangible prepetition and postpetition property of the DIP Loan Parties of the same nature, scope, and type as the Prepetition Term Priority Collateral, regardless of where located (the “**DIP Priming Liens**”). Notwithstanding anything herein to the contrary, the DIP Priming Liens shall be (A) senior in all respects to the other Prepetition Liens on the Prepetition



Term Priority Collateral, (B) senior to any ABL Adequate Protection Liens on the Prepetition Term Priority Collateral and (C) not subordinate to any lien, security interest or mortgage that is avoided and preserved for the benefit of the Debtors and their estates under section 551 of the Bankruptcy Code. The Prepetition Liens with respect to the Prepetition Term Priority Collateral shall be primed by and made subject and subordinate to the DIP Priming Liens.

(c) *Junior Liens Priming Certain Prepetition Secured Parties' Liens.* Pursuant to section 364(d)(1) of the Bankruptcy Code, a valid, binding, continuing, enforceable, fully-perfected junior (subject only to (1) the Carve-Out, (2) the ABL Adequate Protection Liens and (3) the Prepetition ABL Liens) priority priming security interest in, and lien upon, all tangible and intangible prepetition and postpetition property of the DIP Loan Parties of the same nature, scope, and type as the Prepetition ABL Priority Collateral, regardless of where located, which security interest and lien shall prime the Prepetition 1L Liens and Prepetition 2L Liens on the Prepetition ABL Priority Collateral (the “**DIP Priming Third Liens**”). Notwithstanding anything herein to the contrary, the DIP Priming Third Liens shall be (A) senior in all respects to the Prepetition Liens on Prepetition ABL Priority Collateral other than the Prepetition ABL Liens and ABL Adequate Protection Liens, and (B) not subordinate to any lien, security interest or mortgage that is avoided and preserved for the benefit of the Debtors and their estates under section 551 of the Bankruptcy Code. The Prepetition 1L Liens and Prepetition 2L Liens with respect to the Prepetition ABL Priority Collateral shall be primed by and made subject and subordinate to the DIP Priming Third Liens.

(d) *Liens Junior to Certain Other Liens.* Pursuant to section 364(c)(3) of the Bankruptcy Code, a valid, binding, continuing, enforceable, fully perfected security interest in and lien upon all tangible and intangible prepetition and postpetition property of the DIP Loan Parties

that, on or as of the Petition Date, is subject to Prepetition Permitted Senior Liens, which shall be (x) with respect to the Prepetition Term Priority Collateral, immediately junior and subordinate to the Prepetition 1L Permitted Senior Liens and Prepetition 2L Permitted Senior Liens, (y) with respect to the Prepetition ABL Priority Collateral, immediately junior and subordinate to the Prepetition ABL Permitted Senior Liens, but (y) (1) senior to the Prepetition Liens and Prepetition Adequate Protections Liens on all Prepetition Term Priority Collateral subject to such Prepetition Permitted Senior Liens and (2) junior to the ABL Adequate Protection Liens and the Prepetition ABL Liens but senior to the Prepetition 1L Liens and Prepetition 2L Liens on all Prepetition ABL Priority Collateral subject to such Prepetition Permitted Senior Liens.

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

7. *Protection of DIP Lenders' and Prepetition Secured Parties' Rights.*

(a) So long as there are any DIP Obligations outstanding or the DIP Lenders have any outstanding DIP Commitments, the Prepetition Secured Parties (other than the Prepetition ABL Secured Parties solely with respect to the Prepetition ABL Priority Collateral

prior to the Prepetition ABL Debt being Paid in Full<sup>6</sup>) shall, subject to the Intercreditor Agreements: (i) have no right to and shall take no action to foreclose upon, or recover in connection with, the liens granted thereto pursuant to the Prepetition Credit Documents or the DIP Orders, or otherwise seek to exercise or enforce any rights or remedies against the DIP Collateral, including in connection with the ABL Adequate Protection Liens; (ii) be deemed to have consented to any transfer, disposition or sale of, or release of liens on, any DIP Collateral to the extent such transfer, disposition, sale or release is authorized under the DIP Documents; (iii) not file any financing statements, trademark filings, copyright filings, mortgages, notices of lien or similar instruments, or otherwise take any action to perfect their security interests in the DIP Collateral other than (x) to perfect the liens granted pursuant to the DIP Orders or (y) as may be required by applicable state or foreign law to complete a previously commenced process of perfection or to continue the perfection of valid and non-avoidable liens or security interests existing as of the Petition Date; and (iv) deliver or cause to be delivered, at the DIP Loan Parties' cost and expense, any termination statements, releases and/or assignments in favor of the DIP Secured Parties or other documents necessary to effectuate and/or evidence the release, termination and/or assignment of liens on any portion of the DIP Collateral subject to any sale or disposition permitted by the DIP Documents and the DIP Orders.

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<sup>6</sup> "Paid in Full" means, with respect to the Prepetition ABL Obligations, the indefeasible repayment in full in cash of all obligations (including principal, interest, fees, prepayment premiums, expenses, indemnities, other than contingent indemnification obligations for which no claim has been asserted) under the Prepetition ABL Loan Documents, the cash collateralization of all treasury and cash management obligations, hedging obligations, and bank product obligations, and the cancellation, replacement, backing or cash collateralization of letters of credit, in each case in accordance with the terms of the Prepetition ABL Loan Documents. The Prepetition ABL Obligations shall not be deemed to have been Paid in Full until such time as (a) the commitments to lend under the Prepetition ABL Loan Documents have been terminated, (b) the Challenge Period (as defined herein) shall have expired without a Challenge being commenced or, if a Challenge has been timely and properly asserted prior to the expiration of the Challenge Period, upon the final, non-appealable disposition of such Challenge, and (c) the Prepetition ABL Agent has received a countersigned payoff letter in form and substance reasonably acceptable to the Prepetition ABL Agent.

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

(c) So long as there are any Prepetition ABL Obligations (including the ABL 507(b) Claims) outstanding and until all Prepetition ABL Obligations (including the ABL 507(b) Claims) have been, solely with respect to the Prepetition ABL Priority Collateral, Paid in Full, the enforcement rights of the DIP Secured Parties or Prepetition Secured Parties other than the Prepetition ABL Secured Parties with respect to the Prepetition ABL Priority Collateral shall be subject to the terms of the Prepetition ABL Intercreditor Agreement as if the DIP Agent was party thereto as a Term Loan Debt Agent (as defined in the Prepetition ABL Intercreditor Agreement).

(d) Except as set forth in clause (c) immediately above with respect to the Prepetition ABL Priority Collateral, any proceeds of Prepetition Collateral received by any Prepetition Secured Party, whether in connection with the exercise of any right or remedy (including setoff) relating to the Prepetition Collateral or otherwise, shall be segregated and held in trust for the benefit of, and forthwith paid over to, the DIP Agent for the benefit of the DIP Secured Parties in the same form as received, with any necessary endorsements, or as a court of competent jurisdiction may otherwise direct. The DIP Agent is hereby authorized to make any

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

(e) The DIP Loan Parties shall not sell, transfer, lease, encumber or otherwise dispose of any portion of the DIP Collateral, except as otherwise permitted by the DIP Documents (which allow, for the avoidance of doubt, sales of inventory in the ordinary course of business) (and, with respect to the Prepetition ABL Priority Collateral, as permitted by the Prepetition ABL Loan Documents (which allow, for the avoidance of doubt, sales of inventory in the ordinary course of business)), or an order of the Court.

(f) Upon the occurrence and during the continuation of an Event of Default that has not been waived by the Required DIP Lenders and following delivery of written notice (a “**Termination Notice**”) (including by e-mail) on not less than five (5) business days’ notice (such five (5) business day period, the “**DIP Agent Remedies Notice Period**”) to lead restructuring counsel to the Debtors, lead restructuring counsel to each of the Prepetition Agents, lead counsel to the Creditors’ Committee, and the U.S. Trustee, (the “**Remedies Notice Parties**”), the DIP Agent may (and any automatic stay otherwise applicable to the DIP Secured Parties, whether arising under sections 105 or 362 of the Bankruptcy Code or otherwise, but subject to the terms of the DIP Orders (including this paragraph), is hereby modified), without further notice to, hearing of, or order from this Court, to the extent necessary to permit the DIP Agent to, unless the Court orders otherwise (*provided* that during the DIP Agent Remedies Notice Period, the Debtors, the Creditors’ Committee and/or any party in interest shall be entitled to seek an emergency hearing with the Court for the purpose of contesting whether, in fact, an Event of Default has occurred and is continuing or to obtain non-consensual use of Cash Collateral, and provided further that if a request for such hearing is made prior to the end of the DIP Agent Remedies Notice Period, then

the DIP Agent Remedies Notice Period shall be continued until the Court hears and rules with respect thereto): (a) immediately terminate and/or revoke the Debtors' right under the DIP Orders and any other DIP Documents to use any Cash Collateral (subject to the Carve-Out and related provisions), (b) terminate the DIP Facility and any DIP Document as to any future liability or obligation of the DIP Secured Parties but without affecting any of the DIP Obligations or the DIP Liens securing such DIP Obligations; (c) declare all DIP Obligations to be immediately due and payable; and (d) invoke the right to charge interest at the default rate under the DIP Documents. Upon delivery of such Termination Notice by the DIP Agent, without further notice or order of the Court, the DIP Secured Parties' and the Prepetition Secured Parties' consent to use Cash Collateral and the Debtors' ability to incur additional DIP Obligations hereunder will, subject to the expiration of the DIP Agent Remedies Notice Period and unless the Court orders otherwise, automatically terminate and the DIP Secured Parties will have no obligation to provide any DIP Loans or other financial accommodations. As soon as reasonably practicable following receipt of a Termination Notice, the Debtors shall file a copy of same on the docket.

(g) Following an Event of Default and the delivery of the Termination Notice, but prior to exercising the remedies set forth in this sentence below or any other remedies (other than those set forth in paragraph 7(f)), the DIP Secured Parties shall be required to file a motion with the Court seeking emergency relief (the "**Stay Relief Motion**") on not less than five (5) business days' notice to the Remedies Notice Parties (which may run concurrently with the DIP Agent Remedies Notice Period) for a further order of the Court fashioning any appropriate remedy, including modifying the automatic stay in the Chapter 11 Cases to permit the DIP Secured Parties to, subject to the Intercreditor Agreements and the Carve-Out and related provisions: (a) freeze monies or balances in the Debtors' accounts (unless such monies constitute Prepetition ABL

Priority Collateral); (b) immediately set-off any and all amounts in accounts maintained by the Debtors with the DIP Agent or the DIP Secured Parties against the DIP Obligations (unless such amounts constitute Prepetition ABL Priority Collateral), (c) enforce any and all rights against the DIP Collateral (other than Prepetition ABL Priority Collateral), including, without limitation, foreclosure on all or any portion of the DIP Collateral (other than Prepetition ABL Priority Collateral), occupying the Debtors' premises, sale or disposition of the DIP Collateral (other than Prepetition ABL Priority Collateral); and (d) take any other actions or exercise any other rights or remedies permitted under the DIP Orders, the DIP Documents or applicable law (other than with respect to Prepetition ABL Priority Collateral). If the DIP Secured Parties are permitted by the Court to take any enforcement action with respect to the DIP Collateral (other than Prepetition ABL Priority Collateral) following the hearing on the Stay Relief Motion, the Debtors shall cooperate with the DIP Secured Parties in their efforts to enforce their security interest in the DIP Collateral (other than Prepetition ABL Priority Collateral), and shall not take or direct any entity to take any action designed or intended to hinder or restrict in any respect such DIP Secured Parties from enforcing their security interests in the DIP Collateral. Until such time that the Stay Relief Motion has been adjudicated by the Court, the Debtors may use the proceeds of the DIP Facility to the extent drawn prior to the occurrence of Event of Default and Cash Collateral to fund operations in accordance with the Approved Budget and the terms of the DIP Documents.

(h) Upon the occurrence of any of the below events (any such event being deemed an Event of Default under this Final Order, and a "**Cash Collateral Termination Event**"), the Prepetition ABL Agent, on not less than five (5) business days' notice to the Remedies Notice Parties (such five (5) business day period, the "**ABL Remedies Notice Period**"), and unless the Court orders otherwise (*provided* that during the ABL Remedies Notice Period, the Debtors, the

Creditors' Committee, and/or any party in interest shall be entitled to seek an emergency hearing with the Court for the purpose of contesting whether, in fact, a Cash Collateral Termination Event has occurred and is continuing or to obtain non-consensual use of Cash Collateral), may terminate its and the Prepetition ABL Secured Parties' consent to the Debtors' use of Cash Collateral constituting Prepetition ABL Priority Collateral: (i) an Event of Default (as defined in the DIP Credit Agreement) has occurred that has not been timely cured or for which no waiver or forbearance has been obtained, or the termination of all commitments under the DIP Facility; (ii) the Debtors' failure to timely make current interest payments to the Prepetition ABL Lenders as set forth in paragraph 12.d herein; (iii) the filing of any motion or pleading by the Debtors, or the entry of an order on account of a motion filed by any other party, to stay, vacate, reverse, amend or modify the Interim Order or Final Order in a manner materially adverse to the Prepetition ABL Secured Parties without the consent of the Prepetition ABL Secured Parties; (iv) the entry of an order appointing a trustee, receiver or examiner with expanded powers with respect to any of the Debtors; (v) the Debtors shall attempt to invalidate, reduce or otherwise impair the Prepetition ABL Obligations; (vi) the dismissal of any of the Chapter 11 Cases; (vii) the effective date of any plan of reorganization; (viii) the conversion of any of the Chapter 11 Cases to a case under chapter 7; (ix) the failure to deliver any Borrowing Base Certificate (as defined in the Prepetition ABL Credit Agreement) when required; (x) the failure of the Debtors to maintain a minimum borrowing base capacity (as tested on a weekly basis and consistent with historic practice, beginning with testing the week ending February 17, 2023) of: (i) \$3.5 million for weeks ending February 24, 2023 through March 24, 2023 and (ii) \$4.0 million thereafter; (xi) seventy-five (75) days after the Petition Date (unless such time is extended by agreement of the Debtors and the



Prepetition ABL Agent); or (xii) the delivery of a Carve Out Trigger Notice as provided in this Final Order.

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

8. *Limitation on Charging Expenses Against Collateral.* Except to the extent of the Carve-Out, no costs or expenses of administration of these cases or any Successor Case or any future proceeding that may result therefrom, including liquidation in bankruptcy or other proceeding under the Bankruptcy Code, shall be charged against or recovered from the DIP Collateral or Prepetition ABL Collateral (in each case, including Cash Collateral) pursuant to section 506(c) of the Bankruptcy Code or any similar principle of law, without the prior written consent of the DIP Agent and the Prepetition ABL Agent, as applicable, and no consent shall be implied from any action, inaction or acquiescence by any of the DIP Secured Parties or Prepetition ABL Secured Parties, and nothing contained in the DIP Orders shall be deemed to be a consent by the DIP Secured Parties or Prepetition ABL Secured Parties to any charge, lien, assessment or claims against the Collateral under section 506(c) of the Bankruptcy Code or otherwise.

9. *No Marshaling.* In no event shall the DIP Secured Parties or the Prepetition ABL Secured Parties be subject to the equitable doctrine of "marshaling" or any similar doctrine with respect to the DIP Collateral, the DIP Obligations, the Prepetition ABL Obligations, or the

Prepetition ABL Collateral, as applicable. Further, in no event shall the “equities of the case” exception in section 552(b) of the Bankruptcy Code apply to the Prepetition ABL Secured Parties.

10. *Payments Free and Clear.* Any and all payments or proceeds remitted to the DIP Secured Parties or Prepetition ABL Secured Parties pursuant to the provisions of the DIP Orders, the DIP Documents or any subsequent order of the Court shall be irrevocable, received free and clear of any claim, charge, assessment or other liability, including without limitation, any such claim or charge arising out of or based on, directly or indirectly, sections 506(c) or 552(b) of the Bankruptcy Code, whether asserted or assessed by through or on behalf of the Debtors.

11. *Use of Cash Collateral.* The Debtors were, by the Interim Order, and are hereby authorized, solely on the terms and conditions of this Final Order, to use all Cash Collateral in accordance with the DIP Documents and Approved Budget (subject to permitted variances).

12. *Adequate Protection of Prepetition Secured Parties.* Pursuant to sections 361, 362, 363(e), 364(d)(1) and 507 of the Bankruptcy Code, as adequate protection of their respective interests in the Prepetition Collateral (including Cash Collateral) for the aggregate Diminution in Value and as an inducement to the Prepetition Secured Parties to consent to the priming of the Prepetition Liens and the use of their Cash Collateral, the Prepetition Secured Parties were, by the Interim Order, and are hereby granted on a final basis the following Adequate Protection (collectively, the “**Adequate Protection Obligations**”):

(a) *ABL Adequate Protection Liens.* The Prepetition ABL Agent was, by the Interim Order, and is hereby granted on a final basis, for the benefit of the Prepetition ABL Secured Parties, effective and perfected upon the date of this Final Order and without the necessity of the execution of any mortgages, security agreements, pledge agreements, financing statements or other agreements, a valid, perfected replacement security interest in and lien on account of the

Prepetition ABL Secured Parties' Diminution in Value upon all of the DIP Collateral (the "**ABL Adequate Protection Liens**") (i) in the case of the Prepetition ABL Priority Collateral, senior to all other liens, subject solely to the Carve-Out, and (ii) in the case of the Prepetition Term Priority Collateral, subject and subordinate to (A) the DIP Liens, (B) the Prepetition 1L Liens, (C) the Prepetition 2L Liens, (D) the Prepetition Permitted Senior Liens, and (E) the Carve-Out.

(b) *Prepetition ABL Secured Parties' Section 507(b) Claim.* The Prepetition ABL Agent, for the benefit of the Prepetition ABL Secured Parties, was, by the Interim Order, and is hereby granted on a final basis an allowed superpriority administrative expense claim against the DIP Loan Parties on a joint and several basis (without the need to file any proof of claim) on account of the Prepetition ABL Secured Parties' Diminution in Value under section 507(b) of the Bankruptcy Code (the "**ABL 507(b) Claim**") which ABL 507(b) Claim shall be payable from and have recourse to all DIP Collateral and all proceeds thereof (excluding Avoidance Actions but including, without limitation, subject to entry of the Final Order, the Avoidance Proceeds). With respect to the Prepetition ABL Priority Collateral, the ABL 507(b) Claim shall be senior to all other claims against the DIP Loan Parties, now existing or hereafter arising, of any kind whatsoever, including, without limitation, all administrative expenses of the kind specified in sections 503(b) and 507(b) of the Bankruptcy Code, whether or not such claims may become secured by a judgment lien or other non-consensual lien, levy or attachment, except for the Carve-Out, and with respect to the Prepetition Term Priority Collateral, the ABL 507(b) Claim shall be subject and subordinate only to (i) the Carve-Out, (ii) the DIP Superpriority Claims, (iii) the Prepetition Permitted Senior Liens, (iv) the Prepetition 1L Debt, and (vii) the Prepetition 2L Debt.

(c) *Prepetition ABL Secured Parties Fees and Expenses.* As further adequate protection, subject solely to the Carve-Out, the DIP Loan Parties shall continue to currently pay to

the Prepetition ABL Agent, for the benefit of the Prepetition ABL Secured Parties, in cash, all reasonable and documented prepetition and postpetition fees and out-of-pocket expenses of the Prepetition Secured Parties' legal and financial advisors, including, without limitation, those of Morgan, Lewis & Bockius LLP, Carl Marks Advisory Group LLC and any local legal counsel or other advisors in any foreign jurisdiction (collectively, the "**ABL Adequate Protection Fees and Expenses**"), subject to the review procedures set forth in paragraph 16 of this Final Order;

(d) *ABL Postpetition Interest Payments.* From and after entry of the Interim Order, the Prepetition ABL Agent, on behalf of itself and the Prepetition ABL Lenders, shall receive current cash payment during the Chapter 11 Cases of all accrued interest on the Prepetition ABL Obligations as such interest becomes due and payable at the Base Rate (as defined in the ABL Prepetition Credit Agreement as in effect on the Petition Date) plus 2.50% per annum.

(e) *ABL Cash Collateral Borrowing Base/Information Rights.* The Debtors shall deliver to the Prepetition ABL Agent, with copies to the DIP Agent, a Borrowing Base Certificate, with all the information required to be provided in connection therewith pursuant to the Prepetition ABL Credit Agreement, on Thursday of each week following the Petition Date setting forth the Borrowing Base calculated as of the last day of the immediately preceding calendar week. The Debtors shall provide to the Prepetition ABL Agent at the same time as such reporting (including any reporting with respect to the Approved Budget and the permitted variances in connection therewith) is provided to the DIP Agent all reporting required to be provided to the DIP Agent under the DIP Documents.

13. *Maintenance of Collateral.* The DIP Loan Parties shall continue to maintain and insure the Prepetition Collateral and DIP Collateral in amounts and for the risks, and by the entities, as required under the Prepetition Loan Documents and the DIP Documents, as applicable.

14. *Perfection of DIP Liens and ABL Adequate Protection Liens.*

(a) Without in any way limiting the validity of the automatic perfection of the DIP Liens and the ABL Adequate Protection Liens under the terms of the DIP Orders, the DIP Secured Parties and the Prepetition Secured Parties are hereby authorized, but not required, to execute in the name of the DIP Loan Parties or the Prepetition Loan Parties (as applicable), as their true and lawful attorneys (with full power of substitution, to the maximum extent permitted by law) and to file or record financing statements, trademark filings, copyright filings, mortgages, notices of lien or similar perfection instruments in any jurisdiction, or take possession of certificated securities, or take any other similar action in a manner not inconsistent herewith to document, validate or perfect the liens and security interests granted to them hereunder (the “**Perfection Actions**”). All such Perfection Actions shall be deemed to have been taken on the date of entry of the Interim Order. The automatic stay shall be modified to the extent necessary to permit the DIP Secured Parties and each Prepetition Secured Parties to take any Perfection Action. For the avoidance of doubt, the DIP Liens and the ABL Adequate Protection Liens were 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 the Interim Order, whether or not the DIP Secured Parties or the Prepetition Secured Parties take such Perfection Actions.

(b) A certified copy of the Interim Order or this Final Order may, in the discretion of the DIP Agent and each Prepetition Agent, be filed or recorded in the filing or recording offices in addition to or in lieu of any financing statements, mortgages, notices of lien or similar instruments, and all filing and recording offices were, by the Interim Order, and hereby are authorized and directed to accept a certified copy of the Interim Order or this Final Order for filing and/or recording, as applicable.

15. *Preservation of Rights Granted Under this Final Order.*

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

(b) The occurrence and continuance of any Event of Default shall, after written notice by the DIP Agent (acting at the direction of Required DIP Lenders) to the Borrower, counsel to the Borrower, the U.S. Trustee, and lead counsel to the Creditors' Committee, constitute an event of default under this Final Order (each an "**Event of Default**") and, upon such notice, interest, including, where applicable, default interest, shall accrue and be payable as set forth in the DIP Credit Agreement. Notwithstanding any order that may be entered dismissing any of the chapter 11 cases under section 1112 of the Bankruptcy Code or converting these cases to cases to a Successor Case: (A) the DIP Superpriority Claims, the ABL 507(b) Claims, the DIP Liens, the ABL Adequate Protection Liens, and the Prepetition Liens shall continue in full force and effect,

shall maintain their priorities as provided in the DIP Orders, and shall remain binding on all parties in interest until all DIP Obligations and Adequate Protection Obligations shall have been indefeasibly paid in full and until all Prepetition ABL Obligations have been Paid in Full; (B) the other rights granted by the DIP Orders, including with respect to the Carve-Out, shall not be affected; and (C) this Court shall retain jurisdiction, notwithstanding such dismissal, for the purposes of enforcing the claims, liens and security interests referred to in this paragraph and otherwise in the DIP Orders.

(c) If any or all of the provisions of the DIP Orders are hereafter reversed, modified, vacated, or stayed, such reversal, modification, vacatur, or stay shall not affect (i) the validity, priority, or enforceability of any DIP Obligations or Adequate Protection Obligations incurred prior to the actual receipt of written notice by the DIP Agent or Prepetition Agents, as applicable, of the effective date of such reversal, modification, vacatur, or stay; or (ii) the validity, priority, and enforceability of the DIP Liens, the Prepetition Liens, the ABL Adequate Protection Liens, and the Carve-Out. Notwithstanding any such reversal, modification, vacatur or stay, the DIP Obligations, DIP Liens, Adequate Protection Obligations, ABL Adequate Protection Liens, DIP Superpriority Claims, and the ABL 507(b) Claims incurred prior to the actual receipt of written notice by the DIP Agent or the Prepetition Agents, as applicable, of the effective date of such reversal, modification, vacatur, or stay shall be governed in all respects by the original provisions of this Final Order, and the DIP Secured Parties and the Prepetition Secured Parties shall be entitled to, and are hereby granted, all the rights, remedies, privileges and benefits arising under sections 364(e) and 363(m) of the Bankruptcy Code.

(d) Except as expressly provided in the DIP Orders or in the DIP Documents, the DIP Liens, the DIP Superpriority Claims, the ABL Adequate Protection Liens, the ABL 507(b)

Claims, and all other rights and remedies of the DIP Secured Parties and the Prepetition Secured Parties granted by the DIP Orders and the DIP Documents, as well as the Carve-Out, shall survive, and shall not be modified, impaired or discharged by the entry of an order (i) converting or dismissing any of these cases, or terminating the joint administration of these cases; (ii) approving the sale of any DIP Collateral pursuant to section 363(b) of the Bankruptcy Code (except to the extent permitted by the DIP Documents); (iii) confirming a chapter 11 plan in any of the cases. The terms and provisions of the DIP Orders and the DIP Documents shall continue in full force and effect in these cases and in any Successor Cases until all DIP Obligations and Adequate Protection Obligations are indefeasibly paid in full in cash, the DIP Commitments have been terminated, and all Prepetition ABL Obligations have been Paid in Full. Any confirmation order entered in these cases shall not discharge or otherwise affect in any way the joint and several obligations of the DIP Loan Parties to the DIP Secured Parties under the DIP Facility and the DIP Loan Documents, other than after (x) the payment in full and in cash of all DIP Obligations and the termination of the DIP Commitments or (y) the occurrence of the effective date of such confirmed plan (solely in accordance with the terms of such plan).

16. *Payment of Fees and Expenses.* The DIP Loan Parties are authorized and directed to pay the DIP Fees and Expenses and the ABL Adequate Protection Fees and Expenses. Subject to the review procedures set forth in this paragraph 16, payment of the DIP Fees and Expenses and the ABL Adequate Protection Fees and Expenses shall not be subject to allowance or review by the Court. Professionals for the DIP Secured Parties and the Prepetition ABL Secured Parties shall not be required to comply with the U.S. Trustee fee guidelines, however, any time that such professionals seek payment of fees and expenses from the Debtors prior to confirmation of a chapter 11 plan, each such professional shall provide summary copies of its invoices (including



aggregate amounts of fees and expenses and total amount of time on a per-professional basis), which are not required to contain time detail and which may be redacted or modified to the extent necessary to delete any information subject to the attorney-client privilege, any information constituting attorney work product, or any other confidential information, to the DIP Loan Parties, counsel to any statutory committee, and the U.S. Trustee (together, the “**Review Parties**”); *provided, however*, that (i) the provision of such invoices shall not constitute a waiver of the attorney client privilege or of any benefits of the attorney work product doctrine or any other evidentiary privilege or protection recognized under applicable law; and *provided further that*, the U.S. Trustee and the Creditors’ Committee shall have the right to request additional details regarding the services rendered and expenses incurred by such professionals (each an “**Information Request**”). Any objections raised by any Review Party with respect to such invoices must be in writing and state with particularity the grounds therefor and must be submitted to the applicable professional within ten (10) calendar days after receipt (the “**Review Period**”), which shall not be extended by the delivery of an Information Request. If no written objection is received by 12:00 p.m., prevailing Eastern Time, on the last date of the Review Period, the Debtors shall pay such invoices within five (5) business days. If an objection to a professional’s invoice is received within the Review Period, the Debtors shall promptly pay the undisputed amount of the invoice without the necessity of filing formal fee applications, regardless of whether the invoiced amount arose or was incurred before or after the Petition Date, and this Court shall have jurisdiction to determine the disputed portion of such invoice if the parties are unable to resolve the dispute consensually. Notwithstanding the foregoing, the Debtors were, by the Interim Order, authorized and directed to pay (and are hereby authorized and directed to pay on a final basis), on or prior to the Closing Date (as defined in the DIP Credit Agreement) any costs, fees, expenses

(including reasonable and documented legal fees and expenses) and other compensation contemplated by the DIP Loan Documents or incurred by the Prepetition ABL Agent, whether arising before or after the Petition Date, which costs, fees and expenses shall not be subject to the Review Period. No attorney or advisor to any DIP Secured Party or any Prepetition ABL Secured Party shall be required to file an application seeking compensation for services or reimbursement of expenses with the Court. Any and all fees, costs, and expenses paid prior to the Petition Date by any of the Debtors to (i) the DIP Secured Parties in connection with the DIP Facility, and (ii) Prepetition ABL Secured Parties in connection with these cases, were, by the Interim Order, and are hereby approved on a final basis in full and shall not be subject to recharacterization, avoidance, subordination, disgorgement or any similar form of recovery by the Debtors or any other person.

17. *Effect of Stipulations on Third Parties.* The Debtors' stipulations, admissions, agreements and releases contained in the DIP Orders shall be binding upon the Debtors in all circumstances and for all purposes. The Debtors' stipulations, admissions, agreements and releases contained in the DIP Orders shall be binding upon all other parties in interest, including, without limitation, any statutory or non-statutory committees appointed or formed in these cases and any other person or entity acting or seeking to act on behalf of the Debtors' estates, including any chapter 7 or chapter 11 trustee or examiner appointed or elected for any of the Debtors, in all circumstances and for all purposes unless: (a) such committee or other party in interest with requisite standing has timely filed an adversary proceeding or contested matter (subject to the limitations contained herein) by no later than (i) the earlier of (w) one business day before the hearing approving a sale of substantially all of the Debtors' assets or confirming a plan of reorganization, (x) as to the Creditors' Committee only, March 27, 2023, at 4:00 p.m., prevailing

Central Time, (y) if a chapter 7 or a chapter 11 trustee is appointed or elected prior to the end of the Challenge Period (as defined below), the Challenge Period solely for any such chapter 7 trustee or chapter 11 trustee shall be extended to the date that is the later of (A) 60 calendar days after entry of the Interim Order, or (B) the date that is 30 calendar days after their appointment, and (z) for all other parties in interest, March 12, 2023; and (ii) any such later date as (w) has been agreed to in writing (which may be by email) by the Prepetition ABL Agent with respect to the Prepetition ABL Obligations or the Prepetition ABL Liens, (x) has been agreed to in writing (which may be by email) by the Prepetition 1L Agent with respect to the Prepetition 1L Obligations or the Prepetition 1L Liens, (y) has been agreed to in writing (which may be by email) by the Prepetition 2L Agent with respect to the Prepetition 2L Obligations or the Prepetition 2L Liens, or (z) has been ordered by the Court for cause upon a motion filed and served within any applicable period (the time period established by the foregoing clauses (i)-(ii), the “**Challenge Period**”), (A) objecting to or challenging the amount, validity, perfection, enforceability, priority or extent of the Prepetition Secured Obligations or the Prepetition Liens, or (B) asserting or prosecuting any Avoidance Action or any other claims, counterclaims or causes of action, objections, contests or defenses (collectively, the “**Challenges**”) against any Prepetition Secured Parties or their respective subsidiaries, affiliates, officers, directors, managers, principals, employees, agents, financial advisors, attorneys, accountants, investment bankers, consultants, representatives and other professionals and the respective successors and assigns thereof, in each case in their respective capacity as such (collectively, the “**Representatives**”) in connection with or related to the Prepetition Loan Documents, the Prepetition Secured Obligations, the Prepetition Liens and the Prepetition Collateral; and (b) there is a final non-appealable order in favor of the plaintiff sustaining any such Challenge; *provided, however*, that any pleadings filed in connection with a

Challenge shall set forth with specificity the basis for such Challenge and any Challenges not so specified prior to the expiration of the Challenge Period shall be deemed forever waived, released and barred. If no Challenge is timely and properly filed during the Challenge Period or the Court does not rule in favor of the plaintiff in any such Challenge then: (1) the Debtors' stipulations, admissions, agreements and releases contained in the DIP Orders shall be binding on all parties in interest; (2) the obligations of the Prepetition Loan Parties under the Prepetition Loan Documents shall constitute allowed claims not subject to defense avoidance, reduction, setoff, recoupment, recharacterization, subordination (whether equitable, contractual, or otherwise, except as provided in the Intercreditor Agreements), disallowance, impairment, counterclaim, cross-claim, or any other challenge under the Bankruptcy Code or any applicable law or regulation by any person or entity for all purposes in these cases and any Successor Case(s); (3) the Prepetition Liens shall be deemed to have been, as of the Petition Date, legal, valid, binding, perfected, security interests and liens, not subject to defense, avoidance, reduction, setoff, recoupment, recharacterization, subordination (whether equitable, contractual (other than as provided in the Intercreditor Agreements), or otherwise), disallowance, impairment, counterclaim, cross-claim, or any other challenge under the Bankruptcy Code or any applicable law or regulation by any person or entity, including any statutory or non-statutory committees appointed or formed in these cases or any other party in interest acting or seeking to act on behalf of the Debtors' estates, including, without limitation, any chapter 7 or chapter 11 trustee or examiner, and any defense, avoidance, reduction, setoff, recoupment, recharacterization, subordination (whether equitable, contractual, or otherwise), disallowance, impairment, counterclaim, cross-claim, or any other challenge under the Bankruptcy Code or any applicable law or regulation by any statutory or non-statutory committees appointed or formed in these cases or any other party acting or seeking to act on behalf of the

Debtors' estates, including, without limitation, any chapter 7 or chapter 11 trustee or examiner, whether arising under the Bankruptcy Code or otherwise, against any of the Prepetition Secured Parties and their Representatives shall be deemed forever waived, released and barred. If any motion for standing to assert a Challenge is timely filed during the Challenge Period, then: (1) the stipulations, admissions, agreements and releases contained in the DIP Orders shall nonetheless remain binding and preclusive (as provided in the second sentence of this paragraph) on each person or entity, except to the extent that such stipulations, admissions, agreements and releases were expressly and successfully challenged in such Challenge as set forth in a final, non-appealable order of a court of competent jurisdiction; and (2) any motion for standing to assert a Challenge filed by the Committee shall toll the Challenge Period through the hearing to confirm the Debtors' plan of reorganization. Nothing in the DIP Orders vests or confers on any person or entity (each as defined in the Bankruptcy Code), including any statutory or non-statutory committees appointed or formed in these cases, standing or authority to pursue any claim or cause of action belonging to the Debtors or their estates, including, without limitation, any Challenges with respect to the Prepetition Loan Documents, Prepetition Secured Obligations or Prepetition Liens, and any ruling on standing, if appealed, shall not stay or otherwise delay confirmation of any plan of reorganization in these cases.

18. *Limitation on Use of DIP Financing Proceeds and Collateral.* Notwithstanding any other provision of this Final Order or any other order entered by the Court, no DIP Loans, DIP Collateral, Prepetition Collateral (including Cash Collateral) or any portion of the Carve-Out, may be used directly or indirectly, including without limitation through reimbursement of professional fees of any non-Debtor party, in connection with (a) the investigation, threatened initiation or prosecution of any claims, causes of action, adversary proceedings or other litigation (i) against

any of the DIP Secured Parties, or the Prepetition Secured Parties, or their respective Representatives (in their capacities as such), or any action purporting to do the foregoing in respect of the DIP Obligations, DIP Liens, DIP Superpriority Claims, Prepetition Secured Obligations, ABL Adequate Protection Liens, or ABL 507(b) Claims or (ii) challenging the amount, validity, perfection, priority or enforceability of or asserting any defense, counterclaim or offset with respect to the DIP Obligations, the Prepetition Secured Obligations and/or liens, claims, rights, or security interests securing or supporting the DIP Obligations granted under the DIP Orders, the DIP Documents or the Prepetition Loan Documents in respect of the Prepetition Secured Obligations, including, in the case of each (i) and (ii), without limitation, for lender liability or pursuant to sections 105, 510, 544, 547, 548, 549, 550 or 552 of the Bankruptcy Code, applicable non-bankruptcy law or otherwise (provided that, notwithstanding anything to the contrary herein, the proceeds of the DIP Loans and DIP Collateral (including Cash Collateral) may be used by the Creditors' Committee to investigate, but not to prosecute, (A) the claims and liens of the Prepetition Secured Parties and (B) potential claims, counterclaims, causes of action or defenses against the Prepetition Secured Parties, up to an aggregate cap of no more than \$100,000 (the "**Investigation Cap**"), (b) attempts to prevent, hinder, or otherwise delay or interfere with the Prepetition Secured Parties' or the DIP Secured Parties', as applicable, enforcement or realization on the Prepetition Secured Obligations, Prepetition Collateral, DIP Obligations, DIP Collateral, as applicable, and the liens, claims and rights granted to such parties under the DIP Orders; (c) attempts to seek to modify any of the rights and remedies granted to the Prepetition Secured Parties or the DIP Secured Parties under the DIP Orders, the Prepetition Loan Documents or the DIP Documents, as applicable, other than in accordance with this Final Order; (d) to apply to the Court for authority to approve superpriority claims or grant liens (other than the liens and claims

permitted by the DIP Documents) or security interests in the DIP Collateral or any portion thereof that are senior to, or on parity with, the DIP Liens, DIP Superpriority Claims, ABL Adequate Protection Liens and ABL 507(b) Claims; or (e) to pay or to seek to pay any amount on account of any claims arising prior to the Petition Date unless such payments are authorized by the Court, agreed to in writing by the DIP Lenders, expressly permitted under this Final Order or under the DIP Documents (including the Approved Budget, subject to permitted variances), in each case unless all DIP Obligations, Prepetition Secured Obligations, Adequate Protection Obligations, and claims granted to the DIP Secured Parties and Prepetition Secured Parties under the DIP Orders, have been paid in full in cash or otherwise agreed to in writing by the DIP Secured Parties.

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

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

inure to the benefit of the DIP Secured Parties, the Prepetition Secured Parties, the Debtors, and their respective successors and assigns; *provided* that the 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 or chapter 11 trustee or similar responsible person appointed for the estates of the Debtors.

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

22. *Limitation of Liability.* In determining to make any loan or other extension of credit under the DIP Documents, to permit the use of the DIP Collateral or Prepetition Collateral (including Cash Collateral) or in exercising any rights or remedies as and when permitted pursuant to the DIP Orders, the DIP Documents, or Prepetition Loan Documents, as applicable, none of the DIP Secured Parties or Prepetition Secured Parties shall (a) have any liability to any third party or be deemed to be in “control” of the operations of the Debtors; (b) owe any fiduciary duty to the Debtors, their respective creditors, shareholders or estates; or (c) be deemed to be acting as a



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

23. *Master Proofs of Claim.* Notwithstanding any order entered by this Court in relation to the establishment of a bar date in any of these chapter 11 cases or any Successor Cases, neither the Prepetition Agents, nor any other Prepetition Secured Parties, shall be required to file proofs of claim in these cases or any Successor Cases in order to assert claims for payment of any of the Prepetition Secured Obligations, including, without limitation, any principal, unpaid interest, fees, expenses and other amounts payable under the Prepetition Loan Documents or this Final Order. The Debtors’ stipulations, admissions and acknowledgments of the claim and liens in respect of the Prepetition Secured Obligations set forth in this Final Order are deemed to constitute timely proofs of claim in respect of all indebtedness, secured status and claims arising under the Prepetition Credit Documents and this Final Order. Nonetheless, in order to facilitate the processing of claims, each Prepetition Agent is authorized, but not directed or required, to file a master proof of claim in the Debtors’ lead case *In re Nielsen & Bainbridge, LLC, et al.*,<sup>7</sup> Case No. 23-90071 (DRJ), on behalf of the applicable Prepetition Secured Parties (each, a “**Master**

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<sup>7</sup> A complete list of each of the Debtors in these chapter 11 cases may be obtained on the website of the Debtors’ proposed claims and noticing agent at <https://omniagentsolutions.com/NBGHome>. The Debtors’ service address in these chapter 11 cases is: 12303 Technology Boulevard, Suite 950, Austin, TX 78727.

**Proof of Claim**”), which shall be deemed to have been filed against each Debtor. The provisions of this paragraph 23 and the filing of Master Proofs of Claim, if any, are intended solely for the purpose of administrative convenience and shall not affect the right of each Prepetition Secured Party (or its successors in interest) to vote separately on any plan filed in these cases. Any Master Proof of Claim shall not be required to include any instruments, agreements or other documents evidencing the obligations owing by each of the Debtors to the applicable Prepetition Secured Parties, which instruments, agreements or other documents will be provided upon written request to counsel to the applicable Prepetition Agent. The DIP Secured Parties shall not be required to file proofs of claim with respect to the DIP Obligations.

24. *Insurance.* To the extent that any Prepetition Agent is listed as a loss payee under the insurance policies of any of the DIP Loan Parties, the DIP Agent shall also be deemed to be a loss payee under such insurance policies until the indefeasible payment in full of the DIP Obligations (other than contingent indemnification obligations as to which no claim has been asserted) and termination of the DIP Commitment and, except with respect to the Prepetition ABL Priority Collateral prior to the Prepetition ABL Obligations being Paid in Full, shall act in that capacity and distribute any proceeds recovered or received in respect of such insurance policies.

25. *Credit Bidding.* Subject to the lien priorities set forth herein and in the Intercreditor Agreements and unless the Court for cause orders otherwise, (a) the DIP Agent shall have the right to credit bid, up to the full amount of the DIP Obligations in any sale of the DIP Collateral and (b) each of the Prepetition Agents shall have the right, consistent with the provisions of the Prepetition Loan Documents, as applicable (and, other than with respect to a credit bid from the Prepetition ABL Secured Parties on the Prepetition ABL Priority Collateral, providing for the DIP Obligations to be indefeasibly repaid in full in cash and the termination of the DIP Commitments),

to credit bid, up to the full amount of the applicable Prepetition Secured Obligations, in the sale of the applicable Prepetition Collateral, in each case, without the need for further Court order authorizing the same, whether any such sale is effectuated through section 363(k), 1123, or 1129(b) of the Bankruptcy Code, by a chapter 7 trustee under section 725 of the Bankruptcy Code, or otherwise; *provided* that neither the DIP Obligations nor any Prepetition Secured Obligations (other than the Prepetition ABL Obligations) may be used to credit bid in any disposition of any Prepetition ABL Priority Collateral unless such sale provides for the Prepetition ABL Obligations being Paid in Full.

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

27. *Governing Order.* Notwithstanding the relief granted in any other order by this Court, (i) all payments and actions by any of the Debtors pursuant to the authority granted therein shall be subject to this Final Order, including compliance with the Approved Budget (subject to permitted variances) and all other terms and conditions hereof, and (ii) to the extent there is any inconsistency between the terms of the DIP Documents, the Interim Order, and this Final Order, this Final Order shall control.

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

29. *Payments Held in Trust.* Except as expressly permitted in this Final Order or the DIP Documents and except with respect to the DIP Loan Parties, in the event that any person or entity receives any payment on account of a security interest in the DIP Collateral (other than

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

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

31. *No Third Party Rights.* Except as explicitly provided for herein, this Final Order does not create any rights for the benefit of any third party, creditor, equity holder or any direct, indirect or incidental beneficiary.

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

33. *Interim Order.* Except as specifically amended, superseded, or modified hereby, the provisions of the Interim Order and any actions taken by the Debtors, the DIP Secured Parties or the Prepetition Secured Parties in accordance therewith shall remain in effect and are hereby ratified by this Final Order.

34. *Statutory Liens Held by The County of Williamson, Texas.* Notwithstanding any other provisions of this Final Order, any and all statutory liens held by The County of Williamson, Texas for pre-petition and post-petition ad valorem taxes shall not be primed nor made subordinate to any liens granted to any party hereby to the extent such tax liens are valid, senior, perfected, and unavoidable. All parties' rights to object to the priority, validity, amount, and extent of the claims and liens asserted by The County of Williamson, Texas are fully preserved.

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

**Signed: March 06, 2023.**

  
\_\_\_\_\_  
**DAVID R. JONES**  
**UNITED STATES BANKRUPTCY JUDGE**

**Exhibit 1**

**DIP Credit Agreement**

**Schedule 1**

**Approved Budget**

**Exhibit 1**

**DIP Credit Agreement**



*Execution Version*

\$60.0 MILLION SENIOR SECURED SUPER PRIORITY DEBTOR-IN-POSSESSION  
CREDIT AGREEMENT

Dated as of February 10, 2023

among

KNB HOLDINGS CORPORATION,  
as a Debtor and Debtor-in-Possession under Chapter 11 of the Bankruptcy Code

as Borrower,

KKR Loan Administration Services LLC,  
as Administrative Agent and Collateral Agent,

and

THE LENDERS PARTY HERETO



**TABLE OF CONTENTS**

	<b>Page</b>
<b>ARTICLE I DEFINITIONS AND ACCOUNTING TERMS</b>	
Section 1.01 Defined Terms .....	2
Section 1.02 Other Interpretive Provisions.....	61
Section 1.03 Accounting Terms .....	62
Section 1.04 Rounding.....	62
Section 1.05 References to Agreements, Laws, etc.....	62
Section 1.06 Times of Day and Timing of Payment and Performance .....	62
Section 1.07 [Reserved].....	62
Section 1.08 [Reserved].....	62
Section 1.09 [Reserved].....	62
Section 1.10 Currency Generally.....	62
<b>ARTICLE II THE COMMITMENTS AND BORROWINGS</b>	
Section 2.01 The Loans .....	63
Section 2.02 Borrowings, Conversions and Continuations of Loans .....	64
Section 2.03 [Reserved].....	68
Section 2.04 [Reserved].....	68
Section 2.05 Prepayments.....	68
Section 2.06 Termination or Reduction of Commitments .....	70
Section 2.07 [Reserved].....	71
Section 2.08 Interest .....	71
Section 2.09 Fees; Premium .....	71
Section 2.10 Computation of Interest and Fees .....	72
Section 2.11 Evidence of Indebtedness .....	72
Section 2.12 Payments Generally .....	73
Section 2.13 Sharing of Payments .....	74
Section 2.14 [Reserved].....	75
Section 2.15 [Reserved].....	75
Section 2.16 [Reserved].....	75
Section 2.17 Defaulting Lenders .....	75
Section 2.18 [Reserved].....	76
Section 2.19 [Reserved].....	76
Section 2.20 Credit Bid.....	76
<b>ARTICLE III TAXES, INCREASED COSTS PROTECTION AND ILLEGALITY</b>	
Section 3.01 Taxes.....	77
Section 3.02 Illegality .....	80
Section 3.03 Inability to Determine Rates .....	81
Section 3.04 Increased Cost and Reduced Return; Capital Adequacy; Reserves on SOFR Loan .....	84

**TABLE OF CONTENTS**

	<b>Page</b>
Section 3.05 Funding Losses .....	85
Section 3.06 Matters Applicable to All Requests for Compensation .....	86
Section 3.07 Replacement of Lenders under Certain Circumstances.....	87
Section 3.08 Survival.....	88

**ARTICLE IV CONDITIONS PRECEDENT**

Section 4.01 Conditions Precedent to Closing Date.....	89
Section 4.02 Conditions Precedent to Each Borrowing.....	90

**ARTICLE V REPRESENTATIONS AND WARRANTIES**

Section 5.01 Existence, Qualification and Power; Compliance with Laws .....	92
Section 5.02 Authorization; No Contravention .....	92
Section 5.03 Governmental Authorization .....	93
Section 5.04 Binding Effect.....	93
Section 5.05 Financial Statements; No Material Adverse Effect .....	93
Section 5.06 Litigation.....	94
Section 5.07 Labor Matters.....	94
Section 5.08 Ownership of Property; Liens.....	94
Section 5.09 Environmental Matters .....	94
Section 5.10 Taxes.....	94
Section 5.11 ERISA Compliance .....	95
Section 5.12 Subsidiaries.....	95
Section 5.13 Margin Regulations; Investment Company Act .....	96
Section 5.14 Disclosure .....	96
Section 5.15 Intellectual Property; Licenses, etc.....	96
Section 5.16 [Reserved].....	97
Section 5.17 Anti-Terrorism Laws .....	97
Section 5.18 Collateral Documents .....	97
Section 5.19 Use of Proceeds .....	97
Section 5.20 OFAC.....	97
Section 5.21 Foreign Corrupt Practices Act .....	98
Section 5.22 Budget and Variance Report.....	98

**ARTICLE VI AFFIRMATIVE COVENANTS**

Section 6.01 Financial Statements.....	98
Section 6.02 Certificates; Other Information.....	101
Section 6.03 Notices .....	103
Section 6.04 Payment of Obligations .....	103
Section 6.05 Preservation of Existence, etc.....	104
Section 6.06 Maintenance of Properties .....	104

**TABLE OF CONTENTS**

	<b>Page</b>
Section 6.07 Maintenance of Insurance.....	104
Section 6.08 Compliance with Laws .....	105
Section 6.09 Books and Records .....	105
Section 6.10 Inspection Rights .....	105
Section 6.11 Covenant to Guarantee Obligations and Give Security.....	105
Section 6.12 Compliance with Environmental Laws .....	108
Section 6.13 Further Assurances and Post-Closing Covenant.....	109
Section 6.14 Use of Proceeds .....	109
Section 6.15 [Reserved].....	109
Section 6.16 Accounting Changes.....	109
Section 6.17 Nature of Business .....	109
Section 6.18 [Reserved].....	110
Section 6.19 Anti-Terrorism Law; Anti-Money Laundering; Foreign Corrupt Practices Act 110	
Section 6.20 Orders of Bankruptcy Court .....	110

**ARTICLE VII NEGATIVE COVENANTS**

Section 7.01 Liens .....	110
Section 7.02 Indebtedness .....	111
Section 7.03 Fundamental Changes.....	115
Section 7.04 Asset Sales .....	117
Section 7.05 Restricted Payments.....	117
Section 7.06 Transactions with Affiliates.....	120
Section 7.07 Burdensome Agreements.....	123
Section 7.08 Executory Contracts and Leases .....	126
Section 7.09 Consultant.....	126
Section 7.10 Use of Proceeds .....	126
Section 7.11 Prepayments of Indebtedness .....	127
Section 7.12 Chapter 11 Modifications .....	128
Section 7.13 Conduct of Business .....	128
Section 7.14 Amendments of Organizational Documents.....	128
Section 7.15 Holding Companies .....	128

**ARTICLE VIII EVENTS OF DEFAULT AND REMEDIES**

Section 8.01 Events of Default .....	130
Section 8.02 Remedies upon Event of Default.....	135
Section 8.03 Application of Funds .....	136

**ARTICLE IX ADMINISTRATIVE AGENT AND OTHER AGENTS**

Section 9.01 Appointment and Authorization of the Administrative Agent .....	136
--	-----

**TABLE OF CONTENTS**

	<b>Page</b>
Section 9.02 Rights as a Lender .....	137
Section 9.03 Exculpatory Provisions .....	137
Section 9.04 Lack of Reliance on the Administrative Agent .....	139
Section 9.05 Certain Rights of the Administrative Agent .....	139
Section 9.06 Reliance by the Administrative Agent.....	139
Section 9.07 Delegation of Duties .....	140
Section 9.08 Indemnification.....	140
Section 9.09 The Administrative Agent in Its Individual Capacity.....	140
Section 9.10 Company Advisors .....	141
Section 9.11 Resignation by the Administrative Agent.....	141
Section 9.12 Collateral Matters .....	142
Section 9.13 [Reserved].....	143
Section 9.14 Administrative Agent May File Proofs of Claim .....	143
Section 9.15 Appointment of Supplemental Administrative Agents.....	144
Section 9.16 [Reserved].....	145
Section 9.17 Secured Cash Management Agreements and Secured Hedge Agreements.....	145
Section 9.18 Withholding Tax.....	145
Section 9.19 Erroneous Payments. ....	145

**ARTICLE X MISCELLANEOUS**

Section 10.01 Amendments, etc. ....	149
Section 10.02 Notices and Other Communications; Facsimile Copies .....	152
Section 10.03 No Waiver; Cumulative Remedies .....	154
Section 10.04 Costs and Expenses.....	155
Section 10.05 Indemnification by the Borrower.....	155
Section 10.06 Marshaling; Payments Set Aside .....	156
Section 10.07 Successors and Assigns .....	157
Section 10.08 [Reserved].....	162
Section 10.09 Confidentiality .....	163
Section 10.10 Setoff.....	164
Section 10.11 Interest Rate Limitation .....	164
Section 10.12 Counterparts; Integration; Effectiveness .....	165
Section 10.13 Electronic Execution of Assignments and Certain Other Documents.....	165
Section 10.14 Survival of Representations and Warranties.....	165
Section 10.15 Severability .....	165
Section 10.16 GOVERNING LAW .....	166
Section 10.17 WAIVER OF RIGHT TO TRIAL BY JURY .....	167
Section 10.18 Binding Effect.....	167
Section 10.19 Lender Action .....	167
Section 10.20 Use of Name, Logo, etc .....	167
Section 10.21 USA PATRIOT Act.....	167
Section 10.22 Service of Process.....	168

**TABLE OF CONTENTS**

	<b>Page</b>
Section 10.23 No Advisory or Fiduciary Responsibility.....	168
Section 10.24 Release of Collateral and Guarantee Obligations; Subordination of Liens.....	168
Section 10.25 [Reserved].....	170
Section 10.26 Judgment Currency.....	170
Section 10.27 Acknowledgement and Consent to Bail-In of EEA Financial Institutions.....	170
Section 10.28 Priority and Liens Applicable to Loan Parties.....	171

## SCHEDULES

1.01(1)	[Reserved]
1.01(2)	[Reserved]
2.01	Commitments
4.01(1)(c)	[Reserved]
5.06	Litigation
5.12	Subsidiaries and Other Equity Investments
7.01	Existing Liens
7.02(3)	Existing Indebtedness
7.03	Existing Investments
10.02	Administrative Agent's Office, Certain Addresses for Notices

## EXHIBITS

### *Form of*

A-1	Committed Loan Notice
B-1	Term Note
C	Compliance Certificate
D-1	Assignment and Assumption
E	Guaranty
F	Security Agreement
G-1	[Reserved]
G-2	[Reserved]
H	United States Tax Compliance Certificates
I	[Reserved]
J	[Reserved]
K	[Reserved]
L	Interim DIP Order
M	Variance Report

## CREDIT AGREEMENT

This SENIOR SECURED SUPER PRIORITY DEBTOR-IN-POSSESSION CREDIT AGREEMENT (this “**Agreement**”) is entered into as of February 10, 2023, by and among NBG INTERMEDIATE HOLDINGS INC., a Delaware corporation (“**Holdings**”), KNB HOLDINGS CORPORATION, a Delaware corporation, as a debtor and debtor-in-possession (“**Borrower**”), NBG TOPCO HOLDINGS INC., a Delaware corporation (“**Topco**”), NBG PROPCO LLC, a Delaware limited liability company (“**Propco**”), KKR Loan Administration Services LLC, as administrative agent (in such capacity, including any successor thereto, the “**Administrative Agent**”) and as collateral agent (in such capacity, including any successor thereto, the “**Collateral Agent**”) under the Loan Documents, and each lender from time to time party hereto (collectively, the “**Lenders**” and individually, a “**Lender**”).

## PRELIMINARY STATEMENTS

On February 8, 2023 (the “**Petition Date**”), Topco and certain of its direct and indirect subsidiaries and Affiliates, each as debtors-in-possession (collectively, the “**Debtors**”) commenced voluntary cases (the “**Chapter 11 Cases**”) under Chapter 11 of the Bankruptcy Code (as defined herein) in the United States Bankruptcy Court for the Southern District of Texas (the “**Bankruptcy Court**”). The Debtors continue to operate their businesses and manage their properties as debtors-in-possession pursuant to Sections 1107 and 1108 of the Bankruptcy Code.

Prior to the Petition Date, certain lenders provided financing to the Borrower pursuant to that certain First Lien Credit Agreement, dated as of April 26, 2017, among NBG Intermediate Holdings Inc. as holdings, NBG Acquisition Inc., as the initial borrower, Deutsche Bank AG New York Branch as administrative agent and collateral agent, and the other parties from time to time party thereto (as amended, amended and restated, supplemented or otherwise modified from time to time through the Petition Date, the “**Prepetition First Lien Credit Agreement**”).

On the Petition Date, the outstanding principal balance of Loans (as defined in the Prepetition First Lien Credit Agreement) and unpaid reimbursement obligations under the Prepetition First Lien Credit Agreement was approximately \$282,262,097, plus interest, fees, costs and expenses and all other Prepetition First Lien Obligations under the Prepetition First Lien Credit Agreement.

The Prepetition First Lien Obligations under the Prepetition First Lien Credit Agreement are secured by security interests and liens in substantially all of the existing and after-acquired assets of the Borrower and the applicable Guarantors as more fully set forth in the Prepetition Loan Documents, and such security interest is perfected, and, with certain exceptions as described in the Prepetition Loan Documents (including with respect to the Prepetition ABL Facility), has priority over all other security interests.

The Borrower has requested, and, upon the terms and subject to the conditions set forth in this Agreement, the Lenders have agreed to make available to the Borrower, a secured term loan credit facility in an aggregate principal amount of \$60.0 million, consisting of two tranches: (i) a \$30.0 million senior secured term loan facility and (ii) \$30.0 million tranche of term loans resulting from the rollup and refinancing of certain of the Prepetition First Lien Loans outstanding on the



Closing Date in accordance with the Bankruptcy Court DIP Orders, each to fund the working capital requirements of the Borrower and the Subsidiaries during the pendency of the Chapter 11 Cases and the Carve Out, in each case, pursuant to and in accordance with the Approved Updated Budget.

The Borrower and the Guarantors have agreed to secure all of their Obligations under the Loan Documents by granting to the Administrative Agent, for the benefit of the Administrative Agent and the other Secured Parties, a security interest in and lien upon all of their existing and after-acquired personal and real property.

The Borrower's and the Guarantors' business is a mutual and collective enterprise and the Borrower and the Guarantors believe that the loans and other financial accommodations to the Borrower under this Agreement will enhance the aggregate borrowing powers of the Borrower and facilitate the administration of the Chapter 11 Cases and their loan relationship with the Administrative Agent and the Lenders, all to the mutual advantage of the Borrower and the Guarantors.

The Borrower and the Guarantors each acknowledges that it will receive substantial direct and indirect benefits by reason of the making of loans and other financial accommodations to the Borrower as provided in this Agreement.

The Lenders' willingness to extend financial accommodations to the Borrower, and the Administrative Agent's willingness to administer the Borrower's and Guarantors' collateral security therefor, on a combined basis as more fully set forth in this Agreement and the other Loan Documents, is done as an accommodation to the Borrower and the Guarantors and at the Borrower's and the Guarantors' request and in furtherance of the Borrower's and the Guarantors' mutual and collective enterprise.

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

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

## ARTICLE I

### **Definitions and Accounting Terms**

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

“**ABL 507(b) Claims**” has the meaning specified in the Interim DIP Order (or the Final DIP Order, when applicable).

“**ABL Adequate Protection Liens**” means the security interests in and liens on all the assets of the Loan Parties, effective and perfected as of the Interim DIP Order Entry Date, that were granted for the benefit of the Prepetition ABL Facility Administrative Agent under the Prepetition ABL Facility on behalf of itself and the applicable secured creditors and holders thereof, and without the necessity of the execution of mortgages, security agreements, pledge agreements, financing statements or other agreements, and without the need for entry of a separate order by the Bankruptcy Court.

“**Acceptable Plan**” means a Plan of Reorganization that is consistent with the Restructuring Support Agreement and otherwise satisfactory to the Required Lenders and (solely with respect to its own treatment) Administrative Agent (as the same may be amended, supplemented, or modified from time to time after entry thereof in accordance with the terms thereof with the prior written consent of Administrative Agent).

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

(1) Indebtedness of any other Person existing at the time such other Person is merged, consolidated or amalgamated with or into or became a Restricted Subsidiary of such specified Person and not incurred in connection with, or in contemplation of, such other Person merging, amalgamating or consolidating with or into, or becoming a Restricted Subsidiary of, such specified Person, and

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

“**Adequate Protection Liens**” has the meaning specified in the Interim DIP Order (or the Final DIP Order, when applicable).

“**Administrative Agent**” has the meaning specified in the introductory paragraph to this Agreement.

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

“**Administrative Questionnaire**” means an Administrative Questionnaire in a form supplied by the Administrative Agent.

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

“**Affiliate Transaction**” has the meaning specified in Section 7.06(a).

“**Agent Parties**” has the meaning specified in Section 10.02(4).

“**Agent-Related Persons**” means the Agents, together with their respective Affiliates, and the officers, directors, employees, agents, attorney-in-fact, partners, trustees and advisors of such Persons and of such Persons’ Affiliates.

“**Agents**” means, collectively, the Administrative Agent, the Collateral Agent and the Supplemental Administrative Agents (if any).

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

“**Agreement**” means this Agreement, as amended, restated, amended and restated, modified or supplemented from time to time in accordance with the terms hereof.

“**Agreement Currency**” has the meaning specified in Section 10.26.

“**Allowed Professional Fees**” has the meaning set forth in the Interim DIP Order.

“**Alternative Benchmark Rate**” has the meaning specified in Section 3.03(3).

“**Annual Financial Statements**” means the audited consolidated balance sheets of the Borrower and its Subsidiaries as of the fiscal years ended December 31, 2020 and December 31, 2021, and the related consolidated statements of operations, changes in stockholders’ equity and cash flows for the Borrower and its Subsidiaries for the fiscal years then ended.

“**Anti-Corruption Laws**” means the U.S. Foreign Corrupt Practices Act of 1977, as amended, and any other similar applicable law or regulation related to corruption or bribery.

“**Anti-Corruption Prohibited Activity**” has the meaning set forth in Section 5.21.

“**Anti-Terrorism Laws**” has the meaning specified in Section 5.17.

“**Applicable Rate**” means a percentage per annum equal to, (A) for SOFR Loans, 10.00%, (B) for Base Rate Loans, 9.00%.

“**Appropriate Lender**” means, at any time, with respect to Loans of any Class, the Lenders of such Class.

“**Approved Fund**” means, with respect to any Lender, any Fund that is administered, advised or managed by (a) such Lender, (b) an Affiliate of such Lender or (c) an entity or an Affiliate of an entity that administers, advises or manages such Lender.

“**Approved Plan of Reorganization**” means a plan of reorganization in form and substance satisfactory to the Required Lenders.

“**Approved Updated Budget**” has the meaning specified in Section 6.01(7)(a).

“**Asset Sale**” means:

(1) the sale, conveyance, transfer, license, lease, assignment or other disposition (including sale-leaseback transactions), whether direct or indirect or in a single transaction or a series of related transactions of property or assets of the Borrower or any Restricted Subsidiary (each referred to in this definition as a “**disposition**”); or

(2) the issuance or sale of Equity Interests (other than Preferred Stock or Disqualified Stock of Restricted Subsidiaries issued in compliance with Section 7.02 and directors’ qualifying shares or shares or interests required to be held by foreign nationals or other third parties to the extent required by applicable law) of any Restricted Subsidiary (other than to the Borrower or another Restricted Subsidiary), whether in a single transaction or a series of related transactions;

in each case, other than:

(a) any disposition of:

(i) Cash Equivalents or Investment Grade Securities,

(ii) obsolete, damaged or worn out property or assets in the ordinary course of business or consistent with industry practice or any disposition of inventory or goods (or other assets) held for sale or no longer used or useful in the ordinary course,

(iii) [reserved],

(iv) improvements made to leased real property to landlords pursuant to customary terms of leases entered into in the ordinary course of business and

(v) [reserved];

(b) the disposition of any assets by the Borrower or any Restricted Subsidiary in a manner permitted pursuant to Section 7.03;

(c) any disposition constituting a Restricted Payment that is permitted to be made, and is made, under Section 7.05, a Permitted Investment or an acquisition otherwise permitted under this Agreement;

(d) any disposition of property or assets or issuance of securities by a Restricted Subsidiary to the Borrower or by the Borrower or a Restricted Subsidiary to a Restricted Subsidiary to the extent permitted under this Agreement;

(e) (i) the lease, assignment or sublease, license or sublicense of any real or personal property in the ordinary course of business or consistent with industry practice and (ii) the exercise of termination rights with respect to any lease, sublease, license or sublicense or other agreement;

- (f) [reserved];
- (g) foreclosures, condemnation, expropriation, eminent domain or any similar action (including for the avoidance of doubt, any Casualty Event) with respect to assets or the granting of Liens not prohibited hereunder;
- (h) [reserved];
- (i) [reserved];
- (j) the sale, lease, assignment, license, sublease or discount of inventory, equipment, accounts receivable, notes receivable or other current assets or the conversion of accounts receivable to notes receivable or other dispositions of accounts receivable in connection with the collection thereof, in each case in the ordinary course of business or consistent with industry practice;
- (k) the licensing or sublicensing of IP Rights or other general intangibles in the ordinary course of business or consistent with industry practice;
- (l) any surrender or waiver of contract rights or the settlement, release or surrender of contract rights or other litigation claims in the ordinary course of business or consistent with industry practice;
- (m) the unwinding of any Hedging Obligations;
- (n) sales, transfers and other dispositions of Investments in joint ventures to the extent required by, or made pursuant to, customary put, drag or tag arrangements (or other provisions with similar effect) between the joint venture parties set forth in joint venture arrangements and similar binding arrangements;
- (o) the lapse or abandonment of IP Rights, which in the reasonable good faith determination of the Borrower, are not material to the conduct of the business of the Borrower and its Restricted Subsidiaries taken as a whole;
- (p) the granting of a Lien that is permitted under Section 7.01;
- (q) the issuance of directors' qualifying shares and shares of Capital Stock of Foreign Subsidiaries issued to foreign nationals as required by applicable law;
- (r) the disposition of any assets (including Equity Interests but excluding any fee-owned real property) (i) acquired in a transaction permitted hereunder, which assets are not used or useful in the principal business of the Borrower and its Restricted Subsidiaries or (ii) made in connection with the approval of any applicable antitrust authority or otherwise necessary or advisable in the good faith determination of the Borrower to consummate any acquisition permitted hereunder; and

(s) dispositions of property to the extent that such property is exchanged for credit against the purchase price of similar replacement property.

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

“**Assignment and Assumption**” means an Assignment and Assumption substantially in the form of Exhibit D-1 or any other form approved by the Administrative Agent.

“**Attorney Costs**” means all reasonable fees, expenses and disbursements of any law firm or other external legal counsel, to the extent documented in reasonable detail and invoiced.

“**Available Tenor**” means, shall mean, as of any date of determination and with respect to the then-current Benchmark, as applicable, (x) if such Benchmark is a term rate, any tenor for such Benchmark (or component thereof) that is or may be used for determining the length of an interest period pursuant to this Agreement or (y) otherwise, any payment period for interest calculated with reference to such Benchmark (or component thereof) that is or may be used for determining any frequency of making payments of interest calculated with reference to such Benchmark, in each case, as of such date and not including, for the avoidance of doubt, any tenor for such Benchmark that is then-removed from the definition of “Interest Period” pursuant to Section 3.03.

“**Avoidance Actions**” has the meaning assigned to such term in Section 10.28(a)(iii).

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

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

“**Bankruptcy Code**” means Title 11 of the United States Code entitled “Bankruptcy,” as now and hereafter in effect, or any successor statute.

“**Bankruptcy Court**” has the meaning specified in the recitals hereto.

“**Bankruptcy Court DIP Order**” means the Interim DIP Order or the Final DIP Order, as applicable; *provided* that the Bankruptcy Court DIP Orders shall (i) provide that in no event shall the Agents, Lenders, Prepetition Agents or the Prepetition Lenders be subject to the equitable doctrine of “marshaling” or any similar doctrine with respect to the Collateral, (ii) approve the Debtors’ waiver of all section 506(c) claims and any “equities of the case” exception under section 552(b) of the Bankruptcy Code with respect to the Secured Parties and the Prepetition ABL Secured Parties; *provided* that, with respect to the Interim DIP Order, the foregoing waiver shall be without prejudice to any provisions of the Final DIP Order with respect to costs or expenses incurred following the entry of such Final DIP Order, (iii) contain stipulations by the Debtors ratifying the extent, validity, priority, perfection, enforceability and non-avoidance of the obligations under the Prepetition Facilities and (iv) otherwise be in form and substance satisfactory to the Required Lenders.

**“Base Rate”** means, for any day, a fluctuating rate per annum equal to the highest of (a) the Federal Funds Rate (which, if negative, shall be deemed to be 0%) on such day plus 1/2 of 1.00%, (b) the Prime Lending Rate on such day and (c) Term SOFR for a one-month tenor in effect on such day plus 1.00%. If the Administrative Agent shall have determined (which determination shall be conclusive absent manifest error) that it is unable to ascertain the Federal Funds Rate or Term SOFR for any reason, including the inability or failure of the Administrative Agent to obtain sufficient quotations in accordance with the terms of the definition thereof or a Benchmark Trigger Event has occurred, the Base Rate shall be determined without regard to clause (a) or (c), as applicable, above until the circumstances giving rise to such inability no longer exist.

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

**“Base Rate Term SOFR Determination Day”** has the meaning specified in the definition of “Term SOFR”.

**“Benchmark”** means, initially, the Term SOFR Reference Rate; provided that if a Benchmark Trigger Event has occurred with respect to the Term SOFR Reference Rate or any then-current Benchmark, then “Benchmark” means the applicable Benchmark Replacement Rate to the extent that such Benchmark Replacement Rate has replaced such prior benchmark rate pursuant to Section 3.03.

**“Benchmark Replacement Adjustment”** means, with respect to any replacement of the then-current Benchmark with an Unadjusted Benchmark Replacement for each applicable Interest Period (to the extent an Interest Period remains applicable, otherwise, such other period and Available Tenor), the spread adjustment, or method for calculating or determining such spread adjustment, (which may be a positive or negative value or zero) that has been selected by the Borrower and the Required Lenders giving due consideration to (i) any selection or recommendation of a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of the then-current Benchmark with the applicable Unadjusted Benchmark Replacement by the Relevant Governmental Body, (ii) any evolving or then-prevailing market convention for determining a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of the then-current Benchmark with the applicable Unadjusted Benchmark Replacement for syndicated credit facilities of the applicable currency at such time and (iii) the making of appropriate adjustments to (a) preserve pricing in effect at the time of selection of such Benchmark Replacement Rate and (b) for the duration and time for determination of the Benchmark Replacement Rate in relation to any applicable Interest Period.

**“Benchmark Replacement Amendment”** has the meaning specified in Section 3.03(2).

**“Benchmark Replacement Conforming Changes”** means, with respect to any proposed Benchmark Replacement Amendment, any technical, administrative or operational changes (including changes to the definition of “Base Rate,” the definition of “Interest Period,” timing and frequency of determining rates and making payments of interest and other administrative matters) that the Required Lenders (or, for purposes of clause (i)(3) and clause (ii) of the definition of “Benchmark Replacement Rate”, the Required Lenders with the consent of the Borrower) determines may be appropriate to reflect the adoption and implementation of such Benchmark Replacement Rate and the other provisions contemplated by Section 3.03 (provided that any such



change that is not substantially consistent with both (x) market practice and (y) other syndicated credit facilities for similarly situated sponsors denominated in the same currency as the Facilities shall be determined by the Required Lenders in consultation with the Borrower), and to permit the administration thereof by the Required Lenders in a manner substantially consistent with both (x) market practice and (y) other syndicated credit facilities for similarly situated sponsors denominated in the same currency as the Facilities (or, if the Required Lenders decide that adoption of any portion of such market practice is not administratively feasible or if the Required Lenders determine that no market practice for the administration of the Benchmark Replacement Rate exists, in such other manner of administration as the Required Lenders, in consultation with the Borrower (or, for purposes of clause (i)(3) and clause (ii) of the definition of “Benchmark Replacement Rate”, the Required Lenders with the consent of the Borrower), determines is reasonably necessary in connection with the administration of this Agreement).

“**Benchmark Replacement Date**” means the earliest to occur of the following events with respect to the then-current Benchmark:

(1) in the case of clause Section 3.04(b)(i)(A) of the definition of “Benchmark Trigger Event,” the date on which the administrator of such Benchmark permanently or indefinitely ceases to provide all Available Tenors of such Benchmark; or

(2) in the case of clause Section 3.03(2)(a)(B) of the definition of “Benchmark Trigger Event,” the later of (a) the date of the public statement or publication of information referenced therein and (b) the date on which the administrator of such Benchmark permanently or indefinitely ceases to provide all Available Tenors of such Benchmark.

For the avoidance of doubt, if the event giving rise to the Benchmark Replacement Date occurs on the same day as, but earlier than, the Reference Time in respect of any determination, the Benchmark Replacement Date will be deemed to have occurred prior to the Reference Time for such determination.

“**Benchmark Replacement Rate**” means the sum of: (a) the alternate benchmark rate that has been selected by the Borrower and the Required Lenders giving due consideration to (i) any selection or recommendation of a replacement rate or the mechanism for determining such a rate by the Relevant Governmental Body or (ii) any evolving or then-prevailing market convention for determining a rate of interest as a replacement to the applicable then-current Benchmark for syndicated credit facilities of the applicable currency and (b) the related Benchmark Replacement Adjustment; provided that, if the Benchmark Replacement Rate as so determined pursuant to any clause above for the Term Loans would be less than 0.00% per annum, the Benchmark Replacement Rate for such Term Loans will be deemed to be 0.00% per annum for the purposes of this Agreement. An amendment to reflect the Benchmark Replacement Rate shall become effective within five (5) Business Days of the date that notice of such Benchmark Replacement Rate is provided to the Lenders.

“**Benchmark Trigger Event**” has the meaning specified in Section 3.03(2)(d).

“**Benchmark Unavailability Period**” means, with respect to any Benchmark, the period (if any) (x) beginning at the time that a Benchmark Replacement Date has occurred if, at such



time, no Benchmark Replacement Rate has replaced the then-current Benchmark for all purposes hereunder and under any Loan Document in accordance with Section 3.03 and (y) ending at the time that a Benchmark Replacement Rate has replaced such then-current Benchmark for all purposes hereunder and under any Loan Document in accordance with Section 3.03.

“**Bid Deadline**” means “Bid Deadline” as defined in the Restructuring Support Agreement.

“**Board of Directors**” means, for any Person, the board of directors or other governing body of such Person or, if such Person does not have such a board of directors or other governing body and is owned or managed by a single entity, the Board of Directors of such entity, or, in either case, any committee thereof duly authorized to act on behalf of such Board of Directors. Unless otherwise provided, “Board of Directors” means the Board of Directors of the Borrower.

“**Borrower**” has the meaning specified in the introductory paragraph to this Agreement.

“**Borrower Materials**” has the meaning specified in Section 6.02.

“**Borrowing**” means a borrowing consisting of Loans of the same Class and Type made, converted or continued on the same date and, in the case of SOFR Loans, having the same Interest Period.

“**Borrowing Base**” shall mean the “Borrowing Base” as defined in the Prepetition ABL Credit Agreement.

“**Borrowing Date**” shall mean the date of any Borrowing hereunder and shall include the Closing Date.

“**Budget**” means the 13-week statement of the Loan Parties’ anticipated cash receipts and disbursements for the first 13 weeks of the Chapter 11 Cases, set forth on a weekly basis, including the anticipated uses of the proceeds of the Term Loans for such period, as may be updated from time to time by an Approved Updated Budget.

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

“**Budget Testing Date**” means, with respect to the Budget, 6:00 p.m. Central Standard Time on the Wednesday that is one full week occurring after the Petition Date and each Wednesday thereafter.

“**Budget Testing Period**” means, the week period ending immediately prior to the Budget Testing Date.

“**Business Day**” means any day other than a Saturday, Sunday or other day on which commercial banks are authorized to close under the Laws of the State of New York, or are in fact closed in, New York City; provided, that, when used in connection with a SOFR Loan, or any

other calculation or determination involving SOFR, the term “Business Day” means any day that is only a U.S. Government Securities Business Day.

“**Capital Stock**” means:

- (1) in the case of a corporation, corporate stock or shares in the capital of such corporation;
- (2) in the case of an association or business entity, any and all shares, interests, participations, rights or other equivalents (however designated) of corporate stock;
- (3) in the case of a partnership or limited liability company, partnership or membership interests (whether general or limited); and
- (4) any other interest or participation that confers on a Person the right to receive a share of the profits and losses of, or distributions of assets of, the issuing Person, but excluding from all of the foregoing any debt securities convertible into or exchangeable for Capital Stock, whether or not such debt securities include any right of participation with Capital Stock.

“**Capitalized Lease Obligation**” means, at the time any determination thereof is to be made, the amount of the liability in respect of a capital lease that would at such time be required to be capitalized and reflected as a liability on a balance sheet (excluding the footnotes thereto) prepared in accordance with GAAP as in effect on the Closing Date.

“**Carve Out**” means the sum of (i) all fees required to be paid to the Clerk of the Bankruptcy Court and to the Office of the United States Trustee for the Southern District of Texas (the “**U.S. Trustee**”) under section 1930(a) of title 28 of the United States Code plus interest at the statutory rate (without regard to the notice set forth in (iii) below); (ii) all reasonable fees and expenses up to \$50,000 incurred by a trustee under section 726(b) of the Bankruptcy Code (without regard to the notice set forth in (iii) below); (iii) the Allowed Professional Fees incurred by persons or firms retained by the Debtors pursuant to section 327, 328, or 363 of the Bankruptcy Code (the “**Debtor Professionals**”) and Committee pursuant to section 328 or 1103 of the Bankruptcy Code (the “**Committee Professionals**” and, together with the Debtor Professionals, the “**Professional Persons**”) at any time before or on the first Business Day following delivery by the Administrative Agent of a Carve Out Trigger Notice, whether allowed by the Bankruptcy Court prior to or after delivery of a Carve Out Trigger Notice; and (iv) Allowed Professional Fees of Professional Persons in an aggregate amount not to exceed \$3.5 million incurred after the first Business Day following delivery by the Administrative Agent of the Carve Out Trigger Notice, to the extent allowed at any time, whether by interim order, procedural order, or otherwise (which for the avoidance of doubt, includes all amounts required to be paid to Guggenheim Securities, LLC on account of any Transaction Fee under that certain engagement letter between Guggenheim Securities, LLC, Kirkland & Ellis LLP, and the Debtors, dated November 14, 2022, incurred at any time before or after delivery by the Administrative Agent of a Carve Out Trigger Notice, any payable under sections 328, 330, and/or 331 of the Bankruptcy Code, to the extent not yet paid or due as of the date of the delivery of the Carve Out Trigger Notice and allowed by order of this

Court at any time); (the amounts set forth in this clause (iv) being the “**Post-Carve Out Trigger Notice Cap**”).

“**Carve Out Reserves**” has the meaning specified in Section 2.02(10).

“**Carve Out Trigger Notice**” means a written notice delivered by email (or other electronic means) by the Administrative Agent to the Debtors, their lead restructuring counsel, the U.S. Trustee, and counsel to the Committee, which notice may be delivered following the occurrence and during the continuation of an Event of Default and acceleration of the Obligations hereunder, stating that the Post-Carve Out Trigger Notice Cap has been invoked.

“**Cash Collateral Account**” means an account held at, and subject to the sole dominion and control of, the Collateral Agent.

“**Cash Equivalents**” means:

- (1) Dollars;
- (2) [Reserved];
- (3) local currencies held by the Borrower or any Restricted Subsidiary from time to time in the ordinary course of business or consistent with industry practice;
- (4) readily marketable direct obligations issued or directly and fully and unconditionally guaranteed or insured by the U.S. government or any agency or instrumentality thereof the securities of which are unconditionally guaranteed as a full faith and credit obligation of such government with maturities of 24 months or less from the date of acquisition;
- (5) certificates of deposit, time deposits and eurodollar time deposits with maturities of one year or less from the date of acquisition, demand deposits, bankers’ acceptances with maturities not exceeding one year and overnight bank deposits, in each case, with any domestic or foreign commercial bank having capital and surplus of not less than \$500.0 million in the case of U.S. banks and \$100.0 million (or the U.S. Dollar equivalent as of the date of determination);
- (6) repurchase obligations for underlying securities of the types described in clauses (4) and (5) above or clauses (7) and (8) below entered into with any financial institution or recognized securities dealer meeting the qualifications specified in clause (5) above;
- (7) commercial paper and variable or fixed rate notes rated at least P-2 by Moody’s or at least A-2 by S&P (or, if at any time neither Moody’s nor S&P is rating such obligations, an equivalent rating from another Rating Agency) and in each case maturing within 24 months after the date of acquisition thereof;
- (8) marketable short-term money market and similar liquid funds having a rating of at least P-2 or A-2 from either Moody’s or S&P, respectively (or, if at any time

neither Moody's nor S&P is rating such obligations, an equivalent rating from another Rating Agency);

(9) securities issued or directly and fully and unconditionally guaranteed by any state, commonwealth or territory of the United States or any political subdivision or taxing authority of any such state, commonwealth or territory or any public instrumentality thereof having maturities of not more than 24 months from the date of acquisition thereof;

(10) with respect to any Foreign Subsidiary, readily marketable direct obligations issued or directly and fully and unconditionally guaranteed by any foreign government or any political subdivision or public instrumentality thereof, in each case having an Investment Grade Rating from either Moody's or S&P (or, if at any time neither Moody's nor S&P is rating such obligations, an equivalent rating from another Rating Agency selected by the Borrower) with maturities of 24 months or less from the date of acquisition;

(11) Indebtedness or Preferred Stock issued by Persons with a rating of "A" or higher from S&P or "A2" or higher from Moody's (or, if at any time neither Moody's nor S&P is rating such obligations, an equivalent rating from another Rating Agency) with maturities of 24 months or less from the date of acquisition;

(12) Investments with average maturities of 24 months or less from the date of acquisition in money market funds rated AAA- (or the equivalent thereof) or better by S&P or Aa3 (or the equivalent thereof) or better by Moody's (or, if at any time neither Moody's nor S&P is rating such obligations, an equivalent rating from another Rating Agency); and

(13) investment funds investing substantially all of their assets in securities of the types described in clauses (1) through (12) above.

In the case of Investments by any Foreign Subsidiary or Investments made in a country outside the United States, Cash Equivalents will also include (i) investments of the type and maturity described in clauses (1) through (13) above of foreign obligors, which investments or obligors (or the parents of such obligors) have ratings described in such clauses or equivalent ratings from comparable foreign rating agencies and (ii) other short-term investments utilized by Foreign Subsidiaries in accordance with normal investment practices for cash management in investments analogous to the foregoing investments in clauses (1) through (13) and in this paragraph.

**"Cash Management Agreement"** means any agreement entered into from time to time by Holdings, the Borrower or any Restricted Subsidiary in connection with Cash Management Services for collections, other Cash Management Services and for operating, payroll and trust accounts of such Person, including automatic clearing house services, controlled disbursement services, electronic funds transfer services, information reporting services, lockbox services, stop payment services and wire transfer services.

**"Cash Management Bank"** means any Person that is an Agent, a Lender or an Affiliate of an Agent or Lender at the time it entered into a Cash Management Agreement, whether or not such Person subsequently ceases to be an Agent, a Lender or an Affiliate of an Agent or Lender.

“**Cash Management Obligations**” means obligations owed by Holdings, the Borrower or any Restricted Subsidiary to any Cash Management Bank in connection with, or in respect of, any Cash Management Services.

“**Cash Management Order**” has the meaning specified in Section 4.01(1).

“**Cash Management Services**” means (a) commercial credit cards, merchant card services, purchase or debit cards, including non-card e-payables services, (b) treasury management services (including controlled disbursement, overdraft, automatic clearing house fund transfer services, return items and interstate depository network services), (c) foreign exchange, netting and currency management services and (d) any other demand deposit or operating account relationships or other cash management services, including under any Cash Management Agreements.

“**Casualty Event**” means any event that gives rise to the receipt by the Borrower or any Restricted Subsidiary of any insurance proceeds or condemnation awards in respect of any equipment, fixed assets or real property (including any improvements thereon) to replace or repair such equipment, fixed assets or real property.

“**Change in Law**” means the occurrence, after the Closing Date, of any of the following: (a) the adoption of any law, rule, regulation or treaty (excluding the taking effect after the Closing Date of a law, rule, regulation or treaty adopted prior to the Closing Date), (b) any change in any law, rule, regulation or treaty or in the administration, interpretation or application thereof by any Governmental Authority or (c) the making or issuance of any request, guideline or directive (whether or not having the force of law) by any Governmental Authority. It is understood and agreed that (i) the Dodd–Frank Wall Street Reform and Consumer Protection Act (Public Law 111 203, H.R. 4173), all Laws relating thereto and all interpretations and applications thereof and (ii) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States regulatory authorities, in each case pursuant to Basel III, shall, for the purpose of this Agreement, be deemed to be adopted subsequent to the Closing Date.

“**Change of Control**” means the occurrence of any of the following after the Closing Date:

(i) the direct or indirect sale, lease, transfer, conveyance or other disposition (other than by way of merger or consolidation), in one or a series of related transactions, of all or substantially all of the properties or assets of 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 Exchange Act)); (ii) the adoption of a plan relating to the liquidation or dissolution of Borrower; (iii) the consummation of any transaction (including, without limitation, any merger or consolidation), the result of which is that any Person (including any “person” (as defined above)), other than the Permitted Holders, becomes the beneficial owner, directly or indirectly, of more than thirty-five percent (35%) of the voting power by the issued and outstanding Equity Interests of the Borrower or any Parent Company; or (iv) the Permitted Holders ceasing to beneficially own (as defined in Rules 13d-3 and 13d-5 under the Exchange Act), in the aggregate, directly or indirectly, at least a majority of the aggregate ordinary voting power represented by the issued and outstanding Equity Interests of the Borrower.

Notwithstanding the foregoing, the commencement of the Chapter 11 Cases shall not constitute a “Change of Control” hereunder.

“**Chapter 11 Cases**” has the meaning specified in the recitals hereto.

“**Claim**” means any actions, suits or written demands or claims.

“**Class**” means (i) with respect to Commitments or Loans, those of such Commitments or Loans that have the same terms and conditions (without regard to differences in the Type of Loan, upfront fees, OID or similar fees paid or payable in connection with such Commitments or Loans, or differences in tax treatment (e.g., “fungibility”)) and (ii) with respect to Lenders, those of such Lenders that have Commitments or Loans of a particular Class.

“**Clerk**” means “clerk” as such term is used in section 1930(a) of title 28 of the United States Code.

“**Closing Date**” means the first date on which all the conditions precedent in Section 4.01 are satisfied or waived in accordance with Section 10.01, which date was February 10, 2023; *provided* that the Closing Date shall occur within two (2) Business Days of the Interim DIP Order.

“**Code**” means the U.S. Internal Revenue Code of 1986, as amended.

“**Collateral**” means (i) all the “Collateral” (or other similar term with the same meaning) as defined in the Collateral Documents and any other property of the Loan Parties in which a lien or security interest is or is purported to be granted to the Administrative Agent to secure the Obligations pursuant to any Collateral Document and (ii) the “DIP Collateral” referred to in the Bankruptcy Court DIP Orders, it being understood that “Collateral” shall include all such “DIP Collateral” irrespective of whether any such property was excluded pursuant to the Pre-Petition First Lien Loan Documents.

“**Collateral Agent**” has the meaning specified in the introductory paragraph to this Agreement.

“**Collateral and Guarantee Requirement**” means, at any time, the requirement that:

(a) all Obligations shall have been unconditionally guaranteed by Borrower and each Subsidiary of the Borrower other than an Excluded Subsidiary;

(b) the Obligations and the Guaranty shall have been secured by a first-priority security interest (subject to the Carve Out in all respects and Liens permitted by Section 7.01) through the provisions of the Interim DIP Order and the Final DIP Order, as applicable, in (i) all the Equity Interests of the Borrower, (ii) all Equity Interests of each direct, wholly owned Subsidiary that is directly owned by the Borrower or any Subsidiary Guarantor (other than the Excluded Equity); and

(c) except to the extent otherwise provided hereunder, including subject to Liens permitted by Section 7.01, or under any Collateral Document or the Bankruptcy Court DIP Order, the Obligations and the Guaranty shall have been secured by a perfected



first-priority (subject in all respects to the Carve Out, the Bankruptcy Court DIP Order (including with respect to Lien priorities set forth therein) and Liens permitted by Section 7.01) security interest (to the extent such security interest may be perfected by virtue of the Bankruptcy Court DIP Order or by filing financing statements under the Uniform Commercial Code or making any necessary filings for perfection with the United States Patent and Trademark Office or United States Copyright Office) in substantially all tangible and intangible personal property of the Borrower and each Guarantor (including accounts (other than deposit accounts, other bank or securities accounts), inventory, equipment, investment property, contract rights, applications and registrations of intellectual property filed in the United States, other general intangibles, and proceeds of the foregoing), in each case, with the priority required by the Collateral Documents and the Bankruptcy Court DIP Order, in each case subject to exceptions and limitations otherwise set forth in this Agreement, the Collateral Documents and the Bankruptcy Court DIP Order; *provided* that any such security interests (i) in Prepetition ABL Priority Collateral shall be subject to the terms of the Prepetition ABL Intercreditor Agreement.

The foregoing definition shall not require the perfection of pledges of or security interests in, or the obtaining of title insurance, surveys, abstracts or appraisals with respect to, particular assets if and for so long as, in the reasonable judgment of the Required Lenders and the Borrower, the cost of perfecting such pledges or security interests in such assets or obtaining title insurance, surveys abstracts or appraisals in respect of such assets shall be excessive in view of the benefits to be obtained by the Lenders therefrom.

“**Collateral Documents**” means, collectively, the Bankruptcy Court DIP Orders, the Security Agreement, the Intellectual Property Security Agreements, the Mortgages (if any), each of the collateral assignments, security agreements, pledge agreements or other similar agreements delivered to the Administrative Agent, Collateral Agent or the Lenders pursuant to Sections 4.01(1)(c), 6.11 or 6.13 and each of the other agreements, instruments or documents that creates or purports to create a Lien in favor of the Collateral Agent for the benefit of the Secured Parties.

“**Commitment**” means with respect to each Lender, such Lender’s New Money Delayed Draw Commitment and such Lender’s Roll-Up Loans Commitment or any combination thereof.

“**Commitment Premium**” has the meaning specified in Section 2.09(2).

“**Committed Loan Notice**” means a notice of (1) a Borrowing with respect to a given Class of Loans, (2) a conversion of Loans of a given Class from one Type to the other or (3) a continuation of SOFR Loans of a given Class, pursuant to Section 2.02(1), which, if in writing, shall be substantially in the form of Exhibit A-1.

“**Committee**” has the meaning specified in Section 6.14.

“**Committee Professionals**” has the meaning set forth in the definition of “Carve Out”.

“**Commodity Exchange Act**” means the Commodity Exchange Act (7 U.S.C. §1 et. seq.), as amended from time to time and any successor statute.

“**Compensation Period**” has the meaning specified in Section 2.12(3)(b).

“**Compliance Certificate**” means a certificate substantially in the form of Exhibit C and which certificate shall in any event be a certificate of a Financial Officer of the Borrower

(1) certifying as to whether a Default has occurred and is continuing and, if applicable, specifying the details thereof and any action taken or proposed to be taken with respect thereto (in each case, other than any Default with respect to which the Administrative Agent has otherwise obtained notice in accordance with Section 6.03(1)); and

(2) in the case of financial statements delivered under Section 6.01(1), setting forth reasonably detailed calculations of the Net Proceeds received during the applicable period by or on behalf of the Borrower or any Restricted Subsidiary in respect of any Asset Sale or Casualty Event subject to prepayment pursuant to Section 2.05(2)(b)(i).

“**Consultant**”, means, as of the Closing Date, Christophe Majeske and at any time following his resignation, death, incapacity or removal by the Required Lenders, an individual, acceptable to the Administrative Agent (as directed by the Required Lenders), engaged by the Loan Parties on terms, including, without limitation, the scope of the services and fees, acceptable to the Administrative Agent (as directed by the Required Lenders).

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

“**Controlled Investment Affiliate**” means, as to any Person, any other Person, other than any Investor, which directly or indirectly is in control of, is controlled by, or is under common control with such Person and is organized by such Person (or any Person controlling such Person) primarily for making direct or indirect equity or debt investments in the Borrower or other companies.

“**Debtor Professionals**” means persons or firms retained by the Loan Parties pursuant to section 327, 328 or 363 of the Bankruptcy Code.

“**Debtor Relief Laws**” means the Bankruptcy Code of the United States, and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization or similar debtor relief Laws of the United States or other applicable jurisdictions from time to time in effect and affecting the rights of creditors generally.

“**Debtors**” has the meaning specified in the recitals hereto.

“**Declined Proceeds**” has the meaning specified in Section 2.05(2)(g).

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



**“Default Rate”** means an interest rate with respect to any SOFR Loan or Base Rate Loan, equal to (1) the Base Rate, *plus* (2) the Applicable Rate applicable to Base Rate Loans, *plus* (3) 2.00% per annum; *provided* that with respect to the outstanding principal amount of any Loan, the Default Rate shall be an interest rate equal to the interest rate (including any Applicable Rate) otherwise applicable to such Loan (giving effect to Section 2.02(3)) *plus* 2.00% per annum, in each case, to the fullest extent permitted by applicable Laws.

**“Defaulting Lender”** means, subject to Section 2.17(2), any Lender that (a) has failed to perform any of its funding obligations hereunder, including in respect of its Loans, within one Business Day of the date required to be funded by it hereunder, (b) has notified the Borrower or the Administrative Agent that it does not intend to comply with its funding obligations or has made a public statement to that effect with respect to its funding obligations hereunder or under other agreements in which it commits to extend credit, (c) has failed, within three (3) Business Days after request by the Administrative Agent, to confirm in a manner satisfactory to the Administrative Agent that it will comply with its funding obligations, (d) has, or has a direct or indirect parent company that has, (i) become or is the subject of a proceeding under any Debtor Relief Law, (ii) had a receiver, conservator, trustee, administrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or assets or a custodian appointed for it or (iii) taken any action in furtherance of, or indicated its consent to, approval of or acquiescence in any such proceeding or appointment or (e) has become the subject of a Bail-In Action; *provided* that a Lender shall not be a Defaulting Lender solely by virtue of the ownership or acquisition of any equity interest in that Lender or any direct or indirect parent company thereof by a Governmental Authority so long as such ownership interest does not result in or provide such Lender with immunity from the jurisdiction of courts within the United States or from the enforcement of judgments or writs of attachment on its assets or permit such Lender (or such Governmental Authority or instrumentality) to reject, repudiate, disavow or disaffirm any contracts or agreements made with such Lender. Any determination by the Administrative Agent that a Lender is a Defaulting Lender under this definition shall be conclusive absent manifest error, and such Lender shall be deemed to be a Defaulting Lender (subject to Section 2.17) upon delivery of written notice of such determination to the Borrower and each Lender.

**“DIP Superpriority Claims”** has the meaning assigned to such term in Section 10.28(a)(i).

**“discharge”** means, with respect to any Indebtedness, the repayment, prepayment, repurchase (including pursuant to an offer to purchase), redemption, defeasance or other discharge of such Indebtedness, any such case in whole or in part.

**“Disclosure Statement”** has the meaning specified in Section 8.01(12)(a).

**“disposition”** has the meaning set forth in the definition of “Asset Sale”.

**“Disqualified Institution”** means (a) any competitor of the Borrower or its Subsidiaries identified in writing by or on behalf of the Borrower or the Sponsor to the Administrative Agent from time to time after the Closing Date and (b) any Affiliate of the entities described in the preceding clause (a) (excluding, in the case of clause (a), bona fide debt funds) that are either readily identifiable as such on the basis of their name or are identified as such in writing by or on behalf of the Borrower or the Sponsor to the Administrative Agent from time to time after the

Closing Date; it being understood and agreed that the identification of any Person as a Disqualified Institution after the Closing Date shall not apply to retroactively disqualify any Person that has previously acquired an assignment or participation interest in any Loan, subject to Section 10.07(n), until such time such Person no longer constitutes a Lender. The identity of Disqualified Institutions shall be posted or distributed to all Lenders and prospective assignees following request therefor. Notwithstanding the foregoing, each Loan Party and the Lenders acknowledge and agree that the Administrative Agent shall not have any responsibility or obligation to determine whether any Lender or potential Lender is a Disqualified Institution, and the Administrative Agent shall have no liability with respect to any assignment or participation made to a Disqualified Institution.

**“Disqualified Stock”** means, with respect to any Person, any Capital Stock of such Person which, by its terms, or by the terms of any security into which it is convertible or for which it is redeemable or exchangeable, or upon the happening of any event, matures or is mandatorily redeemable (other than solely as a result of a change of control, asset sale, casualty, condemnation or eminent domain) pursuant to a sinking fund obligation or otherwise, or is redeemable at the option of the holder thereof (other than (i) for any Qualified Equity Interests or (ii) solely as a result of a change of control, asset sale, casualty, condemnation or eminent domain), in whole or in part, in each case prior to the date 91 days after Latest Maturity Date or the date the Loans are no longer outstanding and the Commitments have been terminated; *provided* that if such Capital Stock is issued pursuant to any plan for the benefit of, future, current or former employees, directors, officers, members of management or consultants (or their respective Controlled Investment Affiliates or Immediate Family Members or any permitted transferees thereof) of the Borrower or its Subsidiaries or any Parent Company or by any such plan to such employees, directors, officers, members of management or consultants (or their respective Controlled Investment Affiliates or Immediate Family Members or any permitted transferees thereof), such Capital Stock will not constitute Disqualified Stock solely because it may be required to be repurchased by the Borrower or its Subsidiaries in order to satisfy applicable statutory or regulatory obligations or as a result of such employee’s, director’s, officer’s, management member’s or consultant’s termination, death or disability; *provided further* any Capital Stock held by any future, current or former employee, director, officer, member of management or consultant (or their respective Controlled Investment Affiliates or Immediate Family Members or any permitted transferees thereof) of the Borrower, any of its Subsidiaries, any Parent Company, or any other entity in which the Borrower or a Restricted Subsidiary has an Investment and is designated in good faith as an “affiliate” by the Board of Directors (or the compensation committee thereof), in each case pursuant to any equity subscription or equity holders’ agreement, management equity plan or stock option plan or any other management or employee benefit plan or agreement will not constitute Disqualified Stock solely because it may be required to be repurchased by the Borrower or any Subsidiary or in order to satisfy applicable statutory or regulatory obligations or as a result of such employee’s, director’s, officer’s, management member’s or consultant’s termination, death or disability. For the purposes hereof, the aggregate principal amount of Disqualified Stock will be deemed to be equal to the greater of its voluntary or involuntary liquidation preference and maximum fixed repurchase price, determined on a consolidated basis in accordance with GAAP, and the “maximum fixed repurchase price” of any Disqualified Stock that does not have a fixed repurchase price will be calculated in accordance with the terms of such Disqualified Stock as if such Disqualified Stock were purchased on any

date on which the Consolidated Total Debt will be required to be determined pursuant to this Agreement, and if such price is based upon, or measured by, the fair market value of such Disqualified Stock.

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

“**Domestic Subsidiary**” means any direct or indirect Subsidiary that is organized under the Laws of the United States, any state thereof or the District of Columbia.

“**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.

“**Electing DIP Term Lender**” has the meaning specified in Section 2.01(4).

“**Eligible Assignee**” means any Person that meets the requirements to be an assignee under Section 10.07(b), *provided* that no Defaulting Lender(s) or Disqualified Institution(s) may be Eligible Assignee(s).

“**Environment**” means ambient air, indoor air, surface water, groundwater, drinking water, soil, surface and sub-surface strata, and natural resources such as wetlands, flora and fauna.

“**Environmental Claim**” means any administrative, regulatory or judicial actions, suits, demands, demand letters, claims, liens, notices of noncompliance or violation, or proceedings with respect to any Environmental Liability or Environmental Law, (hereinafter “**Claims**”), including (i) any Claims by Governmental Authorities for enforcement, cleanup, removal, response, remedial or other actions or damages pursuant to any Environmental Law and (ii) any claims by any third party seeking damages, contribution, indemnification, cost recovery, compensation or injunctive relief pursuant to any Environmental Law.

“**Environmental Laws**” means any Laws relating to pollution or the protection of the Environment or, to the extent relating to exposure to Hazardous Materials, the protection of human health.

“**Environmental Liability**” means any liability (including any liability for damages, costs of environmental remediation, fines, penalties or indemnities) resulting from or relating to (a) 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 or

threatened Release of any Hazardous Materials or (e) any contract, agreement or other consensual arrangement pursuant to which liability is assumed or imposed with respect to any of the foregoing.

**“Environmental Permit”** means any permit, approval, identification number, license or other authorization required under any Environmental Law.

**“Equity Interests”** means, with respect to any Person, the Capital Stock of such Person and all warrants, options or other rights to acquire Capital Stock of such Person, but excluding any debt security that is convertible into, or exchangeable for, Capital Stock of such Person.

**“ERISA”** means the Employee Retirement Income Security Act of 1974, as amended from time to time.

**“ERISA Affiliate”** means any trade or business (whether or not incorporated) that together with any Loan Party is treated as a single employer within the meaning of Section 414 of the Code or Section 4001 of ERISA.

**“ERISA Event”** means (a) a Reportable Event with respect to a Pension Plan; (b) a withdrawal by any Loan Party or any of their respective ERISA Affiliates from a Pension Plan subject to Section 4063 of ERISA during a plan year in which it was a substantial employer (as defined in Section 4001(a)(2) of ERISA) or a cessation of operations that is treated as a termination under Section 4062(e) of ERISA; (c) a complete or partial withdrawal by any Loan Party or any of their respective ERISA Affiliates from a Multiemployer Plan, written notification of any Loan Party or any of their respective ERISA Affiliates concerning the imposition of Withdrawal Liability or written notification that a Multiemployer Plan is “insolvent” (within the meaning of Section 4245 of ERISA) or has been determined to be in “endangered” or “critical” status (within the meaning of Section 432 of the Code or Section 305 of ERISA); (d) the filing under Section 4041(c) of ERISA of a notice of intent to terminate a Pension Plan, the treatment of a Pension Plan or Multiemployer Plan amendment as a termination under Sections 4041 or 4041A of ERISA, or the commencement in writing of proceedings by the PBGC to terminate a Pension Plan or Multiemployer Plan; (e) the imposition of any liability under Title IV of ERISA with respect to the termination of any Pension Plan or Multiemployer Plan, other than for the payment of plan contributions or PBGC premiums due but not delinquent under Section 4007 of ERISA, upon any Loan Party or any of their respective ERISA Affiliates; (f) an event or condition which constitutes grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Pension Plan or Multiemployer Plan; (g) a failure to satisfy the minimum funding standard (within the meaning of Section 302 of ERISA or Section 412 of the Code) with respect to a Pension Plan, whether or not waived; (h) the application for a minimum funding waiver under Section 302(c) of ERISA with respect to a Pension Plan; (i) the imposition of a lien under Section 303(k) of ERISA or Section 412(c) of the Code with respect to any Pension Plan; (j) a determination that any Pension Plan is in “at risk” status (within the meaning of Section 303 of ERISA or Section 430 of the Code); or (k) the occurrence of a nonexempt prohibited transaction with respect to any Pension Plan maintained or contributed to by any Loan Party or any of their respective ERISA Affiliates (within the meaning of Section 4975 of the Code or Section 406 of ERISA) which could result in liability to any Loan Party.

**“Erroneous Payment”** has the meaning specified in Section 9.19(a).

“**Erroneous Payment Deficiency Assignment**” has the meaning specified in Section 9.19(d)(i).

“**Erroneous Payment Impacted Class**” has the meaning specified in Section 9.19(d)(i).

“**Erroneous Payment Return Deficiency**” has the meaning specified in Section 9.19(d)(i).

“**Erroneous Payment Subrogation Rights**” has the meaning specified in Section 9.19(e).

“**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.

“**Event of Default**” has the meaning specified in Section 8.01.

“**Exchange Act**” means the Securities Exchange Act of 1934, as amended, and the rules and regulations of the SEC promulgated thereunder.

“**Excluded Assets**” 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) the Excluded Equity, (c) any deposit account or similar account established as “assurance of payment” for a utility pursuant to section 366 of the Bankruptcy Code, (d) 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 Collateral Document from attaching to such assets, (e) any particular asset, if the pledge thereof or the security interest therein is prohibited by applicable Law other than to the extent such prohibition is rendered ineffective under or by virtue of the UCC, the Bankruptcy Court DIP Order or other applicable Law notwithstanding such prohibition, (f) 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 (x) the pledge of such rights is deemed ineffective under or by virtue of the UCC, the Bankruptcy Court DIP Order or other applicable Law or principle of equity notwithstanding such prohibition or restriction, (g) licenses and any other property and assets to the extent that the Collateral Agent may not validly possess a security interest therein under applicable Laws (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 Bankruptcy Court DIP Order or other applicable Law, or the pledge or creation of a security interest in which would require governmental consent, approval, license or authorization, provided that Collateral shall include to the maximum extent permitted by applicable Law all rights incident or appurtenant to such licenses, property and assets (except to the extent any Lien on such asset in favor of the Collateral Agent requires consent, approval or authorization from any Governmental Authority), (h) 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 Bankruptcy Court DIP Order or other applicable Law or principle of equity), (i) any escrow, fiduciary, payroll, tax withholding

or trust account (each, an “**Excluded Account**”), (j) Avoidance Actions, and/or (k) cash deposits and/or cash collateral permitted by Section 7.01.

“**Excluded Equity**” means Equity Interests (or, in the case of clause (iii) below, Voting Stock) (i) [reserved], (ii) [reserved], (iii) [reserved] (iv) of any Subsidiary with respect to which the Administrative Agent and the Borrower have determined in their reasonable judgment and agreed in writing that the costs of providing a pledge of such Equity Interests or perfection thereof is excessive in view of the benefits to be obtained by the Secured Parties therefrom, (v) [reserved], (vi) to the extent prohibited by, or creating an enforceable right of termination in favor of any other party thereto (other than the Borrower or any wholly owned Restricted Subsidiary of the Borrower), under the terms of any applicable Organizational Documents, joint venture agreement or shareholders’ agreement, equity interests in any person other than wholly-owned Restricted Subsidiaries; and (vii) of any Subsidiary outside the United States the pledge of which is prohibited by applicable Laws or which would reasonably be expected to result in a violation or breach of, or conflict with, fiduciary duties of such Subsidiary’s officers, directors or managers.

“**Excluded Subsidiaries**” means all of the following and “**Excluded Subsidiary**” means any of them:

- (1) any Subsidiary that is not a direct or indirect Subsidiary of the Borrower,
- (2) any Foreign Subsidiary,
- (3) any Subsidiary (including any regulated entity that is subject to net worth or net capital or similar capital and surplus restrictions) that is prohibited or restricted by applicable Law, accounting policies or by Contractual Obligation existing on the Closing Date (or, with respect to any Subsidiary acquired by the Borrower or a Restricted Subsidiary after the Closing Date (and so long as such Contractual Obligation was not incurred in contemplation of such acquisition), on the date such Subsidiary is so acquired) from providing a Guaranty, or if such Guaranty would require governmental (including regulatory) or third party (other than a Loan Party) consent, approval, license or authorization, unless such consent, approval, license or authorization has been received, and, in each case, on for so long as such restriction is continuing,
- (4) any special purpose securitization vehicle (or similar entity), and
- (5) NBGroup, LLC.

“**Excluded Swap Obligation**” means, with respect to any Loan Party, any obligation (a “**Swap Obligation**”) to pay or perform under any agreement, contract or transaction that constitutes a “swap” within the meaning of Section 1a(47) of the Commodity Exchange Act, if, and to the extent that, all or a portion of the guarantee of such Loan Party of, or the grant by such Loan Party of a security interest to secure, such Swap Obligation (or any guarantee thereof) is or becomes illegal or unlawful under the Commodity Exchange Act or any rule, regulation or order of the Commodity Futures Trading Commission (or the application or official interpretation of any thereof) by virtue of such Loan Party’s failure for any reason to constitute an “eligible contract participant” as defined in the Commodity Exchange Act (determined after giving effect to any



“keepwell, support or other agreement” for the benefit of such Loan Party for all purposes of Section 1a(18)(A)(v)(II) of the Commodity Exchange Act) at the time the Guaranty of such Loan Party, or a grant by such Loan Party of a security interest, becomes effective with respect to such Swap Obligation. If a Swap Obligation arises under a master agreement governing more than one swap, such exclusion shall apply only to the portion of such Swap Obligation that is attributable to swaps for which such Guaranty or security interest becomes illegal.

“**Excluded Taxes**” means, with respect to each Agent and each Lender,

(1) (A) any tax on such Agent or Lender’s net income or profits (or franchise tax in lieu of such tax on net income or profits) imposed by a jurisdiction as a result of such Agent or Lender being organized under the laws of or having its principal office or applicable Lending Office located in such jurisdiction or (B) any Tax as a result of any other present or former connection between such Agent or Lender and the jurisdiction (including as a result of such Agent or Lender carrying on a trade or business, having a permanent establishment or being a resident for tax purposes in such jurisdiction) other than a connection arising from such Agent or Lender having executed, delivered, enforced, 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 sold or assigned an interest in, any Loan or Loan Document,

(2) any branch profits tax or similar tax imposed by any jurisdiction described in clause (1),

(3) other than with respect to any Lender that becomes a party hereto pursuant to the Borrower’s request under Section 3.07, any U.S. federal withholding tax that is imposed on amounts payable to a Lender pursuant to a Law in effect at the time such Lender becomes a party hereto (or designates a new Lending Office), except, in the case of a Lender that designates a new Lending Office or is an assignee, to the extent that such Lender (or its assignor, if any) was entitled, immediately prior to the time of designation of a new Lending Office (or assignment), to receive additional amounts from a Loan Party with respect to such U.S. federal withholding tax pursuant to Section 3.01,

(4) any withholding tax attributable to a Lender’s failure to comply with Section 3.01(3),

(5) any U.S. federal withholding tax imposed under FATCA and

(6) any interest, additions to taxes and penalties with respect to any taxes described in clauses (1) through (5) of this definition.

“**Executive Order**” has the meaning specified in Section 5.17.

“**Facilities**” means the New Money Loans and the Roll-up Loans, or, as the context may require, and “**Facility**” means any of them.

“**fair market value**” means, with respect to any asset or liability, the fair market value of such asset or liability as determined by the Borrower in good faith.

“**FATCA**” means Sections 1471 through 1474 of the Code as in effect on the date hereof or any amended or successor version thereof that is substantively comparable and not materially more onerous to comply with (and, in each case, any regulations promulgated thereunder or official interpretations thereof), and any agreements entered into pursuant to Section 1471(b)(1) of the Code, and any intergovernmental agreements (together with any law implementing such agreements).

“**FCPA**” means the U.S. Foreign Corrupt Practices Act of 1977, as amended.

“**Federal Funds Rate**” means, for any day, the rate per annum equal to the weighted average of the rates on overnight federal funds transactions with members of the Federal Reserve System on such day, as published by the Federal Reserve Bank on the Business Day next succeeding such day; *provided* that (a) if such day is not a Business Day, the Federal Funds Rate for such day shall be such rate on such transactions on the next preceding Business Day as so published on the next succeeding Business Day and (b) if no such rate is so published on such next succeeding Business Day, the Federal Funds Rate for such day shall be the average rate (rounded upward, if necessary, to a whole multiple of 1/100 of 1%) charged to the Administrative Agent on such day on such transactions as determined by the Administrative Agent.

“**Fee Letter**” means that certain Fee Letter, dated as of the date hereof, as amended, restated, amended and restated, supplemented or otherwise modified from time to time in accordance with the terms thereof.

“**Final DIP Order**” means the Final DIP Order of the Bankruptcy Court, approving the Facility on a final basis, in form and substance satisfactory to the Required Lenders, as the same may be amended, modified or supplemented from time to time with the express written consent of the Required Lenders (and with respect to amendments, modifications or supplements that adversely affect the rights or duties of the Administrative Agent, the Administrative Agent).

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

“**Financial Officer**” means, with respect to a Person, the chief financial officer, accounting officer, treasurer, controller or other senior financial or accounting officer of such Person, as appropriate.

“**Flood Insurance Laws**” means, collectively, (i) the National Flood Insurance Act of 1968 as now or hereafter in effect or any successor statute thereto, (ii) the Flood Disaster Protection Act of 1973 as now or hereafter in effect or any successor statute thereto, (iii) the National Flood Insurance Reform Act of 1994 as now or hereafter in effect or any successor statute thereto and (iv) the Flood Insurance Reform Act of 2004 as now or hereafter in effect or any successor statute thereto.

“**Flood Insurance Requirements**” has the meaning specified in Section 6.07(2).

“**floor**” means, with respect to any reference rate of interest, any fixed minimum amount specified for such rate.



“**Foreign Asset Sale**” has the meaning specified in Section 2.05(2)(h).

“**Foreign Casualty Event**” has the meaning specified in Section 2.05(2)(h).

“**Foreign Lender**” means a Lender that is not a United States person within the meaning of Section 7701(a)(30) of the Code.

“**Foreign Plan**” means any material employee benefit plan, program or agreement maintained or contributed to by, or entered into with, the Borrower or any Subsidiary of the Borrower with respect to employees employed outside the United States (other than benefit plans, programs or agreements that are mandated by applicable Laws).

“**Foreign Subsidiary**” means any direct or indirect Restricted Subsidiary of the Borrower that is not a Domestic Subsidiary.

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

“**GAAP**” means generally accepted accounting principles in the United States set forth in the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or in such other statements by such other entity as have been approved by a significant segment of the accounting profession, as in effect from time to time. Notwithstanding any other provision contained herein, the amount of any Indebtedness under GAAP with respect to Capitalized Lease Obligations shall be determined in accordance with the definition of Capitalized Lease Obligations.

Notwithstanding the foregoing, if at any time any change occurs after the Closing Date in GAAP or in the application thereof on the computation of any financial ratio or financial requirement, or compliance with any covenant, set forth in any Loan Document, and the Borrower shall so request (regardless of whether any such request is given before or after such change), the Administrative Agent, the Lenders and the Borrower will negotiate in good faith to amend (subject to the approval of the Required Lenders) such ratio, requirement or covenant to preserve the original intent thereof in light of such change in GAAP; provided further that until so amended, (a) such ratio, requirement or covenant 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 which include a reconciliation between calculations of such ratio or requirement made before and after giving effect to such change in GAAP.

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

“**Granting Lender**” has the meaning specified in Section 10.07(g).

“**guarantee**” means a guarantee (other than by endorsement of negotiable instruments for collection in the ordinary course of business or consistent with industry practice), direct or indirect, in any manner (including letters of credit and reimbursement agreements in respect thereof), of all or any part of any Indebtedness or other obligations.

“**Guarantee**” means, as to any Person, without duplication, (a) any obligation, contingent or otherwise, of such Person guaranteeing or having the economic effect of guaranteeing any Indebtedness or other monetary obligation payable or performable by another Person (the “**primary obligor**”) in any manner, whether directly or indirectly, and including any obligation of such Person, direct or indirect, (i) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or other monetary obligation, (ii) to purchase or lease property, securities or services for the purpose of assuring the obligee in respect of such Indebtedness or other monetary obligation of the payment or performance of such Indebtedness or other monetary obligation, (iii) to maintain working capital, equity capital or any other financial statement condition or liquidity or level of income or cash flow of the primary obligor so as to enable the primary obligor to pay such Indebtedness or other monetary obligation or (iv) entered into for the purpose of assuring in any other manner the obligee in respect of such Indebtedness or other monetary obligation of the payment or performance thereof or to protect such obligee against loss in respect thereof (in whole or in part) or (b) any Lien on any assets of such Person securing any Indebtedness or other monetary obligation of any other Person, whether or not such Indebtedness or other monetary obligation is assumed by such Person (or any right, contingent or otherwise, of any holder of such Indebtedness to obtain any such Lien); *provided* that the term “Guarantee” shall not include endorsements for collection or deposit, in either case in the ordinary course of business, or customary and reasonable indemnity obligations in effect on the Closing Date or entered into in connection with any acquisition or disposition of assets permitted under this Agreement (other than such obligations with respect to Indebtedness). The amount of any Guarantee shall be deemed to be an amount equal to the stated or determinable amount of the related primary obligation, or portion thereof, in respect of which such Guarantee is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof as determined by the guaranteeing Person in good faith. The term “Guarantee” as a verb has a corresponding meaning.

“**Guarantor**” has the meaning specified in clause (2) of the definition of “Collateral and Guarantee Requirement”; *provided* that, on the Closing Date, the Guarantors shall be Holdings, N&B Industries, Inc., Nielsen & Bainbridge, LLC, Design Solutions International, Inc., Cheyenne Products LLC, Dwell & Decor Outdoor LLC, Home Decor Holding Company, Patton Picture Company, Jimco Lamp & Manufacturing Company, and Quoizel, LLC, Dwelling & Decor, LLC, Topco and Propco.

For avoidance of doubt, the Borrower may, in its sole discretion, cause any domestic Parent Company or Restricted Subsidiary that is not required to be a Guarantor to Guarantee the Obligations by causing such Parent Company or Restricted Subsidiary to execute a joinder to the Guaranty (substantially in the form provided therein or as the Administrative Agent, the Borrower and such Guarantor may otherwise agree), and any such Parent Company or Restricted Subsidiary shall be a Guarantor hereunder for all purposes.

“**Guaranty**” means (a) the Guarantee of the Obligations by the Guarantors substantially in the form of Exhibit E, (b) each other Guarantee and Guarantee supplement delivered pursuant to Section 6.11 and (c) each other Guarantee and Guarantee supplement delivered by any Parent Company or Restricted Subsidiary pursuant to the second sentence of the definition of “Guarantor”.

“**Hazardous Materials**” means all explosive or radioactive substances or wastes, and all other hazardous or toxic substances or wastes, pollutants and contaminants and chemicals in any form, including petroleum or petroleum distillates, asbestos or asbestos-containing materials, polychlorinated biphenyls, or radon gas and infectious or medical wastes, to the extent any of the foregoing are regulated pursuant to, or can form the basis for liability under, any Environmental Law.

“**Hedge Agreement**” means (a) any and all rate swap transactions, basis swaps, credit derivative transactions, forward rate transactions, commodity swaps, commodity options, forward commodity contracts, equity or equity index swaps or options, bond or bond price or bond index swaps or options or forward bond or forward bond price or forward bond index transactions, interest rate options, forward foreign exchange transactions, cap transactions, floor transactions, collar transactions, currency swap transactions, cross-currency rate swap transactions, currency options, spot contracts or any other similar transactions or any combination of any of the foregoing (including any options to enter into any of the foregoing), whether or not any such transaction is governed by or subject to any master agreement, and (b) any and all transactions of any kind, and the related confirmations, which are subject to the terms and conditions of, or governed by, any form of master agreement published by the International Swaps and Derivatives Association, Inc., any International Foreign Exchange Master Agreement or any other master agreement (any such master agreement, together with any related schedules, a “**Master Agreement**”), including any such obligations or liabilities under any Master Agreement.

“**Hedge Bank**” means any Person party to a Hedge Agreement that is an Agent, a Lender or an Affiliate of any of the foregoing on the Closing Date or at the time it enters into such Hedge Agreement, in its capacity as a party thereto, whether or not such Person subsequently ceases to be an Agent, a Lender or an Affiliate of any of the foregoing.

“**Hedging Obligations**” means, with respect to any Person, the obligations of such Person under any Hedge Agreement.

“**Holdings**” has the meaning specified in the introductory paragraph to this Agreement.

“**Immediate Family Members**” means with respect to any individual, such individual’s child, stepchild, grandchild or more remote descendant, parent, stepparent, grandparent, spouse, former spouse, qualified domestic partner, sibling, mother-in-law, father-in-law, son-in-law and daughter-in-law (including, in each case, adoptive relationships) and any trust, partnership or other bona fide estate-planning vehicle the only beneficiaries of which are any of the foregoing individuals or any private foundation or fund that is controlled by any of the foregoing individuals or any donor-advised fund of which any such individual is the donor.

“**incur**” and “**incurrence**” has the meaning specified in Section 7.02(a)(i).

“**Indebtedness**” means, with respect to any Person, without duplication:

(1) any indebtedness (including principal and premium) of such Person, whether or not contingent:

(a) in respect of borrowed money;

(b) evidenced by bonds, notes, debentures or similar instruments or letters of credit or bankers’ acceptances (or, without duplication, reimbursement agreements in respect thereof);

(c) representing the balance deferred and unpaid of the purchase price of any property (including Capitalized Lease Obligations) due more than twelve months after such property is acquired, except (i) any such balance that constitutes an obligation in respect of a commercial letter of credit, a trade payable or similar obligation to a trade creditor, in each case accrued in the ordinary course of business or consistent with industry practice, (ii) any earn-out obligations until such obligation is reflected as a liability on the balance sheet (excluding any footnotes thereto) of such Person in accordance with GAAP and is not paid within 60 days after becoming due and payable and (iii) accruals for payroll and other liabilities accrued in the ordinary course of business;

(d) representing the net obligations under any Hedging Obligations; or

(e) in respect of Disqualified Stock

if and to the extent that any of the foregoing Indebtedness (other than obligations in respect of letters of credit and Hedging Obligations) would appear as a liability upon a balance sheet (excluding the footnotes thereto) of such Person prepared in accordance with GAAP; *provided* that Indebtedness of any Parent Company appearing upon the balance sheet of the Borrower solely by reason of push-down accounting under GAAP will be excluded;

(2) to the extent not otherwise included, any obligation by such Person to be liable for, or to pay, as obligor, guarantor or otherwise, on the obligations of the type referred to in clause (1) of a third Person (whether or not such items would appear upon the balance sheet of such obligor or guarantor), other than by endorsement of negotiable instruments for collection in the ordinary course of business or consistent with industry practice; and

(3) to the extent not otherwise included, the obligations of the type referred to in clause (1) of a third Person secured by a Lien on any asset owned by such first Person, whether or not such Indebtedness is assumed by such first Person; *provided* that the amount of such Indebtedness will be the lesser of (i) the fair market value of such asset at such date of determination and (ii) the amount of such Indebtedness of such other Person;

*provided* that, notwithstanding any of the foregoing sub-clauses of this definition, Indebtedness will be deemed not to include:

(i) Guarantees of obligations not constituting Indebtedness described herein incurred in the ordinary course of business or consistent with industry practice,

(ii) reimbursement obligations under commercial letters of credit (*provided* that unreimbursed amounts under letters of credit will be counted as Indebtedness three (3) Business Days after such amount is drawn),

(iii) [reserved],

(iv) accrued expenses,

(v) deferred or prepaid revenues, and

(vi) asset retirement obligations and obligations in respect of reclamation and workers compensation (including pensions and retiree medical care);

*provided further* that Indebtedness will be calculated without giving effect to the effects of Accounting Standards Codification Topic No. 815, *Derivatives and Hedging*, and related interpretations to the extent such effects would otherwise increase or decrease an amount of Indebtedness for any purpose under this Agreement as a result of accounting for any embedded derivatives created by the terms of such Indebtedness.

“**Indemnified Liabilities**” has the meaning specified in Section 10.05.

“**Indemnitees**” has the meaning specified in Section 10.05.

“**Independent Assets or Operations**” means, with respect to any Parent Company, that Parent Company’s total assets, revenues, income from continuing operations before income taxes and cash flows from operating activities (excluding in each case amounts related to its investment in the Borrower and the Restricted Subsidiaries), determined in accordance with GAAP and as shown on the most recent balance sheet of such Parent Company, is more than 3.0% of such Parent Company’s corresponding consolidated amount.

“**Independent Financial Advisor**” means an accounting, appraisal, investment banking firm or consultant of nationally recognized standing that, in the good faith judgment of the Borrower, is qualified to perform the task for which it has been engaged.

“**Information**” has the meaning specified in Section 10.09.

“**Initial Non-Voting Lender**” means each Lender set forth on Schedule 10.07.

“**Intellectual Property Security Agreements**” has the meaning specified in the Security Agreement.

“**Interest Payment Date**” means, as to any Loan of any Class, the first Business Day of each month and the applicable Maturity Date of the Loans of such Class.

“**Interest Period**” means, as to each SOFR Loan, the period commencing on the date such SOFR Loan is disbursed or converted to or continued as a SOFR Loan and ending on the date three (3) months thereafter ; provided that:

(1) any Interest Period that would otherwise end on a day that is not a Business Day shall be extended to the next succeeding Business Day unless such Business Day falls in another calendar month, in which case such Interest Period shall end on the next preceding Business Day; and

(2) 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.

“**Interim DIP Order**” means the order of the Bankruptcy Court, approving the Facility on an interim basis, substantially in the form of Exhibit L hereto.

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

“**Interpolated Term SOFR**” means, for purposes of any calculation of Term SOFR for a SOFR Loan, the rate which results from interpolating on a linear basis between:

(a) the most recent applicable Term SOFR (determined pursuant to clause (a) of the definition thereof) for the longest period (for which Term SOFR is available) which is less than the Interest Period of that Loan; and

(b) the most recent applicable Term SOFR (determined pursuant to clause (a) of the definition thereof) for the shortest period (for which Term SOFR is available) which is greater than the Interest Period of that Loan.

“**Investment Grade Rating**” means a rating equal to or higher than Baa3 (or the equivalent) by Moody’s or BBB- (or the equivalent) by S&P, or an equivalent rating by any other Rating Agency selected by the Borrower.

“**Investment Grade Securities**” means:

(1) securities issued or directly and fully guaranteed or insured by the United States government or any agency or instrumentality thereof (other than Cash Equivalents);

(2) debt securities or debt instruments with an Investment Grade Rating, but excluding any debt securities or debt instruments constituting loans or advances among the Borrower and its Subsidiaries;

(3) investments in any fund that invests at least 95% of its assets in investments of the type described in clauses (1) and (2) which fund may also hold immaterial amounts of cash pending investment or distribution; and

(4) corresponding instruments in countries other than the United States customarily utilized for high quality investments.

**“Investments”** means, with respect to any Person, all investments by such Person in other Persons (including Affiliates) in the form of loans (including guarantees), advances or capital contributions (excluding accounts receivable, credit card and debit card receivables, trade credit, advances to customers, commission, travel and similar advances to employees, directors, officers, members of management, manufacturers and consultants, in each case made in the ordinary course of business or consistent with industry practice), purchases or other acquisitions for consideration of Indebtedness, Equity Interests or other securities issued by any other Person..

The amount of any Investment outstanding at any time will be the original cost of such Investment, reduced by any dividend, distribution, interest payment, return of capital, repayment or other amount received in cash by the Borrower or a Restricted Subsidiary in respect of such Investment.

**“Investors”** means the Sponsor.

**“IP Rights”** has the meaning specified in Section 5.15.

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

**“ISDA”** has the meaning specified in Section 3.03(2)(c).

**“Judgment Currency”** has the meaning specified in Section 10.26.

**“Latest Maturity Date”** means, at any date of determination, the latest maturity or expiration date applicable to any Loan or Commitment hereunder at such time as extended in accordance with this Agreement from time to time.

**“Laws”** means, collectively, all international, foreign, federal, state and local laws (including common law), statutes, treaties, rules, legally enforceable guidelines, regulations, ordinances, codes and administrative or judicial precedents or authorities and executive orders, including the legally binding interpretation or administration thereof by any Governmental Authority charged with the enforcement, interpretation or administration thereof, and all applicable administrative orders, directed duties, licenses, authorizations and permits of, and agreements with, any Governmental Authority.

**“Lender”** has the meaning specified in the introductory paragraph to this Agreement and their respective successors and assigns as permitted hereunder, each of which is referred to herein as a “Lender.” As of the Closing Date, Schedule 2.01 sets forth the name of each Lender.

**“Lending Office”** means, as to any Lender, the office or offices of such Lender described as such in such Lender’s Administrative Questionnaire, or such other office or offices as a Lender may from time to time notify the Borrower and the Administrative Agent.

**“Lien”** means, with respect to any asset, any mortgage, lien (statutory or otherwise), pledge, hypothecation, charge, security interest or encumbrance of any kind in respect of such



asset, whether or not filed, recorded or otherwise perfected under applicable law, including any conditional sale or other title retention agreement, any lease in the nature thereof, any option or other agreement to sell or give a security interest and any authorized filing of or agreement to give any financing statement under the Uniform Commercial Code (or equivalent statutes) of any jurisdiction; *provided* that in no event will an operating lease be deemed to constitute a Lien.

“**Liquidity**” means, as of any date of determination, the sum of all cash and Cash Equivalents of the Debtors on a consolidated basis on such date of determination.

“**Loan**” means an extension of credit under Article II.

“**Loan Documents**” means, collectively, (a) this Agreement, (b) the Term Notes, (c) any amendments thereto, (d) the Guaranty, (e) the Collateral Documents, (f) the Restructuring Support Agreement, (g) the initial Budget, (h) the Approved Updated Budget, (i) the Variance Reports and (j) the Fee Letter.

“**Loan Parties**” means, collectively, (a) Holdings, (b) Topco, (c) Propco, (d) the Borrower and (e) each Subsidiary Guarantor.

“**Management Stockholders**” means the members of management (and their Controlled Investment Affiliates and Immediate Family Members and any permitted transferees thereof) of the Borrower (or a Parent Company) who are holders of Equity Interests of any Parent Company on the Closing Date or will become holders of such Equity Interests in connection with the Transactions.

“**Margin Stock**” has the meaning set forth in Regulation U of the Board of Governors of the United States Federal Reserve System, or any successor thereto.

“**Material Adverse Effect**” means (i) a circumstance or condition that would materially and adversely affect (a) the business, operations or financial condition of the Borrower and its Subsidiaries, taken as a whole (excluding (i) any matters publicly disclosed in writing or disclosed to the Administrative Agent and the Lenders in writing prior to the filing of the Chapter 11 Cases, (ii) any matters disclosed in the schedules hereto, (iii) any matters disclosed in any first day pleadings or declarations and (iv) the filing of the Chapter 11 Cases, the events and conditions related and/or leading up thereto and the effects thereof and any action required to be taken under the Loan Documents or under the Bankruptcy Court DIP Orders), (b) the ability of the Loan Parties (taken as a whole) to perform their payment obligations under the Loan Documents to which it is a party or (c) the rights and remedies of the Lenders, the Collateral Agent and the Administrative Agent under the Loan Documents.

“**Material Real Property**” means any fee-owned real property located in the United States and owned by any Loan Party, having a fair market value in excess of \$2.0 million at the time of acquisition or as of the date of substantial completion of any material improvement thereon or new construction thereof; *provided* that for the avoidance of doubt, Material Real Property will not include any Excluded Assets.



“**Maturity Date**” means the earliest of (i) the date that is two (2) months following the Closing Date, (ii) the effective date and the date of the substantial consummation (as defined in section 1102(2) of the Bankruptcy Code) of an Approved Plan of Reorganization that has been confirmed by an order of the Bankruptcy Court (the “**Plan Effective Date**”), (iii) the consummation of a sale or other disposition of all or substantially all of the assets of the Debtors under Section 363 of the Bankruptcy Code; (iv) the date the Bankruptcy Court orders the conversion of the bankruptcy case of any of the Loan Parties to a Chapter 7 liquidation, (v) the acceleration of the Loans or termination of the Commitments under the Facility, including as a result of the occurrence of an Event of Default, (vi) the date that is 35 days after the Interim DIP Order Entry Date if the Final DIP Order Entry Date shall not have occurred by such date and (vii) the date of consummation of one or more sales that, in the aggregate, constitutes a sale of all or substantially all of the DIP Collateral (as defined in the Bankruptcy Court DIP Order). If such date is not a Business Day, the immediately succeeding Business Day.

“**Maximum Rate**” has the meaning specified in Section 10.11.

“**Milestones**” has the meaning specified in Section 8.01(12).

“**Moody’s**” means Moody’s Investors Service, Inc. and any successor to its rating agency business.

“**Mortgage Policies**” has the meaning specified in Section 6.11(2)(b)(ii).

“**Mortgaged Properties**” has the meaning specified in paragraph (5) of the definition of “Collateral and Guarantee Requirement.”

“**Mortgages**” means collectively, the deeds of trust, trust deeds, hypothecs, deeds to secure debt and mortgages made by the Loan Parties in favor or for the benefit of the Collateral Agent for the benefit of the Secured Parties in form and substance reasonably satisfactory to the Collateral Agent, including such modifications as may be required by local laws, pursuant to Section 6.13(2) and any other deeds of trust, trust deeds, hypothecs, deeds to secure debt or mortgages executed and delivered pursuant to Sections 6.11.

“**Multiemployer Plan**” means any multiemployer plan as defined in Section 4001(a)(3) of ERISA and subject to Title IV of ERISA, to which any Loan Party or any of their respective ERISA Affiliates makes or is obligated to make contributions, or during the preceding five plan years, has made or been obligated to make contributions.

“**Net Proceeds**” means:

(1) with respect to any Asset Sale or any Casualty Event, the aggregate Cash Equivalent proceeds or other cash amounts received directly or indirectly by or on behalf of the Borrower or any Restricted Subsidiary in respect of such Asset Sale or Casualty Event, net of the costs relating to such Asset Sale or Casualty Event, including legal, accounting and investment banking fees, payments made in order to obtain a necessary consent or required by applicable law, brokerage and sales commissions, all dividends, distributions or other payments required to be made to minority interest holders in

Restricted Subsidiaries as a result of any such Asset Sale or Casualty Event by a Restricted Subsidiary, the amount of any purchase price or similar adjustment claimed by any Person to be owed by the Borrower or any Restricted Subsidiary, until such time as such claim will have been settled or otherwise finally resolved, or paid or payable by the Borrower or any Restricted Subsidiary, in either case in respect of such Asset Sale or Casualty Event, any relocation expenses incurred as a result thereof, costs and expenses in connection with unwinding any Hedging Obligation in connection therewith, other fees and expenses, including title and recordation expenses, taxes paid or payable by the Borrower or a Restricted Subsidiary as a result thereof or any transactions occurring or deemed to occur to effectuate a payment under this Agreement, amounts required to be applied to the repayment of principal, premium, if any, and interest on Indebtedness (other than Subordinated Indebtedness) or amounts required to be applied to the repayments of Indebtedness secured by a Lien on such assets and required (other than required by Section 2.05(2)(b)) to be paid as a result of such transaction and any deduction of appropriate amounts to be provided by the Borrower or any Restricted Subsidiary as a reserve in accordance with GAAP against any liabilities associated with the asset disposed of in such transaction and retained by the Borrower or any Restricted Subsidiary 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

(2) (a) with respect to the incurrence or issuance of any Indebtedness by the Borrower or any Restricted Subsidiary or any Permitted Equity Issuance by the Borrower or any Parent Company, the excess, if any, of (i) the sum of the cash and Cash Equivalents received in connection with such incurrence or issuance over (ii) all taxes paid or reasonably estimated to be payable, and all fees (including investment banking fees, attorneys' fees, accountants' fees, underwriting fees and discounts), commissions, costs and other out-of-pocket expenses and other customary expenses incurred, in each case by the Borrower or such Restricted Subsidiary in connection with such incurrence or issuance and (b) with respect to any Permitted Equity Issuance by any Parent Company, the amount of cash from such Permitted Equity Issuance contributed to the capital of the Borrower.

**“New Money Delayed Draw Commitment”** means as to each Lender, its obligation to make (a) New Money Loans to the Borrower hereunder on the Closing Date and (b) New Money Delayed Draw Loans to the Borrower hereunder after the Closing Date, expressed as an amount representing the maximum principal amount of New Money Delayed Draw Loans to be made by such Lender under this Agreement, as such commitment may be reduced or increased from time to time pursuant to assignments by or to such Lender pursuant to an Assignment and Acceptance. The amount of each Lender's New Money Delayed Draw Commitment is set forth on Schedule 2.01 under the caption “New Money Delayed Draw Commitments” or, otherwise, in the Assignment and Acceptance pursuant to which such Lender shall have assumed its New Money Delayed Draw Commitment, as the case may be. The aggregate amount of the New Money Delayed Draw Commitments on the Closing Date is \$30.0 million, before giving effect to the issuance of the New Money Initial Loans funded on the Closing Date.

**“New Money Delayed Draw Loans”** has the meaning specified in Section 2.01(1).

“**New Money Delayed Draw Termination Date**” means the earliest to occur of (i) the date on which the New Money Delayed Draw Commitments are fully drawn, (ii) the Maturity Date and (iii) unless otherwise agreed by the Required Lenders, the date that is three (3) Business Days prior to the Bid Deadline.

“**New Money Initial Loan**” has the meaning specified in Section 2.01(1).

“**New Money Loans**” means the New Money Initial Loans and the New Money Delayed Draw Loans and shall include as principal thereof the interest thereon paid in kind pursuant to Section 2.08.

“**Non-Consenting Lender**” has the meaning specified in Section 3.07.

“**Non-Defaulting Lender**” means, at any time, a Lender that is not a Defaulting Lender.

“**Non-Excluded Taxes**” means all 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.

“**Non-Voting Lender**” means (a) each Initial Non-Voting Lender and (b) any assignee, participant or transferee of an Initial Non-Voting Lender (other than, in the case of this clause (b), any assignee, participant or transferee that is a Lender (other than an Initial Non-Voting Lender) on the Closing Date, an Affiliate of such Lender or a Related Person of such Lender or any assignee, participant or transferee of such Lender).

“**Non-Voting Loans**” means any Loans received by an Initial Non-Voting Lender on the Closing Date or pursuant to the Final DIP Order.

“**Not Otherwise Applied**” means, with reference to any proceeds from any Equity Issuance or the amount of any contributions to the equity capital of the Borrower and its Restricted Subsidiaries, that such amount was not previously applied pursuant to (or otherwise included in the calculation of), as applicable, Section 7.05(b)(3), 7.05(b)(8), 7.05(b)(14)(h)(ii).

“**Obligations**” means all

(1) advances to, and debts, liabilities, obligations, covenants and duties of, any Loan Party arising under any Loan Document or otherwise with respect to any Loan, including the obligation (including guarantee obligations) to pay principal, interest, reimbursement obligations, charges, expenses, fees, Attorney Costs, indemnities and other amounts payable by any Loan Party under any Loan Document, whether direct or indirect (including those acquired by assumption), absolute or contingent, due or to become due, now existing or hereafter arising and including interest, fees and other amounts that accrue after the commencement by or against any Loan Party of any proceeding under any Debtor Relief Laws naming such Person as the debtor in such proceeding, regardless of whether such interest and fees are allowed claims in such proceeding,

(2) obligations (other than Excluded Swap Obligations) of the Borrower or any Restricted Subsidiary arising under any Secured Hedge Agreement,

(3) Cash Management Obligations under each Secured Cash Management Agreement and

(4) the Guaranty in respect of each of the foregoing.

Notwithstanding the foregoing, (a) unless otherwise agreed to by the Borrower and any applicable Hedge Bank or Cash Management Bank, the obligations of the Borrower or any Subsidiary under any Secured Hedge Agreement and under any Secured Cash Management Agreement shall be secured and guaranteed pursuant to the Collateral Documents and the Guaranty only to the extent that, and for so long as, the other Obligations are so secured and guaranteed and (b) any release of Collateral or Guarantors effected in the manner permitted by this Agreement and any other Loan Document shall not require the consent of the holders of Hedging Obligations under Secured Hedge Agreements or of the holders of Cash Management Obligations under Secured Cash Management Agreements.

“**OFAC**” shall mean the U.S. Department of the Treasury, Office of Foreign Assets Control.

“**Officer’s Certificate**” means a certificate signed on behalf of a Person by a Responsible Officer of such Person.

“**OID**” means original issue discount.

“**Opinion of Counsel**” means a written opinion from legal counsel who is reasonably acceptable to the Administrative Agent and the Required Lenders. Counsel may be an employee of or counsel to the Borrower or the Administrative Agent.

“**Organizational Documents**” means

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

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

(3) with respect to any partnership, joint venture, trust or other form of business entity, the partnership, joint venture or other applicable agreement of formation or organization and any agreement, instrument, filing or notice with respect thereto filed in connection with its formation or organization with the applicable Governmental Authority in the jurisdiction of its formation or organization and, if applicable, any certificate or articles of formation or organization of such entity.

“**Other Taxes**” means any and all present or future stamp, court or documentary Taxes, intangible, recording, filing or similar Taxes arising from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Loan Document.

**“Outstanding Amount”** means on any date, the outstanding principal amount of any Term Loans after giving effect to any borrowings and prepayments or repayments of Term Loans, occurring on such date.

**“Overnight Rate”** means, for any day, the greater of (a) the Federal Funds Rate and (b) an overnight rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation.

**“Parent Company”** means any Person so long as such Person directly or indirectly holds 100.0% of the total voting power of the Capital Stock of the Borrower, and at the time such Person acquired such voting power, no Person and no group (within the meaning of Section 13(d)(3) or Section 14(d)(2) of the Exchange Act or any successor provision), including any such group acting for the purpose of acquiring, holding or disposing of securities (within the meaning of Rule 13d-5(b)(1) under the Exchange Act) (other than any Permitted Holder), will have beneficial ownership (within the meaning of Rule 13d-3 under the Exchange Act, or any successor provision), directly or indirectly, of 50.0% or more of the total voting power of the Voting Stock of such Person. For the avoidance of doubt, Topco is a Parent Company of the Borrower.

**“Participant”** has the meaning specified in Section 10.07(d).

**“Participant Register”** has the meaning specified in Section 10.07(e).

**“Patriot Act”** has the meaning specified in Section 5.17.

**“Payment Recipient”** has the meaning specified in Section 9.19(a).

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

**“Pension Plan”** means any “employee pension benefit plan” (as such term is defined in Section 3(2) of ERISA), other than a Multiemployer Plan, that is subject to Title IV of ERISA and is sponsored or maintained by any Loan Party or any of their respective ERISA Affiliates or to which any Loan Party or any of their respective ERISA Affiliates contributes or has an obligation to contribute, or in the case of a multiple employer or other plan described in Section 4064(a) of ERISA, has made contributions at any time in the preceding five plan years.

**“Perfection Certificate”** has the meaning specified in the Security Agreement.

**“Permitted Disbursements Variance”** means actual disbursements (i) for the most recently ended Budget Testing Period and (ii) on a cumulative basis are no greater than 110% (or such greater percentage determined by the Administrative Agent and the Required Lenders in their sole and absolute discretion) of the projected disbursements line-item in the then in-effect Budget.

**“Permitted Equity Issuance”** means any sale or issuance of any Qualified Equity Interests of the Borrower or any Parent Company.

**“Permitted Holder”** means (1) the Investors and Management Stockholders and any group (within the meaning of Section 13(d)(3) or Section 14(d)(2) of the Exchange Act) of which any of the foregoing are members; *provided* that in the case of such group and without giving effect to

the existence of such group or any other group, such Investor and Management Stockholders, collectively, have beneficial ownership of more than 50.0% of the total voting power of the Voting Stock of the Borrower or any Permitted Parent, and (2) any Person acting in the capacity of an underwriter (solely to the extent that and for so long as such Person is acting in such capacity) in connection with a public or private offering of Capital Stock of the Borrower or any Permitted Parent.

**“Permitted Indebtedness”** means Indebtedness permitted to be incurred in accordance with Section 7.02.

**“Permitted Investments”** means:

(1) any Investment (a) by any Loan Party in any other Loan Party and (b) by any Restricted Subsidiary that is a Non-Loan Party in any other Restricted Subsidiary that is a Non-Loan Party;

(2) any Investment(s) in Cash Equivalents or Investment Grade Securities and Investments that were Cash Equivalents or Investment Grade Securities when made;

(3) [reserved];

(4) any Investment in securities or other assets not constituting Cash Equivalents or Investment Grade Securities and received in connection with an Asset Sale made in accordance with Section 7.04 or any other disposition of assets not constituting an Asset Sale;

(5) any Investment existing on the Closing Date or made pursuant to binding commitments in effect on the Closing Date, in each case as set forth on Schedule 7.03 or an Investment consisting of any extension, modification, replacement, renewal or reinvestment of any Investment or binding commitment existing on the Closing Date; *provided* that the amount of any such Investment or binding commitment may be increased, extended, modified, replaced, reinvested or renewed, (a) as required by the terms of such Investment or binding commitment as in existence on the Closing Date (including as a result of the accrual or accretion of interest or original issue discount or the issuance of pay-in-kind securities) or (b) as otherwise permitted hereunder;

(6) any Investment acquired by the Borrower or any Restricted Subsidiary:

(a) in exchange for any other Investment, accounts receivable or indorsements for collection or deposit held by the Borrower or any Restricted Subsidiary in connection with or as a result of a bankruptcy, workout, reorganization or recapitalization of, or settlement of delinquent accounts and disputes with or judgments against, the issuer of such other Investment or accounts receivable (including any trade creditor or customer);

(b) in satisfaction of judgments against other Persons;

(c) as a result of a foreclosure by the Borrower or any Restricted Subsidiary with respect to any secured Investment or other transfer of title with respect to any secured Investment in default; or

(d) as a result of the settlement, compromise or resolution of (i) litigation, arbitration or other disputes or (ii) obligations of trade creditors or customers that were incurred in the ordinary course of business or consistent with industry practice of the Borrower or any Restricted Subsidiary, including pursuant to any plan of reorganization or similar arrangement upon the bankruptcy or insolvency of any trade creditor or customer;

(7) Hedging Obligations permitted under Section 7.02(b)(10);

(8) [reserved];

(9) Investments the payment for which consists of Equity Interests (other than Disqualified Stock) of the Borrower or any Parent Company; *provided* that such Equity Interests are Not Otherwise Applied;

(10) (a) guarantees of Indebtedness permitted under Section 7.02 and performance guarantees incurred in the ordinary course of business or consistent with industry practice, and (b) the creation of liens on the assets of the Borrower or any Restricted Subsidiary in compliance with Section 7.01;

(11) any transaction to the extent it constitutes an Investment that is permitted by and made in accordance with the provisions of Section 7.06(b)(3), (4), (7), (8), (10), (14), (16), (17), (18), (19), and (20);

(12) Investments consisting of purchases and acquisitions of inventory, supplies, material, services or equipment or similar assets or the licensing or contribution of IP Rights pursuant to joint marketing arrangements with other Persons;

(13) [reserved];

(14) [reserved];

(15) loans and advances to, or guarantees of Indebtedness of, officers, directors, employees, consultants and members of management not in excess of \$1.5 million outstanding at any one time;

(16) loans and advances to employees, directors, officers, members of management and consultants for business-related travel expenses, moving expenses, payroll advances and other similar expenses or payroll expenses, in each case incurred in the ordinary course of business or consistent with past practice or consistent with industry practice or to future, present and former employees, directors, officers, members of management and consultants (and their Controlled Investment Affiliates and Immediate Family Members) to fund such Person's purchase of Equity Interests of the Borrower or any Parent Company;



(17) advances, loans or extensions of trade credit or prepayments to suppliers or loans or advances made to distributors, in each case, in the ordinary course of business or consistent with past practice or consistent with industry practice by the Borrower or any Restricted Subsidiary;

(18) any Investment in any Subsidiary or any joint venture in connection with intercompany cash management arrangements or related activities arising in the ordinary course of business or consistent with industry practice;

(19) Investments consisting of purchases and acquisitions of assets or services in the ordinary course of business or consistent with industry practice;

(20) Investments made in the ordinary course of business or consistent with industry practice in connection with obtaining, maintaining or renewing client contacts and loans or advances made to distributors;

(21) Investments in prepaid expenses, negotiable instruments held for collection and lease, utility and workers compensation, performance and similar deposits entered into as a result of the operations of the business in the ordinary course of business or consistent with industry practice;

(22) [reserved];

(23) [reserved];

(24) Investments in the ordinary course of business or consistent with industry practice consisting of Uniform Commercial Code Article 3 endorsements for collection or deposit and Article 4 customary trade arrangements with customers;

(25) [reserved];

(26) Investments made as part of, to effect or resulting from the Transactions;

(27) Investments of assets relating to non-qualified deferred payment plans in the ordinary course of business or consistent with industry practice;

(28) intercompany current liabilities owed to joint ventures incurred in the ordinary course of business or consistent with industry practice in connection with the cash management operations of the Borrower and its Subsidiaries;

(29) acquisitions of obligations of one or more directors, officers or other employees or consultants or independent contractors of any Parent Company, the Borrower, or any Subsidiary of the Borrower in connection with such director's, officer's, employee's consultant's or independent contractor's acquisition of Equity Interests of the Borrower or any direct or indirect parent of the Borrower, to the extent no cash is actually advanced by the Borrower or any Restricted Subsidiary to such directors, officers, employees, consultants or independent contractors in connection with the acquisition of any such obligations;



(30) Investments constituting promissory notes or other non-cash proceeds of dispositions of assets to the extent permitted under Section 7.04;

(31) Investments resulting from pledges and deposits permitted pursuant to the definition of “Permitted Liens”; and

(32) loans and advances to any direct or indirect parent of the Borrower in lieu of and not in excess of the amount of (after giving effect to any other loans, advances or Restricted Payments in respect thereof) Restricted Payments to the extent permitted to be made in cash to such parent in accordance with Section 7.05 at such time, such Investment being treated for purposes of the applicable clause of Section 7.05, including any limitations, as if a Restricted Payment were made pursuant to such applicable clause.

For purposes of determining compliance with this definition, an Investment need not be incurred solely by reference to one category of Permitted Investments described in this definition, but is permitted to be incurred in part under any combination thereof and of any other available exemption.

“**Permitted Liens**” means, with respect to any Person:

(1) Liens created pursuant to any Loan Document;

(2) Liens, pledges or deposits made in connection with:

(a) workers’ compensation laws, unemployment insurance, health, disability or employee benefits, other social security laws or similar legislation or regulations,

(b) insurance-related obligations (including in respect of deductibles, self-insured retention amounts and premiums and adjustments thereto) securing reimbursement or indemnification obligations of (including obligations in respect of letters of credit, bank guarantees or similar documents or instruments for the benefit of) insurance carriers providing property, casualty or liability insurance or otherwise supporting the payment of items set forth in the foregoing clause (a) or

(c) bids, tenders, contracts, statutory obligations, surety, indemnity, warranty, release, appeal or similar bonds, or with regard to other regulatory requirements, completion guarantees, stay, customs and appeal bonds, performance bonds, bankers’ acceptance facilities, and other obligations of like nature (including those to secure health, safety and environmental obligations) (other than for the payment of Indebtedness) or leases to which such Person is a party, or deposits to secure public or statutory obligations of such Person or deposits of cash or U.S. government bonds to secure surety or appeal bonds to which such Person is a party, or deposits as security for the payment of rent, contested taxes or import duties and obligations in respect of letters of credit, bank guarantees or similar instruments that have been posted to support the same, in each case incurred in the ordinary course of business or consistent with industry practice;

(3) Liens imposed by law, such as landlords', carriers', warehousemen's, materialmen's, repairmen's, construction, mechanics' or other similar Liens (a) for sums not yet overdue for a period of more than sixty (60) days or, if more than sixty (60) days overdue, are unfiled and no other action has been taken to enforce such Liens or (b) being contested in good faith by appropriate actions or other Liens arising out of or securing judgments or awards against such Person with respect to which such Person will then be proceeding with an appeal or other proceedings for review if such Liens are adequately bonded or adequate reserves with respect thereto are maintained on the books of such Person in accordance with GAAP;

(4) Liens for taxes, assessments or other governmental charges not yet overdue for a period of more than thirty (30) days or not yet payable or not subject to penalties for nonpayment or which are being contested in good faith by appropriate actions if adequate reserves with respect thereto are maintained on the books of such Person in accordance with GAAP;

(5) Liens in favor of issuers of performance, surety, bid, indemnity, warranty, release, appeal or similar bonds, instruments or obligations or with respect to regulatory requirements or letters of credit or bankers acceptance issued, and completion guarantees provided for, in each case, issued pursuant to the request of and for the account of such Person in the ordinary course of its business or consistent with past practice or industry practice;

(6) survey exceptions, encumbrances, ground leases, easements, restrictions, protrusions, encroachments or reservations of, or rights of others for, licenses, rights-of-way, servitudes, sewers, electric lines, drains, telegraph, telephone and cable television lines and other similar purposes, or zoning, building codes or other restrictions (including minor defects or irregularities in title and similar encumbrances) as to the use of real properties or Liens incidental to the conduct of the business of such Person or to the ownership of its properties that were not incurred in connection with Indebtedness and that do not in the aggregate materially impair their use in the operation of the business of such Person and exceptions on title policies insuring liens granted on Mortgaged Properties;

(7) Liens securing obligations in respect of Indebtedness permitted to be incurred pursuant to clause (4) of Section 7.02(b); *provided* that Liens securing obligations in respect of Indebtedness permitted to be incurred pursuant to such clause (4) extend only to the assets so purchased, replaced, leased or improved and proceeds and products thereof; *provided further* that individual financings of assets provided by a counterparty may be cross-collateralized to other financings of assets provided by such counterparty.

(8) Liens existing, or provided for under binding contracts existing, on the Closing Date (including Liens in effect on the Closing Date securing Indebtedness permitted under Section 7.02(b)(3) but excluding Liens securing Indebtedness permitted under Section 7.02(b)(2)), in each case as set forth on Schedule 7.01;

(9) [reserved];

(10) Liens on property or other assets at the time the Borrower or a Restricted Subsidiary acquired the property or such other assets, including any acquisition by means of a merger, amalgamation or consolidation with or into the Borrower or any Restricted Subsidiary; *provided* that such Liens are not created or incurred in connection with, or in contemplation of, such acquisition, amalgamation, merger or consolidation; *provided further* that such Liens are limited to all or part of the same property or assets (plus improvements, accessions, proceeds or dividends or distributions in respect thereof and after acquired-property) that secured the obligations to which such Liens relate;

(11) [reserved];

(12) Liens securing (x) Hedging Obligations and (y) obligations in respect of Cash Management Services;

(13) Liens on specific items of inventory or other goods and proceeds of any Person securing such Person's accounts payable or similar obligations in respect of bankers' acceptances or letters of credit issued or created for the account of such Person to facilitate the purchase, shipment or storage of such inventory or other goods;

(14) leases, subleases, licenses or sublicenses (or other agreement under which the Borrower or any Restricted Subsidiary has granted rights to end users to access and use the Borrower's or any Restricted Subsidiary's products, technologies or services) that do not materially interfere with the business of the Borrower and its Restricted Subsidiaries, taken as a whole, and the customary rights reserved or vested in any Person by the terms of any lease, sublease, license, sublicense, grant or permit, or to require annual or periodic payments as a condition to the continuance thereof;

(15) Liens arising from Uniform Commercial Code (or equivalent statutes) financing statement filings regarding operating leases, consignments or accounts entered into by the Borrower and its Restricted Subsidiaries in the ordinary course of business or consistent with industry practice or purported Liens evidenced by the filing of precautionary Uniform Commercial Code (or equivalent statutes) financing statements or similar public filings;

(16) Liens in favor of the Borrower or any Restricted Subsidiary; provided that such liens securing Indebtedness for borrowed money incurred by a Guarantor and owing to a Restricted Subsidiary that is not a Guarantor is expressly subordinated to the Liens securing the Obligations of the Loans of such Guarantor;

(17) Liens on equipment or vehicles of the Borrower or any Restricted Subsidiary granted in the ordinary course of business or consistent with industry practice;

(18) [reserved];

(19) Liens to secure any modification, refinancing, refunding, extension, renewal or replacement (or successive modification, refinancing, refunding, extensions, renewals or replacements) as a whole, or in part, of any Indebtedness or Preferred Stock

secured by any Lien referred to in clauses (8) or (10) of this definition; *provided* that: (a) such new Lien will be limited to all or part of the same property (plus improvements, accessions, proceeds or dividends or distributions in respect thereof and after-acquired property) that secured the original Lien (plus improvements and accessions on such property) and proceeds and products thereof and (b) the Indebtedness or Preferred Stock secured by such Lien at such time is not increased to any amount greater than the sum of (i) the outstanding principal amount or, if greater, committed amount of the Indebtedness described under such clauses (7), (8) or (10) at the time the original Lien became a Permitted Lien hereunder, *plus* (ii) an amount necessary to pay any fees and expenses (including original issue discount, upfront fees, defeasance costs, underwriting discounts or similar fees) and premiums (including tender premiums and accrued and unpaid interest), related to such refinancing, refunding, extension, renewal or replacement;

(20) deposits made or other security provided to secure liability to insurance brokers, carriers, underwriters or self-insurance arrangements, including Liens on insurance policies and the proceeds thereof securing the financing of the premiums with respect thereto;

(21) [reserved];

(22) Liens in favor of customs and revenue authorities arising as a matter of law to secure payment of customs duties in connection with the importation of goods;

(23) (a) the prior rights of consignees and their lenders under consignment arrangements entered into in the ordinary course of business or consistent with industry practice, (b) Liens arising out of conditional sale, title retention or similar arrangements for the sale of goods in the ordinary course of business or consistent with industry practice and (c) Liens arising by operation of law under Article 2 of the Uniform Commercial Code;

(24) Liens securing judgments for the payment of money not constituting an Event of Default under Section 8.01(7);

(25) Liens (a) of a collection bank arising under Sections 4-208 or 4-210 of the Uniform Commercial Code on items in the course of collection, (b) attaching to commodity trading accounts or other brokerage accounts incurred in the ordinary course of business or consistent with industry practice and (c) in favor of banking or other institutions or other electronic payment service providers arising as a matter of law or under general terms and conditions encumbering deposits or margin deposits or other funds maintained with such institution (including the right of setoff) and that are within the general parameters customary in the banking industry;

(26) Liens deemed to exist in connection with Investments in repurchase agreements permitted under this Agreement; *provided* that such Liens do not extend to assets other than those that are subject to such repurchase agreements;

(27) Liens that are contractual rights of setoff (a) relating to the establishment of depository relations with banks or other deposit-taking financial institutions or other

electronic payment service providers and not given in connection with the issuance of Indebtedness, (b) relating to pooled deposit or sweep accounts to permit satisfaction of overdraft or similar obligations incurred in the ordinary course of business or consistent with industry practice of the Borrower or any Restricted Subsidiary or (c) relating to purchase orders and other agreements entered into with customers of the Borrower or any Restricted Subsidiary in the ordinary course of business or consistent with industry practice;

(28) Liens on cash proceeds (as defined in Article 9 of the Uniform Commercial Code) of assets sold that were subject to a Lien permitted hereunder;

(29) any encumbrance or restriction (including put, call arrangements, tag, drag, right of first refusal and similar rights) with respect to capital stock of any joint venture or similar arrangement pursuant to any joint venture or similar agreement;

(30) Liens (a) on cash advances or cash earnest money deposits in favor of the seller of any property to be acquired in an Investment permitted under this Agreement to be applied against the purchase price for such Investment and (b) consisting of a letter of intent or an agreement to sell, transfer, lease or otherwise dispose of any property in a transaction permitted under Section 7.04 in each case, solely to the extent such Investment or sale, disposition, transfer or lease, as the case may be, would have been permitted on the date of the creation of such Lien;

(31) ground leases, leases, subleases, licenses or sublicenses in respect of real property on which facilities owned or leased by the Borrower or any of its Subsidiaries are located;

(32) [reserved];

(33) [reserved];

(34) any interest or title of a lessor, sublessor, licensor or sublicensor or secured by a lessor's, sublessor's, licensor's or sublicensor's interest under leases or licenses entered into by the Borrower or any of the Restricted Subsidiaries in the ordinary course of business or consistent with industry practice;

(35) deposits of cash with the owner or lessor of premises leased and operated by the Borrower or any of its Subsidiaries in the ordinary course of business or consistent with industry practice of the Borrower and such Subsidiary to secure the performance of the Borrower's or such Subsidiary's obligations under the terms of the lease for such premises;

(36) rights of set-off, banker's liens, netting arrangements and other Liens arising by operation of law or by the terms of documents of banks or other financial institutions in relation to the maintenance of administration of deposit accounts, securities accounts, cash management arrangements or in connection with the issuance of letters of credit, bank guarantees or other similar instruments;

(37) Liens on cash and Permitted Investments used to satisfy or discharge Indebtedness; *provided* that such satisfaction or discharge is permitted under this Agreement;

(38) receipt of progress payments and advances from customers in the ordinary course of business or consistent with industry practice to the extent the same creates a Lien on the related inventory and proceeds thereof;

(39) [reserved];

(40) agreements to subordinate any interest of the Borrower or any Restricted Subsidiary in any accounts receivable or other proceeds arising from inventory consigned by the Borrower or any Restricted Subsidiary pursuant to an agreement entered into in the ordinary course of business or consistent with industry practice;

(41) Liens arising pursuant to Section 107(l) of the Comprehensive Environmental Response, Compensation and Liability Act or similar provision of any Environmental Law;

(42) Liens disclosed by the title insurance policies delivered on or prior to the Closing Date and any replacement, extension or renewal of any such Lien (to the extent the Indebtedness and other obligations secured by such replacement, extension or renewal Liens are permitted by this Agreement); *provided* that such replacement, extension or renewal Liens do not cover any property other than the property that was subject to such Liens prior to such replacement, extension or renewal;

(43) rights reserved or vested in any Person by the terms of any lease, license, franchise, grant or permit held by the Borrower or any of its Restricted Subsidiaries or by a statutory provision, to terminate any such lease, license, franchise, grant or permit, or to require annual or periodic payments as a condition to the continuance thereof;

(44) restrictive covenants affecting the use to which real property may be put; *provided* that the covenants are complied with in all material respects;

(45) security given to a public utility or any municipality or governmental authority when required by such utility or authority in connection with the operations of that Person in the ordinary course of business or consistent with industry practice;

(46) zoning by-laws and other land use restrictions, including site plan agreements, development agreements and contract zoning agreements; and

(47) ABL Adequate Protection Liens.

For purposes of determining compliance with this definition, a Lien need not be incurred solely by reference to one category of Permitted Liens described in this definition, but is permitted to be incurred in part under any combination thereof and of any other available exemption.

For purposes of this definition, the term “Indebtedness” will be deemed to include interest on such Indebtedness.

“**Permitted Parent**” means any direct or indirect parent of the Borrower that at the time it became a parent of the Borrower was a Permitted Holder pursuant to clause (1) of the definition thereof.

“**Permitted Prior ABL Liens**” has the meaning specified in Section 10.28(a)(v).

“**Permitted Prior First Lien Liens**” has the meaning specified in Section 10.28(a)(v).

“**Permitted Prior Liens**” has the meaning specified in Section 10.28(a)(v).

“**Permitted Prior Second Lien Liens**” has the meaning specified in Section 10.28(a)(v).

“**Permitted Receipts Variance**” means actual cash receipts (i) for the most recently ended Budget Testing Period and (ii) on a cumulative basis are no less than 90% (or such lesser percentage determined by the Administrative Agent acting at the direction of the Required Lenders in their sole and absolute discretion) of the projected cash receipts line-item in the then in-effect Budget.

“**Permitted Restructuring Professional Fees Variance**” means actual disbursements (i) for the most recently ended Budget Testing Period and (ii) on a cumulative basis are no greater than 110% of the Professional Fees line-item for such Budget Testing Period in the then in-effect Approved Updated Budget.

“**Permitted Variance**” means, collectively, the Permitted Receipts Variance, the Permitted Disbursements Variance and the Permitted Restructuring Professional Fees Variance.

“**Person**” means any individual, corporation, limited liability company, partnership, joint venture, association, joint stock company, trust, unincorporated organization, government or any agency or political subdivision thereof or any other entity.

“**Petition Date**” has the meaning specified in the recitals hereto.

“**Plan**” means any material “employee benefit plan” (as such term is defined in Section 3(3) of ERISA), other than a Foreign Plan, established or maintained by any Loan Party or, with respect to any such plan that is subject to Section 412 of the Code or Title IV of ERISA, any of their respective ERISA Affiliates.

“**Plan of Reorganization**” means a plan of reorganization with respect to any of the Loan Parties or any of their respective Subsidiaries pursuant to the Chapter 11 Cases.

“**Platform**” has the meaning specified in Section 6.02.

“**Post-Carve Out Amounts**” has the meaning specified in Section 2.02(10).



“**Post-Carve Out Trigger Notice Cap**” has the meaning set forth in the definition of “Carve Out”.

“**Post-Carve Out Trigger Notice Reserve**” has the meaning specified in Section 2.02(10).

“**Pre-Carve Out Amounts**” has the meaning specified in Section 2.02(10).

“**Pre-Carve Out Trigger Notice Reserve**” has the meaning specified in Section 2.02(10).

“**Preferred Stock**” means any Equity Interest with preferential rights of payment of dividends or upon liquidation, dissolution or winding up.

“**Prepetition ABL Collateral**” means “Collateral” as defined in the Prepetition ABL Credit Agreement.

“**Prepetition ABL Credit Agreement**” means the ABL Credit Agreement dated as of April 26, 2017 among Holdings, as holdings, NBG Acquisition Inc. as the initial borrower, the Prepetition ABL Facility Administrative Agent and the several banks and other financial institutions from time to time parties thereto, as such agreement has been amended, supplemented, waived or otherwise modified from time to time prior to the date hereof.

“**Prepetition ABL Facility**” means the asset-based credit facility governed by the Prepetition ABL Credit Agreement and one or more debt facilities or other financing arrangements (including indentures) providing for loans, notes or other long-term indebtedness that replace or refinance such credit facility, including any such replacement or refinancing facility or indenture that increases or decreases the amount permitted to be borrowed thereunder or alters the maturity thereof and whether by the same or any other agent, lender or group of lenders, and any amendments, supplements, modifications, extensions, renewals, restatements, amendments and restatements or refundings thereof or any such indentures or credit facilities that replace or refinance such credit facility (or any subsequent replacement thereof), in each case to the extent permitted or not restricted by this Agreement.

“**Prepetition ABL Facility Administrative Agent**” means Wells Fargo Bank, National Association in its capacity as administrative agent under the Prepetition ABL Credit Agreement or any successor agent under the Prepetition ABL Loan Documents.

“**Prepetition ABL Intercreditor Agreement**” means the ABL Intercreditor Agreement dated as of April 26, 2017, among Deutsche Bank AG New York Branch, as collateral agent under the Prepetition First Lien Credit Agreement, Cortland Capital Market Services LLC, as collateral agent under the Prepetition Second Lien Credit Agreement, Wells Fargo Bank, National Association, as collateral agent under the Prepetition ABL Credit Agreement and the representatives for purposes thereof for holders of one or more other classes of Indebtedness, the Borrower and the other parties thereto, as amended, restated, supplemented or otherwise modified from time to time in accordance with the requirements thereof and of this Agreement, and which shall also include any replacement intercreditor agreement entered into in accordance with the terms hereof.

“**Prepetition ABL Liens**” means any Liens securing the Prepetition ABL Obligations.



**“Prepetition ABL Loan Documents”** means, collectively, (i) the Prepetition ABL Credit Agreement and (ii) any security documents, intercreditor agreements (including the Prepetition ABL Intercreditor Agreement), guarantees, joinders and other agreements or instruments executed in connection with the Prepetition ABL Credit Agreement or such other agreements, in each case, as amended, modified, supplemented, substituted, replaced, restated or refinanced, in whole or in part, from time to time prior to the date hereof.

**“Prepetition ABL Obligations”** means “Obligations” as defined in the Prepetition ABL Credit Agreement.

**“Prepetition ABL Priority Collateral”** means “ABL Priority Collateral” as defined in the Prepetition ABL Intercreditor Agreement.

**“Prepetition ABL Secured Parties”** has the meaning ascribed to such term in the Bankruptcy Court DIP Order.

**“Prepetition Agents”** has the meaning ascribed to such term in the Bankruptcy Court DIP Order.

**“Prepetition Debt Documents”** means, collectively, the Prepetition ABL Loan Documents, the Prepetition First Lien Loan Documents, and the Prepetition Second Lien Loan Documents.

**“Prepetition Facility”** means each of the Prepetition First Lien Facility, Prepetition Second Lien Facility, and Prepetition ABL Facility.

**“Prepetition First Lien Credit Agreement”** has the meaning specified in the recitals hereto.

**“Prepetition First Lien Facility”** means the credit facility governed by the Prepetition First Lien Credit Agreement and one or more debt facilities or other financing arrangements (including indentures) providing for loans, notes or other long-term indebtedness that replace or refinance such credit facility, including any such replacement or refinancing facility or indenture that increases or decreases the amount permitted to be borrowed thereunder or alters the maturity thereof and whether by the same or any other agent, lender or group of lenders, and any amendments, supplements, modifications, extensions, renewals, restatements, amendments and restatements or refundings thereof or any such indentures or credit facilities that replace or refinance such credit facility (or any subsequent replacement thereof), in each case to the extent permitted or not restricted by this Agreement.

**“Prepetition First Lien Lender”** means any lender under the Prepetition First Lien Credit Agreement.

**“Prepetition First Lien Loan”** means each “Loan” as defined in the Prepetition First Lien Credit Agreement.

**“Prepetition First Lien Loan Documents”** means, collectively, (i) the Prepetition First Lien Credit Agreement and (ii) any security documents, intercreditor agreements, guarantees,

joinders and other agreements or instruments executed in connection with the Prepetition First Lien Credit Agreement or such other agreements, in each case, as amended, modified, supplemented, substituted, replaced, restated or refinanced, in whole or in part, from time to time prior to the date hereof.

**“Prepetition First Lien Obligations”** means “Obligations” as defined in the Prepetition First Lien Credit Agreement.

**“Prepetition First Liens”** means any Liens securing the Prepetition First Lien Obligations

**“Prepetition Lenders”** has the meaning ascribed to such term in the Bankruptcy Court DIP Order.

**“Prepetition Loan Documents”** has the meaning ascribed to such term in the Bankruptcy Court DIP Order.

**“Prepetition Obligations”** means all of the Prepetition First Lien Obligations, the Prepetition Second Lien Obligations and the Prepetition ABL Obligations incurred prior to the Petition Date.

**“Prepetition Second Lien Credit Agreement”** means the Second Lien Term Loan Credit Agreement dated as of April 26, 2017 among Holdings, as holdings, NBG Acquisition Inc. as the initial borrower, Cortland Capital Market Service LLC, as administrative agent and collateral agent and the several banks and other financial institutions from time to time parties thereto as lenders, as such agreement has been amended, supplemented, waived or otherwise modified from time to time prior to the date hereof.

**“Prepetition Second Lien Facility”** means the credit facility governed by the Prepetition Second Lien Credit Agreement and one or more debt facilities or other financing arrangements (including indentures) providing for loans, notes or other long-term indebtedness that replace or refinance such credit facility, including any such replacement or refinancing facility or indenture that increases or decreases the amount permitted to be borrowed thereunder or alters the maturity thereof and whether by the same or any other agent, lender or group of lenders, and any amendments, supplements, modifications, extensions, renewals, restatements, amendments and restatements or refundings thereof or any such indentures or credit facilities that replace or refinance such credit facility (or any subsequent replacement thereof), in each case to the extent permitted or not restricted by this Agreement..

**“Prepetition Second Lien Loan Documents”** means, collectively, (i) the Prepetition Second Lien Credit Agreement and (ii) the security documents, intercreditor agreements (including the Prepetition Term Intercreditor Agreement), guarantees, joinders and other agreements or instruments executed in connection with the Prepetition Second Lien Facility or such other agreements, in each case, as amended, modified, supplemented, substituted, replaced, restated or refinanced, in whole or in part, from time to time prior to the date hereof.

**“Prepetition Second Lien Obligations”** means “Obligations” as defined in the Prepetition Second Lien Credit Agreement as in effect on the date hereof.

“**Prepetition Second Liens**” means any Liens securing the Prepetition Second Lien Obligations.

“**Prepetition Term Intercreditor Agreement**” means the Term Intercreditor Agreement dated as of April 26, 2017, among Deutsche Bank AG New York Branch, as collateral agent under the Prepetition First Lien Credit Agreement, Cortland Capital Market Services LLC, as collateral agent under the Prepetition Second Lien Credit Agreement and the representatives for purposes thereof for holders of one or more other classes of Indebtedness, the Borrower and the other parties thereto, as amended, restated, supplemented or otherwise modified from time to time in accordance with the requirements thereof and of this Agreement, and which shall also include any replacement intercreditor agreement entered into in accordance with the terms hereof.

“**Prepetition Term Priority Collateral**” has the meaning ascribed to such term in the Bankruptcy Court DIP Order.

“**Prime Lending Rate**” mean the rate last quoted by The Wall Street Journal as the “Prime Rate” in the United States or, if The Wall Street Journal ceases to quote such rate, the highest per annum interest rate published by the Federal Reserve Board in Federal Reserve Statistical Release H.15 (519) (Selected Interest Rates) as the “bank prime loan” rate or, if such rate is no longer quoted therein, any similar rate quoted therein (as reasonably determined by Administrative Agent) or any similar release by the Federal Reserve Board (as reasonably determined by Administrative Agent)

“**Priming Liens**” has the meaning assigned to such term in Section 10.28(a)(iv).

“**Private-Side Information**” means any information with respect to Holdings and its Subsidiaries that is not Public-Side Information.

“**Pro Rata Share**” means with respect to all payments, computations and other matters relating to the Term Loan of a given Class of any Lender at any time a fraction (expressed as a percentage, carried out to the ninth decimal place), the numerator of which is the amount of the Term Loan Exposure of such Class of such Lender at such time and the denominator of which is the aggregate Term Loan Exposure of such Class of all Lenders at such time.

“**Professional Fees**” means all unpaid fees and expenses incurred by persons or firms retained by the Loan Parties pursuant to sections 327, 328, 329, 330, 331, 363, or 503(b)(4) of the Bankruptcy Code; provided that to the extent that any amount of the foregoing compensation or reimbursement is denied or reduced by a Final DIP Order by the Bankruptcy Court or any other court of competent jurisdiction, such amount shall no longer constitute Professional Fees.

“**Professional Persons**” has the meaning set forth in the definition of “Carve Out”.

“**Propco**” has the meaning specified in the introductory paragraph to this Agreement.

“**Proposed Budget**” has the meaning assigned to such term in Section 6.01(7)(a).

“**Public Lender**” means Lenders that do not wish to receive Private-Side Information.

**“Public-Side Information”** means (i) at any time prior to Holdings or any of its Subsidiaries becoming the issuer of any Traded Securities, information that is (a) of a type that would be required by applicable Law to be publicly disclosed in connection with an issuance by Holdings or any of its Subsidiaries of its debt or equity securities pursuant to a registered public offering made at such time or (b) not material to make an investment decision with respect to securities of Holdings or any of its Subsidiaries (for purposes of United States federal, state or other applicable securities laws), and (ii) at any time on or after Holdings or any of its Subsidiaries becoming the issuer of any Traded Securities, information that does not constitute material non-public information (within the meaning of United States federal, state or other applicable securities laws) with respect to Holdings or any of its Subsidiaries or any of their respective securities.

**“Purchase Money Obligations”** means any Indebtedness incurred to finance or refinance the acquisition, leasing, construction or improvement of property (real or personal) or assets (other than Capital Stock), and whether acquired through the direct acquisition of such property or assets, or otherwise.

**“Qualified Equity Interests”** means any Equity Interests that are not Disqualified Stock.

**“Quarterly Financial Statements”** means the unaudited quarterly balance sheet and related statements of income and cash flows of the Borrower for the most recent fiscal quarter(s) ended after December 31, 2022 and at least 45 days prior to the Closing Date.

**“Rating Agencies”** means Moody’s and S&P, or if Moody’s or S&P (or both) are not making ratings on the relevant obligations publicly available, a nationally recognized statistical rating agency or agencies, as the case may be, selected by the Borrower that will be substituted for Moody’s or S&P (or both), as the case may be.

**“Reference Time”** shall mean, with respect to any setting of the then-current Benchmark, the time determined by the Administrative Agent in its reasonable discretion.

**“Register”** has the meaning specified in Section 10.07(c).

**“Rejection Notice”** has the meaning specified in Section 2.05(2)(g).

**“Related Business Assets”** means assets (other than Cash Equivalents) used or useful in a Similar Business; *provided* that any assets received by the Borrower or a Restricted Subsidiary in exchange for assets transferred by the Borrower or a Restricted Subsidiary will not be deemed to be Related Business Assets if they consist of securities of a Person, unless upon receipt of the securities of such Person, such Person is or would become a Restricted Subsidiary.

**“Related Indemnified Person”** of an Indemnitee means (1) the respective directors, officers or employees of such Indemnitee and (2) the respective agents of such Indemnitee, in the case of this clause (2), acting at the instructions of such Indemnitee.

**“Related Person”** means, with respect to any Person, (a) any Affiliate of such Person and (b) the respective directors, officers, employees, agents and other representatives of such Person or any of its Affiliates.

“**Release**” means any release, spill, emission, discharge, disposal, leaking, pumping, pouring, dumping, emptying, injection or leaching into the Environment.

“**Relevant Administrator**” has the meaning specified in Section 3.03(2)(a).

“**Relevant Governmental Body**” means, the Federal Reserve Board and/or the NYFRB, as applicable, or a committee officially endorsed or convened by the Federal Reserve Board and/or the NYFRB or, in each case, any successor thereto.

“**Reportable Event**” means, with respect to any Pension Plan, any of the events set forth in Section 4043(c) of ERISA or the regulations issued thereunder, other than events for which the thirty (30) day notice period has been waived.

“**Required Facility Lenders**” means, as of any date of determination, with respect to one or more Facilities, Lenders having more than 50% of the sum of the (a) aggregate principal amount of outstanding Loans under such Facility or Facilities and (b) aggregate unused Commitments under such Facility or Facilities; *provided* that the portion of outstanding Loans and the unused Commitments of any such Facility, as applicable, held or deemed held by a Defaulting Lender (solely with respect to any Non-Voting Loans) any Non-Voting Lender shall be excluded for purposes of making a determination of Required Facility Lenders; *provided* that (x) so long as Silver Point Capital, L.P. and KKR Credit Advisors (US) LLC or any of their respective Affiliates or managed accounts are Lenders (the “**Designated Lenders**”), Required Facility Lenders shall mean the Designated Lenders and (y) so long as either Designated Lender is a Lender, Required Facility Lenders must include the consent of all such Designated Lenders.

“**Required Lenders**” means, as of any date of determination, Lenders having more than 50% of the aggregate Term Loan Exposure; *provided* that the aggregate Term Loan Exposure of or held by any Defaulting Lender or (solely with respect to any Non-Voting Loans) any Non-Voting Lender shall be excluded for purposes of making a determination of the “Required Lenders”; *provided* that so long as the Designated Lenders are Lenders, Required Lenders must include the consent of all such Designated Lenders.

“**Responsible Officer**” means, with respect to a Person, the chief executive officer, chief operating officer, president, vice president, chief financial officer, treasurer or assistant treasurer or other similar officer or Person performing similar functions, of such Person. With respect to any document delivered by a Loan Party on the Closing Date, Responsible Officer includes any secretary or assistant secretary of such Loan Party. Any document delivered hereunder that is signed by a Responsible Officer of a Loan Party shall be conclusively presumed to have been authorized by all necessary corporate, partnership or other action on the part of such Loan Party and such Responsible Officer shall be conclusively presumed to have acted on behalf of such Loan Party. Unless otherwise specified, all references herein to a “Responsible Officer” shall refer to a Responsible Officer of the Borrower.

“**Restricted Investment**” means any Investment other than any Permitted Investment(s).

“**Restricted Payment**” has the meaning specified in Section 7.05.

**“Restricted Subsidiary”** means, at any time, any direct or indirect Subsidiary of the Borrower (including any Foreign Subsidiary). Wherever the term “Restricted Subsidiary” is used herein with respect to any Subsidiary of a referenced Person that is not the Borrower, then it will be construed to mean a Person that would be a Restricted Subsidiary of the Borrower on a *pro forma* basis following consummation of one or a series of related transactions involving such referenced Person and the Borrower.

**“Restructuring Support Agreement”** means that certain Restructuring Support Agreement, dated as of February 8, 2023 (as amended, restated, supplemented or otherwise modified from time to time), among Holdings, certain affiliates of Holdings party thereto, certain holders of Prepetition Obligations party thereto, and the other parties thereto from time to time.

**“Roll-Up Loans”** means the Term Loans made pursuant to Section 2.01(3) resulting from the rollup and refinancing of certain of the Prepetition First Lien Loans outstanding on the Closing Date in accordance with the Bankruptcy Court DIP Order. Roll-Up Loans shall include as principal thereof the interest thereon paid in kind pursuant to Section 2.08.

**“Roll-Up Loans Commitment”** means, as to each Lender, its obligation to make a Roll-Up Loan to the Borrower pursuant to Section 2.01(3) in an aggregate principal amount not to exceed the amount set forth opposite such Lender’s name on Schedule 2.01 under the caption “Roll-Up Loans Commitment”, as applicable. The aggregate amount of the Roll-Up Loans Commitment on the Closing Date is \$30.0 million, which amount shall (i) comprise a roll-up and refinancing of the Prepetition First Lien Loans (including accrued but unpaid interest) approved pursuant to the Bankruptcy Court DIP Order and (ii) be deemed funded by the Lenders pursuant to Section 2.01.

**“S&P”** means Standard & Poor’s, a division of The McGraw-Hill Companies, Inc., and any successor to its rating agency business.

**“Same Day Funds”** means disbursements and payments in immediately available funds.

**“Sanctioned Person”** means at any time: (a) any Person listed on any Sanctions-related list of designated or blocked persons; (b) any Person resident in, or entity organized under the laws of, a country or territory that is the subject of comprehensive Sanctions (including without limitation Cuba, Iran, North Korea, Sudan, Syria, and the Crimea region); or (c) any Person majority-owned or controlled by any of the foregoing.

**“Sanctions”** means applicable 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 OFAC; (b) the European Union and implemented by its member States; (c) the United Nations Security Council; or (d) Her Majesty’s Treasury of the United Kingdom.

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

**“Secured Cash Management Agreement”** means any Cash Management Agreement that is entered into by and between Holdings, the Borrower or any Restricted Subsidiary and a Cash



Management Bank; and designated in writing by the Cash Management Bank and the Borrower to the Administrative Agent as a “Secured Cash Management Agreement.”

“**Secured Hedge Agreement**” means any Hedge Agreement with respect to Hedging Obligations permitted under Section 7.02 that is (a) entered into by and between any Loan Party or Restricted Subsidiary and any Hedge Bank and (b) designated in writing by the Hedge Bank and the Borrower to the Administrative Agent as a “Secured Hedge Agreement.”

“**Secured Parties**” means, collectively, the Administrative Agent, the Collateral Agent, the Lenders, each Hedge Bank party to a Secured Hedge Agreement, each Cash Management Bank party to a Secured Cash Management Agreement, each Supplemental Administrative Agent and each co-agent or sub-agent appointed by the Administrative Agent from time to time pursuant to Section 9.01(2) or 9.07.

“**Securities Act**” means the Securities Act of 1933, as amended, and the rules and regulations of the SEC promulgated thereunder.

“**Security Agreement**” means, collectively, the Pledge and Security Agreement executed by the Loan Parties and the Collateral Agent, substantially in the form of Exhibit F, together with supplements or joinders thereto executed and delivered pursuant to Section 6.11.

“**Similar Business**” means (1) any business conducted or proposed to be conducted by the Borrower or any Restricted Subsidiary on the Closing Date or (2) any business or other activities that are reasonably similar, ancillary, incidental, complementary or related to (including non-core incidental businesses acquired in connection with any Permitted Investment), or a reasonable extension, development or expansion of, the businesses that the Borrower and its Restricted Subsidiaries conduct or propose to conduct on the Closing Date.

“**SOFR**” means, with respect to any U.S. Government Securities Business Day, a rate per annum equal to the secured overnight financing rate for such U.S. Government Securities Business Day published by the SOFR Administrator on the SOFR Administrator’s Website on the immediately succeeding U.S. Government Securities Business Day.

“**SOFR Administrator**” means the NYFRB (or a successor administrator of the secured overnight financing rate).

“**SOFR Administrator’s Website**” means the NYFRB’s website, currently at <http://www.newyorkfed.org>, or any successor source for the secured overnight financing rate identified as such by the SOFR Administrator from time to time.

“**SOFR Loan**” means a Loan that bears interest at a rate based on Term SOFR, other than pursuant to clause (c) of the definition of “Base Rate”.

“**SPC**” has the meaning specified in Section 10.07(g).

“**Sponsor**” means Sycamore Partners Management, L.P. and any of its respective Affiliates and funds or partnerships managed or advised by it or any of its respective Affiliates but not including, however, any portfolio company of any of the foregoing.

“**Subordinated Indebtedness**” means any Indebtedness for borrowed money of any Loan Party that by its terms is subordinated in right of payment to the Obligations of such Loan Party arising under the Loans or the Guaranty.

“**Subsidiary**” means, with respect to any Person:

(1) any corporation, association or other business entity (other than a partnership, joint venture, limited liability company or similar entity) of which more than 50.0% of the total voting power of shares of Capital Stock entitled (without regard to the occurrence of any contingency) to vote in the election of directors, members of management or trustees thereof is at the time of determination owned or controlled, directly or indirectly, by such Person or one or more of the other Subsidiaries of that Person or a combination thereof; and

(2) any partnership, joint venture, limited liability company or similar entity of which:

(a) more than 50.0% of the capital accounts, distribution rights, total equity and voting interests or general or limited partnership interests, as applicable, are owned or controlled, directly or indirectly, by such Person or one or more of the other Subsidiaries of that Person or a combination thereof whether in the form of membership, general, special or limited partnership or otherwise and

(b) such Person or any Restricted Subsidiary of such Person is a controlling general partner or otherwise controls such entity.

Unless otherwise specified, all references herein to a “Subsidiary” or to “Subsidiaries” shall refer to a Subsidiary or Subsidiaries of the Borrower.

“**Subsidiary Guarantor**” means any Guarantor other than Topco, Propco, Holdings and any other Parent Company.

“**Supplemental Administrative Agent**” and “**Supplemental Administrative Agents**” have the meanings specified in Section 9.15(1).

“**Swap Obligation**” has the meaning specified in the definition of “Excluded Swap Obligation.”

“**Tax**” means any present or future tax, levy, impost, duty, assessment, charge, fee, deduction or withholding (including backup withholding) of any nature and whatever called, imposed by any Governmental Authority, including any interest, additions to tax and penalties applicable thereto.

“**Tax Group**” has the meaning specified in Section 7.05(b)(8)(b).

“**Tax Indemnitee**” as defined in Section 3.01(5).

“**Term Borrowing**” means a Borrowing of any Term Loans.



“**Term Commitment**” means, as to each Term Lender, its obligation to make a Term Loan to the Borrower hereunder, expressed as an amount representing the maximum principal amount of the Term Loan to be made by such Term Lender under this Agreement, as such commitment may be (a) reduced from time to time pursuant to this Agreement and (b) reduced or increased from time to time pursuant to assignments by or to such Term Lender pursuant to an Assignment and Assumption. The initial amount of each Term Lender’s Term Commitment is its New Money Delayed Draw Commitment or, otherwise, in the Assignment and Assumption, as the case may be.

“**Term Lender**” means, at any time, any Lender that has any New Money Delayed Draw Commitments or any Term Loans outstanding at such time.

“**Term Loans**” means Loans made by the Term Lenders pursuant to Section 2.01, whether in the form of a New Money Loan or a Roll-up Loan, as applicable.

“**Term Loan Exposure**” means, with respect to any Lender, as of any date of determination, the outstanding principal amount of the Term Loans of such Lender; *provided* that at any time prior to the making of the Term Loans, the Term Loan Exposure of any Lender shall be equal to such Lender’s Term Commitment.

“**Term Note**” means a promissory note of the Borrower payable to any Term Lender or its registered assigns, in substantially the form of Exhibit B-1 hereto.

“**Term Priority Collateral**” means “Term Priority Collateral” as defined in the Prepetition ABL Intercreditor Agreement.

“**Term SOFR**” means:

(a) for any calculation with respect to a SOFR Loan, (i) for any Interest Period for a duration of three-months (subject to the availability thereof or as used for reference purposes only in determining Interpolated Term SOFR, as applicable), the Term SOFR Reference Rate for a tenor comparable to the applicable Interest Period on the day (such day, the “Periodic Term SOFR Determination Day”) that is two (2) Business Days prior to the first day of such Interest Period, as such rate is published by the Term SOFR Administrator; provided, however, that if as of 5:00 p.m. (New York City time) on any Periodic Term SOFR Determination Day the Term SOFR Reference Rate for the applicable tenor has not been published by the Term SOFR Administrator and a Benchmark Replacement Date with respect to the Term SOFR Reference Rate has not occurred, then Term SOFR will be the Term SOFR Reference Rate for such tenor as published by the Term SOFR Administrator on the first preceding Business Day for which such Term SOFR Reference Rate for such tenor was published by the Term SOFR Administrator so long as such first preceding Business Day is not more than three (3) Business Days prior to such Periodic Term SOFR Determination Day, and (ii) for an Interest Period of any duration other than specified in clause (i), Interpolated Term SOFR, and

(b) for any calculation with respect to a Base Rate Loan on any day, the Term SOFR Reference Rate for a tenor of one month on the day (such day, the “Base Rate Term SOFR Determination Day”) that is two (2) Business Days prior to such day, as such rate is published by

the Term SOFR Administrator; provided, however, that if as of 5:00 p.m. (New York City time) on any Base Rate Term SOFR Determination Day the Term SOFR Reference Rate for the applicable tenor has not been published by the Term SOFR Administrator and a Benchmark Replacement Date with respect to the Term SOFR Reference Rate has not occurred, then Term SOFR will be the Term SOFR Reference Rate for such tenor as published by the Term SOFR Administrator on the first preceding U.S. Government Securities Business Day for which such Term SOFR Reference Rate for such tenor was published by the Term SOFR Administrator so long as such first preceding U.S. Government Securities Business Day is not more than three (3) Business Days prior to such Base Rate Term SOFR Determination Day;

provided, further, that Term SOFR shall not be less than 1.00% per annum.

“**Term SOFR Administrator**” means CME Group Benchmark Administration Limited (CBA) (or a successor administrator of the Term SOFR Reference Rate selected by the Administrative Agent in its reasonable discretion).

“**Term SOFR Reference Rate**” means the forward-looking term rate based on SOFR.

“**Termination Conditions**” means, the payment in full in cash of the Obligations (other than (i) contingent indemnification obligations as to which no claim has been asserted and (ii) Obligations under Secured Hedge Agreements and Obligations under Secured Cash Management).

“**Termination Declaration Date**” has the meaning specified in Section 2.02(10).

“**Threshold Amount**” means \$15.0 million.

“**Toggle Event**” has the meaning specified in Section 8.01(12).

“**Topco**” has the meaning specified in the introductory paragraph to this Agreement.

“**Traded Securities**” means any debt or equity securities issued pursuant to a public offering or Rule 144A offering.

“**Transaction Expenses**” means any fees, expenses, costs or charges incurred or paid by any Parent Company, Holdings, the Borrower or any Restricted Subsidiary in connection with the Transactions.

“**Transactions**” means, collectively, (a) the funding of the New Money Loans, (b) the roll-up of Prepetition First Lien Loans as the Roll-up Loans, (c) the payment of the Transaction Expenses, (d) the execution and delivery of the Loan Documents and (e) the consummation of any other transactions in connection with the foregoing.

“**Type**” means, with respect to a Loan, its character as a Base Rate Loan or a SOFR Loan.

“**U.S. Government Securities Business Day**” means any day except for (i) a Saturday, (ii) a Sunday or (iii) a day on which the Securities Industry and Financial Markets Association recommends that the fixed income departments of its members be closed for the entire day for purposes of trading in United States government securities.

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

“**U.S. Trustee**” has the meaning set forth in the definition of “Carve Out”.

“**Unadjusted Benchmark Replacement**” means the Benchmark Replacement excluding the Benchmark Replacement Adjustment.

“**Unaudited Annual Financial Statement**” means the unaudited consolidated balance sheet of the Borrower and its Subsidiaries as of the fiscal year ended December 31, 2022, and the related consolidated statements of operations, changes in stockholders’ equity and cash flows for the Borrower and its Subsidiaries for the fiscal year then ended.

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

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

“**United States Tax Compliance Certificate**” has the meaning specified in Section 3.01(3)(b)(iii).

“**USA PATRIOT Act**” means The Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (Title III of Public Law No. 107-56 (signed into law October 26, 2001)), as amended or modified from time to time.

“**Variance Report**” has the meaning specified in Section 6.01(8).

“**Voting Stock**” of any Person as of any date means the Capital Stock of such Person that is at the time entitled to vote in the election of the Board of Directors of such Person.

“**wholly owned**” means, with respect to any Subsidiary of any Person, a Subsidiary of such Person one hundred percent (100%) of the outstanding Equity Interests of which (other than (x) directors’ qualifying shares and (y) shares of Capital Stock of Foreign Subsidiaries issued to foreign nationals as required by applicable Law) is at the time owned by such Person or by one or more wholly owned Subsidiaries of such Person.

“**Withdrawal Liability**” means the liability to a Multiemployer Plan as a result of a complete or partial withdrawal from such Multiemployer Plan, as such term is defined in Part I of Subtitle E of Title IV of ERISA.

“**Write-Down and Conversion Powers**” means, 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.

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

(1) The meanings of defined terms are equally applicable to the singular and plural forms of the defined terms.

(2) The words “herein,” “hereto,” “hereof” and “hereunder” and words of similar import when used in any Loan Document shall refer to such Loan Document as a whole and not to any particular provision thereof.

(3) References in this Agreement to an Exhibit, Schedule, Article, Section, Annex, clause or subclause refer (a) to the appropriate Exhibit or Schedule to, or Article, Section, clause or subclause in this Agreement or (b) to the extent such references are not present in this Agreement, to the Loan Document in which such reference appears, in each case as such Exhibit, Schedule, Article, Section, Annex, clause or subclause may be amended or supplemented from time to time.

(4) The term “including” is by way of example and not limitation.

(5) The term “documents” includes any and all instruments, documents, agreements, certificates, notices, reports, financial statements and other writings, however evidenced, whether in physical or electronic form.

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

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

(8) The word “or” is not intended to be exclusive unless expressly indicated otherwise.

(9) With respect to any Default or Event of Default, the words “exists”, “is continuing” or similar expressions with respect thereto shall mean that the Default or Event of Default has occurred and has not yet been cured or waived.

(10) For purposes of determining compliance with any Section of Article VII, in the event that any Lien, Investment, Indebtedness, Asset Sale, Restricted Payment, Affiliate Transaction, Contractual Obligation or prepayment of Indebtedness meets the criteria of one or more of the categories of transactions permitted pursuant to any clause of such Sections, such transaction (or portion thereof) at any time, shall be permitted under one or more of such clauses as determined by the Borrower in its sole discretion at such time.

(11) For purposes hereof, unless otherwise specifically indicated, the term “consolidated” with respect to any Person refers to such Person consolidated with its Restricted Subsidiaries.

Section 1.03 Accounting Terms. 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, except as otherwise specifically prescribed herein.

Section 1.04 Rounding. Any financial ratios required to be satisfied in order for a specific action to be permitted under this Agreement shall be calculated by dividing the appropriate component by the other component, carrying the result to one place more than the number of places by which such ratio is expressed herein and rounding the result up or down to the nearest number (with a rounding-up if there is no nearest number).

Section 1.05 References to Agreements, Laws, etc. Unless otherwise expressly provided herein, (1) references to Organizational Documents, agreements (including the Loan Documents) and other contractual instruments shall be deemed to include all subsequent amendments, restatements, extensions, supplements and other modifications thereto, but only to the extent that such amendments, restatements, extensions, supplements and other modifications are permitted by any Loan Document; and (2) references to any Law shall include all statutory and regulatory provisions consolidating, amending, replacing, supplementing or interpreting such Law.

Section 1.06 Times of Day and Timing of Payment and Performance. Unless otherwise specified, all references herein to times of day shall be references to New York time (daylight or standard, as applicable). When the payment of any obligation or the performance of any covenant, duty or obligation is stated to be due or performance required on a day which is not a Business Day, the date of such payment (other than as described in the definition of "Interest Period") or performance shall extend to the immediately succeeding Business Day.

Section 1.07 [Reserved].

Section 1.08 [Reserved].

Section 1.09 [Reserved].

Section 1.10 Currency Generally.

(1) [Reserved].

(2) [Reserved].

(3) For purposes of determining compliance with any restriction on the incurrence of Indebtedness, the Dollar equivalent of the principal amount of Indebtedness denominated in a foreign currency being incurred shall be calculated based on the exchange rate in effect on the date such Indebtedness was incurred, in the case of term debt, or first committed, in the case of revolving credit debt; provided that if such Indebtedness is incurred to extend, replace, refund, refinance, renew or defease other Indebtedness denominated in a foreign currency, and such extension, replacement, refunding, refinancing, renewal or defeasance would cause the applicable restriction to be exceeded if calculated at the relevant currency exchange rate in effect on the date of such extension, replacement, refunding, refinancing, renewal or defeasance, such restriction shall be deemed not to have been exceeded so long as the principal amount of such refinancing

Indebtedness does not exceed the principal amount of such Indebtedness being extended, replaced, refunded, refinanced, renewed or defeased.

## ARTICLE II

### The Commitments and Borrowings

#### Section 2.01 The Loans.

(1) Subject to the terms and conditions set forth in Sections 4.01 and 4.02 hereof and in the Bankruptcy Court DIP Order, each Lender severally agrees following the Bankruptcy Court's entry of the Interim DIP Order, to make a term loan to the Borrower in a single Borrowing on the Closing Date (the "**New Money Initial Loan**") out of a portion of such Lender's New Money Delayed Draw Commitment in an aggregate principal amount not to exceed such Lender's New Money Delayed Draw Commitment; *provided*, that the total amount of Borrowings of New Money Delayed Draw Loans made on the Closing Date shall not exceed \$5.7 million. Amounts borrowed under this Section 2.01(1) and repaid or prepaid may not be reborrowed.

(2) Subject to the terms and conditions set forth in Section 4.02 hereof and in the Bankruptcy Court DIP Order, each Lender severally agrees following the Bankruptcy Court's entry of the Interim DIP Order, to make additional delayed draw term loans to the Borrower in one or more Borrowings at any time from time to time until the New Money Delayed Draw Termination Date (the "**New Money Delayed Draw Loans**") in an aggregate principal amount not to exceed such Lender's New Money Delayed Draw Commitment; *provided*, that (i) there shall be no more than one Borrowing of New Money Delayed Draw Loans per calendar week and (ii) the total amount of Borrowings of New Money Delayed Draw Loans made prior to the Final DIP Order Entry Date shall not exceed \$10.0 million. Each New Money Delayed Draw Loan shall be in a minimum amount of \$500,000 or a whole multiple of \$100,000 in excess thereof. Amounts paid or prepaid in respect of the Delayed Draw Term Loan may not be reborrowed. The New Money Delayed Draw Commitments shall terminate automatically in their entirety on the New Money Delayed Draw Termination Date. Amounts borrowed under this Section 2.01(2) and repaid or prepaid may not be reborrowed.

(3) Subject to the terms and conditions set forth herein and in the Bankruptcy Court DIP Order, each Lender shall automatically, and without further action or order of the Bankruptcy Court, be deemed on each Borrowing Date to have "rolled-up" and refinanced as Roll-Up Loans on a dollar-for-dollar basis one dollar of Prepetition First Lien Loans held by such Lender immediately prior to the Closing Date for each dollar of New Money Loans actually funded by each such Lender on such Borrowing Date (which for the avoidance of doubt shall include the Closing Date). The Roll-Up Loans (i) funded by each Lender shall be deemed funded on each Borrowing Date in an amount equal to the amount of New Money Loans actually funded by each such Lender on such Borrowing Date and (ii) shall be due and payable in accordance with the terms and conditions set forth in this Agreement as if originally funded hereunder on such Borrowing Date. From and after each Borrowing Date on which any Roll-Up Loans are deemed funded, the outstanding aggregate amount of the Prepetition First Lien Loans shall be automatically and irrevocably deemed reduced by the amount of such Roll-Up Loans deemed funded. By way of example, if on a Borrowing Date, \$5.0 million of New Money Loans are

advanced, \$5.0 million of Prepetition First Lien Loans held by the Lenders advancing such New Money Loans shall be deemed “rolled-up” and refinanced as Roll-Up Loans on such Borrowing Date, with the amount of outstanding Prepetition First Lien Loans automatically reduced by \$5.0 million on such Borrowing Date and the amount of outstanding Roll-Up Loans automatically increased by \$5.0 million on such Borrowing Date. All Roll-Up Loans shall be SOFR Loans with an Interest Period of three months.

(4) Subject to the consent of the Required Lenders, each Prepetition First Lien Lender that is a party to the Restructuring Support Agreement (in such capacity, an “**Electing DIP Term Lender**”) may participate in providing Loans in an amount to be determined by the Required Lenders, in their sole and absolute discretion, by executing an a Joinder (as defined in the Restructuring Support Agreement) and (i) upon such execution of such election joinder, each such Person shall become a Lender and (ii) each existing Lender’s Commitment shall be reduced proportionally on such date.

(5) All Loans and all other Obligations owing hereunder with respect to the Loans shall be paid in full not later than the Maturity Date.

Section 2.02 Borrowings, Conversions and Continuations of Loans.

(1) Each Borrowing of New Money Loans, each conversion of New Money Loans from one Type to the other, and each continuation of SOFR Loans shall be made upon the Borrower’s irrevocable written notice, on behalf of the Borrower, to the Administrative Agent. Each such notice must be received by the Administrative Agent not later than 12:00 p.m., New York time, (a) two (2) Business Days prior to the requested date of any Borrowing or continuation of SOFR Loans or any conversion of Base Rate Loans to SOFR Loans and (b) one (1) Business Day prior to the requested date of any Borrowing or continuation of Base Rate Loans or any conversion of SOFR Loans to Base Rate Loans. Each Borrowing of, conversion to or continuation of SOFR Loans shall be in a principal amount of \$500,000 or a whole multiple of \$100,000 in excess thereof. Each Borrowing of or conversion to Base Rate Loans shall be in a principal amount of \$1.0 million or a whole multiple of \$500,000 in excess thereof. Each Committed Loan Notice shall specify:

- (i) whether the Borrower is requesting a Borrowing of New Money Loans, a conversion of Term Loans from one Type to the other or a continuation of SOFR Loans,
- (ii) the requested date of the Borrowing, conversion or continuation, as the case may be (which shall be a Business Day),
- (iii) the principal amount of Loans to be borrowed, converted or continued,
- (iv) [reserved],
- (v) the Class and Type of Loans to be borrowed or to which existing Term Loans are to be converted, and
- (vi) wire instructions of the account(s) of the Borrower to which funds are to be disbursed.



If the Borrower fails to specify a Type of Loan to be made in a Committed Loan Notice, then the applicable Loans shall be made as SOFR Loans with an Interest Period of three (3) months. If the Borrower fails to give a timely notice requesting a conversion or continuation, then the applicable Loans shall be made or continued as the same Type of Loan, which if a SOFR Loan, shall have a three-month Interest Period. Any such automatic continuation of SOFR Loans shall be effective as of the last day of the Interest Period then in effect with respect to the applicable SOFR Loans.

(2) Following receipt of a Committed Loan Notice, the Administrative Agent shall promptly notify each Lender of the amount of its Pro Rata Share or other applicable share provided for under this Agreement of the applicable Class of Loans, and if no timely notice of a conversion or continuation is provided by the Borrower, the Administrative Agent shall notify each Lender of the details of any automatic continuation of SOFR Loans or continuation of Loans described in Section 2.02(1). In the case of each Borrowing, each Appropriate Lender shall make the amount of its Loan available to the Administrative Agent in Same Day Funds at the Administrative Agent's Office not later than, in the case of Borrowing on the Closing Date, 10:00 a.m., New York time, and otherwise 2:00 p.m., New York time, on the Business Day specified in the applicable Committed Loan Notice. Upon satisfaction of the applicable conditions set forth in Section 4.01 for the Borrowing on the Closing Date, the Administrative Agent shall make all funds so received available to the Borrower in like funds as received by the Administrative Agent either by (a) crediting the account(s) of the applicable Borrower on the books of the Administrative Agent with the amount of such funds or (b) wire transfer of such funds, in each case in accordance with instructions provided by the Borrower to (and reasonably acceptable to) the Administrative Agent.

(3) Except as otherwise provided herein, a SOFR Loan may be continued or converted only on the last day of an Interest Period for such SOFR Loan, unless the Borrower pays the amount due, if any, under Section 3.05 in connection therewith. Upon the occurrence and during the continuation of an Event of Default, the Administrative Agent at the direction of the Required Lenders under the applicable Facility may require by notice to the Borrower that no Loans may be converted to or continued as SOFR Loans.

(4) The Administrative Agent shall promptly notify the Borrower and the Lenders of the interest rate applicable to any Interest Period for SOFR Loans upon determination of such interest rate. The determination of the Term SOFR by the Administrative Agent shall be conclusive in the absence of manifest error. At any time when Base Rate Loans are outstanding, the Administrative Agent shall notify the Borrower and the Lenders of any change in the Administrative Agent's prime rate used in determining the Base Rate promptly following the public announcement of such change.

(5) After giving effect to all Term Borrowings, all conversions of Term Loans from one Type to the other, and all continuations of Term Loans as the same Type, there shall not be more than 6 Interest Periods in effect unless otherwise agreed between the Borrower and the Administrative Agent.

(6) The failure of any Lender to make the Loan to be made by it as part of any Borrowing shall not relieve any other Lender of its obligation, if any, hereunder to make its Loan



on the date of such Borrowing, but no Lender shall be responsible for the failure of any other Lender to make the Loan to be made by such other Lender on the date of any Borrowing.

(7) Unless the Administrative Agent shall have received written notice from a Lender prior to the date of any Borrowing, or, in the case of any Borrowing of Base Rate Loans, prior to 1:00 p.m., New York time, on the date of such Borrowing, that such Lender will not make available to the Administrative Agent such Lender's Pro Rata Share of such Borrowing, the Administrative Agent may assume that such Lender has made such Pro Rata Share available to the Administrative Agent on the date of such Borrowing in accordance with paragraph (2) above, and the Administrative Agent may, 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, each of such Lender and the Borrower severally agrees 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 until the date such amount is repaid to the Administrative Agent at (a) in the case of the Borrower, the interest rate applicable at the time to the Loans comprising such Borrowing and (b) in the case of such Lender, the Overnight Rate *plus* any administrative, processing or similar fees customarily charged by the Administrative Agent in accordance with the foregoing. A certificate of the Administrative Agent submitted to any Lender with respect to any amounts owing under this Section 2.02(7) shall be conclusive in the absence of manifest error. If the Borrower and such Lender shall both pay all or any portion of the principal amount in respect of such Borrowing or interest to the Administrative Agent for the same or an overlapping period, the Administrative Agent shall promptly remit to the Borrower the amount of such Borrowing or interest paid by the Borrower for such period. If such Lender pays its share of the applicable Borrowing to the Administrative Agent, then the amount so paid shall constitute such Lender's Loan included in such Borrowing. Any payment by the Borrower shall be without prejudice to any claim the Borrower may have against a Lender that shall have failed to make such payment to the Administrative Agent.

(8) On the day on which a Carve Out Trigger Notice is given by the Administrative Agent (acting at the direction of the Required Lenders) to the Borrower with a copy to counsel to the Committee (the "**Termination Declaration Date**"), the Carve Out Trigger Notice shall (i) be deemed a Committed Loan Notice, in an amount equal to the then unpaid amounts of the Allowed Professional Fees and (ii) also constitute a demand to the Borrower and its Subsidiaries to utilize all cash on hand as of such date and any available cash thereafter held by Borrower or its Subsidiaries to fund a reserve in an amount equal to the then unpaid amounts of the Allowed Professional Fees. The Borrower shall deposit and hold such amounts plus any cash on hand necessary to comply with the provisions of the Interim Order with respect to the Carve Out Reserve in a segregated account at the Administrative Agent in trust to pay such then unpaid Allowed Professional Fees (the "**Pre-Carve Out Trigger Notice Reserve**") prior to any and all other claims. On the Termination Declaration Date, the Carve Out Trigger Notice shall also (i) be deemed a Committed Loan Notice in an amount equal to the Post-Carve Out Trigger Notice Cap and (ii) constitute a demand to the Borrower and its Subsidiaries to utilize all cash on hand as of such date and any available cash thereafter held by Borrower or its Subsidiaries, after funding the Pre-Carve Out Trigger Notice Reserve, to fund a reserve in an amount equal to the Post-Carve Out Trigger Notice Cap. The Borrower shall deposit and hold such amounts in a segregated account at the Administrative Agent in trust to pay such Allowed Professional Fees benefiting from the Post-

Carve Out Trigger Notice 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. On the first Business Day after the Administrative Agent gives such Committed Loan Notice, notwithstanding anything herein to the contrary, including with respect to the existence of a Default or Event of Default, the failure of the Borrower to satisfy any or all of the conditions precedent for a Borrowing under the Facility, any termination of the Commitments following an Event of Default, or the occurrence of the Maturity Date, each Lender shall be obligated to make New Money Loans to the Borrower to fully fund the Carve Out Reserve in an amount not to exceed the aggregate outstanding amount of New Money Delayed Draw Commitments as of the Closing Date; *provided* that in no event shall the aggregate principal amount of all New Money Loans exceed \$30.0 million (plus any interest thereon paid in kind pursuant to Section 2.08). All funds in the Pre-Carve Out Trigger Notice Reserve shall be used first to pay the obligations set forth in clauses (i) through (iii) of the definition of Carve- Out (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 Administrative Agent for the benefit of the Lenders, unless the Obligations have been indefeasibly paid in full, in cash, and all Commitments have been terminated, in which case any such excess shall be paid to the holders of the Prepetition Obligations in accordance with their rights and priorities as of the Petition Date. All funds in the Post-Carve Out Trigger Notice Reserve shall be used first to pay the obligations set forth in clauses (iv) and (v) of the definition of Carve Out (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 Administrative Agent for the benefit of the Lenders, unless the Obligations have been indefeasibly paid in full, in cash, and all Commitments have been terminated, in which case any such excess shall be paid to the holders of the Prepetition Obligations in accordance with their rights and priorities as of the Petition Date. Notwithstanding anything to the contrary in the Loan Documents, the Interim DIP Order or the Final DIP Order, if either of the Carve Out Reserves is not funded in full in the amounts set forth in this Section 2.02(8), 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 Section 2.02(8), prior to making any payments to the Administrative Agent or the holders of the Prepetition Obligations, as applicable. Notwithstanding anything to the contrary in the Loan Documents, the Final DIP Order or the Interim DIP Order, following delivery of a Carve Out Trigger Notice, the Administrative Agent and the Prepetition ABL Facility Administrative Agent shall not sweep or foreclose on cash (including cash received as a result of the sale or other disposition of any assets) of the Loan Parties until the Carve Out Reserves have been fully funded, but shall have a security interest in any residual interest in the Carve Out Reserves, with any excess paid to the Administrative Agent for application in accordance with the Loan Documents. Further, notwithstanding anything to the contrary in the Final DIP Order or the Interim DIP Order, (i) disbursements by the Loan Parties from the Carve Out Reserves shall not constitute Loans or increase or reduce the Obligations, (ii) the failure of the Carve Out Reserves to satisfy in full the Allowed Professional Fees shall not affect the priority of the Carve Out, and (iii) in no way shall the initial Budget, Budget, Carve Out, Post-Carve Out Trigger Notice Cap, Carve Out Reserves, or any of the foregoing be construed as a cap or limitation on the amount of the Allowed Professional Fees due and payable by the Debtors. For the avoidance of doubt and notwithstanding anything to the contrary in the Final DIP Order or the Interim DIP Order, the Facility, or in any Prepetition Facilities, the Carve Out shall be senior

to all liens and claims securing the Facility, the ABL Adequate Protection Liens, and the ABL 507(b) Claim, and any and all other forms of adequate protection, liens, or claims securing the Obligations or the Prepetition Obligations.

Section 2.03 [Reserved].

Section 2.04 [Reserved].

Section 2.05 Prepayments.

(1) Optional.

(a) The Borrower may, upon irrevocable written notice to the Administrative Agent, at any time prepay the Term Loans, in full but not in part without premium or penalty; *provided that*:

(i) such notice must be received by the Administrative Agent not later than 12:00 p.m., New York time, (A) three (3) Business Days prior to any date of prepayment of SOFR Loans and (B) one (1) Business Day prior to the date of prepayment of Base Rate Loans; and

(ii) any such prepayment must be applied pursuant to Section 8.03.

Each such notice shall specify the date and amount of such prepayment and the Class(es) and Type(s) of Loans to be prepaid. The Administrative Agent will promptly notify each Appropriate Lender of its receipt of each such notice, and of the amount of such Lender's Pro Rata Share or other applicable share provided for under this Agreement of such prepayment. If such notice is given, the Borrower shall make such prepayment and the payment amount specified in such notice shall be due and payable on the date specified therein. Any prepayment of a Loan shall be accompanied by all accrued interest thereon, together with, in the case of a SOFR Loan, any additional amounts required pursuant to Section 3.05.

(2) Mandatory.

(a) [Reserved].

(b) (i) If (x) the Borrower or any Restricted Subsidiary makes an Asset Sale or (y) any Casualty Event occurs, which results in the realization or receipt by the Borrower or such Restricted Subsidiary of Net Proceeds, the Borrower shall, prepay, or cause to be prepaid, on or prior to the date which is ten (10) Business Days after the date of the realization or receipt by the Borrower or such Restricted Subsidiary of such Net Proceeds, subject to clause (ii) of this Section 2.05(2)(b) and clauses (2)(g) and (h) of this Section 2.05, an aggregate principal amount of Term Loans equal to 100% of all Net Proceeds realized or received.

(c) [reserved]

(d) If the Borrower or any Restricted Subsidiary incurs or issues any Indebtedness not expressly permitted to be incurred or issued pursuant to Section 7.02(b), the

Borrower shall prepay, or cause to be prepaid, an aggregate principal amount of Term Loans of any Class or Classes (in each case, as directed by the Borrower) equal to 100% of all Net Proceeds received therefrom on or prior to the date which is five (5) Business Days after the receipt by the Borrower or such Restricted Subsidiary of such Net Proceeds.

(e) (i) each prepayment of Term Loans required by Sections 2.05(2)(b) through (d) shall be applied to each Class of Term Loans then outstanding on a *pro rata* basis or a less than *pro rata* basis (but not greater than *pro rata* basis) with any other Term Loans, provided that prepayments pursuant to Section 2.05(2)(b) shall always be applied on a *pro rata* basis, (ii) with respect to each Class of Loans, each prepayment pursuant to clauses (a) through (d) of Section 2.05(2) shall be applied to remaining scheduled installments of principal thereof following the date of prepayment in direct order of maturity and (iii) each such prepayment shall be paid to the Lenders in accordance with their respective Pro Rata Shares of such prepayment;

(f) [Reserved].

(g) The Borrower shall notify the Administrative Agent in writing of any mandatory prepayment of Term Loans required to be made pursuant to clauses (a) through (d) of this Section 2.05(2) before 12:00 p.m. New York time at least three (3) Business Days prior to the date of such prepayment. Each such notice shall specify the date of such prepayment and provide a reasonably detailed calculation of the aggregate amount of such prepayment to be made by the Borrower. The Administrative Agent will promptly notify each Appropriate Lender of the contents of the Borrower's prepayment notice and of such Appropriate Lender's Pro Rata Share of the prepayment or other applicable share provided for under this Agreement. Each Term Lender may reject all or a portion of its Pro Rata Share, or other applicable share provided for under this Agreement, of any mandatory prepayment (such declined amounts, the "**Declined Proceeds**") of Term Loans required to be made pursuant to clauses (a) and (b) of this Section 2.05(2) by providing written notice (each, a "**Rejection Notice**") to the Administrative Agent and the Borrower no later than 3:00 p.m., New York time, one (1) Business Day prior to the scheduled date of such prepayment. Each Rejection Notice from a given Lender shall specify the principal amount of the mandatory repayment of Term Loans to be rejected by such Lender. If a Term Lender fails to deliver a Rejection Notice to the Administrative Agent within the time frame specified above or such Rejection Notice fails to specify the principal amount of the Term Loans to be rejected, any such failure will be deemed an acceptance of the total amount of such mandatory prepayment of Term Loans. Any Declined Proceeds remaining shall be applied as required by the Bankruptcy Court DIP Order.

(h) Notwithstanding any other provisions of this Section 2.05(2), (A) to the extent that any or all of the Net Proceeds of any Asset Sale by a Foreign Subsidiary giving rise to a prepayment event pursuant to Section 2.05(2)(b) (a "**Foreign Asset Sale**") or the Net Proceeds of any Casualty Event from a Foreign Subsidiary (a "**Foreign Casualty Event**"), the portion of such Net Proceeds so affected will not be required to be applied to repay Term Loans at the times provided in this Section 2.05(2) but may be retained by the applicable Foreign Subsidiary so long, but only so long, as the applicable local law will not permit repatriation to the United States (the Borrower hereby agreeing to cause the applicable Foreign Subsidiary to promptly take all commercially reasonable actions available under by the applicable local law

to permit such repatriation), and once such repatriation of any of such affected Net Proceeds is permitted under the applicable local law such repatriation will be promptly effected and an amount equal to such repatriated Net Proceeds will be promptly (and in any event not later than two (2) Business Days after such repatriation) applied (net of additional taxes payable or reserved against as a result thereof) to the repayment of the Term Loans pursuant to this Section 2.05(2) to the extent otherwise provided herein and (B) to the extent that the Borrower has determined in good faith that repatriation of any or all of the Net Proceeds of any Foreign Asset Sale or Foreign Casualty Event would have a material adverse tax consequence to the Borrower and its Restricted Subsidiaries (taking into account any foreign tax credit or benefit actually realized in connection with such repatriation) with respect to such Net Proceeds, the Net Proceeds so affected may be retained by the applicable Foreign Subsidiary.

(i) Interest, Funding Losses, etc. All prepayments under this Section 2.05 shall be accompanied by all accrued interest thereon, together with, in the case of any such prepayment of a SOFR Loan on a date prior to the last day of an Interest Period therefor, any amounts owing in respect of such SOFR Loan pursuant to Section 3.05.

Notwithstanding any of the other provisions of this Section 2.05, so long as no Event of Default shall have occurred and be continuing, if any prepayment of SOFR Loans is required to be made under this Section 2.05 prior to the last day of the Interest Period therefor, in lieu of making any payment pursuant to this Section 2.05 in respect of any such SOFR Loan prior to the last day of the Interest Period therefor, the Borrower may, in its discretion, deposit an amount sufficient to make any such prepayment otherwise required to be made thereunder together with accrued interest to the last day of such Interest Period into a Cash Collateral Account until the last day of such Interest Period, at which time the Administrative Agent shall be authorized (without any further action by or notice to or from the Borrower or any other Loan Party) to apply such amount to the prepayment of such Loans in accordance with this Section 2.05. Upon the occurrence and during the continuance of any Event of Default, the Administrative Agent shall also be authorized (without any further action by or notice to or from the Borrower or any other Loan Party) to apply such amount to the prepayment of the outstanding Loans in accordance with the relevant provisions of this Section 2.05. Such deposit shall be deemed to be a prepayment of such Loans by the Borrower for all purposes under this Agreement.

#### Section 2.06 Termination or Reduction of Commitments.

(1) Optional. The Borrower may, upon written notice by the Borrower to the Administrative Agent, terminate the unused Commitments of any Class, or from time to time permanently reduce the unused Commitments of any Class, in each case without premium or penalty; *provided that*

(a) any such notice shall be received by the Administrative Agent three (3) Business Days prior to the date of termination or reduction, and

(b) any such partial reduction shall be in an aggregate amount of \$500,000 or any whole multiple of \$100,000 in excess thereof or, if less, the entire amount thereof.

(2) Mandatory. The New Money Delayed Draw Commitments shall terminate automatically on the New Money Delayed Draw Termination Date. The Roll-Up Loan Commitments in respect of the Roll-Up Loans deemed funded on the Closing Date shall terminate automatically immediately after the deemed funding of the Roll-Up Loans on the Closing Date. The Roll-Up Loan Commitments in respect of the Roll-Up Loans deemed funded on any Borrowing Date occurring after the Closing Date shall terminate automatically immediately after the deemed funding of such Roll-Up Loans on such Borrowing Date.

(3) Application of Commitment Reductions. Upon any reduction of unused Commitments of any Class, the Commitment of each Lender of such Class shall be reduced by such Lender's Pro Rata Share or other applicable share provided for under this Agreement of the amount by which such Commitments are reduced (other than the termination of the Commitment of any Lender as provided in Section 3.07).

Section 2.07 [Reserved].

Section 2.08 Interest.

(1) Subject to the provisions of Section 2.08(2), (a) each SOFR Loan shall bear interest on the outstanding principal amount thereof for each Interest Period at a rate per annum equal to the Term SOFR Reference Rate for such Interest Period, *plus* the Applicable Rate and (b) each Base Rate Loan shall bear interest on the outstanding principal amount thereof from the applicable Borrowing Date at a rate per annum equal to the Base Rate, *plus* the Applicable Rate.

(2) During the continuance of an Event of Default, the Borrower shall pay interest on past due amounts hereunder at a fluctuating interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by applicable Laws; *provided* that no interest at the Default Rate shall accrue or be payable to a Defaulting Lender so long as such Lender shall be a Defaulting Lender. Accrued and unpaid interest on past due amounts (including interest on past due interest) shall be due and payable upon demand.

(3) Interest on each Loan shall be due and payable in arrears on each Interest Payment Date applicable thereto and at such other times as may be specified herein. Interest hereunder shall be due and payable in accordance with the terms hereof before and after judgment, and before and after the commencement of any proceeding under any Debtor Relief Law. Interest on the Loans shall be payable in kind on each Interest Payment Date, with the interest accrued as of such Interest Payment Date being added to the outstanding principal balance of each respective Class of Loans.

Section 2.09 Fees; Premium.

(1) The Borrower shall pay to the Agents such fees as shall have been separately agreed upon in writing in the amounts and at the times so specified. Such fees shall be fully earned when paid and shall not be refundable for any reason whatsoever (except as expressly agreed between the Borrower and the applicable Agent).

(2) The Borrower agrees to pay to the Administrative Agent for the ratable benefit of each Lender (based on its Pro Rata Share of New Money Delayed Draw Commitments) a



commitment premium equal to 5.00% of such Lender's New Money Delayed Draw Commitments (the "**Commitment Premium**"), which Commitment Premium shall be payable in kind and added to the New Money Loans owed to such Lender as of the day of the funding of such New Money Loans. For avoidance of doubt, the amount of the Commitment Premium added to the principal of the New Money Loans shall not reduce the New Money Delayed Draw Commitments but shall be in excess of such New Money Delayed Draw Commitments.

Section 2.10 Computation of Interest and Fees. All computations of interest for Base Rate Loans shall be made on the basis of a year of 365 days or 366 days, as the case may be, and actual days elapsed. All other computations of fees and interest shall be made on the basis of a 360-day year and actual days elapsed. Interest shall accrue on each Loan for the day on which the Loan is made, and shall not accrue on a Loan, or any portion thereof, for the day on which the Loan or such portion is paid; *provided* that any Loan that is repaid on the same day on which it is made shall, subject to Section 2.12(1), bear interest for one day. Each determination by the Administrative Agent of an interest rate or fee hereunder shall be conclusive and binding for all purposes, absent manifest error.

Section 2.11 Evidence of Indebtedness.

(1) The Term Borrowings made by each Lender shall be evidenced by one or more accounts or records maintained by such Lender and evidenced by one or more entries in the Register maintained by the Administrative Agent, acting solely for purposes of Treasury Regulation Section 5f.103-1(c), as agent for the Borrower, in each case in the ordinary course of business. The accounts or records maintained by the Administrative Agent and each Lender shall be prima facie evidence absent manifest error of the amount of the Term Borrowings made by the Lenders to the Borrower and the interest and payments thereon. Any failure to so record or any error in doing so shall not, however, limit or otherwise affect the obligation of the Borrower hereunder to pay any amount owing with respect to the Obligations. In the event of any conflict between the accounts and records maintained by any Lender and the accounts and records of the Administrative Agent, as set forth in the Register, in respect of such matters, the accounts and records of the Administrative Agent shall control in the absence of manifest error. Upon the request of any Lender made through the Administrative Agent, the Borrower shall execute and deliver to such Lender (through the Administrative Agent) a Term Note payable to such Lender, which shall evidence such Lender's Loans in addition to such accounts or records. Each Lender may attach schedules to its Term Note and endorse thereon the date, Type (if applicable), amount and maturity of its Loans and payments with respect thereto.

(2) [Reserved].

(3) Entries made in good faith by the Administrative Agent in the Register pursuant to Section 2.11(1), and by each Lender in its account or accounts pursuant to Section 2.11(1), shall be prima facie evidence of the amount of principal and interest due and payable or to become due and payable from the Borrower to, in the case of the Register, each Lender and, in the case of such account or accounts, such Lender, under this Agreement and the other Loan Documents, absent manifest error; *provided* that the failure of the Administrative Agent or such Lender to make an entry, or any finding that an entry is incorrect, in the Register or such account

or accounts shall not limit or otherwise affect the obligations of the Borrower under this Agreement and the other Loan Documents.

Section 2.12 Payments Generally.

(1) All payments to be made by the Borrower shall be made without condition or deduction for any counterclaim, defense, recoupment or setoff. Except as otherwise expressly provided herein, all payments by the Borrower hereunder shall be made to the Administrative Agent, for the account of the respective Lenders to which such payment is owed, at the applicable Administrative Agent's Office for payment and in Same Day Funds not later than 2:00 p.m., New York time, on the date specified herein. The Administrative Agent will promptly distribute to each Appropriate Lender its Pro Rata Share (or other applicable share as provided herein) of such payment in like funds as received by wire transfer to such Lender's Lending Office. Any payments under this Agreement that are made later than 2:00 p.m., New York time, may, in the Administrative Agent's sole discretion, be deemed to have been made on the next succeeding Business Day (but the Administrative Agent may extend such deadline for purposes of computing interest and fees (but not beyond the end of such day) in its sole discretion whether or not such payments are in process).

(2) If any payment to be made by the Borrower shall come due on a day other than a Business Day, payment shall be made on the next following Business Day, and such extension of time shall be reflected in computing interest or fees, as the case may be.

(3) Unless the Borrower or any Lender has notified the Administrative Agent in writing, prior to the date, or in the case of any Borrowing of Base Rate Loans, prior to 1:00 p.m., New York time, on the date of such Borrowing, any payment is required to be made by it to the Administrative Agent hereunder (in the case of the Borrower, for the account of any Lender hereunder or, in the case of the Lenders, for the account of the Borrower hereunder), that the Borrower or such Lender, as the case may be, will not make such payment, the Administrative Agent may assume that the Borrower or such Lender, as the case may be, has timely made such payment and may (but shall not be so required to), in reliance thereon, make available a corresponding amount to the Person entitled thereto. If and to the extent that such payment was not in fact made to the Administrative Agent in Same Day Funds, then:

(a) if the Borrower failed to make such payment, each Lender shall forthwith on demand repay to the Administrative Agent the portion of such assumed payment that was made available to such Lender in Same Day Funds, together with interest thereon in respect of each day from and including the date such amount was made available by the Administrative Agent to such Lender to the date such amount is repaid to the Administrative Agent in Same Day Funds at the applicable Overnight Rate from time to time in effect; and

(b) if any Lender failed to make such payment, such Lender shall forthwith on demand pay to the Administrative Agent the amount thereof in Same Day Funds, together with interest thereon for the period from the date such amount was made available by the Administrative Agent to the Borrower to the date such amount is recovered by the Administrative Agent (the "**Compensation Period**") at a rate per annum equal to the applicable Overnight Rate from time to time in effect. When such Lender makes payment to the



Administrative Agent (together with all accrued interest thereon), then such payment amount (excluding the amount of any interest which may have accrued and been paid in respect of such late payment) shall constitute such Lender's Loan included in the applicable Borrowing. If such Lender does not pay such amount forthwith upon the Administrative Agent's demand therefor, the Administrative Agent may make a demand therefor upon the Borrower, and the Borrower shall pay such amount, or cause such amount to be paid, to the Administrative Agent, together with interest thereon for the Compensation Period at a rate per annum equal to the rate of interest applicable to the applicable Borrowing. Nothing herein shall be deemed to relieve any Lender from its obligation to fulfill its Commitment or to prejudice any rights which the Administrative Agent or the Borrower may have against any Lender as a result of any default by such Lender hereunder. A notice of the Administrative Agent to any Lender or the Borrower with respect to any amount owing under this Section 2.12(3) shall be conclusive, absent manifest error.

(c) If any Lender makes available to the Administrative Agent funds for any Loan to be made by such Lender as provided in this Article II, and such funds are not made available to the Borrower by the Administrative Agent because the conditions to the applicable Term Borrowing set forth in Section 4.01 are not satisfied or waived in accordance with the terms hereof, the Administrative Agent shall return such funds (in like funds as received from such Lender) to such Lender, without interest.

(d) The obligations of the Lenders hereunder to make Loans are several and not joint. The failure of any Lender to make any Loan on any date required hereunder shall not relieve any other Lender of its corresponding obligation to do so on such date, and no Lender shall be responsible for the failure of any other Lender to so make its Loan.

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

(f) Whenever any payment received by the Administrative Agent under this Agreement or any of the other Loan Documents is insufficient to pay in full all amounts due and payable to the Administrative Agent and the Lenders under or in respect of this Agreement and the other Loan Documents on any date, such payment shall be distributed by the Administrative Agent and applied by the Administrative Agent and the Lenders in the order of priority set forth in Section 8.03 (or otherwise expressly set forth herein). If the Administrative Agent receives funds for application to the Obligations of the Loan Parties under or in respect of the Loan Documents under circumstances for which the Loan Documents do not specify the manner in which such funds are to be applied, the Administrative Agent may, but shall not be obligated to, elect to distribute such funds to each of the Lenders in accordance with such Lender's Pro Rata Share or other applicable share provided for under this Agreement of the sum of the Outstanding Amount of all Loans outstanding at such time, in repayment or prepayment of such of the outstanding Loans or other Obligations then owing to such Lender.

Section 2.13 Sharing of Payments. Other than as expressly provided elsewhere herein (including with respect to any discounted prepayment of Term Loans pursuant to Section 2.05(2)(e) or 2.05(2)(g)), if any Lender of any Class shall obtain payment in respect of any principal of or interest on account of the Loans of such Class made by it (whether voluntary,

involuntary, through the exercise of any right of setoff, or otherwise) in excess of its ratable share (or other share contemplated hereunder) thereof, such Lender shall immediately (1) notify the Administrative Agent of such fact, and (2) purchase from the other Lenders such participations in the Loans of such Class made by them, as shall be necessary to cause such purchasing Lender to share the excess payment in respect of any principal of or interest on such Loans of such Class, pro rata with each of them; *provided* that if all or any portion of such excess payment is thereafter recovered from the purchasing Lender under any of the circumstances described in Section 10.06 (including pursuant to any settlement entered into by the purchasing Lender in its discretion), such purchase shall to that extent be rescinded and each other Lender shall repay to the purchasing Lender the purchase price paid therefor, together with an amount equal to such paying Lender's ratable share (according to the proportion of (a) the amount of such paying Lender's required repayment to (b) the total amount so recovered from the purchasing Lender) of any interest or other amount paid or payable by the purchasing Lender in respect of the total amount so recovered, without further interest thereon. For avoidance of doubt, the provisions of this Section 2.13 shall not be construed to apply to (i) any payment made by the Borrower pursuant to and in accordance with the express terms of this Agreement as in effect from time to time (including the application of funds arising from the existence of a Defaulting Lender) or (ii) 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 permitted hereunder. The Borrower agrees that any Lender so purchasing a participation from another Lender may, to the fullest extent permitted by applicable Law, exercise all its rights of payment (including the right of setoff, but subject to Section 10.10) with respect to such participation as fully as if such Lender were the direct creditor of the Borrower in the amount of such participation. The Administrative Agent will keep records (which shall be conclusive and binding in the absence of manifest error) of participations purchased under this Section 2.13 and will in each case notify the Lenders following any such purchases or repayments. Each Lender that purchases a participation pursuant to this Section 2.13 shall from and after such purchase have the right to give all notices, requests, demands, directions and other communications under this Agreement with respect to the portion of the Obligations purchased to the same extent as though the purchasing Lender were the original owner of the Obligations purchased.

Section 2.14 [Reserved].

Section 2.15 [Reserved].

Section 2.16 [Reserved]

Section 2.17 Defaulting Lenders

(1) Adjustments. Notwithstanding anything to the contrary contained in this Agreement, if any Lender becomes a Defaulting Lender, then, until such time as that Lender is no longer a Defaulting Lender, to the extent permitted by applicable Law:

(a) Waivers and Amendments. That Defaulting Lender's right to approve or disapprove of any amendment, waiver or consent with respect to this Agreement shall be restricted as set forth in Section 10.01.

(b) Reallocation of Payments. Any payment of principal, interest, fees or other amounts received by the Administrative Agent for the account of that Defaulting Lender (whether voluntary or mandatory, at maturity, pursuant to Article VIII or otherwise), shall be applied at such time or times as may be determined by the Administrative Agent and the Required Lenders as follows: first, to the payment of any amounts owing by that Defaulting Lender to the Administrative Agent hereunder; second, as the Borrower may request (so long as no Default or Event of Default has occurred and is continuing), to the funding of any Loan in respect of which that Defaulting Lender has failed to fund its portion thereof as required by this Agreement, as determined by the Administrative Agent and the Required Lenders; third, if so determined by the Administrative Agent, the Required Lenders and the Borrower, to be held in a non-interest bearing deposit account and released in order to satisfy obligations of that Defaulting Lender to fund Loans under this Agreement; fourth, to the payment of any amounts owing to the Lenders, as a result of any judgment of a court of competent jurisdiction obtained by any Lender, against that Defaulting Lender as a result of that Defaulting Lender's breach of its obligations under this Agreement; fifth, so long as no Default or Event of Default has occurred and is continuing, to the payment of any amounts owing to the Borrower as a result of any judgment of a court of competent jurisdiction obtained by the Borrower against that Defaulting Lender as a result of that Defaulting Lender's breach of its obligations under this Agreement; and sixth, to that Defaulting Lender or as otherwise directed by a court of competent jurisdiction; *provided* that if (i) such payment is a payment of the principal amount of any Loans in respect of which that Defaulting Lender has not fully funded its appropriate share and (ii) such Loans were made at a time when the conditions set forth in Section 4.01 were satisfied or waived, such payment shall be applied solely to pay the Loans of all Non-Defaulting Lenders on a pro rata basis prior to being applied to the payment of any Loans of that Defaulting Lender. Any payments, prepayments or other amounts paid or payable to a Defaulting Lender that are applied (or held) to pay amounts owed by a Defaulting Lender or to post cash collateral pursuant to this Section 2.17(1)(b) shall be deemed paid to and redirected by that Defaulting Lender, and each Lender irrevocably consents hereto.

(2) Defaulting Lender Cure. If the Borrower and the Administrative Agent, acting at the direction of the Required Lenders, agree in writing in their sole discretion that a Defaulting Lender should no longer be deemed to be a Defaulting Lender, the Administrative Agent will so notify the parties hereto, whereupon as of the effective date specified in such notice and subject to any conditions set forth therein, that Lender will, to the extent applicable, purchase that portion of outstanding Loans of the other Lenders, whereupon that Lender will cease to be a Defaulting Lender; *provided* that no adjustments will be made retroactively with respect to fees accrued or payments made by or on behalf of the Borrower while that Lender was a Defaulting Lender; *provided further* that except to the extent otherwise expressly agreed by the affected parties, no change hereunder from Defaulting Lender to Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender.

Section 2.18 [Reserved].

Section 2.19 [Reserved].

Section 2.20 Credit Bid. Each Lender agrees that the Required Lenders shall have the right to direct the Administrative Agent to credit bid up to the full amount of the Obligations

outstanding under the facility during any sale of all or any portion of any Loan Parties' or Loan Parties' affiliates' assets or equity, including without limitation, sales occurring pursuant to section 363 of the Bankruptcy Code or included as part of any Plan of Reorganization subject to confirmation under Section 1129(b)(2)(A)(iii) of the Bankruptcy Code.

### ARTICLE III

#### **Taxes, Increased Costs Protection and Illegality**

##### Section 3.01 Taxes.

(1) Except as required by applicable Law, any and all payments by or on account of any obligation of any Loan Party under any Loan Document shall be made free and clear of and without deduction or withholding for any Taxes.

(2) If any Loan Party or any other applicable withholding agent is required by applicable Law (as determined in the good faith discretion of such Loan Party or withholding agent) to make any deduction or withholding on account of any Taxes from any such payment under any of the Loan Documents:

(a) the applicable Loan Party shall notify the Administrative Agent of any such requirement or any change in any such requirement as soon as such Loan Party becomes aware of it;

(b) the applicable Loan Party or other applicable withholding agent shall be entitled to make such deduction or withholding and shall pay any amounts deducted or withheld to the relevant Governmental Authority before the date on which penalties attach thereto, such payment to be made (if the liability to pay is imposed on any Loan Party) for its own account or (if that liability is imposed on the Lender or Agent) on behalf of and in the name of the Lender or Agent (as applicable);

(c) if the Tax in question is a Non-Excluded Tax or Other Tax, the sum payable shall be increased by such Loan Party to the extent necessary to ensure that, after the making of any required deduction or withholding for Non-Excluded Taxes or Other Taxes (including any deductions or withholdings for Non-Excluded Taxes or Other Taxes attributable to any payments required to be made under this Section 3.01), the Lender or the Administrative Agent (as applicable) receives on the due date a net sum equal to what it would have received had no such deduction or withholding been required or made; and

(d) within thirty days after paying any sum from which any Loan Party is required by Law to make any deduction or withholding, and within thirty days after the due date of payment of any Tax which any Loan Party is required by this Section 3.01 to pay, the Borrower shall deliver to the Administrative Agent evidence reasonably satisfactory to the Administrative Agent of such deduction or withholding and of the remittance thereof to the relevant Governmental Authority.

(3) Status of Lender. The Administrative Agent and each Lender shall, at such times as are reasonably requested by the Borrower or the Administrative Agent, provide the Borrower and the Administrative Agent with any documentation prescribed by Laws or reasonably requested by the Borrower or the Administrative Agent certifying as to any entitlement of such Lender to an exemption from, or reduction in, withholding Tax with respect to any payments to be made to such Lender under any Loan Document. 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, the Administrative Agent or the Required Lenders to determine whether or not such Lender is subject to backup withholding or information reporting requirements. Each such Lender shall, whenever a lapse in time or change in circumstances renders such documentation (including any specific documentation required below in this Section 3.01(3)) obsolete, expired or inaccurate in any material respect, deliver promptly to the Borrower and the Administrative Agent updated or other appropriate documentation (including any new documentation reasonably requested by the Borrower or the Administrative Agent) or promptly notify the Borrower and Administrative Agent of its inability to do so. Notwithstanding anything to the contrary herein, the completion, execution and submission of such documentation (other than such documentation set forth in Section 3.01(3)(a), (b) and (c) 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 of expense or would materially prejudice the legal or commercial position of such Lender.

Without limiting the foregoing:

(a) Each U.S. Lender shall deliver to the Borrower and the Administrative Agent on or before the date on which such Lender becomes a party to this Agreement two properly completed and duly signed copies of Internal Revenue Service Form W-9 certifying that such Lender is exempt from U.S. federal backup withholding.

(b) Each Foreign Lender shall deliver to the Borrower and the Administrative Agent on or before the date on which such Lender becomes a party to this Agreement (and from time to time thereafter upon the request of the Borrower or the Administrative Agent) whichever of the following is applicable:

(i) two properly completed and duly signed copies of Internal Revenue Service Form W-8BEN or W-8BEN-E, as applicable (or any successor forms) claiming eligibility for the benefits of an income tax treaty to which the United States is a party, and such other documentation as required under the Code,

(ii) two properly completed and duly signed copies of Internal Revenue Service Form W-8ECI (or any successor forms),

(iii) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 871(h) or Section 881(c) of the Code, (A) two properly completed and duly signed certificates substantially in the form of Exhibit H-1 (any such certificate, a "**United States Tax Compliance Certificate**") and (B) two properly

completed and duly signed copies of Internal Revenue Service Form W-8BEN or W-8BEN-E, as applicable (or any successor forms),

(iv) to the extent a Foreign Lender is not the beneficial owner (for example, where the Foreign Lender is a partnership or a participating Lender), executed originals of Internal Revenue Service Form W-8IMY (or any successor forms) of the Foreign Lender, accompanied by a Form W-8ECI, Form W-8BEN or W-8BEN-E, as applicable, a United States Tax Compliance Certificate substantially in the form of Exhibit H-2 or H-3, Form W-9, Form W-8IMY and any other required information (or any successor forms) from each beneficial owner that would be required under this Section 3.01(3) if such beneficial owner were a Lender, as applicable (*provided* that if one or more beneficial owners are claiming the portfolio interest exemption, the United States Tax Compliance Certificate substantially in the form of Exhibit H-4 may be provided by such Foreign Lender on behalf of such beneficial owner), or

(v) two properly completed and duly signed copies of any other form prescribed by applicable U.S. federal income tax laws (including the Treasury Regulations) as a basis for claiming a complete exemption from, or a reduction in, United States federal withholding Tax on any payments to such Lender under the Loan Documents.

(c) If a payment made to a Lender under any Loan Document would be subject to Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Sections 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 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 to deduct and withhold from such payment. Solely for purposes of this paragraph, the term "FATCA" shall include any amendments made to FATCA after the date of this Agreement.

Notwithstanding any other provision of this Section 3.01, a Lender shall not be required to deliver any form that such Lender is not legally eligible to deliver.

(4) In addition to the payments by a Loan Party required by Section 3.01(2), the Loan Parties shall pay any Other Taxes to the relevant Governmental Authority in accordance with applicable law.

(5) The Loan Parties shall, jointly and severally, indemnify a Lender or Agent (each a "**Tax Indemnitee**"), within 10 days after written demand therefor, for the full amount of any Non-Excluded Taxes paid or payable by such Tax Indemnitee or required to be withheld or deducted from a payment to such Tax Indemnitee attributable to any payment under or with respect to any Loan Document, and any Other Taxes paid or payable by such Tax Indemnitee (including Non-



Excluded Taxes or Other Taxes imposed on or attributable to amounts payable under this Section 3.01), 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 prepared in good faith and delivered by the Tax Indemnitor or by the Administrative Agent on its own behalf or on behalf of another Tax Indemnitor, shall be conclusive absent manifest error.

(6) If and to the extent that a Tax Indemnitor, in its sole discretion (exercised in good faith), determines that it has received a refund of any Taxes as to which it has been indemnified pursuant to this Section 3.01 (including by the payment of additional amounts pursuant to this Section 3.01), then such Tax Indemnitor shall pay to the relevant Loan Party the amount of such refund, net of all out-of-pocket expenses of the Tax Indemnitor (including any Taxes imposed with respect to such refund), and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund), *provided* that the Loan Party, upon the request of the Tax Indemnitor, agrees to repay the amount paid over by the Tax Indemnitor (*plus* any penalties, interest or other charges imposed by the relevant Governmental Authority) to the Tax Indemnitor to the extent the Tax Indemnitor is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this paragraph (6), in no event will the Tax Indemnitor be required to pay any amount to a Loan Party pursuant to this paragraph (6) the payment of which would place the Tax Indemnitor in a less favorable net after-Tax position than the Tax Indemnitor would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. This subsection shall not be construed to require a Tax Indemnitor to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to any Loan Party or any other Person.

(7) The agreements in this Section 3.01 shall survive the termination of this Agreement and the payment of the Loans and all other amounts payable hereunder.

Section 3.02 Illegality. Subject to Section 3.04, if any Lender reasonably determines that any Law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for any Lender or its applicable Lending Office to make, maintain or fund Loans whose interest is determined by reference to Term SOFR, or to determine or charge interest rates based upon Term SOFR Reference Rate, then, on notice thereof by such Lender to the Borrower through the Administrative Agent, (i) any obligation of such Lender to make or continue SOFR Loans or to convert Base Rate Loans to SOFR Loans shall be suspended and (ii) if such notice asserts the illegality of such Lender making or maintaining Base Rate Loans, the interest rate on which is determined by reference to the SOFR component of the Base Rate, the interest rate on which Base Rate Loans of such Lender, shall, if necessary to avoid such illegality, be determined by the Administrative Agent without reference to the Term SOFR component of the Base Rate, in each case until such Lender notifies the Administrative Agent and the Borrower that the circumstances giving rise to such determination no longer exist. Upon receipt of such notice, the Borrower shall, upon demand from such Lender (with a copy to the Administrative Agent), prepay or convert all of such Lender's SOFR Loans to Base Rate Loans (the interest rate on which Base Rate Loans of such Lender shall, if necessary to avoid such illegality, be determined by the Administrative Agent without reference to the Term SOFR component of the Base Rate), either on the last day of the

Interest Period therefor, if such Lender may lawfully continue to maintain such SOFR Loans to such day, or promptly after such demand, if such Lender may not lawfully continue to maintain such SOFR Loans. Upon any such prepayment or conversion, the Borrower shall also pay accrued interest on the amount so prepaid or converted and all amounts due, if any, in connection with such prepayment or conversion under Section 3.05. Each Lender agrees to designate a different Lending Office if such designation will avoid the need for such notice and will not, in the good faith judgment of such Lender, otherwise be materially disadvantageous to such Lender.

Section 3.03 Inability to Determine Rates.

(1) If (i) the Administrative Agent reasonably determines that for any reason, adequate and reasonable means do not exist for determining Term SOFR for any requested Interest Period with respect to a proposed SOFR Loan, or (ii) the Required Lenders determine that for any reason in connection with any request for a SOFR Loan or a conversion thereto or a continuation thereof that Term SOFR for any requested Interest Period with respect to a proposed SOFR Loan does not adequately and fairly reflect the cost to such Lenders of making and maintaining such Loan and the Required Lenders have provided notice of such determination to the Administrative Agent, then, in the case of (i) or (ii), the Administrative Agent will promptly so notify the Borrower and each Lender. Thereafter, (x) the obligation of the Lenders to make or maintain SOFR Loans in the effected currency or currencies shall be suspended and (y) in the event of a determination described in the preceding sentence with respect to the Term SOFR component of the Base Rate, the utilization of the Term SOFR component in determining the Base Rate shall be suspended, in each case until the Administrative Agent (upon the instruction of the Required Lenders) revokes such notice. Upon receipt of such notice, the Borrower may revoke any pending request for a Borrowing of, conversion to or continuation of SOFR Loans or, failing that, will be deemed to have converted such request into a request for a Borrowing of Base Rate Loans in the amount specified therein, and the Borrower shall not have to pay any amounts that would otherwise be due under Section 3.05 with respect to such revocation or conversion. Notwithstanding anything to the contrary herein, the Administrative Agent, with the consent of the Borrower, may make Benchmark Replacement Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Loan Document, any amendments implementing such Benchmark Replacement Conforming Changes will become effective without any further action or consent of any other party to this Agreement or any other Loan Document.

(2) Notwithstanding anything else in this Agreement to the contrary, if at any time:

(a) (A) the Administrative Agent (upon the instruction of the Required Lenders) determines that the circumstances set forth in Section 3.03(1) have arisen and such circumstances are unlikely to be temporary or (B) the circumstances set forth in Section 3.03(1) have not arisen but the supervisor or the administrator of such Benchmark or a Governmental Authority or an insolvency official having jurisdiction over the supervisor or administrator, or a court or an entity with similar insolvency or resolution authority over the supervisor or administrator, or the central bank for the currency of the relevant Benchmark has made a public statement or published information stating that the administrator or supervisor (each of the foregoing, a “**Relevant Administrator**”) has ceased or will cease to use such Benchmark for determining interest rates for loans in Dollars (or any other currency, as applicable); provided



that, in the case of this clause (B), at the time of such statement or publication, there is no successor administrator that will continue to provide any Available Tenor of such Benchmark;

(b) a Relevant Administrator has made a public statement or published information announcing that such Benchmark is no longer representative;

(c) an event has occurred that would require the existing Benchmark set forth in any non-speculative interest rate Swap Obligation related to the Loans to be amended by adherence to a final protocol published by, or other amendment promulgated by, the International Swaps and Derivatives Association, Inc. (“ISDA”) to facilitate the replacement of such Benchmark or if any non-speculative interest rate Swap Obligation related to the Loans is entered into after the Closing Date and is subject to ISDA definitions amended after the Closing Date that reflect a replacement of such Benchmark used in this Agreement on the Closing Date; or

(d) either (A) a notification is made by the Borrower to the Administrative Agent or (B) a notification is made by the Administrative Agent to the Borrower, and the Borrower agrees in writing that such notification constitutes a Benchmark Trigger Event (as defined below), in each case, that at least five currently outstanding syndicated credit facilities of the same currency as the Facilities, each available for review (including by way of availability through posting on DebtDomain, IntraLinks, Debt X, SyndTrak Online or by similar electronic means) and identified by the Borrower in such notice, contain (as a result of amendment or as originally executed) as a benchmark interest rate, in lieu of the Term SOFR Reference Rate (or the then-current Benchmark) a replacement benchmark rate (each of (i) through (iv), a “**Benchmark Trigger Event**”),

then the Administrative Agent and the Borrower may establish an alternate benchmark floating rate of interest to the Term SOFR Reference Rate (or the then-current Benchmark) that is a Benchmark Replacement Rate, and may enter into an amendment to this Agreement (the “**Benchmark Replacement Amendment**”) to reflect such Benchmark Replacement Rate and such other related changes to this Agreement with respect thereto as may be applicable in their discretion, including provisions for the Administrative Agent and the Borrower to allow for the adoption (without further amendment) of a term structure and any Benchmark Replacement Conforming Changes; *provided, further*, that any Benchmark Replacement Rate implemented pursuant to this Section 3.03 shall only be implemented to the extent it is commercially practicable for the Administrative Agent to administer (as determined by the Administrative Agent in its sole discretion). Notwithstanding anything to the contrary herein, the Benchmark Replacement Amendment (i) shall become effective without any further action or consent of any other party to this Agreement and (ii) may designate the timing of effectiveness of the Benchmark Replacement Rate (including pursuant to the occurrence of identified conditions).

(3) If a Benchmark Trigger Event has occurred and there is not a Benchmark Replacement Rate, then the Administrative Agent (at the direction of the Required Lenders) and the Borrower may establish an alternate benchmark floating term rate of interest to the Term SOFR Reference Rate (or the then-current Benchmark) that is not a Benchmark Replacement Rate, which may include a spread or method for determining a spread or other adjustments or modifications (including to make appropriate adjustments to (i) preserve pricing in effect at the time of selection

of such new rate and (ii) for the duration and time for determination of such rate in relation to any applicable Interest Period), and enter into a Benchmark Replacement Amendment to reflect such alternate rate of interest, which amendment shall become effective within five (5) Business Days of the date that notice of such alternate rate of interest is provided to the Lenders (the “**Alternative Benchmark Rate**”); provided that any Alternative Benchmark Rate implemented pursuant to this paragraph shall only be implemented to the extent it is commercially practicable for the Administrative Agent to administer (as determined by the Administrative Agent at the direction of the Required Lenders in their sole discretion). For the avoidance of doubt, if any such alternate rate of interest determined pursuant to this paragraph for the Term Loans would be less than 1.00% per annum, such rate shall be deemed to be 1.00% per annum for purposes of this Agreement.

(4) Following the effectiveness of the Benchmark Replacement Rate or the Benchmark Replacement Amendment, if any Benchmark Trigger Event occurs with respect to the Benchmark Replacement Rate or the Alternative Benchmark Rate identified in such Benchmark Replacement Amendment (including, for the avoidance of doubt, any change in or alternative to the Benchmark Replacement Adjustment or any change in or alternative to a compounded or term methodology for calculating such benchmark), then the Administrative Agent and the Borrower may enter into an additional Benchmark Replacement Amendment to reflect another Benchmark Replacement Rate without any further action or consent of any other party to this Agreement or to reflect an Alternative Benchmark Rate, which amendment, for the avoidance of doubt, shall become effective within five (5) Business Days of the date that notice of such alternate rate of interest is provided to the Lenders, unless prior to the end of such five (5) Business Day period the Administrative Agent receives a written notice from the Required Lenders stating that such Required Lenders object to such alternate rate of interest; provided that, with respect to any such additional Benchmark Replacement Amendment to reflect another Benchmark Replacement Rate, the Required Lenders shall only be entitled to object to the Benchmark Replacement Adjustments with respect thereto.

(5) Notices; Standards for Decisions and Determinations. The Administrative Agent will promptly notify the Borrower and the Lenders of (i) the implementation of any Benchmark Replacement Rate and (ii) the effectiveness of any Benchmark Replacement Conforming Changes in connection with the use, administration, adoption or implementation of a Benchmark Replacement Rate. The Administrative Agent will promptly notify the Borrower of (x) the removal or reinstatement of any tenor of a Benchmark pursuant to Section 3.03(6) and (y) the commencement of any Benchmark Unavailability Period. Any determination, decision or election that may be made by the Administrative Agent or, if applicable, any Lender (or group of Lenders) pursuant to this Section 3.03, including any determination with respect to a tenor, rate or adjustment or of the occurrence or non-occurrence of an event, circumstance or date and any decision to take or refrain from taking any action or any selection, will be conclusive and binding absent manifest error and may be made in its or their sole discretion and without consent from any other party to this Agreement or any other Loan Document, except, in each case, as expressly required pursuant to this Section 3.03.

(6) Unavailability of Tenor of Benchmark. Notwithstanding anything to the contrary herein or in any other Loan Document, at any time (including in connection with the implementation of a Benchmark Replacement Rate), (i) if the then-current Benchmark is a term rate (including the Term SOFR Reference Rate) and either (A) any tenor for such Benchmark is

not displayed on a screen or other information service that publishes such rate from time to time as selected by the Required Lenders in their reasonable discretion or (B) the administrator of such Benchmark or the regulatory supervisor for the administrator of such Benchmark has provided a public statement or publication of information announcing that any tenor for such Benchmark is not or will not be representative, then the Administrative Agent may modify the definition of “Interest Period” (or any similar or analogous definition) for any Benchmark settings at or after such time to remove such unavailable or non-representative tenor and (ii) if a tenor that was removed pursuant to clause (i) above either (A) is subsequently displayed on a screen or information service for a Benchmark (including a Benchmark Replacement Rate) or (B) is not, or is no longer, subject to an announcement that it is not or will not be representative for a Benchmark (including a Benchmark Replacement Rate), then the Administrative Agent may modify the definition of “Interest Period” (or any similar or analogous definition) for all Benchmark settings at or after such time to reinstate such previously removed tenor.

(7) Benchmark Unavailability Period. Upon the Borrower’s receipt of notice of the commencement of a Benchmark Unavailability Period, the Borrower may revoke any request for a SOFR Loan of, conversion to or continuation of SOFR Loans to be made, converted or continued during any Benchmark Unavailability Period and, failing that, the Borrower will be deemed to have converted any such request into a request for a Borrowing of or conversion to Base Rate Loans. During any Benchmark Unavailability Period or at any time that a tenor for the then-current Benchmark is not an Available Tenor, the component of Base Rate based upon the then-current Benchmark or such tenor for such Benchmark, as applicable, will not be used in any determination of Base Rate.

(8) Notwithstanding anything herein or in any other Loan Document to the contrary, the Administrative Agent and the Borrower shall cooperate in good faith and use commercially reasonable efforts to satisfy any applicable requirements under final U.S. Treasury Regulations or other Internal Revenue Service guidance such that the use of an alternative rate of interest pursuant to this Section 3.04 shall not result in a deemed exchange of any Loan under Section 1001 of the Code.

Section 3.04 Increased Cost and Reduced Return; Capital Adequacy; Reserves on SOFR Loan.

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

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

(b) subject any Lender to any Tax of any kind whatsoever with respect to this Agreement or any SOFR Loan made by it, or change the basis of taxation of payments to such Lender in respect thereof (except for (A) Non-Excluded Taxes (other than Taxes described in clause (1)(B) of the definition of Non-Excluded Taxes), (B) Taxes that are imposed on or measured by net income (however denominated) or that are franchise Taxes or branch profits Taxes as a result of a present or former connection between such Lender and the jurisdiction (including as a result of such Lender carrying on a trade or business, having a permanent

establishment or being a resident for tax purposes in such jurisdiction) other than a connection arising from such Lender having executed, delivered, enforced, 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 sold or assigned an interest in, any Loan or Loan Document, or (C) Other Taxes covered by Section 3.01 and any Excluded Taxes); or

(c) impose on any Lender or the London interbank market any other condition, cost or expense affecting this Agreement or SOFR Loans made by such Lender that is not otherwise accounted for in the definition of “Term SOFR” or this clause (c);

and the result of any of the foregoing shall be to increase the cost to such Lender of making, converting to, continuing or maintaining any Loan the interest on which is determined by reference to the Term SOFR Reference Rate (or of maintaining its obligation to make any such Loan), or to increase the cost to such Lender, or to reduce the amount of any sum received or receivable by such Lender hereunder (whether of principal, interest or any other amount) then, from time to time within fifteen (15) days after demand by such Lender setting forth in reasonable detail such increased costs (with a copy of such demand to the Administrative Agent), the Borrower will pay to such Lender such additional amount or amounts as will compensate such Lender for such additional costs incurred or reduction suffered; *provided* that such amounts shall only be payable by the Borrower to the applicable Lender under this Section 3.04(1) so long as it is such Lender’s general policy or practice to demand compensation in similar circumstances under comparable provisions of other financing agreements.

(2) Capital Requirements. If any Lender reasonably determines that any Change in Law affecting such Lender or any Lending Office of such Lender or such Lender’s holding company, if any, regarding capital requirements has or would have the effect of reducing the rate of return on such Lender’s capital or on the capital of such Lender’s holding company, if any, as a consequence of this Agreement, the Commitments of such Lender or the Loans made by it, to a level below that which such Lender or such Lender’s holding company, as the case may be, could have achieved but for such Change in Law (taking into consideration such Lender’s policies and the policies of such Lender’s holding company with respect to capital adequacy), then from time to time upon demand of such Lender setting forth in reasonable detail the charge and the calculation of such reduced rate of return (with a copy of such demand to the Administrative Agent), the Borrower will pay to such Lender additional amount or amounts as will compensate such Lender or such Lender’s holding company for any such reduction suffered; *provided* that such amounts shall only be payable by the Borrower to the applicable Lender under this Section 3.04(2) so long as it is such Lender’s general policy or practice to demand compensation in similar circumstances under comparable provisions of other financing agreements.

(3) Certificates for Reimbursement. A certificate of a Lender setting forth the amount or amounts necessary to compensate such Lender or its holding company, as the case may be, as specified in subsection (1) or (2) of this Section 3.04 and delivered to the Borrower shall be conclusive absent manifest error. The Borrower shall pay such Lender, as the case may be, the amount shown as due on any such certificate within fifteen (15) days after receipt thereof.

Section 3.05 Funding Losses. Upon written demand of any Lender (with a copy to the Administrative Agent) from time to time, which demand shall set forth in reasonable detail the

basis for requesting such amount, the Borrower shall promptly compensate such Lender for and hold such Lender harmless from any loss, cost or expense (excluding loss of anticipated profits or margin) actually incurred by it as a result of:

(1) any continuation, conversion, payment or prepayment of any SOFR Loan on a day prior to the last day of the Interest Period for such Loan (whether voluntary, mandatory, automatic, by reason of acceleration, or otherwise);

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

(3) any assignment of a SOFR Loan on a day prior to the last day of the Interest Period therefor as a result of a request by the Borrower pursuant to Section 3.07; including any loss or expense (excluding loss of anticipated profits or margin) actually incurred by reason of the liquidation or reemployment of funds obtained by it to maintain such SOFR Loan or from fees payable to terminate the deposits from which such funds were obtained.

Notwithstanding the foregoing, no Lender may make any demand under this Section 3.05 with respect to the “floor” specified in the proviso to the definition of “Term SOFR”.

Section 3.06 Matters Applicable to All Requests for Compensation.

(1) Designation of a Different Lending Office. If any Lender requests compensation under Section 3.04, or the Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.01, or if any Lender gives a notice pursuant to Section 3.02, then such Lender shall use reasonable efforts to designate a different Lending Office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the good faith judgment of such Lender such designation or assignment (a) would eliminate or reduce amounts payable pursuant to Section 3.01 or 3.04, as the case may be, in the future, or eliminate the need for the notice pursuant to Section 3.02, as applicable, and (b) in each case, would not subject such Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender in any material economic, legal or regulatory respect.

(2) Suspension of Lender Obligations. If any Lender requests compensation by the Borrower under Section 3.04, the Borrower may, by notice to such Lender (with a copy to the Administrative Agent), suspend the obligation of such Lender to make or continue SOFR Loans from one Interest Period to another Interest Period, or to convert Base Rate Loans into SOFR Loans until the event or condition giving rise to such request ceases to be in effect (in which case the provisions of Section 3.06(3) shall be applicable); *provided* that such suspension shall not affect the right of such Lender to receive the compensation so requested.

(3) Conversion of SOFR Loans. If any Lender gives notice to the Borrower (with a copy to the Administrative Agent) that the circumstances specified in Section 3.02, 3.03 or 3.04 hereof that gave rise to the conversion of such Lender’s SOFR Loans no longer exist (which such

Lender agrees to do promptly upon such circumstances ceasing to exist) at a time when SOFR Loans made by other Lenders, as applicable, are outstanding, such Lender's Base Rate Loans shall be automatically converted, on the first day(s) of the next succeeding Interest Period(s) for such outstanding SOFR Loans to the extent necessary so that, after giving effect thereto, all Loans of a given Class held by the Lenders of such Class holding SOFR Loans and by such Lender are held pro rata (as to principal amounts, interest rate basis, and Interest Periods) in accordance with their respective Pro Rata Shares.

(4) Delay in Requests. Failure or delay on the part of any Lender to demand compensation pursuant to the foregoing provisions of Sections 3.01 or 3.04 shall not constitute a waiver of such Lender's right to demand such compensation; *provided* that the Borrower shall not be required to compensate a Lender pursuant to the foregoing provisions of Section 3.01 or 3.04 for any increased costs incurred or reductions suffered more than one hundred and eighty (180) days prior to the date that such Lender notifies the Borrower of the event giving rise to such claim and of such Lender's intention to claim compensation therefor (except that, if the circumstance giving rise to such increased costs or reductions is retroactive, then the 180-day period referred to above shall be extended to include the period of retroactive effect thereof).

Section 3.07 Replacement of Lenders under Certain Circumstances. If (1) any Lender requests compensation under Section 3.04 or ceases to make SOFR Loans as a result of any condition described in Section 3.02 or Section 3.04, (2) the Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.01 or 3.04, (3) any Lender is a Non-Consenting Lender, (4) any Lender becomes a Defaulting Lender or (5) any other circumstance exists hereunder that gives the Borrower the right to replace a Lender as a party hereto, then the Borrower may, at its sole expense and effort, upon notice to such Lender and the Administrative Agent:

(a) require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in, and consents required by, Section 10.07), all of its interests, rights and obligations under this Agreement (or, with respect to clause (3) above, all of its interests, rights and obligations with respect to the Class of Loans or Commitments that is the subject of the related consent, waiver, or amendment, as applicable) and the related Loan Documents to one or more Eligible Assignees that shall assume such obligations (any of which assignee may be another Lender, if a Lender accepts such assignment), *provided* that:

(i) the Borrower shall have paid to the Administrative Agent the assignment fee specified in Section 10.07(b)(iv);

(ii) such Lender shall have received payment of an amount equal to the applicable outstanding principal of its Loans, accrued interest thereon, accrued fees and all other amounts payable to it hereunder and under the other Loan Documents (including any amounts under Section 3.05) from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrower (in the case of all other amounts);

(iii) such Lender being replaced pursuant to this Section 3.07 shall (i) execute and deliver an Assignment and Assumption with respect to all, or a portion, as applicable, of such Lender's Commitment and outstanding Loans and (ii) deliver any Term Notes



evidencing such Loans to the Borrower or Administrative Agent (or a lost or destroyed note indemnity in lieu thereof); *provided* that the failure of any such Lender to execute an Assignment and Assumption or deliver such Term Notes shall not render such sale and purchase (and the corresponding assignment) invalid and upon payment to the Lender being replaced of the amounts set forth in clause (ii) (and the payment to the Administrative Agent set forth in clause (i)) such assignment shall be recorded in the Register and the Term Notes shall be deemed to be canceled upon such failure;

(iv) the Eligible Assignee shall become a Lender hereunder and the assigning Lender shall cease to constitute a Lender hereunder with respect to such assigned Loans and Commitments, except with respect to indemnification and confidentiality provisions under this Agreement, which shall survive as to such assigning Lender;

(v) in the case of any such assignment resulting from a claim for compensation under Section 3.04 or payments required to be made pursuant to Section 3.01, such assignment will result in a reduction in such compensation or payments thereafter;

(vi) such assignment does not conflict with applicable Laws; and

(vii) the Lender that acts as Administrative Agent cannot be replaced in its capacity as Administrative Agent other than in accordance with Section 9.11, or

(b) terminate the Commitment of such Lender and repay all Obligations of the Borrower owing to such Lender relating to the Loans held by such Lender as of such termination date; *provided* that in the case of any such termination of the Commitment of a Non-Consenting Lender such termination shall be sufficient (together with all other consenting Lenders) to cause the adoption of the applicable consent, waiver or amendment of the Loan Documents and such termination shall, with respect to clause (3) above, be in respect of all of its interests, rights and obligations with respect to the Class of Loans or Commitments that is the subject of the related consent, waiver and amendment.

In the event that (i) the Borrower or the Administrative Agent has requested that the Lenders consent to a departure or waiver of any provisions of the Loan Documents or agree to any amendment thereto, (ii) the consent, waiver or amendment in question requires the agreement of each Lender, all affected Lenders or all the Lenders or all affected Lenders with respect to a certain Class or Classes of the Loans/Commitments and (iii) the Required Lenders or Required Facility Lenders, as applicable, have agreed to such consent, waiver or amendment, then any Lender who does not agree to such consent, waiver or amendment shall be deemed a “**Non-Consenting Lender.**”

A Lender shall not be required to make any such assignment or delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling the Borrower to require such assignment and delegation cease to apply.

Section 3.08 Survival. All of the Borrower’s obligations under this Article III shall survive termination of the Aggregate Commitments, repayment, satisfaction or discharge of all other Obligations under this Agreement and resignation of the Administrative Agent.

## ARTICLE IV

### Conditions Precedent

Section 4.01 Conditions Precedent to Closing Date. This Agreement shall become effective as of the Business Day of and, subject to, the satisfaction, or waiver by the Required Lenders in accordance with this Agreement of the following conditions:

(1) the Chapter 11 Cases shall have been commenced in the Bankruptcy Court and all of the “first day orders” (including a cash management order (the “**Cash Management Order**”)) and all related pleadings to be entered at the time of commencement of the Chapter 11 Cases shall have been provided to counsel to the Required Lenders and shall be in form and substance reasonably satisfactory to the Required Lenders;

(2) the Interim DIP Order shall have been entered by the Bankruptcy Court and the Administrative Agent shall have received a true and complete copy of such order, and such order shall be in the form of Exhibit L hereto, be in full force and effect and shall not have been reversed, modified, amended, stayed or vacated absent prior written consent of the Administrative Agent and the Required Lenders;

(3) all orders entered by the Bankruptcy Court pertaining to cash management, vendor payments and adequate protection and all other motions and documents filed or to be filed with, and submitted to, the Bankruptcy Court in connection therewith, shall be in form and substance reasonably acceptable to the Required Lenders;

(4) the Administrative Agent shall have received UCC, tax and judgment lien searches and other appropriate evidence, in form and substance acceptable to the Administrative Agent and the Required Lenders, evidencing the absence of any other liens or mortgages on the Collateral, except the liens securing the Prepetition Obligations and other existing liens acceptable to the Required Lenders;

(5) the Administrative Agent, for its benefit and the benefit of each Lender, shall have been granted a perfected lien on the Collateral by the Bankruptcy Court DIP Orders on the terms and conditions set forth herein and in the other Loan Documents;

(6) the Administrative Agent shall have received appropriate UCC-1 financing statements for filing under the UCC of each jurisdiction of organization of each Loan Party;

(7) the Administrative Agent and Required Lenders shall have received the initial Budget;

(8) [reserved];

(9) the Borrower shall have paid to the Administrative Agent and Lenders the fees and expenses then due and payable under the Loan Documents (including, without limitation, the fees and expenses of Milbank LLP) subject to and in accordance with the Bankruptcy Court DIP Orders;



(10) the Administrative Agent shall have received certified copies of the Organizational Documents of each Loan Party and of documents (including appropriate resolutions of the Board of Directors or similar body of each Loan Party and, if necessary, shareholder or similar approval) evidencing the due authorization by it of the making and performance by it of the Loan Documents to which it is a party and the authority of the persons signing the Loan Documents on its behalf;

(11) the Administrative Agent shall have received a certificate signed by a Responsible Officer of each Loan Party to the effect that all representations and warranties made by such Loan Party contained in each of the Loan Documents to which it is a party are true and correct in all material respects on and as of the Closing Date and no Default exists on and as of the Closing Date and covering the authority, incumbency and specimen signatures of the individuals who have executed the Loan Documents and other documents contemplated hereby on behalf of such Loan Party;

(12) the Administrative Agent shall have received a certificate of a Responsible Officer of the Borrower, dated as of the Closing Date, certifying that no approval by any Governmental Authority or any other third-party approval is required to be obtained by any Loan Party as of the Closing Date in respect of the transactions contemplated by the Loan Documents;

(13) the Administrative Agent shall have received all documentation and other information required by bank regulatory authorities under applicable “know-your-customer” and anti-money laundering rules and regulations, including the Patriot Act, in each case satisfactory to each Lender;

(14) [reserved];

(15) the representations and warranties of each Loan Party contained in Article V or any other Loan Document shall be true and correct in all material respects, and no Default shall have occurred or would result from the making of the Loans and the application of the proceeds thereof;

(16) the Loan Parties shall have executed and delivered the Loan Documents and promissory notes (if requested by any Lender) evidencing the loans made or deemed made under the Facility;

(17) the Borrower shall have retained the Consultant;

(18) the Prepetition Agents and the Prepetition Lenders shall have each consented to the use of collateral or received adequate protection (if applicable) in respect of the liens securing their respective obligations pursuant to the Interim DIP Order; and

(19) the Administrative Agent shall have received such other documents as the Administrative Agent, any Lender or their respective counsel may have reasonably requested.

Section 4.02 Conditions Precedent to Each Borrowing. The obligations of each Lender to make Loans to the Borrower on each Borrowing Date are hereunder subject to the satisfaction of the following conditions precedent:

(1) the representations and warranties of each Loan Party contained in Article V or any other Loan Document shall be true and correct in all material respects on and as of the date of such Borrowing, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they shall be true and correct in all material respects as of such earlier date; provided that, in each case, such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof;

(2) no Default or Event or Default shall exist, or would result from such proposed Borrowing or from the application of the proceeds thereof;

(3) the Administrative Agent shall have received the Committed Loan Notice in accordance with the requirements hereof;

(4) with respect to any Borrowings that occur on or after the date that is 40 days following the Petition Date, the Final DIP Order shall be in full force and effect and shall not (in whole or in part) have been reversed, modified, amended, stayed, vacated, appealed, or subject to a stay pending appeal or otherwise challenged or subject to any challenge;

(5) the Loan Parties shall be in compliance with each order entered in the Chapter 11 Cases, including the Bankruptcy Court DIP Order and the Cash Management Order;

(6) (i) the Loan Parties shall be in compliance with their obligations in connection with the delivery of an initial Budget, any Approved Updated Budgets and any Variance Reports, (ii) the Loan Parties shall be in compliance with the Budget (subject to Permitted Variance) and (iii) the Required Lenders shall have approved the Proposed Budget delivered for the week of such proposed Borrowing;

(7) except as disclosed in the Loan Documents, since the Petition Date, no material adverse change in the operations, assets, revenues, financial condition, profits or prospects of the Loan Parties (other than by virtue of the Chapter 11 Cases) shall have occurred;

(8) the Loan Parties shall not have entered into, or made any payment in respect of, any critical vendor agreements or otherwise entered into any agreement to pay or made on a post-petition basis any payment in respect of any trade obligations, except as provided herein or otherwise consented to by the Required Lenders; and

(9) the Required Lenders shall have determined in their sole and absolute discretion to advance the New Money Loans to the Borrower.

Any Committed Loan Notice submitted by the Borrower shall be deemed to be a representation and warranty that the conditions specified in Sections 4.02(1) and (2) have been satisfied on and as of the applicable Borrowing Date.

## ARTICLE V

### Representations and Warranties

The Borrower represents and warrants to the Administrative Agent and the Lenders, on the Closing Date:

Section 5.01 Existence, Qualification and Power; Compliance with Laws. Each Loan Party and each of its respective Restricted Subsidiaries:

(1) is a Person duly organized or formed, validly existing and in good standing under the Laws of the jurisdiction of its incorporation or organization (to the extent such concept exists in such jurisdiction);

(2) subject to the entry and terms of the Bankruptcy Court DIP Order and the other orders of the Bankruptcy Court, as applicable, has all corporate or other organizational power and authority to (a) own or lease its assets and carry on its business as currently conducted and (b) in the case of the Loan Parties, execute, deliver and perform its obligations under the Loan Documents to which it is a party;

(3) is duly qualified and in good standing (to the extent such concept exists) under the Laws of each jurisdiction where its ownership, lease or operation of properties or the conduct of its business as currently conducted requires such qualification;

(4) is in compliance with all applicable Laws, orders, writs, injunctions and orders unless stayed by the Bankruptcy Court; and

(5) has all requisite governmental licenses, authorizations, consents and approvals to operate its business as currently conducted;

except in each case referred to in the preceding clauses (2)(a), (3), (4) or (5), to the extent that failure to do so would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

Section 5.02 Authorization; No Contravention.

(1) Subject to the entry and the terms of the Bankruptcy Court DIP Order, the execution, delivery and performance by each Loan Party of each Loan Document to which such Person is a party have been duly authorized by all necessary corporate or other organizational action.

(2) None of the execution, delivery and performance by each Loan Party of each Loan Document to which such Person is a party will:

(a) contravene the terms of any of such Person's Organizational Documents;

(b) result in any breach or contravention of, or the creation of any Lien upon any of the property or assets of such Person or any of the Restricted Subsidiaries (other than as

permitted by Section 7.01) under (i) any Contractual Obligation in excess of the Threshold Amount to which such Loan Party is a party or affecting such Loan Party or the properties of such Loan party or any of its Subsidiaries or (ii) any order, injunction, writ or decree of any Governmental Authority or any arbitral award to which such Loan Party or its property is subject; or

(c) violate any applicable Law;

except with respect to any breach, contravention or violation (but not creation of Liens) referred to in the preceding clauses (b) and (c), to the extent that such breach, contravention or violation would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

Section 5.03 Governmental Authorization. Other than the Bankruptcy Court DIP Order, no material approval, consent, exemption, authorization, or other action by, or notice to, or filing with, any Governmental Authority is necessary or required in connection with the execution, delivery or performance by, or enforcement against, any Loan Party of this Agreement or any other Loan Document, except for:

(1) filings and registrations necessary to perfect the Liens on the Collateral granted by the Loan Parties in favor of the Secured Parties,

(2) the approvals, consents, exemptions, authorizations, actions, notices and filings that have been duly obtained, taken, given or made and are in full force and effect (except to the extent not required to be obtained, taken, given or made or in full force and effect pursuant to the Collateral and Guarantee Requirement) and

(3) those approvals, consents, exemptions, authorizations or other actions, notices or filings, the failure of which to obtain or make would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

Section 5.04 Binding Effect. Subject to the entry and the terms of the Bankruptcy Court DIP Order, each of this Agreement and each other Loan Document has been duly executed and delivered by each Loan Party that is party hereto or thereto, as applicable. Each Loan Document constitutes a legal, valid and binding obligation of each Loan Party that is party thereto, enforceable against each such Loan Party in accordance with its terms, except as such enforceability may be limited by Debtor Relief Laws and by general principles of equity and principles of good faith and fair dealing.

Section 5.05 Financial Statements; No Material Adverse Effect.

(1) (1) The Annual Financial Statements, the Unaudited Annual Financial Statement and the Quarterly Financial Statements fairly present in all material respects the financial condition of the Borrower and its consolidated Subsidiaries as of the date(s) thereof and their results of operations for the period covered thereby in accordance with GAAP consistently applied throughout the periods covered thereby, (i) except as otherwise expressly noted therein and (ii)

subject, in the case of the Quarterly Financial Statements, to changes resulting from normal year-end adjustments and the absence of footnotes.

(2) Since the Petition Date, there has been no event or circumstance, either individually or in the aggregate, that has had or would reasonably be expected to have a Material Adverse Effect.

Section 5.06 Litigation. Except as set forth on Schedule 5.06, other than the Chapter 11 Cases, there are no actions, suits, proceedings, claims or disputes pending or, to the knowledge of the Borrower, overtly threatened in writing, at law, in equity, in arbitration or before any Governmental Authority, by or against the Borrower or any of the Restricted Subsidiaries that would reasonably be expected to have a Material Adverse Effect.

Section 5.07 Labor Matters. Except as would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect: (1) there are no strikes or other labor disputes against the Borrower or the Restricted Subsidiaries pending or, to the knowledge of the Borrower, overtly threatened in writing and (2) hours worked by and payment made based on hours worked to employees of each of the Borrower or the Restricted Subsidiaries have not been in violation of the Fair Labor Standards Act or any other applicable Laws dealing with wage and hour matters.

Section 5.08 Ownership of Property; Liens. Each Loan Party and each of its respective Restricted Subsidiaries has good and valid record title in fee simple to, or valid leasehold interests in, or easements or other limited property interests in, all real property necessary in the ordinary conduct of its business, free and clear of all Liens except for Liens permitted by Section 7.01 and except where the failure to have such title or other interest would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

Section 5.09 Environmental Matters. Except as would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect: (a) each Loan Party and each of its Restricted Subsidiaries and their respective operations and properties is in compliance with all applicable Environmental Laws; (b) each Loan Party and each of its Restricted Subsidiaries has obtained and maintained all Environmental Permits required to conduct their operations; (c) none of the Loan Parties or any of their respective Restricted Subsidiaries has become subject to any pending or, to the knowledge of the Borrower, threatened Environmental Claim in writing or Environmental Liability; and (d) none of the Loan Parties or any of their respective Restricted Subsidiaries or, to the knowledge of the Borrower, any of their predecessors or any third party has treated, stored, transported or Released Hazardous Materials in violation of applicable Environmental Laws at or from any real estate or facility currently or formerly owned, leased or operated by any of the Loan Parties or any of their respective Restricted Subsidiaries.

Section 5.10 Taxes. Except as would not, either individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect, each Loan Party and each of its Restricted Subsidiaries has timely filed all Tax returns and reports required to be filed, and have timely paid all Taxes (including satisfying its withholding tax obligations) levied or imposed on their properties, income or assets (whether or not shown in a Tax return), which are due and

payable, except those Taxes which are being contested in good faith by appropriate actions diligently taken and for which adequate reserves have been provided in accordance with GAAP.

There is no proposed Tax assessment, deficiency or other claim against any Loan Party or any of its Restricted Subsidiaries except (i) those being actively contested by a Loan Party or such Restricted Subsidiary in good faith and by appropriate actions diligently taken and for which adequate reserves have been provided in accordance with GAAP or (ii) those which would not reasonably be expected to, individually or in the aggregate, have a Material Adverse Effect.

Section 5.11 ERISA Compliance.

(1) Except as would not, either individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect, each Plan is in compliance with the applicable provisions of ERISA, the Code and other federal or state Laws.

(2) (2) No ERISA Event has occurred or is reasonably expected to occur;

(a) no Pension Plan has failed to satisfy the minimum funding standards (within the meaning of Section 412 of the Code or Section 302 of ERISA) applicable to such Pension Plan;

(b) none of the Loan Parties or any of their respective ERISA Affiliates has incurred, or reasonably expects to incur, any liability (and no event has occurred which, with the giving of notice under Section 4219 of ERISA, would result in such liability) under Sections 4201 et seq. or 4243 of ERISA with respect to a Multiemployer Plan;

(c) none of the Loan Parties or any of their respective ERISA Affiliates has engaged in a transaction that is subject to Sections 4069 or 4212(c) of ERISA; and

(d) neither any Loan Party nor any ERISA Affiliate has been notified in writing by the sponsor of a Multiemployer Plan that such Multiemployer Plan is insolvent or has been determined to be in endangered or critical status and no such Multiemployer Plan is expected to be insolvent or in endangered or critical status,

except, with respect to each of the foregoing clauses of this Section 5.11(2), as would not reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect.

(3) Except where noncompliance or the incurrence of an obligation would not reasonably be expected to result in a Material Adverse Effect, (a) each Foreign Plan has been maintained in substantial compliance with its terms and with the requirements of any and all applicable Laws, statutes, rules, regulations and orders, and (b) none of the Borrower or any Subsidiary has incurred any obligation in connection with the termination of or withdrawal from any Foreign Plan.

Section 5.12 Subsidiaries.

(1) As of the Closing Date, after giving effect to the Transactions all of the outstanding Equity Interests in the Borrower and its Subsidiaries have been validly issued and are fully paid

and (if applicable) non-assessable, and all Equity Interests owned by the Borrower or any Subsidiary Guarantor in any of their respective Subsidiaries are owned free and clear of all Liens of any person except (a) those Liens created under the Collateral Documents, the Prepetition Second Lien Loan Documents and the Prepetition ABL Loan Documents and (b) any nonconsensual Lien that is permitted under Section 7.01.

(2) As of the Closing Date, Schedule 5.12 sets forth:

- (a) the name and jurisdiction of each Subsidiary,
- (b) the ownership interests of the Borrower and any Subsidiary of the Borrower in each Subsidiary, including the percentage of such ownership, and
- (c) the Equity Interests of each Subsidiary described in clause (b) that are required to be pledged on the Closing Date after giving effect to the Transactions pursuant to the Collateral and Guarantee Requirement.

Section 5.13 Margin Regulations; Investment Company Act.

(a) No Loan Party is engaged nor will it engage, principally or as one of its important activities, in the business of purchasing or carrying Margin Stock (within the meaning of Regulation U issued by the Board of Governors of the Federal Reserve System of the United States), or extending credit for the purpose of purchasing or carrying Margin Stock, and no proceeds of any Borrowings will be used for any purpose that violates Regulation U.

(b) No Loan Party is an “investment company” under the Investment Company Act of 1940.

Section 5.14 Disclosure. None of the written information and written data heretofore or contemporaneously furnished in writing by or on behalf of the Borrower or any Subsidiary Guarantor to any Agent or any Lender on or prior to the Closing Date in connection with the Transactions, when taken as a whole, when furnished, contains any material misstatement of fact or omits to state any material fact necessary to make such written information and written data taken as a whole, in the light of the circumstances under which it was delivered, not materially misleading (after giving effect to all modifications and supplements to such written information and written data, in each case, furnished after the date on which such written information or such written data was originally delivered and prior to the Closing Date); it being understood that for purposes of this Section 5.14, such written information and written data shall not include any projections, *pro forma* financial information, financial estimates, forecasts and forward-looking information or information of a general economic or general industry nature.

Section 5.15 Intellectual Property; Licenses, etc. The Borrower and the Restricted Subsidiaries have good and marketable title to, or a valid license or right to use, all patents, patent rights, trademarks, servicemarks, trade names, copyrights, technology, software, know-how database rights and other intellectual property rights (collectively, “**IP Rights**”) that to the knowledge of the Borrower are reasonably necessary for the operation of their respective businesses as currently conducted, except where the failure to have any such rights, either



individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect. To the knowledge of the Borrower, the operation of the respective businesses of the Borrower or any Subsidiary of the Borrower as currently conducted does not infringe upon, dilute, misappropriate or violate any IP Rights held by any Person except for such infringements, dilutions, misappropriations or violations, individually or in the aggregate, that would not reasonably be expected to have a Material Adverse Effect. No claim or litigation regarding any IP Rights is pending or, to the knowledge of the Borrower, threatened in writing against any Loan Party or Subsidiary, that, either individually or in the aggregate, would reasonably be expected to have a Material Adverse Effect.

Section 5.16 [Reserved].

Section 5.17 Anti-Terrorism Laws. No Loan Party is in material violation of any applicable requirement of law relating to terrorism or money laundering (“**Anti-Terrorism Laws**”), including Executive Order No. 13224, effective September 24, 2001 (the “**Executive Order**”), and the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Public Law 107-56, signed into law October 26, 2001 (the “**Patriot Act**”). The use of proceeds of the Loans will not violate the Trading With the Enemy Act (50 U.S.C. §§ 1-44, as amended) or any applicable foreign asset control regulations of the United States Treasury Department (31 C.F.R. Subtitle B, Chapter V).

Section 5.18 Collateral Documents. The provisions of the Interim DIP Order and Final DIP Order, as applicable, are effective to create in favor of the Collateral Agent for the benefit of the Secured Parties a legal, valid and enforceable security interest on all right, title and interest of the respective Loan Parties in the Collateral described therein (with such priority as provided for in the Bankruptcy Court DIP Order (including, without limitation, with respect to the Carve Out)). Except for filings contemplated hereby and by the Interim DIP Order and Final DIP Order, as applicable, no filing or other action will be necessary to perfect the Liens on any Collateral under the Laws of the United States of America.

Notwithstanding anything herein (including this Section 5.18) or in any other Loan Document to the contrary, no Loan Party makes any representation or warranty as to (A) the priority, perfection or the enforceability of, any pledge of or security interest in any Equity Interests of any Foreign Subsidiary or as to the rights and remedies of the Agents or any Lender with respect thereto, under foreign Law, (B) the pledge or creation of any security interest, or the effects of perfection or non-perfection, the priority or the enforceability of any pledge of or security interest to the extent such pledge, security interest, perfection or priority is not required pursuant to the Collateral and Guarantee Requirement or (C) any Excluded Assets.

Section 5.19 Use of Proceeds. The Borrower has used the proceeds of the Loans issued hereunder only in compliance with (and not in contravention of) each Loan Document.

Section 5.20 OFAC. None of the Borrower, any Subsidiary nor, to the knowledge of the Borrower, any director, officer, employee, or agent of the Borrower or any Subsidiary is a Sanctioned Person. The Borrower shall not use the proceeds of the Loans, directly or, to the Borrower’s knowledge, indirectly, for the purpose of financing activities of or with any Sanctioned Person, or in any country that, at the time of such financing is, or whose government is, the subject



or target of any applicable Sanctions, or in any other manner that would result in a violation of applicable Sanctions by any Person that is a party to this Agreement, except to the extent licensed by OFAC or otherwise authorized under U.S. or other applicable law.

Section 5.21 Foreign Corrupt Practices Act. None of the Borrower, any Subsidiary nor, to the knowledge of the Borrower, any director, officer, employee, or agent of the Borrower or any Subsidiary, has made, offered, promised, or authorized, and no part of the proceeds of the Loans will be used directly or, to the Borrower's knowledge, indirectly, for any unlawful payments to any governmental official or employee, political party, official of a political party, candidate for political office, or any other Person acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage, in each case in violation of any applicable Anti-Corruption Laws (any such unlawful payment, offer, promise, or authorization an "**Anti-Corruption Prohibited Activity**").

Section 5.22 Budget and Variance Report. Each Budget delivered was prepared in good faith based on assumptions believed by the Loan Parties to be reasonable at the time made and upon information believed by the management of the Borrower to have been accurate based upon the information available to the management of the Borrower at the time such Budget was furnished. On and after the delivery of any Variance Report in accordance with this Agreement, such Variance Report shall be complete and correct and fairly represent in all respects the results of operations of the Loan Parties and their Subsidiaries for the period covered thereby and in the detail to be covered thereby.

## ARTICLE VI

### Affirmative Covenants

So long as the Termination Conditions have not been satisfied, the Borrower shall, and shall (except in the case of the covenants set forth in Sections 6.01, 6.02 and 6.03) cause each of the Restricted Subsidiaries to:

Section 6.01 Financial Statements. Deliver to the Administrative Agent for prompt further distribution by the Administrative Agent to each Lender each of the following:

(1) as soon as available, but in any event within ninety (90) days after the end of each fiscal year of the Borrower, commencing with the fiscal year ending December 31, 2023, a consolidated balance sheet of the Borrower and its Subsidiaries as at the end of such fiscal year, and the related consolidated statements of income or operations, stockholders' equity and cash flows for such fiscal year, together with related notes thereto and management's discussion and analysis describing results of operations in the form customarily prepared by management of the Borrower, setting forth in each case in comparative form the figures for the previous fiscal year, in reasonable detail and all prepared in accordance with GAAP, audited and accompanied by a report and opinion of PricewaterhouseCoopers, LLP or any other independent registered public accounting firm of nationally recognized standing or another accounting firm reasonably acceptable to the Administrative Agent and the Required Lenders, which report and opinion (a) will be prepared in accordance with generally accepted auditing standards and (b) will not be subject to any qualification as to the scope of such audit or be subject to any explanatory statement

(other than an “emphasis of matter” paragraph) as to the Borrower’s ability to continue as a “going concern” or like qualification (other than with respect to the impending maturity of any Indebtedness having an aggregate outstanding principal amount of not less than the Threshold Amount;

(2) as soon as available, but in any event within forty-five (45) days after the end of each of the first three (3) fiscal quarters of each fiscal year of the Borrower commencing with the fiscal quarter ending March 31, 2023, a condensed consolidated balance sheet of the Borrower and its Subsidiaries as at the end of such fiscal quarter, and the related (a) condensed consolidated statement of income or operations for such fiscal quarter and for the portion of the fiscal year then ended and (b) condensed consolidated statement of cash flows for the portion of the fiscal year then ended, setting forth, in each case of the preceding clauses (a) and (b), in comparative form the figures for the corresponding fiscal quarter of the previous fiscal year and the corresponding portion of the previous fiscal year, accompanied by an Officer’s Certificate stating that such financial statements fairly present in all material respects the financial condition, results of operations and cash flows of the Borrower and its Subsidiaries in accordance with GAAP, subject to normal year-end adjustments and the absence of footnotes, together with management’s discussion and analysis describing results of operations in the form customarily prepared by management of the Borrower;

(3) within ninety (90) days after the end of each fiscal year of the Borrower (commencing with the fiscal year ending December 31, 2023), a consolidated budget for the following fiscal year on a quarterly basis as customarily prepared by management of the Borrower for its internal use (including any projected consolidated balance sheet of the Borrower and its Subsidiaries as of the end of the following fiscal year and the related consolidated statements of projected operations or income, in each case, to the extent prepared by management of the Borrower and included in such consolidated budget), which projected financial statements shall be prepared in good faith on the basis of assumptions believed to be reasonable at the time of preparation of such projected financial statements (it being understood by the Secured Parties that any such projections are not to be viewed as facts, are subject to significant uncertainties and contingencies, many of which are beyond the control of the Loan Parties and that no assurance can be given that any particular projections will be realized, that actual results may differ and that such differences may be material);

(4) as soon as available, but in any event within thirty (30) days of the Closing Date, (a) unaudited condensed consolidated statement of income or operations for the fiscal year ended December 31, 2022 and (b) unaudited condensed consolidated statement of cash flows for the portion of the fiscal year ended December 31, 2022, setting forth, in each case of the preceding clauses (a) and (b), in comparative form the figures for the corresponding fiscal quarter of the previous fiscal year and the corresponding portion of the previous fiscal year; accompanied by an Officer’s Certificate stating that such financial statements fairly present in all material respects the financial condition, results of operations and cash flows of the Borrower and its Subsidiaries in accordance with GAAP, subject to normal year-end adjustments and the absence of footnotes; provided that any tax aspects, components or updates related to any of the foregoing may be delivered within sixty (60) days of the Closing Date (or such long period as agreed by the Administrative Agent (acting at the direction of the Required Lenders);

(5) no less frequently than once every week, at any time mutually agreed between the Borrower and the Lenders, the chief transformation officer of the Borrower and the Consultant shall participate in a conference call with the Administrative Agent and the Lenders to discuss the financial position, results of operations, business plan, status of critical vendor outstandings and payments, and Liquidity of the Borrower and its Subsidiaries;

(6) as soon as available, but in any event within thirty (30) days after the end of each month commencing with the first full month ending after the Closing Date, (i) a condensed consolidated balance sheet of the Borrower and its Subsidiaries as at the end of such month, and the related (a) condensed consolidated statement of income or operations for such month and for the portion of the fiscal year then ended and (b) condensed consolidated statement of cash flows for the portion of the fiscal year then ended;

(7) no later than the Friday of each week after the Chapter 11 Cases are commenced, the Loan Parties shall provide to the Administrative Agent an updated 13-week statement for the subsequent 13-week period (a **“Proposed Budget”**), which Proposed Budget shall modify and supersede any prior Budget upon the approval of the Administrative Agent (acting at the direction of the Required Lenders in their sole and absolute discretion) (such Proposed Budget upon such approval by the Administrative Agent, an **“Approved Updated Budget”**) and include separate line items covering any anticipated payments payable to any Affiliate of the Loan Parties;

(8) no later than the Wednesday of each week after the Chapter 11 Cases are commenced, the Loan Parties shall deliver to the Administrative Agent a liquidity report which shall include:

(a) a detailed listing of disbursements from the prior week by vendor and category; and

(b) actual cash flow results for the prior week and variance from forecast (standard summary on cash receipts and disbursements) with an explanation of the variances;

(c) an accounts payable aging report; and

(d) information describing any events that have, or would be reasonably expected to result in a Material Adverse Effect impacting Holdings and its Subsidiaries.

(9) on each Budget Testing Date (prior to 6:00 p.m. Central Standard Time), the Loan Parties shall deliver to the Administrative Agent (x) a report (each, a **“Variance Report”**) substantially in the form attached hereto as Exhibit M describing in reasonable detail the Borrower’s aggregate cash receipts and aggregate cash disbursements during the relevant Budget Testing Period as compared to the projected, aggregate cash receipts and disbursements provided by the then-current Budget for the same period (including breakdown by vendor and category) and (y) an analysis, certified by the chief transformation officer of the Borrower, demonstrating that a Budget Event shall not have occurred for such Budget Testing Period;

(10) the Loan Parties (whether directly or, as appropriate, through their relevant advisors) shall grant access to, and cooperate in all respects with, the Administrative Agent, the

Lenders, the Consultant and each of their advisors, and any other representatives of the foregoing to provide in a timely manner all information that such parties may reasonably request;

(11) no later than the 30<sup>th</sup> day after the Interim DIP Order Entry Date, the Loan Parties shall provide a report of its EBITDA and financials consolidated and consolidating for the latest fiscal month-end close to the Administrative Agent and the Lenders.

Notwithstanding the foregoing, the obligations referred to in Sections 6.01(1) and 6.01(2) may be satisfied with respect to financial information of the Borrower and its Subsidiaries by furnishing (A) the applicable financial statements of any Parent Company or (B) the Borrower's or such Parent Company's Form 10-K or 10-Q, as applicable, filed with the SEC (and the public filing of such report with the SEC shall constitute delivery under this Section 6.01); *provided* that with respect to each of the preceding clauses (A) and (B), (1) to the extent such information relates to a parent of the Borrower, if and so long as such Parent Company will have Independent Assets or Operations, such information is accompanied by consolidating information that explains in reasonable detail the differences between the information relating to such Parent Company and its Independent Assets or Operations, on the one hand, and the information relating to the Borrower and the consolidated Restricted Subsidiaries on a stand-alone basis, on the other hand and (2) to the extent such information is in lieu of information required to be provided under Section 6.01(1) (it being understood that such information may be audited at the option of the Borrower), such materials are accompanied by a report and opinion of PricewaterhouseCoopers, LLP or any other independent registered public accounting firm of nationally recognized standing or another accounting firm reasonably acceptable to the Administrative Agent and the Required Lenders, which report and opinion (x) shall be prepared in accordance with generally accepted auditing standards and (y) shall not be subject to any qualification as to the scope of such audit or be subject to any explanatory statement (other than an "emphasis of matter" paragraph) as to the Borrower's ability to continue as a "going concern" or like qualification (other than with respect to (i) the impending maturity of any Indebtedness having an aggregate outstanding principal amount of not less than the Threshold Amount or (ii) any actual or prospective breach of any financial maintenance covenant).

Each Lender and the Administrative Agent hereby acknowledges and agrees that the Borrower and its Subsidiaries may be required to restate historical financial statements as the result of the implementation of changes in GAAP, or the respective interpretation thereof, and that such restatements will not result in a Default or an Event of Default under the Loan Documents.

Section 6.02 Certificates; Other Information. Deliver to the Administrative Agent for prompt further distribution by the Administrative Agent to each Lender:

(1) no later than five (5) days after the delivery of the financial statements referred to in Sections 6.01(1) and (2) (commencing with such delivery for the fiscal quarter ending March 31, 2023), a duly completed Compliance Certificate signed by a Financial Officer of the Borrower;

(2) promptly after the same are publicly available, copies of all annual, regular, periodic and special reports, proxy statements and registration statements which the Borrower or any Restricted Subsidiary files with the SEC or with any Governmental Authority that may be substituted therefor or with any national securities exchange, as the case may be (other than

amendments to any registration statement (to the extent such registration statement, in the form it became effective, is delivered to the Administrative Agent), exhibits to any registration statement and, if applicable, any registration statement on Form S-8), and in any case not otherwise required to be delivered to the Administrative Agent pursuant to any other clause of this Section 6.02;

(3) [reserved];

(4) together with the delivery of the Compliance Certificate with respect to the financial statements referred to in Section 6.01(1), list of each Subsidiary of the Borrower that identifies each Subsidiary as a Restricted Subsidiary as of the date of delivery of such list or a confirmation that there is no change in such information since the later of the Closing Date and the last such list;

(5) promptly, such additional information regarding the business and financial affairs of any Loan Party or any Restricted Subsidiary, or compliance with the terms of the Loan Documents, as the Administrative Agent may from time to time on its own behalf or on behalf of any Lender reasonably request in writing from time to time;

(6) [reserved];

(7) as soon as reasonably practicable in advance of, but no later than the earlier of (x) five (5) days prior to, any filing with the Bankruptcy Court or (y) contemporaneous delivery to any statutory committee appointed in the Chapter 11 Cases or the U.S. Trustee, as the case may be, 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 (except that, with respect to any emergency pleading or document for which, despite the Loan Parties' best efforts, such advance notice is impracticable, the Loan Parties shall be required to furnish such documents as soon as reasonably practicable and in no event later than substantially concurrently with such filings or deliveries thereof, as applicable), including any monthly reporting by the Loan Parties to the Bankruptcy Court and/or the U.S. Trustee; and

(8) at least two (2) days prior to issuance thereof, drafts of any press releases or other public statements regarding the Facilities, the Chapter 11 Cases, or the Debtors' businesses, which press releases or public statements, as the case may be, shall be revised by the Borrower acting in good faith, to include all reasonable comments of the Lenders prior to release thereof.

Documents required to be delivered pursuant to Section 6.01 or Section 6.02(2) may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date (a) on which the Borrower posts such documents, or provides a link thereto, on the Borrower's (or any Parent Company's) website on the Internet at the website address listed on Schedule 10.02 hereto (or as such address may be updated from time to time in accordance with Section 10.02); or (b) on which such documents are posted on the Borrower's behalf on IntraLinks/IntraAgency or another relevant website, if any, to which each Lender and the Administrative Agent have access (whether a commercial, third-party website or whether sponsored by the Administrative Agent); *provided* that (i) upon written request by the Administrative Agent, the Borrower will deliver paper copies of such documents to the Administrative Agent for further distribution by the

Administrative Agent to each Lender until a written request to cease delivering paper copies is given by the Administrative Agent and (ii) the Borrower shall notify (which may be by facsimile or electronic mail) the Administrative Agent of the posting of any such documents or link and, upon the Administrative Agent's request, provide to the Administrative Agent by electronic mail electronic versions (i.e., soft copies) of such documents. Each Lender shall be solely responsible for timely accessing posted documents or requesting delivery of paper copies of such documents from the Administrative Agent and maintaining its copies of such documents.

The Borrower hereby acknowledges that (a) the Administrative Agent will make available to the Lenders materials or information provided by or on behalf of the Borrower hereunder (collectively, the "**Borrower Materials**") by posting the Borrower Materials on Intralinks or another similar electronic system (the "**Platform**") and (b) certain of the Lenders may have personnel who do not wish to receive any information with respect to the Borrower, its Subsidiaries or their respective securities that is not Public-Side Information, and who may be engaged in investment and other market-related activities with respect to such Person's securities. The Borrower hereby agrees that (i) at the Administrative Agent's request, all Borrower Materials that are to be made available to Public Lenders will be clearly and conspicuously marked "PUBLIC" which, at a minimum, means that the word "PUBLIC" will appear prominently on the first page thereof; (ii) by marking Borrower Materials "PUBLIC," the Borrower will be deemed to have authorized the Administrative Agent and the Lenders to treat such Borrower Materials as containing only Public-Side Information (*provided, however*, that to the extent such Borrower Materials constitute Information, they will be treated as set forth in Section 10.09); (iii) all Borrower Materials marked "PUBLIC" are permitted to be made available through a portion of the Platform designated as "Public Side Information"; and (iv) the Administrative Agent will treat the Borrower Materials that are not marked "PUBLIC" as being suitable only for posting on a portion of the Platform not designated as "Public Side Information." Notwithstanding the foregoing, the Borrower shall be under no obligation to mark the Borrower Materials "PUBLIC."

Anything to the contrary notwithstanding, nothing in this Agreement will require the Borrower or any Subsidiary to disclose, permit the inspection, examination or making copies or abstracts of, or discussion of, any document, information or other matter, or provide information (i) that constitutes non-financial trade secrets or non-financial proprietary information, (ii) in respect of which disclosure is prohibited by Law or binding agreement or (iii) that is subject to attorney-client or similar privilege or constitutes attorney work product.

Section 6.03 Notices. Promptly after a Responsible Officer obtains actual knowledge thereof, notify the Administrative Agent of:

- (1) the occurrence of any Default; and
- (2) (a) any dispute, litigation, investigation or proceeding between any Loan Party and any arbitrator or Governmental Authority, (b) the filing or commencement of, or any material development in, any litigation or proceeding affecting any Loan Party or its Subsidiary, or (c) the occurrence of any ERISA Event that, in any such case referred to in clauses (a), (b) or (c) of this Section 6.03(2), has resulted or would reasonably be expected to result in a Material Adverse Effect.



Each notice pursuant to this Section 6.03 shall be accompanied by a written statement of a Responsible Officer of the Borrower (a) that such notice is being delivered pursuant to Section 6.03(1) or (2) (as applicable) and (b) setting forth details of the occurrence referred to therein and stating what action the Borrower has taken and proposes to take with respect thereto.

Section 6.04 Payment of Obligations. Timely pay, discharge or otherwise satisfy, as the same shall become due and payable, all of its obligations and liabilities in respect of Taxes imposed upon it or upon its income or profits or in respect of its property, except, in each case, to the extent (1) any such Tax is being contested in good faith and by appropriate actions for which appropriate reserves have been established in accordance with GAAP or (2) the failure to pay or discharge the same would not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect.

Section 6.05 Preservation of Existence, etc.

(1) Preserve, renew and maintain in full force and effect its legal existence under the Laws of the jurisdiction of its organization; and

(2) take all reasonable action to obtain, preserve, renew and keep in full force and effect its rights, licenses, permits, privileges, franchises, and IP Rights material to the conduct of its business,

except in the case of clauses (1) or (2) of this Section 6.05 to the extent (other than with respect to the preservation of the existence of the Borrower set forth in clause (1)) that failure to do so would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect or to the extent such non-compliance is in connection with a merger, consolidation, liquidation, dissolution or disposition permitted by Section 7.03.

Section 6.06 Maintenance of Properties. Except if the failure to do so would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, maintain, preserve and protect all of its material properties and equipment used in the operation of its business in reasonably good working order, repair and condition, ordinary wear and tear excepted and casualty or condemnation excepted.

Section 6.07 Maintenance of Insurance.

(1) Maintain with insurance companies that the Borrower believes (in the good faith judgment of its management) are financially sound and reputable at the time the relevant coverage is placed or renewed, insurance with respect to the Borrower's and the Restricted Subsidiaries' properties and business against loss or damage of the kinds customarily insured against by Persons engaged in the same or similar business, of such types and in such amounts (after giving effect to any self-insurance reasonable and customary for similarly situated Persons engaged in the same or similar businesses as the Borrower and the Restricted Subsidiaries) as are customarily carried under similar circumstances by such other Persons, and will furnish to the Lenders, upon written request from the Administrative Agent, information presented in reasonable detail as to the insurance so carried; *provided* that notwithstanding the foregoing, in no event will the Borrower or any Restricted Subsidiary be required to obtain or maintain insurance that is more restrictive

than what is consistent with past practice. Each such policy of insurance will as appropriate, (i) name the Collateral Agent, on behalf of the Secured Parties, as an additional insured thereunder as its interests may appear or (ii) in the case of each casualty insurance policy, contain an additional loss payable clause or endorsement that names the Collateral Agent, on behalf of the Secured Parties, as the additional loss payee thereunder.

(2) If any improved portion of any Mortgaged Property is at any time located in an area identified by the Federal Emergency Management Agency (or any successor agency) as a special flood hazard area with respect to which flood insurance has been made available under the Flood Insurance Laws, then the Borrower will, or will cause each Loan Party to (a) maintain, or cause to be maintained, flood insurance in an amount and otherwise sufficient to comply with all applicable rules and regulations promulgated pursuant to the Flood Insurance Laws and (b) deliver to the Collateral Agent (A) evidence as to whether the community in which such Mortgaged Property is located is participating in the National Flood Insurance Program, (B) the Borrower's written acknowledgment of receipt of written notification from the Administrative Agent as to the fact that such Mortgaged Property is a Flood Hazard Property and as to whether the community in which each such Flood Hazard Property is located is participating in the National Flood Insurance Program and (C) copies of an application for a flood insurance policy plus proof of premium payment, a declaration page confirming that such flood insurance has been issued, or such other evidence of such flood insurance reasonably satisfactory to the Administrative Agent and naming the Collateral Agent as mortgagee and loss payee (the requirements of clauses (a) and (b) being the "**Flood Insurance Requirements**").

Section 6.08 Compliance with Laws. Comply in all material respects with the requirements of all Laws and all orders, writs, injunctions and decrees of any Governmental Authority applicable to it or to its business or property (including ERISA, the USA PATRIOT Act, applicable Sanctions and the FCPA), except if the failure to comply therewith would not reasonably be expected individually or in the aggregate to have a Material Adverse Effect.

Section 6.09 Books and Records. Maintain proper books of record and account, in which entries that are full, true and correct in all material respects shall be made of all material financial transactions and matters involving the assets and business of the Borrower or such Restricted Subsidiary, as the case may be (it being understood and agreed that certain Foreign Subsidiaries may maintain individual books and records in conformity with generally accepted accounting principles in their respective countries of organization and that such maintenance shall not constitute a breach of the representations, warranties or covenants hereunder).

Section 6.10 Inspection Rights. Permit representatives and independent contractors of the Administrative Agent and each Lender to visit and inspect any of its properties, to examine its corporate, financial and operating records, including, without limitation, historical records and information, and make copies thereof or abstracts therefrom and to discuss its affairs, finances and accounts with its directors, officers, other personnel and independent public accountants (subject to such accountants' customary policies and procedures), all at the reasonable expense of the Borrower and at such reasonable times during normal business hours and as often as may be reasonably desired, upon reasonable advance notice to the Borrower. The Administrative Agent shall give the Borrower the opportunity to participate in any discussions with the Borrower's



independent public accountants. For the avoidance of doubt, this Section 6.10 is subject to the last paragraph of Section 6.02.

Section 6.11 Covenant to Guarantee Obligations and Give Security. At the Borrower's expense, subject to the provisions of the Collateral and Guarantee Requirement and any applicable limitation in any Collateral Document, take all action necessary or reasonably requested by the Administrative Agent or the Collateral Agent to ensure that the Collateral and Guarantee Requirement continues to be satisfied, including:

(1) (x) upon (i) the formation or acquisition of any new direct or indirect wholly owned Domestic Subsidiary by any Loan Party (other than any Excluded Subsidiary), (y) upon the acquisition of any material assets by the Borrower or any Subsidiary Guarantor or (z) with respect to any Subsidiary at the time it becomes a Loan Party, for any material assets held by such Subsidiary (in each case, other than assets constituting Collateral under a Collateral Document that becomes subject to the Lien created by such Collateral Document upon acquisition thereof (without limitation of the obligations to perfect such Lien)):

(a) within five (5) days (or such greater number of days specified below) after such formation, acquisition or designation or, in each case, such longer period as the Administrative Agent and the Required Lenders may agree in their reasonable discretion cause such Domestic Subsidiary required to become a Guarantor under the Collateral and Guarantee Requirement to execute the Guaranty (or a joinder thereto) and other documentation the Administrative Agent may reasonably request from time to time in order to carry out more effectively the purposes of the Guaranty and the Collateral Documents and

(A) within five (5) days) after such formation, acquisition or designation, cause each such Domestic Subsidiary that is required to become a Subsidiary Guarantor pursuant to the Collateral and Guarantee Requirement to duly execute and deliver to the Collateral Agent supplements to the Security Agreement and other security agreements and documents necessary to satisfy the Collateral and Guarantee Requirement, as reasonably requested by and in form and substance reasonably satisfactory to the Collateral Agent (consistent with the Security Agreement and other Collateral Documents in effect on the Closing Date), in each case granting and perfecting Liens required by the Collateral and Guarantee Requirement;

(B) [reserved];

(C) within five (5) days) after such formation, acquisition or designation, take and cause (i) the applicable Domestic Subsidiary that is required to become a Guarantor pursuant to the Collateral and Guarantee Requirement and (ii) to the extent applicable, each direct or indirect parent of such applicable Domestic Subsidiary, in each case, to take customary action(s) (including the filing of Uniform Commercial Code financing statements) as may be necessary in the reasonable opinion of the Administrative Agent to vest in the Collateral Agent (or in any representative of the Collateral Agent designated by it) valid and perfected (subject to Liens permitted by Section 7.01) Liens required by the Collateral and

Guarantee Requirement, enforceable against all third parties in accordance with their terms, except as such enforceability may be limited by Debtor Relief Laws and by general principles of equity (regardless of whether enforcement is sought in equity or at law); and

(D) within five (5) days) after the reasonable request therefor by the Administrative Agent (or such longer period as the Administrative Agent and the Required Lenders may agree in their reasonable discretion), deliver to the Administrative Agent a signed copy of a customary Opinion of Counsel, addressed to the Administrative Agent and the Lenders, of counsel for the Loan Parties reasonably acceptable to the Administrative Agent and the Required Lenders as to such matters set forth in this Section 6.11(1) as the Administrative Agent may reasonably request (with such opinion being consistent with the Opinion of Counsel delivered to the Administrative Agent on the Closing Date);

*provided* that actions relating to Liens on real property are governed by Section 6.11(2) and not this Section 6.11(1).

(2) Material Real Property.

(a) Notice.

(i) Within sixty (60) days (or such longer period as the Collateral Agent may agree in its reasonable discretion), after the formation, acquisition or designation of a Domestic Subsidiary that is required to become a Subsidiary Guarantor under the Collateral and Guarantee Requirement, the Borrower will, or will cause such Domestic Subsidiary to, furnish to the Collateral Agent a description of any Material Real Property (other than any Excluded Asset(s)) owned by such Domestic Subsidiary.

(ii) Within sixty (60) days (or such longer period as the Collateral Agent may agree in its reasonable discretion), after the acquisition of any Material Real Property (other than any Excluded Asset(s)) by a Loan Party, after the Closing Date, the Borrower will, or will cause such Loan Party to, furnish to the Collateral Agent a description of any such Material Real Property.

(b) Mortgages. The Borrower will, or will cause the applicable Loan Party to, provide the Collateral Agent with a Mortgage with respect to any Material Real Property that is the subject of a notice delivered pursuant to Section 6.11(2)(a), within one hundred and twenty (120) days of the acquisition, formation or designation of such Domestic Subsidiary or the acquisition of such Material Real Property (or such longer period as the Collateral Agent may agree in its sole discretion), together with:

(i) evidence that counterparts of the Mortgages have been duly executed, acknowledged and delivered and are in form suitable for filing or recording in all filing or recording offices that the Collateral Agent may deem reasonably necessary or desirable in order to create, except to the extent otherwise provided hereunder, including subject to Liens permitted by Section 7.01, a valid and subsisting perfected Lien on such Material

Real Property in favor of the Collateral Agent for the benefit of the Secured Parties and that all filing and recording taxes and fees have been paid or otherwise provided for in a manner reasonably satisfactory to the Collateral Agent;

(ii) fully paid American Land Title Association Lender's Extended Coverage title insurance policies or the equivalent or other form available in each applicable jurisdiction (the "**Mortgage Policies**") in form and substance, with endorsements, including zoning endorsements, available in the applicable jurisdiction and in amounts, reasonably acceptable to the Collateral Agent (not to exceed the fair market value of the real properties covered thereby), issued, coinsured and reinsured (as applicable) by title insurers reasonably acceptable to the Collateral Agent, insuring the Mortgages to be valid subsisting Liens on the property described therein, subject only to Liens permitted by Section 7.01 or such other Liens that do not have a material adverse impact on the use or value of the Mortgaged Properties, and providing for such other affirmative insurance (including endorsements for future advances under the Loan Documents) and such coinsurance and direct access reinsurance as the Collateral Agent may reasonably request and is available in the applicable jurisdiction and with respect to any property located in a state in which a zoning endorsement is not available, a zoning compliance letter from the applicable municipality or a zoning report from Planning and Zoning Resources Corporation (or other similar company reasonably acceptable to the Collateral Agent), in each case to be reasonably satisfactory to the Collateral Agent;

(iii) customary Opinions of Counsel for the applicable Loan Parties in states in which such Material Real Properties are located, with respect to the enforceability and perfection of the Mortgage(s) and any related fixture filings, the authorization, execution and delivery of the Mortgages and such other matters as the Collateral Agent may reasonably request, in form and substance reasonably satisfactory to the Collateral Agent;

(iv) American Land Title/American Congress on Surveying and Mapping surveys for each Material Real Property or existing surveys together with customary no change affidavits, in each case certified to the Collateral Agent if deemed necessary by Collateral Agent in its reasonable discretion, sufficient for the title insurance company issuing a Mortgage Policy to remove the standard survey exception and issue standard survey related endorsements;

(v) a completed "Life-of-Loan" Federal Emergency Management Agency standard flood hazard determination with respect to each Material Real Property containing improved land addressed to the Collateral Agent and otherwise in compliance with the Flood Insurance Laws, and if any such Material Real Property is located in an area determined by the Federal Emergency Management Agency (or any successor agency) to be a special flood hazard area, the Borrower's duly executed acknowledgement of receipt of written notification from the Collateral Agent about special flood hazard area status and flood disaster assistance and evidence of compliance with the Flood Insurance Requirements; and

(vi) as promptly as practicable after the reasonable request therefor by the Collateral Agent, environmental assessment reports and reliance letters (if any) that have

been prepared in connection with such acquisition, designation or formation of any Domestic Subsidiary or acquisition of any Material Real Property.

Section 6.12 Compliance with Environmental Laws. Except, in each case, to the extent that the failure to do so would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, (1) comply, and take all reasonable actions to cause any lessees and other Persons operating or occupying its properties to comply, with all applicable Environmental Laws and Environmental Permits (including any cleanup, removal or remedial obligations) and (2) obtain and renew all Environmental Permits required to conduct its operations or in connection with its properties.

Section 6.13 Further Assurances and Post-Closing Covenant.

(1) Subject to the provisions of the Collateral and Guarantee Requirement and any applicable limitations in any Collateral Document and in each case at the expense of the Borrower, promptly upon reasonable request from time to time by the Administrative Agent or the Collateral Agent or as may be required by applicable Laws (a) correct any material defect or error that may be discovered in the execution, acknowledgment, filing or recordation of any Collateral Document or other document or instrument relating to any Collateral, and (b) do, execute, acknowledge, deliver, record, re-record, file, re-file, register and re-register any and all such further acts, deeds, certificates, assurances and other instruments as the Administrative Agent or Collateral Agent may reasonably request from time to time in order to carry out more effectively the purposes of the Collateral Documents and to satisfy the Collateral and Guarantee Requirement.

(2) [Reserved].

Section 6.14 Use of Proceeds. Subject to Section 7.10, the proceeds of the Loans shall be used strictly in accordance with the Budget (subject to Permitted Variances) and the terms of the Bankruptcy Court DIP Order and the Loan Documents, including, without limitation: (i) to pay (a) Professional Fees and other restructuring charges arising on account of the Chapter 11 Cases, including statutory fees of the U.S. Trustee and allowed professional fees and expenses of any official committee appointed in the Chapter 11 Cases (a “**Committee**”), and (b) all professional fees and expenses (including legal, financial advisor, appraisal, and valuation-related fees and expenses) incurred by the Administrative Agent and/or the Lenders as provided under the Facility, including those incurred in connection with the preparation, negotiation, documentation, and court approval of the Facility and (ii) to provide working capital to the Loan Parties that are debtors in the Chapter 11 Cases, and for other general corporate purposes of such entities, and to pay administration costs of the Chapter 11 Cases and claims or amounts approved by the Bankruptcy Court.

Section 6.15 [Reserved].

Section 6.16 Accounting Changes. The Borrower shall, and shall cause its Restricted Subsidiaries to, maintain their fiscal year as in effect on the Closing Date; *provided, however*, that the Borrower may, upon written notice to the Administrative Agent, change its fiscal year to any other fiscal year reasonably acceptable to the Administrative Agent and the Required Lenders, in which case, the Borrower and the Administrative Agent will, and are hereby authorized by the

Lenders to, make any adjustments to this Agreement that are necessary to reflect such change in fiscal year.

Section 6.17 Nature of Business. The Borrower shall and shall cause its Restricted Subsidiaries to, engage in material line of business substantially the same as those lines of business conducted by the Borrower and the Restricted Subsidiaries on the Closing Date or any business(es) or any other activities that are reasonably similar, ancillary, incidental, complimentary or related to, or a reasonable extension, development or expansion of, the business conducted or proposed to be conducted by the Borrower and the Restricted Subsidiaries on the Closing Date.

Section 6.18 [Reserved].

Section 6.19 Anti-Terrorism Law; Anti-Money Laundering; Foreign Corrupt Practices Act.

(1) Borrower shall not:

(A) Directly or indirectly (i) knowingly deal in, or otherwise knowingly engage in any transaction relating to, any property or interests in property blocked pursuant to the Executive Order or any other Anti-Terrorism Law in violation of any applicable Anti-Terrorism Law or applicable Sanctions, (ii) knowingly transact business with or for the benefit of any Sanctioned Person in violation of applicable Sanctions, or (iii) otherwise knowingly engage in or conspire to engage in any transaction that violates or attempts to violate, any of the material prohibitions set forth in any applicable Anti-Terrorism Law or applicable Sanctions;

(B) Directly, or knowingly indirectly, undertake any Anti-Corruption Prohibited Activity;

(C) (i) Repay the Loans using funds or properties of the Borrower or any Restricted Subsidiaries that are, to the knowledge of the Borrower, the property of any Sanctioned Person or the product of a violation of Sanctions or any Anti-Corruption Prohibited Activity or (ii) to the knowledge of the Borrower, permit any Sanctioned Person to have any direct or indirect interest, in the Borrower or any of the Subsidiaries, with the result that the investment in the Borrower or any of the Subsidiaries (whether directly or indirectly) or the Loans made by the Lenders would be in violation of any applicable Sanctions; and

(2) Each Loan Party will, within 60 days of the Closing Date of this Agreement, maintain in effect and enforce policies and procedures that are reasonably designed to ensure compliance by the Loan Parties and their respective directors, officers, employees and agents with applicable Anti-Corruption Laws and applicable Sanctions.

Section 6.20 Orders of Bankruptcy Court. The Loan Parties shall comply with each order entered by the Bankruptcy Court in the Chapter 11 Cases, including the Bankruptcy Court DIP Order and the Cash Management Order.

## ARTICLE VII

### Negative Covenants

So long as the Termination Conditions are not satisfied:

Section 7.01 Liens. The Borrower shall not, nor shall the Borrower permit any Restricted Subsidiary to, directly or indirectly, create, incur or assume any Lien (except any Permitted Lien(s)) on any asset or property of the Borrower or any Restricted Subsidiary, or any income or profits therefrom.

The expansion of Liens by virtue of accretion or amortization of original issue discount, the payment of dividends in the form of Indebtedness, and increases in the amount of Indebtedness outstanding solely as a result of fluctuations in the exchange rate of currencies will not be deemed to be an incurrence of Liens for purposes of this Section 7.01.

Section 7.02 Indebtedness.

(a) The Borrower shall not, nor shall the Borrower permit any Restricted Subsidiary to, directly or indirectly:

(i) create, incur, issue, assume, guarantee or otherwise become directly or indirectly liable, contingently or otherwise (collectively, “**incur**” and collectively, an “**incurrence**”) with respect to any Indebtedness (including Acquired Indebtedness), or

(ii) issue any shares of Disqualified Stock or Preferred Stock; and

(b) the foregoing clause (a) shall not apply to the following:

(1) Indebtedness of the Borrower and of its Restricted Subsidiaries under the Loan Documents and the Carve Out;

(2) [reserved];

(3) (a) the incurrence of Indebtedness by the Borrower and any Restricted Subsidiary in existence on the Closing Date listed on Schedule 7.02(3) (excluding Indebtedness described in the preceding clause (1));

(4) Indebtedness (including Capitalized Lease Obligations and Purchase Money Obligations) incurred or issued by the Borrower or any Restricted Subsidiary and Preferred Stock issued by any Restricted Subsidiary, to finance the purchase, lease, expansion, construction, installation, replacement, repair or improvement of property (real or personal), equipment or other assets, including assets that are used or useful in a Similar Business, whether through the direct purchase of assets or the Capital Stock of any Person owning such assets in an aggregate principal amount, together with any refinancing Indebtedness in respect thereof and all other Indebtedness or Preferred Stock incurred or issued and outstanding under this clause (4), without regard to any Indebtedness listed on Schedule 7.02(3) and any refinancing Indebtedness of the Indebtedness referred to in this clause thereof, at such time not to exceed \$5.0 million;



(5) Indebtedness incurred by the Borrower or any Restricted Subsidiary (a) constituting reimbursement obligations with respect to letters of credit, bank guarantees, banker's acceptances, completion guarantees warehouse receipts, or similar instruments issued or entered into, or relating to obligations or liabilities incurred, in the ordinary course of business or consistent with industry practice, including in respect of workers' compensation claims, performance, completion, bid, appeal or surety bonds, health, disability or other employee benefits or property, casualty or liability insurance or self-insurance, unemployment insurance or other social security legislation or other Indebtedness with respect to reimbursement-type obligations regarding workers' compensation claims, performance, completion or surety bonds, health, disability or other employee benefits or property, casualty or liability insurance or self-insurance or (b) as an account party in respect of letters of credit, bank guarantees or similar instruments in favor of suppliers, trade creditors or other Persons issued or incurred in the ordinary course of business or consistent with industry practice;

(6) [reserved];

(7) the incurrence of Indebtedness of the Borrower to a Restricted Subsidiary (or to any Parent Company which is substantially contemporaneously transferred to the Borrower or any Restricted Subsidiary); *provided* that any such Indebtedness for borrowed money owing to a Restricted Subsidiary that is not a Guarantor is expressly subordinated in right of payment to the Loans; *provided further* that any subsequent issuance or transfer of any Capital Stock or any other event that results in any such Restricted Subsidiary ceasing to be a Restricted Subsidiary or any other subsequent transfer of any such Indebtedness (except to the Borrower or another Restricted Subsidiary or any collateral pledge of such Indebtedness constituting a Permitted Lien) will be deemed, in each case, to be an incurrence of such Indebtedness (to the extent such Indebtedness is then outstanding) not permitted by this clause (7);

(8) the incurrence of Indebtedness of a Restricted Subsidiary to the Borrower or another Restricted Subsidiary (or to any Parent Company which is substantially contemporaneously transferred to the Borrower or any Restricted Subsidiary) to the extent permitted by Section 7.05; *provided* that any such Indebtedness for borrowed money incurred by a Guarantor and owing to a Restricted Subsidiary that is not a Guarantor is expressly subordinated in right of payment to the Guaranty of the Loans of such Guarantor; *provided further* that any subsequent issuance or transfer of any Capital Stock or any other event which results in any such Restricted Subsidiary ceasing to be a Restricted Subsidiary or any such subsequent transfer of any such Indebtedness (except to the Borrower or a Restricted Subsidiary or any collateral pledge of such Indebtedness constituting a Permitted Lien) will be deemed, in each case, to be an incurrence of such Indebtedness (to the extent such Indebtedness is then outstanding) not permitted by this clause (8);

(9) the issuance of shares of Preferred Stock or Disqualified Stock of a Restricted Subsidiary issued to the Borrower or a Restricted Subsidiary; *provided* that any subsequent issuance or transfer of any Capital Stock or any other event that results in any such Restricted Subsidiary that holds such Preferred Stock or Disqualified Stock ceasing to be a Restricted Subsidiary or any other subsequent transfer of any such shares of Preferred Stock or Disqualified Stock (except to the Borrower or another Restricted Subsidiary or any collateral pledge of such Indebtedness constituting a Permitted Lien) will be deemed, in each case, to be an issuance of such

shares of Preferred Stock or Disqualified Stock (to the extent such Preferred Stock is then outstanding) not permitted by this clause (9);

(10) the incurrence of Hedging Obligations (excluding Hedging Obligations entered into for speculative purposes);

(11) [reserved];

(12) [reserved];

(13) [reserved];

(14) [reserved];

(15) the incurrence of Indebtedness arising from the honoring by a bank or other financial institution of a check, draft or similar instrument drawn against insufficient funds in the ordinary course of business or consistent with industry practice;

(16) the incurrence of Indebtedness of the Borrower or any Restricted Subsidiary supported by letters of credit or bank guarantees permitted hereunder, in each case, in a principal amount not in excess of the stated amount of such letters of credit or bank guarantees;

(17) (a) the incurrence of any guarantee by the Borrower or a Restricted Subsidiary of Indebtedness or other obligations of the Borrower or any Restricted Subsidiary so long as the incurrence of such Indebtedness or other obligations incurred by the Borrower or such Restricted Subsidiary is otherwise permitted by this Section 7.02, or (b) any co-issuance by the Borrower or any Restricted Subsidiary of any Indebtedness or other obligations of the Borrower or any Restricted Subsidiary so long as the incurrence of such Indebtedness or other obligations by the Borrower or such Restricted Subsidiary was permitted under this Section 7.02;

(18) [reserved];

(19) customer deposits and advance payments received in the ordinary course of business or consistent with industry practice from customers for goods and services purchased in the ordinary course of business or consistent with industry practice;

(20) the incurrence of (a) Indebtedness owed to banks and other financial institutions incurred in the ordinary course of business or consistent with industry practice in connection with ordinary banking arrangements to manage cash balances of the Borrower and its Restricted Subsidiaries and (b) Indebtedness in respect of Cash Management Services, including Cash Management Obligations;

(21) Indebtedness incurred by the Borrower or any Restricted Subsidiary in connection with discounted bills of exchange or the discounting or factoring of receivables for credit management purposes, in each case incurred or undertaken in the ordinary course of business or consistent with industry practice on arm's-length commercial terms;



(22) the incurrence of Indebtedness of the Borrower or any Restricted Subsidiary consisting of (a) the financing of insurance premiums or (b) take-or-pay obligations contained in supply arrangements in each case, incurred in the ordinary course of business or consistent with industry practice;

(23) [reserved];

(24) the incurrence of Indebtedness by the Borrower or any Restricted Subsidiary undertaken in connection with cash management (including netting services, automatic clearinghouse arrangements, overdraft protections, employee credit card programs and related or similar services or activities) with respect to the Borrower, any Subsidiaries or any joint venture in the ordinary course of business or consistent with industry practice, including with respect to financial accommodations of the type described in the definition of Cash Management Services;

(25) [reserved];

(26) guarantees incurred in the ordinary course of business or consistent with industry practice in respect of obligations to suppliers, customers, franchisees, lessors, licensees, sublicensees and distribution partners;

(27) the incurrence of Indebtedness attributable to (but not incurred to finance) the exercise of appraisal rights or the settlement of any claims or actions (whether actual, contingent or potential) with respect to the Transactions or any other acquisition (by merger, consolidation or amalgamation or otherwise) in accordance with the terms hereof;

(28) the incurrence of Indebtedness representing deferred compensation to employees of any Parent Company, the Borrower or any Restricted Subsidiary, including Indebtedness consisting of obligations under deferred compensation or any other similar arrangements incurred in connection with the Transactions, any investment or any acquisition (by merger, consolidation or amalgamation or otherwise) permitted under this Agreement; and

(29) [reserved];

(30) [reserved];

(31) [reserved];

(32) all premiums (if any), interest (including post-petition interest), fees, expenses, charges and additional or contingent interest on obligations described in clauses (1) through (31) above.

(c) For purposes of determining compliance with this Section 7.02:

(1) in the event that an item of Indebtedness or Preferred Stock (or any portion thereof) at the time of incurrence meets the criteria of more than one of the categories of Permitted Indebtedness or Preferred Stock described in clauses (1) through (32) above, the Borrower, in its sole discretion, may divide and classify, such item of Indebtedness or Preferred Stock (or any portion thereof) in more than one of the types of Indebtedness or Preferred Stock described in

Section 7.02(b) and will only be required to include the amount and type of such Indebtedness or Preferred Stock (or a portion thereof) in such of the above clauses as determined by the Borrower at such time; *provided* that all Indebtedness incurred hereunder on the Closing Date will, at all times, be treated as incurred on the Closing Date under Section 7.02(b)(1) and (2), respectively;

(2) [reserved];

(3) the principal amount of Indebtedness outstanding under any clause of this Section 7.02 will be determined after giving effect to the application of proceeds of any such Indebtedness to refinance any such other Indebtedness;

(4) [reserved]; and

(5) guarantees of, or obligations in respect of letters of credit relating to, Indebtedness that are otherwise included in the determination of a particular amount of Indebtedness will not be included in the determination of such amount of Indebtedness; *provided* that the incurrence of the Indebtedness represented by such guarantee or letter of credit, as the case may be, was incurred in compliance with this Section 7.02.

The accrual of interest or dividends, the accretion of accreted value, the accretion or amortization of original issue discount and the payment of interest or dividends in the form of additional Indebtedness or Preferred Stock and increases in the amount of Indebtedness outstanding solely as a result of fluctuations in the exchange rate of currencies, in each case, will not be deemed to be an incurrence of Indebtedness or Preferred Stock for purposes of this Section 7.02.

Section 7.03 Fundamental Changes. The Borrower shall not, nor shall the Borrower permit any Restricted Subsidiary to, consolidate, amalgamate or merge with or into or wind up into another Person, or liquidate or dissolve or sell, transfer, lease or otherwise dispose of (whether in one transaction or in a series of transactions) all or substantially all of its assets (whether now owned or hereafter acquired) to or in favor of any Person (other than as part of the Transactions), except that:

(1) Subject to Section 3.03(a) of the Security Agreement, Holdings or any Restricted Subsidiary may merge or consolidate with the Borrower (including a merger, the purpose of which is to reorganize the Borrower into a new jurisdiction); *provided* that

(a) the Borrower shall be the continuing or surviving Person,

(b) such merger or consolidation does not result in the Borrower ceasing to be organized under the Laws of the United States, any state thereof or the District of Columbia; and

(c) in the case of a merger or consolidation of Holdings with and into the Borrower,

(i) Holdings shall not be an obligor in respect of any Indebtedness that is not permitted to be Indebtedness of the Borrower under this Agreement,

(ii) Holdings shall have no direct Subsidiaries at the time of such merger or consolidation other than the Borrower,

(iii) no Default or Event of Default exists at such time or after giving effect to such transaction and

(iv) after giving effect to such transaction, the direct parent of the Borrower will (A) expressly assume all the obligations of Holdings under this Agreement and the other Loan Documents to which Holdings is a party pursuant to a supplement hereto or thereto in form reasonably satisfactory to the Administrative Agent and the Borrower, (B) pledge 100% of the Equity Interests of the Borrower to the Administrative Agent as Collateral to secure the Obligations in form reasonably satisfactory to the Administrative Agent and the Borrower and (C) be in compliance with Section 7.09;

(2) (a) any Restricted Subsidiary that is not a Loan Party may merge or consolidate with or into any other Restricted Subsidiary that is not a Loan Party,

(b) any Restricted Subsidiary may merge or consolidate with or into any other Restricted Subsidiary that is a Loan Party; provided that a Loan Party shall be the continuing or surviving Person;

(c) any merger the sole purpose of which is to reincorporate or reorganize a Loan Party in another jurisdiction in the United States will be permitted and

(d) any Restricted Subsidiary may liquidate or dissolve or change its legal form if the Borrower determines in good faith that such action is in the best interests of the Borrower and the Restricted Subsidiaries and is not materially disadvantageous to the Lenders;

*provided* that in the case of clauses (b) through (d) of this Section 7.03(2), (x) no Event of Default shall have occurred and be continuing or result therefrom;

(3) any Restricted Subsidiary may dispose of all or substantially all of its assets (upon voluntary liquidation or otherwise) to the Borrower or another Restricted Subsidiary; *provided* that if the transferor in such a transaction is a Loan Party, then (x) the transferee must be a Loan Party or (y) to the extent constituting an Investment, such Investment must be a Permitted Investment in a Restricted Subsidiary which is not a Loan Party;

(4) [reserved];

(5) [reserved];

(6) any Restricted Subsidiary may merge or consolidate with (or dispose of all or substantially all of its assets to) any other Person in order to effect a Permitted Investment or other investment permitted pursuant to Section 7.05; *provided* that solely in the case of a merger or consolidation involving a Loan Party, no Event of Default shall have occurred and be continuing or result therefrom; *provided further*, that the continuing or surviving Person will be (a) the Borrower or (b) a Loan Party, in each case, which together with each of its Restricted Subsidiaries, will have complied with the applicable requirements of Section 6.11;

(7) a merger, dissolution, liquidation, consolidation or disposition, the purpose of which is to effect a disposition permitted pursuant to Section 7.04 (other than under clause (2)(c) of the definition of “Asset Sale”);

(8) subject to Section 3.03(a) of the Security Agreement, the Borrower may (a) convert into a corporation, partnership, limited partnership, limited liability company or trust organized or existing under the laws of the jurisdiction of organization of the Borrower or the laws of a jurisdiction in the United States and (b) change its name;

(9) the Loan Parties and the Restricted Subsidiaries may consummate the Transactions;

(10) the commencement of any proceedings against any Restricted Subsidiary under Debtor Relief Laws to the extent such proceedings do not constitute an Event of Default under Section 8.01(6);

Section 7.04 Asset Sales. The Borrower shall not, nor shall the Borrower permit any Restricted Subsidiary to, consummate any Asset Sale.

Section 7.05 Restricted Payments. (a) The Borrower shall not, nor shall the Borrower permit any Restricted Subsidiary to, directly or indirectly:

(A) declare or pay any dividend or make any payment or distribution on account of the Borrower’s or any Restricted Subsidiary’s Equity Interests (in each case, solely in such Person’s capacity as holder of such Equity Interests), including any dividend or distribution payable in connection with any merger, amalgamation or consolidation, other than:

(1) dividends, payments or distributions payable solely in Equity Interests (other than Disqualified Stock) of the Borrower or a Parent Company or in options, warrants or other rights to purchase such Equity Interests; or

(2) dividends, payments or distributions by a Restricted Subsidiary so long as, in the case of any dividend, payment or distribution payable on or in respect of any class or series of securities issued by a Restricted Subsidiary other than a wholly owned Subsidiary, the Borrower or a Restricted Subsidiary receives at least its pro rata share of such dividend, payment or distribution in accordance with its Equity Interests in such class or series of securities or such other amount to which it is entitled pursuant to the terms of such Equity Interest;

(B) purchase, redeem, defease or otherwise acquire or retire for value any Equity Interests of the Borrower or any Parent Company, including in connection with any merger, amalgamation or consolidation, in each case held by Persons other than the Borrower or a Restricted Subsidiary;

(C) [reserved]:

(D) make any Restricted Investment;

(all such payments and other actions set forth in clauses (A) through (D) above being collectively referred to as “**Restricted Payments**”);

(b) The provisions of Section 7.05(a) will not prohibit:

(1) payments made or expected to be made by the Borrower or any Restricted Subsidiary in respect of withholding or similar taxes payable with respect to payments to any future, present or former employee, director, officer, member of management or consultant (or their respective Controlled Investment Affiliates or Immediate Family Members or permitted transferees) of the Borrower, any Restricted Subsidiary or any Parent Company,

(a) any repurchases or withholdings of Equity Interests in connection with the exercise of stock options, warrants or similar rights if such Equity Interests represent a portion of the exercise of, or withholding obligations with respect to, such options, warrants or similar rights or required withholding or similar taxes and

(b) loans or advances to officers, directors, employees, managers, consultants and independent contractors of the Borrower, any Restricted Subsidiary or any Parent Company in connection with such Person’s purchase of Equity Interests of the Borrower or any Parent Company; *provided* that no cash is actually advanced pursuant to this clause (c) other than to pay taxes due in connection with such purchase, unless immediately repaid;

(2) [reserved];

(3) [reserved];

(4) [reserved];

(5) [reserved];

(6) any Restricted Payment made in connection with the Transactions and the fees and expenses related thereto or owed to any Affiliate(s);

(7) [reserved];

(8) the declaration and payment of dividends or distributions by the Borrower or any Restricted Subsidiary to, or the making of loans or advances to, the Borrower or any Parent Company in amounts required for any Parent Company to pay in each case without duplication:

(a) franchise, excise and similar taxes, and other fees, taxes and expenses, in each case, required to maintain their corporate or other legal existence;

(b) for any taxable period for which the Borrower or any of its Restricted Subsidiaries are members of a consolidated, combined, unitary or similar income tax group for U.S. federal or applicable foreign, state or local income tax purposes of which a Parent Company is the common parent (a “**Tax Group**”), to pay the portion of any U.S. federal, foreign, state and local income taxes of such Tax Group for such taxable period that are attributable to the taxable income of the Borrower and its Restricted Subsidiaries (net of any payments of such taxes made by the Borrower or its Subsidiaries); *provided* that for each taxable period, the amount of such payments made in respect of such taxable period in the aggregate will not exceed the amount that the Borrower and its Subsidiaries, as applicable, would have been required to pay as a stand-alone Tax Group; *provided* that losses or credits of a Subsidiary of the Borrower shall only be taken into account to the extent that such Subsidiary is actually a part of a Tax Group of the Parent Company;

(c) salary, bonus, severance and other benefits payable to, and indemnities provided on behalf of, employees, directors, officers, members of management and consultants of any Parent Company attributable to the ownership of the Borrower and its Restricted Subsidiaries, and any payroll, social security or similar taxes thereof solely in accordance with the Budget;

(d) non-income taxes and general corporate or other operating, administrative, compliance and overhead costs and expenses (including expenses relating to auditing and other accounting matters) of any Parent Company attributable to the ownership of the Borrower and its Restricted Subsidiaries;

(9) [reserved];

(10) cash payments, or loans, advances, dividends or distributions to any Parent Company to make payments, in lieu of issuing fractional shares in connection with share dividends, share splits, reverse share splits, mergers, consolidations, amalgamations or other business combinations and in connection with the exercise of warrants, options or other securities convertible into or exchangeable for Equity Interests of the Borrower, any Restricted Subsidiary or any Parent Company;

(11) [reserved];

(12) making payments for the benefit of the Borrower or any Restricted Subsidiary to the extent such payments could have been made by the Borrower or any Restricted Subsidiary because such payments (a) would not otherwise be Restricted Payments and (b) would be permitted by Section 7.06; and

(13) payments and distributions to dissenting stockholders pursuant to applicable law pursuant to or in connection with a consolidation, amalgamation, merger or transfer of all or substantially all of the assets of the Borrower and its Restricted Subsidiaries taken as a whole that complies with the terms of this Agreement or any other transaction that complies with the terms of this Agreement;

*provided* that for purposes of clauses (7) and (14) above, taxes will include all interest and penalties with respect thereto and all additions thereto.

(c) For purposes of determining compliance with this Section 7.05, in the event that any Restricted Payment or Investment (or any portion thereof) meets the criteria of more than one of the categories of Restricted Payments described in clauses (2) through (23) of Section 7.05(b) or one or more of the clauses contained in the definition of “Permitted Investments” at the time of making such Restricted Payment, the Borrower will be entitled to divide or classify, in whole or in part, in its sole discretion, such Restricted Payment or Investment (or any portion thereof) among such clauses (2) through (23) of Section 7.05(b) or one or more clauses contained in the definition of “Permitted Investments,” in any manner that otherwise complies with this Section 7.05.

The amount of all Restricted Payments (other than cash) will be the fair market value on the date the Restricted Payment is made, or at the Borrower’s election, the date a commitment is made to make such Restricted Payment, of the assets or securities proposed to be transferred or issued by the Borrower or any Restricted Subsidiary, as the case may be, pursuant to the Restricted Payment.

#### Section 7.06 Transactions with Affiliates.

(a) The Borrower shall not, nor shall the Borrower permit any Restricted Subsidiary to, directly or indirectly, make any payment to, or sell, lease, transfer, license, assign or otherwise dispose of any of its properties or assets to, or purchase any property or assets from, or enter into or make or amend any transaction, contract, agreement, understanding, loan, advance or guarantee with, or for the benefit of, any Affiliate of the Borrower (each of the foregoing, an “**Affiliate Transaction**”) involving aggregate payments or consideration in excess of \$3.0 million, unless (A) such Affiliate Transaction is on terms, taken as a whole, that are not materially less favorable to the Borrower or the relevant Restricted Subsidiary than those that would have been obtained at such time in a comparable transaction by the Borrower or such Restricted Subsidiary with a Person other than an Affiliate of the Borrower on an arm’s-length basis or, if in the good faith judgment of the Board of Directors no comparable transaction is available with which to compare such Affiliate Transaction, such Affiliate Transaction is otherwise fair to the Borrower or such Restricted Subsidiary from a financial point of view and (B) the Borrower delivers to the Administrative Agent with respect to any Affiliate Transaction or series of related Affiliate Transactions requiring aggregate payments or consideration in excess of \$3.0 million, a resolution adopted by the majority of the Board of Directors approving such Affiliate Transaction and set forth in an Officer’s Certificate certifying that such Affiliate Transaction complies with clause (A) above.

(b) The foregoing restriction will not apply to the following:

(1) (a) transactions between or among the Borrower and one or more Restricted Subsidiaries or between or among Restricted Subsidiaries or, in any case, any entity that becomes a Restricted Subsidiary as a result of such transaction and (b) any merger, consolidation or amalgamation of the Borrower and any Parent Company; *provided* that such merger, consolidation or amalgamation of the Borrower is otherwise in compliance



with the terms of this Agreement and effected for a *bona fide* business purpose;

(2) (a) Restricted Payments permitted by Section 7.05 (including any transaction specifically excluded from the definition of the term “Restricted Payments,” including pursuant to the exceptions contained in the definition thereof and the parenthetical exclusions of such definition) and (b) any Permitted Investment(s) or any acquisition otherwise permitted hereunder;

(3) [reserved];

(a) [reserved],

(b) payments, loans, advances or guarantees (or cancellation of loans, advances or guarantees) to future, present or former employees, officers, directors, managers, consultants or independent contractors or guarantees in respect thereof for bona fide business purposes or in the ordinary course of business or consistent with industry practice, and

(c) any payment of compensation or other employee compensation, benefit plan or arrangement, any health, disability or similar insurance plan which covers current, former or future officers, directors, employees, managers, consultants and independent contractors of the Borrower, any Subsidiary or any Parent Company;

(4) the payment of fees and compensation paid to, and indemnities and reimbursements and employment and severance arrangements provided to, or on behalf of or for the benefit of, present, future or former employees, directors, officers, members of management or consultants (or their respective Controlled Investment Affiliates or Immediate Family Members or any permitted transferees thereof) of the Borrower, any Parent Company or any Restricted Subsidiary in accordance with the Budget;

(5) transactions in which the Borrower or any Restricted Subsidiary, as the case may be, delivers to the Administrative Agent a letter from an Independent Financial Advisor stating that such transaction is fair to the Borrower or such Restricted Subsidiary from a financial point of view or stating that the terms, when taken as a whole, are not materially less favorable to the Borrower or the relevant Restricted Subsidiary than those that would have been obtained in a comparable transaction by the Borrower or such Restricted Subsidiary with a Person that is not an Affiliate of the Borrower on an arm’s length basis;

(6) the existence of, or the performance by the Borrower or any Restricted Subsidiary of its obligations under the terms of, any agreement as in effect as of the Closing Date, or any amendment thereto or replacement thereof (so long as any such amendment or replacement is not materially disadvantageous in the good faith judgment of the Board of Directors to the Lenders, when taken as a whole, as compared to the applicable agreement as in effect on the Closing Date);

(7) the existence of, or the performance by the Borrower or any Restricted Subsidiary of its obligations under the terms of, any equity holders agreement or the equivalent (including any registration rights agreement or purchase agreement related thereto) to which it is a party as of the Closing Date and any amendment thereto and, similar agreements or arrangements that it may enter into thereafter; *provided* that the existence of, or the performance by the Borrower or any Restricted Subsidiary of obligations under any future amendment to any such existing agreement or arrangement or under any similar agreement or arrangement entered into after the Closing Date will be permitted by this clause (7) to the extent that the terms of any such amendment or new agreement or arrangement are not otherwise materially disadvantageous in the good faith judgment of the Board of Directors to the Lenders, when taken as a whole, as compared to the original agreement or arrangement in effect on the Closing Date;

(8) the Transactions and the payment of all fees and expenses related to the Transactions, including Transaction Expenses;

(9) transactions with customers, clients, suppliers, contractors, joint venture partners or purchasers or sellers of goods or services, or transactions otherwise relating to the purchase or sale of goods or services, in each case in the ordinary course of business or consistent with industry practice and otherwise in compliance with the terms of this Agreement that are fair to the Borrower and the Restricted Subsidiaries, in the reasonable determination of the Board of Directors or the senior management of the Borrower, or are on terms at least as favorable as might reasonably have been obtained at such time from an unaffiliated party;

(10) the issuance, sale or transfer of Equity Interests (other than Disqualified Stock) of the Borrower or any Parent Company to any Person and the granting and performing of customary rights (including registration rights) in connection therewith, and any contribution to the capital of the Borrower;

(11) payments to or from, and transactions with, any joint venture in the ordinary course of business or consistent with past practice, industry practice or industry norms (including, any cash management activities related thereto);

(12) [reserved]

(13) any lease entered into between the Borrower or any Restricted Subsidiary, as lessee and any Affiliate of the Borrower, as lessor, and any transaction(s) pursuant to that lease, which lease is approved by the Board of Directors or senior management of the Borrower in good faith;

(14) IP Rights licenses in the ordinary course of business or consistent with industry practice;

(15) transactions permitted by, and complying with, Section 7.03 solely for the purpose of (a) reorganizing to facilitate any initial public offering of securities of the Borrower or any Parent Company, (b) forming a holding company or (c) reincorporating the Borrower in a new jurisdiction;

(16) transactions undertaken in good faith (as determined by the Board of Directors or certified by senior management of the Borrower in an Officer's Certificate) for the purposes of improving the consolidated tax efficiency of the Borrower and its Restricted Subsidiaries and not for the purpose of circumventing Articles VI and VII of this Agreement; so long as such transactions, when taken as a whole, do not result in a material adverse effect on the Liens on the Collateral granted by the Loan Parties in favor of the Secured Parties, when taken as a whole, in each case, as determined in good faith by the Board of Directors or certified by senior management of the Borrower in an Officer's Certificate;

(17) (a) transactions with a Person that is an Affiliate of the Borrower solely because the Borrower or any Restricted Subsidiary owns, directly or indirectly, Equity Interests in such Person and (b) transactions with any Person that is an Affiliate solely because a director or officer of such Person is a director or officer of the Borrower, any Restricted Subsidiary or any Parent Company;

(18) any transactions with an Affiliate in which the consideration paid consists solely of Equity Interests of the Borrower or a Parent Company;

(19) the sale, issuance or transfer of Equity Interests (other than Disqualified Stock) of the Borrower; and

(20) payments in respect of (a) the Obligations or (b) other Indebtedness of the Borrower and its Subsidiaries held by Affiliates; *provided* that such Obligations were acquired by an Affiliate of the Borrower in compliance herewith.

Section 7.07 Burdensome Agreements.

(a) The Borrower shall not, nor shall the Borrower permit any Restricted Subsidiary that is a Subsidiary Guarantor or is required to become a Guarantor to, directly or indirectly, create or otherwise cause to exist or become effective any consensual encumbrance or consensual restriction (other than this Agreement or any other Loan Document) on the ability of the Borrower or any such Subsidiary Guarantor to Guaranty the Obligations or create, incur or cause to exist or become effective Liens on property of such Person for the benefit of the Lenders with respect to the Obligations under the Loan Documents to the extent such Lien is required to be given to the Secured Parties pursuant to the Loan Documents; *provided* that any dividend or liquidation priority between or among classes or series of Capital Stock, and the subordination of any Obligation (including the application of any remedy bars thereto) to any other Obligation will not be deemed to constitute such an encumbrance or restriction.

(b) Section 7.07(a) will not apply to any encumbrances or restrictions existing under or by reason of:

(a) encumbrances or restrictions in effect on the Closing Date, including pursuant to the Loan Documents and any Hedge Agreements, Hedging Obligations and the related documentation and any definitive documentation in respect of the Indebtedness set forth on Schedule 7.02(b)(3);

(b) the Prepetition Second Lien Loan Documents along with any other definitive documentation in respect of Indebtedness permitted under Section 7.02(b)(2) and the Prepetition ABL Loan Documents;

(c) Purchase Money Obligations and Capitalized Lease Obligations that impose restrictions of the nature discussed in clause (3) above on the property so acquired;

(d) applicable Law or any applicable rule, regulation or order;

(e) [reserved];

(f) contracts or agreements for the sale or disposition of assets, including any restrictions with respect to a Subsidiary of the Borrower pursuant to an agreement that has been entered into for the sale or disposition of all or substantially all of the Capital Stock or assets of such Subsidiary;

(g) restrictions on cash or other deposits or net worth imposed by customers under contracts entered into in the ordinary course of business or consistent with industry practice or arising in connection with any Liens permitted by Section 7.01;

(h) [reserved];

(i) provisions in joint venture agreements and other similar agreements (including equity holder agreements) relating to such joint venture or its members or entered into in the ordinary course of business or consistent with industry practice;

(j) customary provisions contained in leases, sub-leases, licenses, sub-licenses, Equity Interests or similar agreements, including with respect to IP Rights and other agreements;

(k) [reserved];

(l) restrictions or conditions contained in any trading, netting, operating, construction, service, supply, purchase, sale or other agreement to which the Borrower or any Restricted Subsidiary is a party entered into in the ordinary course of business or consistent with industry practice; *provided* that such agreement prohibits the encumbrance of solely the property or assets of the Borrower or such Restricted Subsidiary that are the subject to such agreement, the payment rights arising thereunder or the proceeds thereof and does not extend to any other asset or property of the Borrower or such Restricted Subsidiary or the assets or property of another Restricted Subsidiary;

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

(n) customary provisions restricting assignment of any agreement;

(o) restrictions arising in connection with cash or other deposits permitted under Section 7.01 and any other agreement or instrument governing any Indebtedness or Preferred Stock permitted to be incurred or issued pursuant to Section 7.02 entered into after the Closing Date that contains encumbrances and restrictions that either (i) are no more restrictive in any material respect, taken as a whole, with respect to any Restricted Subsidiary than (A) the restrictions contained in the Loan Documents as of the Closing Date, Prepetition Second Lien Loan Documents as of the Closing Date or the Prepetition ABL Loan Documents as of the Closing Date or (B) those encumbrances and other restrictions that are in effect on the Closing Date with respect to that Restricted Subsidiary pursuant to agreements in effect on the Closing Date, (ii) are not materially more disadvantageous, taken as a whole, to the Lenders than is customary in comparable financings for similarly situated issuers or (iii) will

not materially impair the Borrower's ability to make payments on the Obligations when due, in each case in the good faith judgment of the Borrower;

(p) Indebtedness permitted to be incurred pursuant to Section 7.02(b)(4);

(q) customary restrictions and conditions contained in documents relating to any Lien so long as (i) such Lien is a Permitted Lien and such restrictions or conditions relate only to the specific asset subject to such Lien and (ii) such restrictions and conditions are not created for the purpose of avoiding the restrictions imposed by this Section 7.07;

(r) [reserved];

(s) any encumbrances or restrictions of the type referred to in clauses (1), (2) or (3) above imposed by any amendments, modifications, restatements, renewals, increases, supplements, refundings, replacements or refinancings of the contracts, instruments or obligations referred to in clauses (a) through (r) above; *provided* that such amendments, modifications, restatements, renewals, increases, supplements, refundings, replacements or refinancings are, in the good faith judgment of the Borrower, no more restrictive in any material respect with respect to such encumbrance and other restrictions, taken as a whole, than those prior to such amendment, modification, restatement, renewal, increase, supplement, refunding, replacement or refinancing; and

(t) applicable law or any applicable rule, regulation or order in any jurisdiction where Indebtedness, Disqualified Stock or Preferred Stock of Foreign Subsidiaries permitted to be incurred pursuant to Section 7.02 is incurred.

Section 7.08 Executory Contracts and Leases. Absent the consent of the Required Lenders, the Borrower shall not, nor shall the Borrower permit any Restricted Subsidiary to (i) assume or reject any executory contract or unexpired lease or (ii) consent to the termination or modification of the exclusive right of any Loan Party to file a Chapter 11 plan pursuant to Section 1121 of the Bankruptcy Code.

Section 7.09 Consultant Holdings and its Subsidiaries shall retain (and continue to retain) the Consultant; *provided* that if any such Consultant resigns, dies or becomes incapacitated or is removed by the Required Lenders, Borrower shall have 30 days (or such longer period as agreed by the Administrative Agent (acting at the direction of the Required Lenders)) to engage a Consultant satisfactory to the Required Lenders in their sole and absolute discretion.

Section 7.10 Use of Proceeds. The proceeds of the Loans shall be applied in accordance with the Budget (subject to Permitted Variance). No part of the proceeds of the Loans will be used, whether directly or indirectly:

(1) in any manner that causes such Loan or the application of such proceeds to violate the Regulations of the Board, including Regulation T, Regulation U and Regulation X, or any other regulation thereof, or to violate the Securities Exchange Act;

(2) for any purpose that is prohibited under the Bankruptcy Code or the Bankruptcy Court DIP Order;

(3) to finance in any way: (x) any adversary action, suit, arbitration, proceeding, application, motion, contested matter or other litigation of any type materially adverse to the interests of any or all of the Administrative Agent, the Lenders, the Prepetition Agents or the Prepetition Lenders or their respective rights and remedies under the Loan Documents, the Interim DIP Order, the Final DIP Order or the Prepetition Loan Documents or (y) any other action which with the giving of notice or passing of time would result in an Event of Default hereunder or under any of the Loan Documents;

(4) for the payment of fees, expenses, interest, or principal under the Prepetition Loan Documents (other than adequate protection payments permitted under the Bankruptcy Court DIP Order);

(5) unless otherwise agreed by the Lenders, to make any distributions under a Plan of Reorganization in the Chapter 11 Cases that does not provide for the indefeasible payment of the Loans in full and in cash;

(6) except as permitted by the Budget (including Permitted Variances) to make any payment in settlement of any prepetition claim, action or proceeding in excess of \$50,000 in the aggregate without the prior written consent of the Administrative Agent, acting at the direction of the Required Lenders; *provided* that, advisors to any Committee, may investigate the liens granted pursuant to, or any claims under or causes of action with respect to, the Prepetition Obligations at an aggregate expense for such investigation not to exceed \$50,000, *provided* that no portion of such amount may be used to prosecute any claims; or

(7) to make any post-petition payments or disbursements not otherwise expressly authorized by an entered order of the Bankruptcy Court in excess of \$900,000 that constitute critical vendor payments as described in the Budget, without the prior written consent of the Required Lenders.

Nothing herein shall in any way prejudice or prevent the Administrative Agent or the Lenders from objecting, for any reason, to any requests, motions, or applications made in the Bankruptcy Court, including any application of final allowances of compensation for services rendered or reimbursement of expenses incurred under Sections 105(a), 330 or 331 of the Bankruptcy Code, by any party in interest (and each such order shall preserve the Administrative Agent's and the Lenders' right to review and object to any such requests, motions or applications).



Section 7.11 Prepayments of Indebtedness. Except as permitted pursuant to the terms of this Agreement and the Bankruptcy Court DIP Order, the Borrower shall not, nor shall the Borrower permit any Restricted Subsidiary that is a Subsidiary Guarantor or is required to become a Guarantor to:

(1) Make any payment of principal or interest or otherwise on account of any Prepetition Obligations or payables under the Prepetition Loan Documents other than (A) payments made in compliance in all material respects with the Budget (subject to Permitted Variances), (B) payments agreed to in writing by the Required Lenders and authorized by the Bankruptcy Court and (C) payments authorized by the Bankruptcy Court pursuant to “first day” or “second day” relief (including any adequate protection payment), or

(2) amend or modify the terms of the Prepetition Loan Documents in a manner that is materially adverse to the Administrative Agent or the Lenders or their rights and remedies under the Loan Documents (including any such amendment or modification that would have a material and adverse impact on any material portion of the Collateral).

Section 7.12 Chapter 11 Modifications. Except as permitted pursuant to the terms of this Agreement and the Bankruptcy Court DIP Order, the Borrower shall not, nor shall the Borrower permit any Restricted Subsidiary to:

(1) Make or permit to be made any change, amendment or modification, or any application or motion for any change, amendment or modification, to the Bankruptcy Court DIP Orders;

(2) incur, create, assume or suffer to exist or permit any other superpriority claim which is pari passu with or senior to the DIP Superpriority Claims of the Administrative Agent, the Collateral Agent and the Lenders hereunder, except for the Carve Out; or

(3) assert any right of subrogation or contribution against any other Loan Party.

Section 7.13 Conduct of Business. Borrower will not, and will not permit any of its Subsidiaries to, engage to any extent material to Borrower and its Subsidiaries (taken as a whole) in any business other than the businesses of the type conducted by Borrower and its Subsidiaries on the Petition Date and businesses reasonably related, ancillary or complementary to the business or businesses of Borrower or any Subsidiary or any reasonable extension, development or expansion thereof.

Section 7.14 Amendments of Organizational Documents. No Loan Party will, nor will it permit any Subsidiary to, amend, modify or waive any of its rights under its certificate of incorporation, by-laws, operating, management or partnership agreement or other Organizational Documents to the extent any such amendment, modification or waiver would be adverse to the Lenders except as required by the Bankruptcy Code; provided that immaterial amendments, including amendments of an administrative, ministerial or technical nature, which are not adverse to the Lenders may be made.

Section 7.15 Holding Companies. None of Topco, Propco or Holdings will conduct, transact or otherwise engage in any business or operations other than the following (and activities incidental thereto):

(1) the ownership or acquisition of the Capital Stock (other than Disqualified Stock) of (x) in the case of Topco, Holdings and Propco, and (y) in the case of Holdings, the Borrower;

(2) the maintenance of its legal existence, including the ability to incur fees, costs and expenses relating to such maintenance;

(3) to the extent applicable, participating in tax, accounting and other administrative matters as a member of the combined group of Topco, Holdings and the Borrower;

(4) the performance of its obligations under and in connection with, and payments with respect to, the Loan Documents;

(5) repurchases of Indebtedness through open market purchases and Dutch auctions (other than Loans hereunder);

(6) any transaction that Holdings is permitted to enter into or consummate under this Article VII and any transaction between or among Holdings and the Borrower or any one or more Restricted Subsidiaries permitted under this Article VII (provided that, to the extent Holdings wishes to make Restricted Payments to, or any Investment in, a Restricted Subsidiary it shall first make such Restricted Payment or Investment in the Borrower, which shall then be contributed by the Borrower to the applicable Restricted Subsidiary) including:

(a) making any payment(s) or Restricted Payment(s) (i) to the extent otherwise permitted under this Section 7.15 and (ii) with any amounts received pursuant to transactions permitted under Section 7.05 (or the making of a loan to any Parent Company in lieu of any such payment(s) or Restricted Payment(s)) or holding any cash received in connection therewith pending application thereof by Holdings;

(b) making any Investment in the Borrower to the extent (i) payment therefor is made solely with the proceeds from Capital Stock of Holdings (other than Disqualified Stock), the proceeds of Restricted Payments received from the Borrower or proceeds of the issuance of, or contribution in respect of the, Capital Stock (other than Disqualified Stock) of Holdings and (ii) any property (including Capital Stock) acquired in connection therewith is contributed to the Borrower or a Subsidiary Guarantor (or, if otherwise permitted by Section 7.05 or constituting a Permitted Investment, a Restricted Subsidiary) or the Person formed or acquired in connection therewith is merged with the Borrower or a Subsidiary Guarantor;

(c) guaranteeing the obligations of the Borrower and its Subsidiaries to the extent such obligations are not prohibited hereunder and the incurrence of Liens on the Equity Interests of the Borrower;

(d) incurrence of Indebtedness of Holdings representing deferred compensation to employees, consultants or independent contractors of Holdings and unsecured Indebtedness consisting of promissory notes issued by any Loan Party to future, present or former employees,

directors, officers, managers, distributors or consultants (or their respective Controlled Investment Affiliates or Immediate Family Members) of the Borrower, any Subsidiary or any Parent Company to finance the retirement, acquisition, repurchase, purchase or redemption of Capital Stock of Holdings;

(e) incurring fees, costs and expenses relating to overhead and general operating including professional fees for legal, tax and accounting issues and paying taxes;

(f) providing indemnification to officers and directors and as otherwise permitted in this Article VII;

(g) activities incidental to the consummation of the Transactions;

(h) the making of any loan to any officers or directors contemplated by Section 7.05 or constituting a Permitted Investment, the making of any investment in the Borrower or any Subsidiary Guarantor or, to the extent otherwise allowed under Section 7.05 or constituting a Permitted Investment, a Restricted Subsidiary; provided that, to the extent Holdings wishes to make a loan to or any Permitted Investment in a Restricted Subsidiary it shall first make such loan or Permitted Investment in the Borrower, which shall then be contributed by the Borrower to the applicable Restricted Subsidiary;

(i) making contributions to the capital of the Borrower (which may be further invested in its Subsidiaries); or

(j) making Investments in cash and Cash Equivalents;

*provided* that any Investment of Topco in the Equity Interests or other securities of Propco, Holdings or the Borrower shall be subject to a Lien in favor of the Secured Parties;

(7) activities incidental to the businesses or activities described in clauses (1) through (6) of this Section 7.15.

## ARTICLE VIII

### Events of Default and Remedies

Section 8.01 Events of Default. Each of the events referred to in clauses (1) through (28) of this Section 8.01 shall constitute an “**Event of Default**”:

(1) Non-Payment. The Borrower fails to pay (a) when and as required to be paid herein, any amount of principal of any Loan or (b) within five (5) Business Days after the same becomes due, any interest on any Loan or any other amount payable hereunder or with respect to any other Loan Document; or

(2) Specific Covenants. The Borrower, any other Loan Party fails to perform or observe any term, covenant or agreement contained in any of Section 6.03(1) or 6.05(1) (solely with respect to the Borrower, other than in a transaction permitted under Section 7.03 or 7.04) or Article VII; or

(3) Other Defaults. Any Loan Party fails to perform or observe any other covenant or agreement (not specified in Section 8.01(1) or (2) above) contained in any Loan Document to be performed or observed by such Loan Party and such failure continues for thirty (30) days after receipt by the Borrower of written notice thereof from the Administrative Agent; or

(4) Representations and Warranties. Any representation, warranty, certification or statement of fact made or deemed made by the Borrower or any Subsidiary Guarantor herein, in any other Loan Document, or in any document required to be delivered in connection herewith or therewith shall be untrue in any material respect when made or deemed made; provided that, if the Borrower has notified the Administrative Agent that such representation or warranty is capable of being remedied and that the Borrower is taking reasonable steps to remedy it, then such incorrect representation or warranty shall only be an Event of Default hereunder if such circumstances continue to exist 30 days after written notice of such default; or

(5) [Reserved].

(6) [Reserved].

(7) Judgments. There is entered against any Loan Party or any Restricted Subsidiary a final judgment and order for the payment of money in an aggregate amount exceeding \$25.0 million (to the extent not covered by independent third-party insurance as to which the insurer has been notified of such judgment or order and has not denied coverage thereof) and such judgment or order shall not have been satisfied, vacated, discharged or stayed or bonded pending an appeal for a period of sixty (60) days; or

(8) ERISA. (a) An ERISA Event occurs with respect to a Pension Plan or Multiemployer Plan, (b) the Borrower or any Subsidiary Guarantor or any of their respective ERISA Affiliates fails to pay when due, after the expiration of any applicable grace period, any installment payment with respect to its Withdrawal Liability under Section 4201 of ERISA under a Multiemployer Plan, or (c) with respect to a Foreign Plan a termination, withdrawal or noncompliance with applicable Law or plan terms, except, with respect to each of the foregoing clauses of this Section 8.01(8), as would not reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect; or

(9) Invalidity of Loan Documents. Any material provision of the Loan Documents, taken as a whole, for any reason, other than (a) as expressly permitted by any Loan Documents (including as a result of a transaction permitted under Section 7.03 or 7.04), (b) as a result of acts or omissions by an Agent or any Lender or (c) due to the satisfaction in full of the Termination Conditions, ceases to be in full force and effect; or any Loan Party contests in writing the validity or enforceability of the Loan Documents, taken as a whole (other than as a result of the satisfaction of the Termination Conditions), or any Loan Party denies in writing that it has any or further liability or obligation under the Loan Documents, taken as a whole (other than as a result of the satisfaction of the Termination Conditions), or purports in writing to revoke or rescind the Loan Documents, taken as a whole, prior to the satisfaction of the Termination Conditions;

(10) Collateral Documents. Any Collateral Document with respect to a material portion of the Collateral for any reason (other than pursuant to the terms hereof or thereof including as a

result of a transaction not prohibited under this Agreement) ceases to create, a valid and perfected Lien with the priority required by the Bankruptcy Court DIP Order or the Loan Documents on and security interest in any material portion of the Collateral purported to be covered thereby, subject to Liens permitted under Section 7.01, except to the extent that (i) any such perfection or priority is not required pursuant to the Collateral and Guarantee Requirement or (ii) the loss thereof results from the failure of the Administrative Agent or the Collateral Agent to (a) maintain possession of Collateral actually delivered to it and pledged under the Collateral Documents or (b) file Uniform Commercial Code amendments relating to a Loan Party's change of name or jurisdiction of formation (but solely to the extent that the Borrower has timely provided the Collateral Agent written notice of such change of name or jurisdiction of formation thereof in accordance with the Loan Documents, and the Collateral Agent notifies the Borrower that it will be responsible for filing such amendments) and continuation statements or to take any other action within its sole control with respect to the Collateral and except as to Collateral consisting of real property, to the extent that such losses are covered by a lender's title insurance policy and such insurer has not denied coverage; or

(11) Change of Control. There occurs any Change of Control;

(12) Milestones. Subject to the occurrence of a Toggle Event, the failure of the of the Borrower to timely satisfy any of the milestones (the "**Milestones**") on or before the following dates (or any later date approved by the Required Lenders in their sole discretion):

(a) no later than the Petition Date, the Debtors shall file an acceptable Plan of Reorganization and related disclosure statement (the "**Disclosure Statement**");

(b) no later than three (3) days after the Petition Date, the Bankruptcy Court shall have entered the Interim DIP Order;

(c) no later than 30 days after the Petition Date, the Debtors shall have entered into new or amended terms with vendors in a sufficient number and on terms and conditions necessary to support the Debtors' business, in each case, that are acceptable to the Debtors and the Required Lenders;

(d) no later than seventeen (17) days after the Petition Date, the Bankruptcy Court shall have entered an order approving conditionally the Disclosure Statement in form and substance satisfactory to the Required Lenders;

(e) no later than thirty-five (35) days after the Petition Date, the Bankruptcy Court shall have entered a Final DIP Order;

(f) no later than forty (40) days after the Petition Date, the Bid Deadline shall have occurred;

(g) no later than forty-two (42) days after the Petition Date, the Auction (as defined in the Restructuring Support Agreement), if needed, shall have occurred;

(h) no later than forty-five (45) days after the Petition Date, a hearing to consider confirmation of an acceptable Plan of Reorganization shall have occurred;

(i) no later than fifty (50) days after the Petition Date, the Bankruptcy Court shall have entered a final order approving the Disclosure Statement and, confirming an Approved Plan of Reorganization, in form and substance satisfactory to the Required Lenders; and

(j) no later than sixty (60) days after the Petition Date, the Plan Effective Date shall have occurred.

Upon the failure of the Debtors to satisfy any of the Milestones set forth above which has not been waived or extended by the Required Lenders, the Required Lenders shall have the option to require the Debtors to initiate a process to market and sell substantially all of their assets, which process shall be acceptable to the Required Lenders and the Debtors (a “**Toggle Event**”).

Upon a Toggle Event, the Milestones set forth above that occur after such Toggle Event shall be replaced in their entirety by the following Milestone:

no later than 28 days after the Toggle Event, the Bankruptcy Court shall have entered an order approving the sale of substantially all of the Debtors’ assets, which order shall be acceptable to the Required Lenders.

(13) Budget Event. There occurs a Budget Event;

(14) The proceeds of any Loans shall have been expended in a manner not in accordance with the Budget (subject to Permitted Variances);

(15) Any Loan Party shall file a motion in the Chapter 11 Cases without the express written consent of Required Lenders, to obtain additional financing from a party other than Lenders under Section 364(d) of the Bankruptcy Code that (i) is not permitted under Section 7.02 and (ii) does not provide for the payment of the Obligations in full and in cash upon the incurrence of such additional financing;

(16) Any Loan Party shall file a motion seeking an order (i) approving payment of any prepetition claim other than (x) as provided for in the “first day” or “second day” orders, (y) contemplated by the Budget (including Permitted Variances), or (z) otherwise consented to by the Required Lenders in writing, (ii) granting relief from the automatic stay under Section 362 of the Bankruptcy Code to any holder of any security interest to permit foreclosure on any assets having a book value in excess of \$50,000 in the aggregate, or (iii) except with respect to the Debtors’ stipulations as provided in the Bankruptcy Court DIP Order, approving any settlement or other stipulation in excess of \$50,000 in the aggregate not approved by the Required Lenders and not included in the Budget with any secured creditor of any Loan Party providing for payments as adequate protection or otherwise to such secured creditor;

(17) An order is entered in any of the Chapter 11 Cases appointing, or any Loan Party, or any Subsidiary of a Loan Party shall file an application for an order seeking the appointment of, (i) a trustee under Section 1104, or (ii) an examiner with enlarged powers relating to the operation

of the Loan Parties' business (powers beyond those set forth in Section 1106(a)(3) and (4) of the Bankruptcy Code) under Section 1106(b) of the Bankruptcy Code;

(18) A confirmation order shall be entered by the Bankruptcy Court dismissing any of the Chapter 11 Cases or converting any of the Chapter 11 Cases to a case under Chapter 7 of the Bankruptcy Code, in each case, which does not contain a provision for termination of the Commitments, and payment in full in cash of all Obligations (other than contingent indemnification obligations as to which no claim has been asserted) of the Loan Parties hereunder and under the other Loan Documents upon entry thereof;

(19) An order is entered by the Bankruptcy Court in any of the Chapter 11 Cases without the express prior written consent of the Required Lenders and the Administrative Agent, (i) to revoke, reverse, stay, modify, supplement or amend the Bankruptcy Court DIP Order in a manner that is inconsistent with this Agreement that is not otherwise consented to by the Required Lenders or (ii) to permit any administrative expense or any claim (now existing or hereafter arising, of any kind or nature whatsoever), in each case other than the Carve Out, to have administrative priority as to the Loan Parties equal or superior to the priority of the DIP Superpriority Claim shall be entered by the Bankruptcy Court without the express prior written consent of the Lenders in respect of the Obligations;

(20) Any Loan Party violates any term, provision or condition in the Interim DIP Order or Final DIP Order, as applicable, provided that in the event such violation is immaterial and such violation has been cured within three days after receipt by the Borrower of written notice thereof from the Administrative Agent, such violation shall not constitute an Event of Default;

(21) An application for any of the orders described in clauses (14), (15), (16), (17), and (20) shall be made by a Person other than the Loan Parties and such application is not contested by the Loan Parties in good faith and such Person actually obtains entry of a final, non-appealable, order under Section 506(c) of the Bankruptcy Code against the Administrative Agent or the Collateral Agent or obtains a final, non-appealable, order materially adverse to the Administrative Agent, the Collateral Agent or the Lenders or any of their respective rights and remedies under the Loan Documents or in the Collateral;

(22) The entry of an order by the Bankruptcy Court terminating or modifying the exclusive right of any Loan Party to file a Chapter 11 plan pursuant to Section 1121 of the Bankruptcy Code, without the prior written consent of the Required Lenders;

(23) (i) Any Loan Party shall attempt to invalidate, reduce or otherwise impair the Liens or security interests of the Collateral Agent, the Administrative Agent and/or the Lenders, claims or rights against such Person or to subject any Collateral to assessment pursuant to Section 506(c) of the Bankruptcy Code, (ii) the Lien or security interest created by Collateral Documents or the Bankruptcy Court DIP Orders with respect to the Collateral shall, for any reason, on and after the entry of the Bankruptcy Court DIP Order, cease to be valid or (iii) any action is commenced by the Loan Parties which contests the validity, perfection or enforceability of any of the Liens and security interests of the Collateral Agent, the Administrative Agent and/or the Lenders created by any of the Bankruptcy Court DIP Order, this Agreement, or any Collateral Document;



(24) Any Loan Party shall seek to, or shall support (in any such case by way of any motion or other pleading filed with the Bankruptcy Court or any other writing to another party-in-interest executed by or on behalf of such Loan Party) any other Person's motion to, disallow in whole or in part the Lenders' claim in respect of the Obligations or contest any material provision of any Loan Document or any material provision of any Loan Document shall cease to be effective (other than in accordance with its terms or in accordance with the Bankruptcy Court DIP Orders);

(25) The Bankruptcy Court DIP Order is amended, supplemented, reversed, vacated, or otherwise modified without the prior written consent of the Required Lenders (and with respect to amendments, modifications or supplements that affect the rights or duties of the Administrative Agent, the Administrative Agent);

(26) Any Loan Party or any of their affiliates shall have filed a motion seeking the entry of, or the Bankruptcy Court shall have entered, an order approving a payment to any person that would be inconsistent with the treatment of any such person under the Restructuring Support Agreement, without the prior written consent of the Required Lender;

(27) The termination of the Restructuring Support Agreement in accordance with its terms due to the action or omission, as applicable, of the Loan Parties;

(28) The Bankruptcy Court shall have failed to enter a Final DIP Order no later than forty (40) days after the Petition Date; or

(29) The filing of any Plan of Reorganization other than an Acceptable Plan.

Notwithstanding the foregoing, (i) an Event of Default shall not be deemed to have occurred unless and until the Loan Parties shall fail to cure and remedy such breach or default within three (3) days after the Loan Parties have received written notice thereof from the Administrative Agent, and (ii) in the case of the enforcement of liens or other remedies with respect to the Collateral, the administrative Agent and/or the Required Lenders, as applicable, shall first file a motion with the Bankruptcy Court seeking relief from the automatic stay to exercise such remedies, and an emergency hearing before the Bankruptcy Court for authorization of such relief, on at least five (5) business days' written notice.

Section 8.02 Remedies upon Event of Default. If any Event of Default occurs and is continuing, the Administrative Agent may with the consent of the Required Lenders and shall, at the request of the Required Lenders, take any or all of the following actions:

(1) declare the Commitments of each Lender to be terminated, whereupon such Commitments will be terminated;

(2) declare the unpaid principal amount of all outstanding Loans, all interest accrued and unpaid thereon, and all other amounts owing or payable under any Loan Document to be immediately due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived by the Borrower;

(3) terminate the Facility as to any future liability or obligation of the Administrative Agent and the Lenders, but without affecting any of the Loan Parties' Obligations under the Facility, the Liens under the Facility, or postpetition administrative superpriority claim status;

(4) declare a termination, reduction, or restriction on the ability of the Loan Parties to use any cash collateral derived solely from the proceeds of the Collateral; *provided* that any such declaration shall be made to the Loan Parties, the Committee (if any) and the U.S. Trustee; and

(5) exercise on behalf of itself and the Lenders all rights and remedies available to it and the Lenders under the Loan Documents or applicable Law;

*provided* that upon the occurrence of an actual or deemed entry of an order for relief with respect to the Borrower under the Bankruptcy Code the Commitments of each Lender will automatically terminate and the unpaid principal amount of all outstanding Loans and all interest and other amounts as aforesaid will automatically become due and payable without further act of the Administrative Agent or any Lender.

Section 8.03 Application of Funds. After the exercise of remedies provided for in Section 8.02 (or after the Loans have automatically become immediately due and payable as set forth in the proviso to Section 8.02), any amounts received on account of the Obligations will be applied by the Administrative Agent in the following order:

*First*, to payment of that portion of the Obligations constituting fees, indemnities, expenses and other amounts (other than principal and interest, but including Attorney Costs payable under Section 10.04 and amounts payable under Article III) payable to the Administrative Agent in its capacity as such;

*Second*, to payment of that portion of the Obligations constituting fees, indemnities and other amounts (other than principal and interest, but including Attorney Costs payable under Section 10.04 and amounts payable under Article III) payable to the Lenders, ratably among them in proportion to the amounts described in this clause Second payable to them;

*Third*, to payment of that portion of the Obligations constituting accrued and unpaid interest on the Loans, ratably among the Lenders in proportion to the respective amounts described in this clause Third payable to them;

*Fourth*, to payment of that portion of the Obligations constituting unpaid principal of the Loans, the other Obligations under Secured Hedge Agreements and Cash Management Obligations, ratably among the Secured Parties in proportion to the respective amounts described in this clause Fourth held by them;

*Fifth*, to the payment of all other Obligations of the Loan Parties that are due and payable to the Administrative Agent and the other Secured Parties on such date, ratably based upon the respective aggregate amounts of all such Obligations owing to the Administrative Agent and the other Secured Parties on such date; and

*Last*, the balance, if any, after all of the Obligations have been paid in full, to the Borrower or as otherwise required by Law.

## ARTICLE IX

### **Administrative Agent and Other Agents**

#### Section 9.01 Appointment and Authorization of the Administrative Agent.

(1) Each Lender hereby irrevocably appoints Deutsche Bank AG New York Branch, to act on its behalf as the Administrative Agent hereunder and under the other Loan Documents and authorizes the Administrative Agent to take such actions on its behalf and to exercise such powers as are delegated to the Administrative Agent by the terms hereof or thereof, together with such actions and powers as are reasonably incidental thereto. The provisions of this Article IX (other than Sections 9.04, 9.09, 9.10, 9.11 and 9.12) are solely for the benefit of the Administrative Agent and the Lenders and the Borrower shall not have rights as a third-party beneficiary of any such provision.

(2) The Administrative Agent shall also act as the “collateral agent” under the Loan Documents, and each of the Lenders (including in its capacities as a Lender and a potential Hedge Bank or Cash Management Bank) hereby irrevocably appoints and authorizes the Administrative Agent to act as the agent of (and to hold any security interest created by the Collateral Documents for and on behalf of or in trust for) such Lender for purposes of acquiring, holding and enforcing any and all Liens on Collateral granted by any of the Loan Parties to secure any of the Obligations, together with such powers and discretion as are reasonably incidental thereto. The Administrative Agent as “collateral agent” (and any co-agents, sub-agents and attorneys-in-fact appointed by the Administrative Agent pursuant to Section 9.05 for purposes of holding or enforcing any Lien on the Collateral (or any portion thereof), or for exercising any rights and remedies with respect thereto), shall be entitled to the benefits of all provisions of this Article IX (including Section 9.07, as though such co-agents, sub-agents and attorneys-in-fact were the “collateral agent” under the Loan Documents) as if set forth in full herein with respect thereto. Without limiting the generality of the foregoing, the Lenders hereby expressly authorize the Administrative Agent to execute any and all documents (including releases) with respect to the Collateral and the rights of the Secured Parties with respect thereto, as contemplated by and in accordance with the provisions of this Agreement and the Collateral Documents and acknowledge and agree that any such action by the Administrative Agent (or its applicable sub-agent) shall bind the Lenders.

Section 9.02 Rights as a Lender. Any Lender that is also serving as an Agent (including as Administrative Agent) hereunder shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not an Agent and the term “Lender” or “Lenders” shall, unless otherwise expressly indicated or unless the context otherwise requires, include each Lender (if any) serving as an Agent hereunder in its individual capacity. Any such Person serving as an Agent and its Affiliates may accept deposits from, lend money to, act as the financial advisor or in any other advisory capacity for and generally engage in any kind of business with the Borrower or any Subsidiary or other Affiliate thereof as if such Person were not an Agent hereunder and without any duty to account therefor to the Lenders. The Lenders acknowledge that, pursuant to such activities, any Agent or its Affiliates may receive

information regarding any Loan Party or any of its Affiliates (including information that may be subject to confidentiality obligations in favor of such Loan Party or such Affiliate) and acknowledge that no Agent shall be under any obligation to provide such information to them.

Section 9.03 Exculpatory Provisions. The Agents (including the Administrative Agent and Collateral Agent) shall not have any duties or responsibilities except those expressly set forth in this Agreement and in the other Loan Documents. Without limiting the generality of the foregoing, no Agent (including the Administrative Agent and Collateral Agent):

(1) shall be subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing and without limiting the generality of the foregoing, the use of the term “agent” herein and in the other Loan Documents 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 and instead, such term is used merely as a matter of market custom, and is intended to create or reflect only an administrative relationship between independent contracting parties;

(2) shall 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 such Agent is required to exercise as directed in writing by the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Loan Documents), *provided* that no Agent shall 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; and

(3) shall, except as expressly set forth herein and in the other Loan Documents, have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to the Borrower or any of their Affiliates that is communicated to or obtained by any Person serving as an Agent or any of its Affiliates in any capacity.

Neither the Administrative Agent nor any of its Related Persons shall 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 shall be necessary, or as the Administrative Agent shall believe in good faith shall be necessary, under the circumstances as provided in Sections 10.01 and 8.02) or (ii) in the absence of its own gross negligence or willful misconduct as determined by the final and non-appealable judgment of a court of competent jurisdiction, in connection with its duties expressly set forth herein. The Administrative Agent shall be deemed not to have knowledge of any Default unless and until notice describing such Default is given to the Administrative Agent by the Borrower or a Lender.

No Agent-Related Person shall be responsible for or have any duty to ascertain or inquire into (i) any recital, 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 the creation, perfection or priority of any Lien purported to be created by the Collateral Documents, (v) the value or the sufficiency of any Collateral, or (vi) the satisfaction of any condition set forth in Article IV or elsewhere herein, other than to confirm receipt of items expressly required to be delivered to the Administrative Agent, or to inspect the properties, books or records of any Loan Party or any Affiliate thereof. The duties of the Administrative Agent shall be mechanical and administrative in nature; the Administrative Agent shall not have by reason of this Agreement or any other Loan Document a fiduciary relationship in respect of any Lender; and nothing in this Agreement or in any other Loan Document, expressed or implied, is intended to or shall be so construed as to impose upon the Administrative Agent any obligations in respect of this Agreement or any other Loan Document except as expressly set forth herein or therein.

Section 9.04 Lack of Reliance on the Administrative Agent. Independently and without reliance upon the Administrative Agent or any of the Loan Parties' financial advisors or investment banks ("**Company Advisors**"), each Lender and the holder of each Term Note, to the extent it deems appropriate, has made and shall continue to make (i) its own independent investigation of the financial condition and affairs of Holdings, the Borrower and the Restricted Subsidiaries in connection with the making and the continuance of the Loans and the taking or not taking of any action in connection herewith and (ii) its own appraisal of the creditworthiness of Holdings, the Borrower and the Restricted Subsidiaries and, except as expressly provided in this Agreement, the neither the Administrative Agent nor the Company Advisors shall have any duty or responsibility, either initially or on a continuing basis, to provide any Lender with any credit or other information with respect thereto, whether coming into its possession before the making of the Loans or at any time or times thereafter. Neither the Administrative Agent nor the Company Advisors shall be responsible to any Lender for any recitals, statements, information, representations or warranties herein or in any document, certificate or other writing delivered in connection herewith or for the execution, effectiveness, genuineness, validity, enforceability, perfection, collectability, priority or sufficiency of this Agreement or any other Loan Document or the financial condition of Holdings, the Borrower or any of the Restricted Subsidiaries or be required to make any inquiry concerning either the performance or observance of any of the terms, provisions or conditions of this Agreement or any other Loan Document, or the financial condition of Holdings, the Borrower or any of the Restricted Subsidiaries or the existence or possible existence of any Default or Event of Default.

Section 9.05 Certain Rights of the Administrative Agent. The Administrative Agent may request instructions from the Required Lenders (or such greater percentage of Lenders required) with respect to any act or action (including failure to act) in connection with this Agreement or any other Loan Document, and the Administrative Agent shall be entitled to refrain from such act or taking such action unless and until the Administrative Agent shall have received instructions from the Required Lenders (or such greater percentage of Lenders required); and the Administrative Agent shall not incur liability to any Lender or any Borrower or Loan Party by reason of so refraining. Without limiting the foregoing, no Lender shall have any right of action whatsoever against the Administrative Agent as a result of the Administrative Agent acting or refraining from acting hereunder or under any other Loan Document in accordance with the instructions of the Required Lenders (or such greater percentage of Lenders required).

Section 9.06 Reliance by the Administrative Agent. The Administrative Agent shall be entitled to rely upon, and shall be fully protected in relying upon, any note, writing, resolution, notice, statement, certificate, e-mail or other electronic message, order or other document or telephone message signed, sent or made by any Person that the Administrative Agent believed to be the proper Person, and, with respect to all legal matters pertaining to this Agreement and any other Loan Document and its duties hereunder and thereunder, upon advice of counsel selected by the Administrative Agent. In determining compliance with any condition hereunder to the making of a Loan, that by its terms must be fulfilled to the satisfaction of a Lender, the Administrative Agent may presume that such condition is satisfactory to such Lender unless the Administrative Agent shall have received notice to the contrary from such Lender prior to the making of such Loan. The Administrative Agent may consult with legal counsel (who may be counsel for the Borrower), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

Section 9.07 Delegation of Duties. The Administrative Agent may perform any and all of its duties and exercise its rights and powers hereunder or under any other Loan Documents by or through any one or more sub agents appointed by the Administrative Agent. The Administrative 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 Agent-Related Persons. The exculpatory provisions of this Article shall apply to any such sub agent and to the Agent-Related Persons of the Administrative Agent and any such sub agent, and shall apply to their respective activities in connection with the syndication of the credit facilities provided for herein as well as activities as Administrative Agent.

Section 9.08 Indemnification. Whether or not the transactions contemplated hereby are consummated, to the extent the Administrative Agent or any other Agent-Related Person (solely to the extent any such Agent-Related Person was performing services on behalf of the Administrative Agent) is not reimbursed and indemnified by the Borrower, the Lenders will reimburse and indemnify the Administrative Agent or any other Agent-Related Person (solely to the extent any such Agent-Related Person was performing services on behalf of the Administrative Agent) in proportion to their respective “percentage” as used in determining the Required Lenders for and against any and all liabilities, obligations, losses, damages, penalties, claims, actions, judgments, costs, expenses or disbursements of whatsoever kind or nature which may be imposed on, asserted against or incurred by the Administrative Agent or any other Agent-Related Person (solely to the extent any such Agent-Related Person was performing services on behalf of the Administrative Agent) in performing its duties hereunder or under any other Loan Document or in any way relating to or arising out of this Agreement or any other Loan Document; *provided* that no Lender shall be liable for any portion of such liabilities, obligations, losses, damages, penalties, claims, actions, judgments, suits, costs, expenses or disbursements resulting from the Administrative Agent’s or any other Agent-Related Person’s gross negligence or willful misconduct (as determined by a court of competent jurisdiction in a final and non-appealable decision). In the case of any investigation, litigation or proceeding giving rise to any Indemnified Liabilities, this Section 9.08 applies whether any such investigation, litigation or proceeding is brought by any Lender or any other Person. Without limitation of the foregoing, each Lender shall reimburse the Administrative Agent upon demand for its ratable share of any costs or out-of-pocket expenses (including Attorney Costs) incurred by the Administrative Agent in connection with the preparation, execution, delivery, administration, modification, amendment or enforcement



(whether through negotiations, legal proceedings or otherwise) of, or legal advice in respect of rights or responsibilities under, this Agreement, any other Loan Document, or any document contemplated by or referred to herein, to the extent that the Administrative Agent is not reimbursed for such expenses by or on behalf of the Borrower, *provided* that such reimbursement by the Lenders shall not affect the Borrower's continuing reimbursement obligations with respect thereto, *provided further* that the failure of any Lender to indemnify or reimburse the Administrative Agent shall not relieve any other Lender of its obligation in respect thereof. The undertaking in this Section 9.08 shall survive termination of the Aggregate Commitments, the payment of all other Obligations and the resignation of the Administrative Agent.

Section 9.09 The Administrative Agent in Its Individual Capacity. With respect to its obligation to make Loans under this Agreement, the Administrative Agent shall have the rights and powers specified herein for a "Lender" and may exercise the same rights and powers as though it were not performing the duties specified herein; and the term "Lender," "Required Lenders" or any similar terms shall, unless the context clearly indicates otherwise, include the Administrative Agent in its respective individual capacities. The Administrative Agent and its affiliates may accept deposits from, lend money to, and generally engage in any kind of banking, investment banking, trust or other business with, or provide debt financing, equity capital or other services (including financial advisory services) to any Loan Party or any Affiliate of any Loan Party (or any Person engaged in a similar business with any Loan Party or any Affiliate thereof) as if they were not performing the duties specified herein, and may accept fees and other consideration from any Loan Party or any Affiliate of any Loan Party for services in connection with this Agreement and otherwise without having to account for the same to the Lenders. The Lenders acknowledge that, pursuant to such activities, any Agent or its Affiliates may receive information regarding any Loan Party or any of its Affiliates (including information that may be subject to confidentiality obligations in favor of such Loan Party or such Affiliate) and acknowledge that no Agent shall be under any obligation to provide such information to them.

Section 9.10 Company Advisors. Notwithstanding the provisions of this Agreement or any of the Loan Documents, none of the Company Advisors shall have any powers, rights, duties, responsibilities or liabilities with respect to this Agreement and the other Loan Documents.

Section 9.11 Resignation by the Administrative Agent. The Administrative Agent may resign from the performance of all its respective functions and duties hereunder or under the other Loan Documents at any time by giving 30 Days prior written notice to the Lenders and the Borrower. If the Administrative Agent is in material breach of its obligations hereunder as Administrative Agent, then the Administrative Agent may be removed as the Administrative Agent at the reasonable request of the Required Lenders. If the Administrative Agent is a Defaulting Lender, the Borrower may remove the Defaulting Lender from such role upon 15 days prior written notice to the Lenders.

Upon any such notice of resignation by, or notice of removal of, the Administrative Agent, the Required Lenders shall appoint a successor Administrative Agent hereunder or thereunder who shall be a commercial bank or trust company reasonably acceptable to the Borrower, which acceptance shall not be unreasonably withheld or delayed (*provided* that the Borrower's approval shall not be required if an Event of Default under Section 8.01(1) or, solely with respect to the Borrower, Section 8.01(6) has occurred and is continuing).



If a successor Administrative Agent shall not have been so appointed within such 30 Day period, the Administrative Agent, shall then appoint a successor Administrative Agent who shall serve as Administrative Agent hereunder or thereunder until such time, if any, as the Required Lenders appoint a successor Administrative Agent as provided above.

If no successor Administrative Agent has been appointed pursuant to the foregoing by the 35th Day after the date such notice of resignation was given by the Administrative Agent or such notice of removal was given by the Required Lenders or the Borrower, as applicable, the Administrative Agent's resignation or removal shall nonetheless become effective and the Required Lenders shall thereafter perform all the duties of the Administrative Agent hereunder or under any other Loan Document until such time, if any, as the Required Lenders appoint a successor Administrative Agent as provided above. The retiring Administrative Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents (except that in the case of any collateral security held by the Administrative Agent on behalf of the Lenders under any of the Loan Documents, the retiring Administrative Agent shall continue to hold such collateral security until such time as a successor Administrative Agent is appointed provided that in its capacity as Collateral Agent, the retiring Administrative Agent may appoint a successor Collateral Agent) and all payments, communications and determinations provided to be made by, to or through the Administrative Agent shall instead be made by or to each Lender directly, until such time as the Required Lenders appoint a successor Administrative Agent as provided for above in this Section 9.11.

Upon the acceptance of a successor's appointment as Administrative Agent hereunder and upon the execution and filing or recording of such financing statements, or amendments thereto, and such amendments or supplements to the Mortgages, and such other instruments or notices, as may be necessary or desirable, or as the Required Lenders may request, in order to (i) continue the perfection of the Liens granted or purported to be granted by the Collateral Documents or (ii) otherwise ensure that the Collateral and Guarantee Requirement is satisfied, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring (or retired) Administrative Agent, and the retiring Administrative Agent shall be discharged from all of its duties and obligations hereunder or under the other Loan Documents (if not already discharged therefrom as provided above in this Section 9.11).

The fees payable by the Borrower to a successor Administrative Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Borrower and such successor. After the resignation or removal of the Administrative Agent hereunder, the provisions of this Article IX and Sections 10.04 and 10.05 shall continue in effect for the benefit of such Administrative Agent, its sub-agents and their respective Agent-Related Persons in respect of any actions taken or omitted to be taken by any of them while Administrative Agent was acting as Administrative Agent.

Upon a resignation or removal of the Administrative Agent pursuant to this Section 9.11, the Administrative Agent (i) shall continue to be subject to Section 10.09 and (ii) shall remain indemnified to the extent provided in this Agreement and the other Loan Documents and the provisions of this Article IX (and the analogous provisions of the other Loan Documents) shall continue in effect for the benefit of such Administrative Agent for all of its actions and inactions while serving as the Administrative Agent.

Section 9.12 Collateral Matters. Each Lender (including in its capacities as a potential Cash Management Bank and a potential Hedge Bank) irrevocably authorizes and directs the Collateral Agent to take the actions to be taken by them as set forth in Sections 7.04 and 10.24.

Each Lender hereby agrees, that, except as otherwise set forth herein, any action taken by the Required Lenders (or such greater percentage of Lenders required) in accordance with the provisions of this Agreement or the Collateral Documents, and the exercise by the Required Lenders (or such greater percentage of Lenders required) of the powers set forth herein or therein, together with such other powers as are reasonably incidental thereto, shall be authorized and binding upon all of the Lenders. The Collateral Agent is hereby authorized on behalf of all of the Lenders, without the necessity of any notice to or further consent from any Lender, from time to time prior to an Event of Default, to take any action with respect to any Collateral or Collateral Documents which may be necessary to perfect and maintain perfected the security interest in and liens upon the Collateral granted pursuant to the Collateral Documents.

Upon request by the Administrative Agent at any time, the Lenders will confirm in writing the Collateral Agent's authority to release particular types or items of Collateral pursuant to this Section 9.12. In each case as specified in this Section 9.12, the applicable Agent will (and each Lender irrevocably authorizes the applicable Agent to), at the Borrower's expense, execute and deliver to the applicable Loan Party such documents as such Loan Party may reasonably request to evidence the release or subordination of such item of Collateral from the assignment and security interest granted under the Collateral Documents, or to evidence the release of such Guarantor from its obligations under the Guaranty, in each case in accordance with the terms of the Loan Documents and this Section 9.12.

The Collateral Agent shall have no obligation whatsoever to the Lenders or to any other Person to assure that the Collateral exists or is owned by any Loan Party or is cared for, protected or insured or that the Liens granted to the Collateral Agent herein or pursuant hereto have been properly or sufficiently or lawfully created, perfected, protected or enforced or are entitled to any particular priority, or to exercise or to continue exercising at all or in any manner or under any duty of care, disclosure or fidelity any of the rights, authorities and powers granted or available to the Collateral Agent in this Section 9.12, Section 10.24 or in any of the Collateral Documents, it being understood and agreed that in respect of the Collateral, or any act, omission or event related thereto, the Collateral Agent may act in any manner it may deem appropriate, in its sole discretion and that the Collateral Agent shall have no duty or liability whatsoever to the Lenders, except for its gross negligence or willful misconduct (as determined by a court of competent jurisdiction in a final and non-appealable decision).

Section 9.13 [Reserved].

Section 9.14 Administrative Agent May File Proofs of Claim. In case of the pendency of any proceeding under any Debtor Relief Law or any other judicial proceeding relative to any Loan Party, the Administrative Agent (irrespective of whether the principal of any Loan shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Administrative Agent shall have made any demand on the Borrower) shall be entitled and empowered, by intervention in such proceeding or otherwise:

(a) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans and all other Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Lenders and the Administrative Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of the Lenders and the Administrative Agent and their respective agents and counsel and all other amounts due the Lenders and the Administrative Agent under Sections 2.09 and 10.04) allowed in such judicial proceeding; and

(b) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same;

and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender to make such payments to the Administrative Agent and, in the event that the Administrative Agent shall consent 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 Agents and their respective agents and counsel, and any other amounts due the Administrative Agent under Sections 2.09 and 10.04.

Nothing contained herein shall be deemed to authorize the Administrative Agent to authorize or consent to or accept or adopt on behalf of any Lender any Plan of Reorganization, arrangement, adjustment or composition affecting the Obligations or the rights of any Lender or to authorize the Administrative Agent to vote in respect of the claim of any Lender in any such proceeding.

Section 9.15 Appointment of Supplemental Administrative Agents.

(1) It is the purpose of this Agreement and the other Loan Documents that there shall be no violation of any Law of any jurisdiction denying or restricting the right of banking corporations or associations to transact business as agent or trustee in such jurisdiction. It is recognized that in case of litigation under this Agreement or any of the other Loan Documents, and in particular in case of the enforcement of any of the Loan Documents, or in case the Administrative Agent deems that by reason of any present or future Law of any jurisdiction it may not exercise any of the rights, powers or remedies granted herein or in any of the other Loan Documents or take any other action which may be desirable or necessary in connection therewith, the Administrative Agent is hereby authorized to appoint an additional individual or institution selected by the Administrative Agent in its sole discretion as a separate trustee, co-trustee, administrative agent, collateral agent, administrative sub-agent or administrative co-agent (any such additional individual or institution being referred to herein individually as a “**Supplemental Administrative Agent**” and collectively as “**Supplemental Administrative Agents**”).

(2) In the event that the Administrative Agent appoints a Supplemental Administrative Agent with respect to any Collateral, (i) each and every right, power, privilege or duty expressed or intended by this Agreement or any of the other Loan Documents to be exercised by or vested in or conveyed to the Administrative Agent with respect to such Collateral shall be exercisable by and vest in such Supplemental Administrative Agent to the extent, and only to the extent, necessary to enable such Supplemental Administrative Agent to exercise such rights, powers and privileges

with respect to such Collateral and to perform such duties with respect to such Collateral, and every covenant and obligation contained in the Loan Documents and necessary to the exercise or performance thereof by such Supplemental Administrative Agent shall run to and be enforceable by either the Administrative Agent or such Supplemental Administrative Agent, and (ii) the provisions of this Article IX and of Sections 10.04 and 10.05 that refer to the Administrative Agent shall inure to the benefit of such Supplemental Administrative Agent and all references therein to the Administrative Agent shall be deemed to be references to the Administrative Agent or such Supplemental Administrative Agent, as the context may require.

(3) Should any instrument in writing from any Loan Party be reasonably required by any Supplemental Administrative Agent so appointed by the Administrative Agent for more fully and certainly vesting in and confirming to him or it such rights, powers, privileges and duties, the Borrower shall, or shall cause such Loan Party to, execute, acknowledge and deliver any and all such instruments reasonably acceptable to it promptly upon request by the Administrative Agent. In case any Supplemental Administrative Agent, or a successor thereto, shall die, become incapable of acting, resign or be removed, all the rights, powers, privileges and duties of such Supplemental Administrative Agent, to the extent permitted by Law, shall vest in and be exercised by the Administrative Agent until the appointment of a new Supplemental Administrative Agent.

Section 9.16 [Reserved].

Section 9.17 Secured Cash Management Agreements and Secured Hedge Agreements. Except as otherwise expressly set forth herein or in any Guaranty or any Collateral Document, no Cash Management Bank or Hedge Bank that obtains the benefits of Section 8.03, any Guaranty or any Collateral by virtue of the provisions hereof or of any Guaranty or any Collateral Document shall have any right to notice of any action or to consent to, direct or object to any action hereunder or under any other Loan Document or otherwise in respect of the Collateral (including the release or impairment of any Collateral) other than in its capacity as a Lender and, in such case, only to the extent expressly provided in the Loan Documents. Notwithstanding any other provision of this Article IX to the contrary, the Administrative Agent shall not be required to verify the payment of, or that other satisfactory arrangements have been made with respect to, Obligations arising under Secured Cash Management Agreements and Secured Hedge Agreements unless the Administrative Agent has received written notice of such Obligations, together with such supporting documentation as the Administrative Agent may request, from the applicable Cash Management Bank or Hedge Bank, as the case may be.

Section 9.18 Withholding Tax. To the extent required by any applicable Laws, the Administrative Agent may withhold from any payment to any Lender an amount equivalent to any applicable withholding Tax. Without limiting or expanding the provisions of Section 3.01, each Lender shall indemnify and hold harmless the Administrative Agent against, and shall make payable in respect thereof within 10 days after demand therefor, any and all Taxes and any and all related losses, claims, liabilities and expenses (including fees, charges and disbursements of any counsel for the Administrative Agent) incurred by or asserted against the Administrative Agent by the IRS or any other Governmental Authority as a result of the failure of the Administrative Agent to properly withhold Tax from amounts paid to or for the account of such Lender for any reason (including because the appropriate form was not delivered or not properly executed, or because such Lender failed to notify the Administrative Agent of a change in circumstance that rendered

the exemption from, or reduction of withholding tax ineffective). 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 this Agreement or any other Loan Document against any amount due the Administrative Agent under this Section 9.18. The agreements in this Section 9.18 shall survive the resignation or replacement of the Administrative Agent, any assignment of rights by, or the replacement of, a Lender, the termination of the Commitments and the repayment, satisfaction or discharge of all other Obligations.

Section 9.19 Erroneous Payments.

(a) If the Administrative Agent (x) notifies a Lender or any Person who has received funds on behalf of a Lender (any such Lender or other recipient (and each of their respective successors and assigns), a "Payment Recipient") that the Administrative Agent has determined in its sole discretion (whether or not after receipt of any notice under immediately succeeding clause (b)) that any funds (as set forth in such notice from the Administrative Agent) received by such Payment Recipient from the Administrative Agent or any of its Affiliates were erroneously or mistakenly transmitted to, or otherwise erroneously or mistakenly received by, such Payment Recipient (whether or not known to such Lender or other Payment Recipient on its behalf) (any such funds, whether transmitted or received as a payment, prepayment or repayment of principal, interest, fees, distribution or otherwise, individually and collectively, an "Erroneous Payment") and (y) demands in writing the return of such Erroneous Payment (or a portion thereof), such Erroneous Payment shall at all times remain the property of the Administrative Agent pending its return or repayment as contemplated below in this Section 9.19(a) and held in trust for the benefit of the Administrative Agent, and such Lender shall (or, with respect to any Payment Recipient who received such funds on its behalf, shall cause such Payment Recipient to) promptly, but in no event later than two Business Days thereafter (or such later date as the Administrative Agent may, in its sole discretion, specify in writing), return to the Administrative Agent the amount of any such Erroneous Payment (or portion thereof) as to which such a demand was made, in same day funds (in the currency so received), together with interest thereon (except to the extent waived in writing by the Administrative Agent) in respect of each day from and including the date such Erroneous Payment (or portion thereof) was received by such Payment Recipient to the date such amount is repaid to the Administrative Agent in same day funds at the greater of the Federal Funds Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation from time to time in effect. A notice of the Administrative Agent to any Payment Recipient under this clause (a) shall be conclusive, absent manifest error.

(b) Without limiting immediately preceding clause (a), each Lender or any Person who has received funds on behalf of a Lender (and each of their respective successors and assigns), agrees that if it receives a payment, prepayment or repayment (whether received as a payment, prepayment or repayment of principal, interest, fees, distribution or otherwise) from the Administrative Agent (or any of its Affiliates) (x) that is in a different amount than, or on a different date from, that specified in this Agreement or in a notice of payment, prepayment or repayment sent by the Administrative Agent (or any of its Affiliates) with respect to such payment, prepayment or repayment, (y) that was not preceded or accompanied by a notice of payment, prepayment or repayment sent by the Administrative Agent (or any of its Affiliates),

or (z) that such Lender or other such recipient, otherwise becomes aware was transmitted, or received, in error or by mistake (in whole or in part), then in each such case:

(i) it acknowledges and agrees that (A) in the case of immediately preceding clauses (x) or (y), an error and mistake shall be presumed to have been made (absent written confirmation from the Administrative Agent to the contrary) or (B) an error and mistake has been made (in the case of immediately preceding clause (z)), in each case, with respect to such payment, prepayment or repayment; and

(ii) such Lender shall use commercially reasonable efforts to (and shall use commercially reasonable efforts to cause any other recipient that receives funds on its respective behalf to) promptly (and, in all events, within one Business Day of its knowledge of the occurrence of any of the circumstances described in immediately preceding clauses (x), (y) and (z)) notify the Administrative Agent of its receipt of such payment, prepayment or repayment, the details thereof (in reasonable detail) and that it is so notifying the Administrative Agent pursuant to this Section 9.19(b).

(c) Each Lender hereby authorizes the Administrative Agent to set off, net and apply any and all amounts at any time owing to such Lender under any Loan Document, or otherwise payable or distributable by the Administrative Agent to such Lender under any Loan Document with respect to any payment of principal, interest, fees or other amounts, against any amount that the Administrative Agent has demanded to be returned under immediately preceding clause (a).

(d) (i) In the event that an Erroneous Payment (or portion thereof) is not recovered by the Administrative Agent for any reason, after demand therefor in accordance with immediately preceding clause (a), from any Lender that has received such Erroneous Payment (or portion thereof) (and/or from any Payment Recipient who received such Erroneous Payment (or portion thereof) on its respective behalf) (such unrecovered amount, an “**Erroneous Payment Return Deficiency**”), upon the Administrative Agent’s notice to such Lender at any time, then effective immediately (with the consideration therefor being acknowledged by the parties hereto), (A) such Lender shall be deemed to have assigned its Loans with respect to which such Erroneous Payment was made (the “**Erroneous Payment Impacted Class**”) in an amount equal to the Erroneous Payment Return Deficiency (or such lesser amount as the Administrative Agent may specify) (such assignment of the Loans (but not Commitments) of the Erroneous Payment Impacted Class, the “**Erroneous Payment Deficiency Assignment**”) (on a cashless basis and such amount calculated at par plus any accrued and unpaid interest (with the assignment fee to be waived by the Administrative Agent in such instance)), and is hereby (together with the Borrower) deemed to execute and deliver an Assignment and Assumption (or, to the extent applicable, an agreement incorporating an Assignment and Assumption by reference pursuant to an approved electronic platform as to which the Administrative Agent and such parties are participants) with respect to such Erroneous Payment Deficiency Assignment, and such Lender shall deliver any Term Notes evidencing such Loans to the Borrower or the Administrative Agent (but the failure of such Person to deliver any such Term Notes shall not affect the effectiveness of the foregoing assignment), (B) the Administrative Agent as the assignee Lender shall be deemed to have acquired the Erroneous Payment Deficiency Assignment, (C) upon such deemed acquisition, the Administrative Agent



as the assignee Lender shall become a Lender, as applicable, hereunder with respect to such Erroneous Payment Deficiency Assignment and the assigning Lender shall cease to be a Lender, as applicable, hereunder with respect to such Erroneous Payment Deficiency Assignment, excluding, for the avoidance of doubt, its obligations under the indemnification provisions of this Agreement and its applicable Commitments which shall survive as to such assigning Lender, (D) the Administrative Agent and the Borrower shall each be deemed to have waived any consents required under this Agreement to any such Erroneous Payment Deficiency Assignment, and (E) the Administrative Agent will reflect in the Register its ownership interest in the Loans subject to the Erroneous Payment Deficiency Assignment. For the avoidance of doubt, no Erroneous Payment Deficiency Assignment will reduce the Commitments of any Lender and such Commitments shall remain available in accordance with the terms of this Agreement.

(ii) Subject to Section 10.07 (but excluding, in all events, any assignment consent or approval requirements (whether from the Borrower or otherwise)), the Administrative Agent may, in its discretion, sell any Loans acquired pursuant to an Erroneous Payment Deficiency Assignment and upon receipt of the proceeds of such sale, the Erroneous Payment Return Deficiency owing by the applicable Lender shall be reduced by the net proceeds of the sale of such Loan (or portion thereof), and the Administrative Agent shall retain all other rights, remedies and claims against such Lender (and/or against any recipient that receives funds on its respective behalf). In addition, an Erroneous Payment Return Deficiency owing by the applicable Lender (x) shall be reduced by the proceeds of prepayments or repayments of principal and interest, or other distribution in respect of principal and interest, received by the Administrative Agent on or with respect to any such Loans acquired from such Lender pursuant to an Erroneous Payment Deficiency Assignment (to the extent that any such Loans are then owned by the Administrative Agent) and (y) may, in the sole discretion of the Administrative Agent, be reduced by any amount specified by the Administrative Agent in writing to the applicable Lender from time to time.

(e) The parties hereto agree that (x) irrespective of whether the Administrative Agent may be equitably subrogated, in the event that an Erroneous Payment (or portion thereof) is not recovered from any Payment Recipient that has received such Erroneous Payment (or portion thereof) for any reason, the Administrative Agent shall be subrogated to all the rights and interests of such Payment Recipient (and, in the case of any Payment Recipient who has received funds on behalf of a Lender, to the rights and interests of such Lender or Secured Party, as the case may be) under the Loan Documents with respect to such amount (the “**Erroneous Payment Subrogation Rights**”) (*provided* that the Loan Parties’ Obligations under the Loan Documents in respect of the Erroneous Payment Subrogation Rights shall not be duplicative of such Obligations in respect of Loans that have been assigned to the Administrative Agent under an Erroneous Payment Deficiency Assignment) and (y) an Erroneous Payment shall not pay, prepay, repay, discharge or otherwise satisfy any Obligations owed by the Borrower or any other Loan Party; *provided* that this Section 9.19 shall not be interpreted to increase (or accelerate the due date for), or have the effect of increasing (or accelerating the due date for), the Obligations of the Borrower relative to the amount (and/or timing for payment) of the Obligations that would have been payable had such Erroneous Payment not been made by the



Administrative Agent; *provided, further*, that for the avoidance of doubt, immediately preceding clauses (x) and (y) shall not apply to the extent any such Erroneous Payment is, and solely with respect to the amount of such Erroneous Payment that is, comprised of funds received by the Administrative Agent from the Borrower for the purpose of making such Erroneous Payment.

(f) To the extent permitted by applicable law, no Payment Recipient shall assert any right or claim to an Erroneous Payment, and hereby waives, and is deemed to waive, any claim, counterclaim, defense or right of set-off or recoupment with respect to any demand, claim or counterclaim by the Administrative Agent for the return of any Erroneous Payment received, including, without limitation, any defense based on “discharge for value” or any similar doctrine.

(g) Each party’s obligations, agreements and waivers under this Section 9.19 shall survive the resignation or replacement of the Administrative Agent, any transfer of rights or obligations by, or the replacement of, a Lender, the termination of the Commitments and/or the repayment, satisfaction or discharge of all Obligations (or any portion thereof) under any Loan Document.

## ARTICLE X

### Miscellaneous

#### Section 10.01 Amendments, etc.

(1) Except as otherwise set forth in this Agreement, no amendment or waiver of any provision of this Agreement or any other Loan Document, and no consent to any departure by the Borrower or any other Loan Party therefrom, shall be effective unless in writing signed by the Required Lenders (other than with respect to (i) any amendment or waiver contemplated in clauses (a) - (i) of this clause (1) below and (ii) any amendment or waiver with respect to the Fee Letter which shall only require the consent of the parties thereto), (or by the Administrative Agent with the consent of the Required Lenders) and the Borrower or the applicable Loan Party, as the case may be, and acknowledged by the Administrative Agent, and the Administrative Agent hereby agrees to acknowledge any such waiver, consent or amendment that otherwise satisfies the requirements of this Section 10.01 as promptly as possible; and each such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given; *provided* that:

(a) only the consent of each affected Lender shall be required to extend or increase the Commitment of such Lender (it being understood that a waiver of any condition precedent set forth in Section 4.01 or the waiver of any Default, mandatory prepayment or mandatory reduction of the Commitments shall not constitute an extension or increase of any Commitment of any Lender);

(b) only the consent of each affected Lender shall be required to postpone any date scheduled for, or reduce the amount of, any payment of principal or interest under Section 2.08 (other than pursuant to Section 2.08(2)) or any payment of fees or premiums hereunder or under any Loan Document with respect to payments to such Lender, it being understood that

the amendment or waiver of any mandatory prepayment shall not constitute a postponement of any date scheduled for, or a reduction in the amount of, any payment of principal, interest, fees or premiums;

(c) only the consent of each affected Lender shall be required to reduce the principal of, or the rate of interest specified herein on, any Loan, or (subject to clause (I) of the proviso immediately succeeding clause (i) of this Section 10.01(1)) any fees or other amounts payable hereunder or under any other Loan Document to such Lender ; *provided* that notwithstanding the foregoing only the consent of (A) the Required Lenders shall be necessary to amend the definition of “Default Rate” and (B) the Required Lenders’ consent will be necessary to waive any obligation of the Borrower to pay interest at the Default Rate;

(d) except as contemplated by clause (C) in the second proviso immediately succeeding clause (i) of this Section 10.01(1), (x) no amendment, waiver or consent shall change any provision of this Section 10.01 or the definition of “Required Lenders” or “Required Facility Lenders,” or any other provision specifying the number of Lenders or portion of the Loans or Commitments required to take any action under the Loan Documents, without the written consent of each Lender and (y) change the definition of “Pro Rata Share” without the written consent of each Lender directly and adversely affected thereby (but not the consent of the Required Lenders or the Required Facility Lenders);

(e) other than in a transaction permitted under Section 7.03 or Section 7.04, no amendment, waiver or consent shall release all or substantially all of the Collateral in any transaction or series of related transactions, without the written consent of each Lender; or

(f) other than in a transaction permitted under Section 7.03 or Section 7.04, no amendment, waiver or consent shall release all or substantially all of the aggregate value of the Guaranty, without the written consent of each Lender;

(g) no amendment, waiver or consent shall change the pro rata sharing of payments among Lenders pursuant to Section 2.12, in each case without the written consent of each Lender; or

(h) no amendment, waiver or consent shall amend, waive or otherwise modify any term or provision (including the availability and conditions to funding and the rate of interest applicable thereto) which directly affects Lenders of one Facility and does not directly affect Lenders under any other Facility, in each case, without the written consent of the Required Facility Lenders under such applicable Facility;

*provided* that:

(I) no amendment, waiver or consent shall, unless in writing and signed by the Administrative Agent in addition to the Lenders required above, affect the rights or duties of, or any fees or other amounts payable to, the Administrative Agent under this Agreement or any other Loan Document; and

(II) Section 10.07(g) may not be amended, waived or otherwise modified without the consent of each Granting Lender all or any part of whose Loans are being funded by an SPC at the time of such amendment, waiver or other modification;

*provided further* that notwithstanding the foregoing:

(A) no Defaulting Lender or (solely with respect to any Non-Voting Loans) any Non-Voting Lender shall have any right to approve or disapprove of any amendment, waiver or consent hereunder (and any amendment, waiver or consent which by its terms requires the consent of all Lenders, the Required Lenders, or the Required Facility Lenders may be effected with the consent of the applicable Lenders other than Defaulting Lenders and/or Non-Voting Lenders) (it being understood that any Commitments or Loans held or deemed held by any Defaulting Lender or Non-Voting Lender shall be excluded in calculating the Required Lenders and the Required Facility Lenders);

(B) [reserved];

(C) this Agreement may be amended (or amended and restated) with the written consent of the Required Lenders, the Administrative Agent and the Borrower (i) to add one or more additional credit facilities to this Agreement and to permit the extensions of credit from time to time outstanding thereunder and the accrued interest and fees in respect thereof to share ratably in the benefits of this Agreement and the other Loan Documents with the Term Loans and the accrued interest and fees in respect thereof and (ii) to include appropriately the Lenders holding such credit facilities in any determination of the Required Lenders;

(D) any waiver, amendment or modification of this Agreement that by its terms affects the rights or duties under this Agreement of Lenders holding Loans or Commitments of a particular Class (but not the Lenders holding Loans or Commitments of any other Class) may be effected by an agreement or agreements in writing entered into by the Borrower and the requisite percentage in interest of the affected Class of Lenders that would be required to consent thereto under this Section 10.01 if such Class of Lenders were the only Class of Lenders hereunder at the time; and

(E) the Borrower and the Administrative Agent may, without the input or consent of the other Lenders, effect changes to any Mortgage or any other Collateral Document as may be necessary or appropriate in the opinion of the Collateral Agent.

(2) [reserved],

(3) In addition, notwithstanding anything to the contrary in this Section 10.01,

(a) the Guaranty, the Collateral Documents, and related documents executed by Holdings, the Borrower or any Restricted Subsidiaries in connection with this Agreement

and the other Loan Documents may be, amended, amended and restated, modified or otherwise 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, modification or waiver is delivered in order (i) to comply with local Law or advice of local counsel, (ii) to cure ambiguities or defects, (iii) to cause the Guaranty, Collateral Documents or other document to be consistent with this Agreement and the other Loan Documents (including by adding additional parties as contemplated herein or therein), or (iv) to effect the granting, perfection, protection, expansion or enhancement of any security interest in any Collateral or additional property to become Collateral for the benefit of the Secured Parties or protect any security interest for benefit of the Secured Parties or to otherwise enhance the rights or benefits of any Lender under any Loan Document;

(b) any provision of this Agreement or any other Loan Document may be amended by an agreement in writing entered into by the Borrower and the Administrative Agent to cure any obvious error, or any error or omission of a technical or immaterial nature, or any ambiguity, omission, defect or inconsistency so long as, in each case, the Lenders shall have received at least 5 Business Days' prior written notice thereof and the Administrative Agent shall not have received, within 5 Business Days of the date of such notice to the Lenders, a written notice from the Required Lenders stating that the Required Lenders object to such amendment;

(c) technical and conforming modifications to the Loan Documents may be made with the consent of the Borrower and the Administrative Agent (and no other Person) to the extent necessary to (i) to increase the interest rates (including any interest rate margins or interest rate floors), fees and other amounts payable to any Class or Classes of Lenders hereunder, (ii) increase, expand and/or extend the call protection provisions and any "most favored nation" provisions benefiting any Class or Classes of Lenders hereunder and/or (iii) modify any other provision hereunder or under any other Loan Document in a manner more favorable to the then-existing Lenders or Class or Classes of Lenders, in each case in connection with the issuance or incurrence of any Indebtedness permitted hereunder, where the terms of any Indebtedness are more favorable to the lenders thereof than the corresponding terms applicable to other Loans or Commitments then existing hereunder, and it is intended that one or more then-existing Classes of Loans or Commitments under this Agreement share in the benefit of such more favorable terms in order to comply with the provisions hereof relating to the incurrence of such Indebtedness.

Section 10.02 Notices and Other Communications; Facsimile Copies.

(1) General. Except in the case of notices and other communications expressly permitted to be given by telephone (and except as provided in subsection (b) below), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by facsimile as follows, and all notices and other communications expressly permitted hereunder to be given by telephone shall be made to the applicable telephone number, as follows:

(a) if to Holdings, the Borrower or the Administrative Agent, to the address, facsimile number, electronic mail address or telephone number specified for such Person on Schedule 10.02; and

(b) if to any other Lender, to the address, facsimile number, electronic mail address or telephone number specified in its Administrative Questionnaire.

Notices and other communications sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received; notices and other communications sent by facsimile shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next succeeding Business Day for the recipient). Notices and other communications delivered through electronic communications to the extent provided in subsection (2) below shall be effective as provided in such subsection (2).

(2) Electronic Communication. Notices and other communications to the Lenders hereunder may be delivered or furnished by electronic communication (including e-mail and Internet or intranet websites) pursuant to procedures approved by the Administrative Agent, *provided* that the foregoing shall not apply to notices to any Lender pursuant to Article II if such Lender, as applicable, has notified the Administrative Agent that it is incapable of receiving notices under such Article by electronic communication. The Administrative Agent or the Borrower may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it, *provided* that approval of such procedures may be limited to particular notices or communications.

(3) Unless the Administrative Agent otherwise prescribes, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement), *provided* that if such notice or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next succeeding Business Day for the recipient, and (ii) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing clause (i) of notification that such notice or communication is available and identifying the website address therefor.

(4) The Platform. THE PLATFORM IS PROVIDED "AS IS" AND "AS AVAILABLE." THE AGENT PARTIES (AS DEFINED BELOW) DO NOT WARRANT THE ACCURACY OR COMPLETENESS OF THE BORROWER MATERIALS OR THE ADEQUACY OF THE PLATFORM, AND EXPRESSLY DISCLAIM LIABILITY FOR ERRORS IN OR OMISSIONS FROM THE BORROWER MATERIALS. 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 ANY AGENT PARTY IN CONNECTION WITH THE BORROWER MATERIALS OR THE PLATFORM. In no event shall the Administrative Agent or any of its Agent-Related Persons (collectively, the "**Agent Parties**") have any liability to the Borrower, any

Lender, or any other Person for losses, claims, damages, liabilities or expenses of any kind (whether in tort, contract or otherwise) arising out of the Borrower's or the Administrative Agent's transmission of Borrower Materials through the Internet, except to the extent that such losses, claims, damages, liabilities or expenses are determined by a court of competent jurisdiction by a final and non-appealable judgment to have resulted from the gross negligence, bad faith or willful misconduct of such Agent Party; *provided, however*, that in no event shall any Agent Party have any liability to the Borrower, any Lender or any other Person for indirect, special, incidental, consequential or punitive damages (as opposed to direct or actual damages).

(5) Change of Address. Each Loan Party and the Administrative Agent may change its address, facsimile or telephone number for notices and other communications hereunder by written notice to the other parties hereto. Each other Lender may change its address, facsimile or telephone number for notices and other communications hereunder by written notice to the Borrower and the Administrative Agent. In addition, each Lender agrees to notify the Administrative Agent from time to time to ensure that the Administrative Agent has on record (i) an effective address, contact name, telephone number, facsimile number and electronic mail address to which notices and other communications may be sent and (ii) accurate wire instructions for such Lender. Furthermore, 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 Law, including United States Federal and state securities Laws, to make reference to Borrower Materials that are not made available through the "Public Side Information" portion of the Platform and that may contain material non-public information with respect to the Borrower or its securities for purposes of United States Federal or state securities laws.

(6) Reliance by the Administrative Agent. The Administrative Agent and the Lenders shall be entitled to rely and act upon any notices purportedly given by or on behalf of the Borrower even if (i) such notices were not made in a manner specified herein, were incomplete or were not preceded or followed by any other form of notice specified herein, or (ii) the terms thereof, as understood by the recipient, varied from any confirmation thereof. The Borrower shall indemnify the Administrative Agent, each Lender and the Agent-Related Persons of each of them from all losses, costs, expenses and liabilities resulting from the reliance by such Person on each notice purportedly given by or on behalf of the Borrower. All telephonic notices to and other telephonic communications with the Administrative Agent may be recorded by the Administrative Agent, and each of the parties hereto hereby consents to such recording.

Section 10.03 No Waiver; Cumulative Remedies. No failure by any Lender or the Administrative Agent to exercise, and no delay by any such Person in exercising, any right, remedy, power or privilege hereunder or under any other Loan Document shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges herein provided, and provided under each other Loan Document, are cumulative and not exclusive of any rights, remedies, powers and privileges provided by Law.



Notwithstanding anything to the contrary contained herein or in any other Loan Document, the authority to enforce rights and remedies hereunder and under the other Loan Documents against the Loan Parties or any of them shall be vested exclusively in, and all actions and proceedings at law in connection with such enforcement shall be instituted and maintained exclusively by, the Administrative Agent in accordance with Section 8.02 for the benefit of all the Lenders; *provided, however*, that the foregoing shall not prohibit (a) the Administrative Agent from exercising on its own behalf the rights and remedies that inure to its benefit (solely in its capacity as Administrative Agent or Collateral Agent) hereunder and under the other Loan Documents, (b) any Lender from exercising setoff rights in accordance with Section 10.10 (subject to the terms of Section 2.13), or (c) any Lender from filing proofs of claim or appearing and filing pleadings on its own behalf during the pendency of a proceeding relative to any Loan Party under any Debtor Relief Law; and *provided further* that if at any time there is no Person acting as Administrative Agent hereunder and under the other Loan Documents, then (i) the Required Lenders shall have the rights otherwise ascribed to the Administrative Agent pursuant to Section 8.02 and (ii) in addition to the matters set forth in clauses (b) and (c) of the preceding proviso and subject to Section 2.13, any Lender may, with the consent of the Required Lenders, enforce any rights and remedies available to it and as authorized by the Required Lenders.

Section 10.04 Costs and Expenses. The Borrower agrees (a) to pay or reimburse the Administrative Agent for all reasonable and documented out-of-pocket costs and expenses of the Administrative Agent (promptly following a written demand therefor, together with backup documentation supporting such reimbursement request) incurred in connection with the preparation, negotiation, syndication, execution, delivery and administration of this Agreement and the other Loan Documents and any amendment, waiver, consent or other modification of the provisions hereof and thereof (whether or not the transactions contemplated thereby are consummated), and the consummation and administration of the transactions contemplated hereby and thereby, including all Attorney Costs of Milbank LLP and, if necessary, a single local counsel in each relevant material jurisdiction and (b) upon presentation of a summary statement, together with any supporting documentation reasonably requested by the Borrower, to pay or reimburse the Administrative Agent and the other Lenders, taken as a whole, promptly following a written demand therefor for all reasonable and documented out-of-pocket costs and expenses incurred in connection with the enforcement of any rights or remedies under this Agreement or the other Loan Documents (including all such costs and expenses incurred during any legal proceeding, including any proceeding under any Debtor Relief Law, and including all Attorney Costs of one counsel to the Administrative Agent and the Lenders taken as a whole (and, if necessary, one local counsel in any relevant material jurisdiction and solely in the case of a conflict of interest, one additional counsel in each relevant jurisdiction to each group of affected Lenders similarly situated taken as a whole)). The agreements in this Section 10.04 shall survive the termination of the Aggregate Commitments and repayment of all other Obligations. All amounts due under this Section 10.04 shall be paid promptly following receipt by the Borrower of an invoice relating thereto setting forth such expenses in reasonable detail.

Section 10.05 Indemnification by the Borrower. The Borrower shall indemnify and hold harmless the Agents, each other Lender and their respective Related Persons (collectively, the “**Indemnitees**”) from and against any and all losses, claims, damages, liabilities or expenses (including Attorney Costs and Environmental Liabilities) to which any such Indemnitee may become subject arising out of, resulting from or in connection with (but limited, in the case of legal



fees and expenses, to the reasonable and documented out-of-pocket fees, disbursements and other charges of one counsel to all Indemnitees taken as a whole and, if reasonably necessary, a single local counsel for all Indemnitees taken as a whole in each relevant jurisdiction, and solely in the case of a conflict of interest, one additional counsel in each relevant jurisdiction to each group of affected Indemnitees similarly situated taken as a whole) any (i) actual or threatened claim, litigation, investigation, proceeding or Environmental Liabilities relating to the Transactions or (ii) to the execution, delivery, enforcement, performance and administration of this Agreement, the other Loan Documents, the Loans or the use, or proposed use of the proceeds therefrom, whether based on contract, tort or any other theory (including any investigation of, preparation for, or defense of any pending or threatened claim, litigation, investigation or proceeding), and regardless of whether any Indemnitee is a party thereto (all the foregoing, collectively, the “**Indemnified Liabilities**”); *provided* that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or expenses resulted from (x) the gross negligence, bad faith or willful misconduct of such Indemnitee or any of its Related Indemnified Persons as determined by a final, non-appealable judgment of a court of competent jurisdiction, (y) a material breach of any obligations under any Loan Document by such Indemnitee or any of its Related Indemnified Persons as determined by a final, non-appealable judgment of a court of competent jurisdiction or (z) any dispute solely among Indemnitees other than any claims against an Indemnitee in its capacity or in fulfilling its role as an administrative agent or arranger or any similar role under any Loan Document and other than any claims arising out of any act or omission of the Borrower or any of their Affiliates (as determined by a final, non-appealable judgment of a court of competent jurisdiction). To the extent that the undertakings to indemnify and hold harmless set forth in this Section 10.05 may be unenforceable in whole or in part because they are violative of any applicable law or public policy, the Borrower shall contribute the maximum portion that they are permitted to pay and satisfy under applicable law to the payment and satisfaction of all Indemnified Liabilities incurred by the Indemnitees or any of them. No Indemnitee shall be liable for any damages arising from the use by others of any information or other materials obtained through IntraLinks or other similar information transmission systems in connection with this Agreement (except to the extent such damages are found in a final non-appealable judgment of a court of competent jurisdiction to have resulted from the willful misconduct, bad faith or gross negligence of such Indemnitee), nor shall any Indemnitee or any Loan Party have any liability for any special, punitive, indirect or consequential damages relating to this Agreement or any other Loan Document or arising out of its activities in connection herewith or therewith (whether before or after the Closing Date) (other than, in the case of any Loan Party, in respect of any such damages incurred or paid by an Indemnitee to a third party for which such Indemnitee is otherwise entitled to indemnification pursuant to this Section 10.05). In the case of an investigation, litigation or other proceeding to which the indemnity in this Section 10.05 applies, such indemnity shall be effective whether or not such investigation, litigation or proceeding is brought by any Loan Party, its directors, stockholders or creditors or an Indemnitee or any other Person, whether or not any Indemnitee is otherwise a party thereto and whether or not any of the transactions contemplated hereunder or under any of the other Loan Documents is consummated. All amounts due under this Section 10.05 shall be paid within twenty (20) Business Days after written demand therefor. The agreements in this Section 10.05 shall survive the resignation of the Administrative Agent, the replacement of any Lender, the termination of the Aggregate Commitments and the repayment, satisfaction or discharge of all the other Obligations. This Section 10.05 shall not apply to Taxes, except any Taxes that represent losses or damages

arising from any non-Tax claim. Notwithstanding the foregoing, each Indemnitee shall be obligated to refund and return promptly any and all amounts paid by the Borrower under this Section 10.05 to such Indemnitee for any such fees, expenses or damages to the extent such Indemnitee is not entitled to payment of such amounts in accordance with the terms hereof.

Section 10.06 Marshaling; Payments Set Aside. None of the Administrative Agent or any Lender shall be under any obligation to marshal any assets in favor of the Loan Parties or any other party or against or in payment of any or all of the Obligations. To the extent that any payment by or on behalf of the Borrower is made to any Agent or any Lender, or any Agent or any Lender exercises its right of setoff, and such payment or the proceeds of such setoff or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by such Agent or such Lender in its discretion) to be repaid to a trustee, receiver or any other party, in connection with any proceeding under any Debtor Relief Law or otherwise, then (a) to the extent of such recovery, the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such setoff had not occurred, and (b) each Lender severally agrees to pay to the Administrative Agent upon demand its applicable share of any amount so recovered from or repaid by any Agent, plus interest thereon from the date of such demand to the date such payment is made at a rate per annum equal to the applicable Overnight Rate from time to time in effect.

Section 10.07 Successors and Assigns.

(a) The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that neither Holdings nor the Borrower may, except as permitted by Section 7.03, assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the Administrative Agent and each Lender and no Lender may assign or otherwise transfer any of its rights or obligations hereunder (including to existing Lenders and their Affiliates) except (i) to an Eligible Assignee, (ii) by way of participation in accordance with the provisions of Section 10.07(d), or (iii) by way of pledge or assignment of a security interest subject to the restrictions of Section 10.07(f), or (iv) to an SPC in accordance with the provisions of Section 10.07(g) (and any other attempted assignment or transfer by any party hereto (other than the replacement of the Administrative Agent pursuant to Article IX above) shall be null and void). Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants to the extent provided in Section 10.07(d), the Company Advisors (to the extent provided in Sections 9.04 and 9.10) and, to the extent expressly contemplated hereby, Related Persons of each of the Administrative Agent and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) Assignments by Lenders. Any Lender may at any time assign to one or more assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitment and the Loans at the time owing to it); *provided* that any such assignment shall be subject to the following conditions:

(i) Minimum Amounts.

(A) in the case of an assignment of the entire remaining amount of the assigning Lender's Commitment and the Loans at the time owing to it or in the case of an assignment to a Lender, an Affiliate of a Lender or an Approved Fund, no minimum amount need be assigned; and

(B) in any case not described in subsection (b)(i)(A) of this Section 10.07, the aggregate amount of the Commitment or, the principal outstanding balance of the Loans of the assigning Lender subject to each such assignment, determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Administrative Agent shall not be less than \$1.0 million (or an integral multiple of \$1,000,000 in excess thereof), unless either (x) such assignment is to a Lender, an Affiliate of a Lender or an Approved Fund or (y) each of the Administrative Agent and the Borrower otherwise consents; *provided, however*, that concurrent assignments to members of an Assignee Group and concurrent assignments from members of an Assignee Group to a single Eligible Assignee (or to an Eligible Assignee and members of its Assignee Group) will be treated as a single assignment for purposes of determining whether such minimum amount has been met.

(ii) Proportionate Amounts. Each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement with respect to the Loans or the Commitment assigned.

(iii) Required Consents. No consent shall be required for any assignment except to the extent required by Section 10.07(b)(i)(B) and, in addition:

(A) the consent of the Borrower (such consent not to be unreasonably withheld or delayed) shall be required unless (1) an Event of Default has occurred and is continuing at the time of such assignment determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Administrative Agent or (2) in respect of an assignment of all or a portion of the Loans, such assignment is to a Prepetition Lender, an Affiliate of a Prepetition Lender, an entity that is or, upon completion of such assignment, becomes party to the Restructuring Support Agreement, a Lender, an Affiliate of a Lender or an Approved Fund; *provided* that the Borrower shall be deemed to have consented to any assignment of all or a portion of the Term Loans unless it shall have objected thereto by written notice to the Administrative Agent within 15 Business Days after having received notice of a failure to respond to such request for assignment; *provided further* that no consent of the Borrower shall be required for an assignment of all or a portion of the Loans pursuant to Section 10.07(h), (k) or (l);

(B) the consent of the Administrative Agent (such consent not to be unreasonably withheld or delayed) shall be required if such assignment is to a Person that is not a Lender, an Affiliate of a Lender or an Approved Fund with respect to a Lender; *provided* that no consent of the Administrative Agent shall be

required for an assignment (i) of all or a portion of the Loans pursuant to Section 10.07(g), (h) or (l);

(C) [Reserved]; and

(D) [Reserved].

(iv) Assignment and Assumption. The parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Assumption via an electronic settlement system acceptable to the Administrative Agent (or, if previously agreed with the Administrative Agent, manually), and shall pay to the Administrative Agent a processing and recordation fee of \$3,500 (which fee may be waived or reduced in the sole discretion of the Administrative Agent). Other than in the case of assignments pursuant to Section 10.07(l), the Eligible Assignee, if it shall not be a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire and all “know your customer” documentation. Each assignee Lender shall be required to represent in the Assignment and Assumption that it is not a Disqualified Institution or an Affiliate of a Disqualified Institution.

(v) No Assignments to Certain Persons. No such assignment shall be made (A) to the Borrower or any of its Subsidiaries or any Affiliate of the Borrower, (C) to a natural person or (D) to any Disqualified Institution.

This Section 10.07(b) shall not prohibit any Lender from assigning all or a portion of its rights and obligations among separate Facilities on a non-pro rata basis among such Facilities.

In connection with any assignment of rights and obligations of any Defaulting Lender hereunder, no such assignment shall be effective unless and until, in addition to the other conditions thereto set forth herein, the parties to the assignment shall make such additional payments to the Administrative Agent in an aggregate amount sufficient, upon distribution thereof as appropriate (which may be outright payment, purchases by the assignee of participations or sub participations, or other compensating actions, including funding, with the consent of the Borrower and the Administrative Agent, the applicable Pro Rata Share of Loans previously requested but not funded by the Defaulting Lender, to each of which the applicable assignee and assignor hereby irrevocably consent), to (x) pay and satisfy in full all payment liabilities then owed by such Defaulting Lender to the Administrative Agent or any Lender hereunder (and interest accrued thereon) and (y) acquire (and fund as appropriate) its full Pro Rata Share of all Loans in accordance with its Pro Rata Share. Notwithstanding the foregoing, in the event that any assignment of rights and obligations of any Defaulting Lender hereunder shall become effective under applicable Law without compliance with the provisions of this paragraph, then the assignee of such interest shall be deemed to be a Defaulting Lender for all purposes of this Agreement until such compliance occurs.

Subject to acceptance and recording thereof by the Administrative Agent pursuant to clause (c) of this Section 10.07 , from and after the recordation date of each Assignment and Assumption in the Register, other than in connection with an assignment pursuant to Section 10.07(l), (x) the assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned

by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, and (y) the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto but shall continue to be entitled to the benefits of Sections 3.01, 3.04, 3.05, 10.04 and 10.05 with respect to facts and circumstances occurring prior to the effective date of such assignment), but shall in any event continue to be subject to Section 10.09. Upon request, and the surrender by the assigning Lender of its Term Note, the Borrower (at its expense) shall execute and deliver a Term Note to the assignee Lender. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this subsection shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with Section 10.07(d).

(c) The Administrative Agent, acting solely for this purpose as a non-fiduciary agent of the Borrower, shall maintain at one of its offices a copy of each Assignment and Assumption delivered to it, each notice of cancellation of any Loans delivered by the Borrower pursuant to subsections (h) or (l) below, and a register for the recordation of the names and addresses of the Lenders, and the Commitments of, and principal amounts (and related interest amounts) of the Loans, owing to each Lender pursuant to the terms hereof from time to time (the "**Register**"). The entries in the Register shall be conclusive absent manifest error, and the Borrower, the Agents 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. The Register shall be available for inspection by the Borrower, any Agent and, with respect to its own Loans, any Lender, at any reasonable time and from time to time upon reasonable prior written notice. This Section 10.07(3) and Section 2.11 shall be construed so that all 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 and any related Treasury regulations (or any other relevant or successor provisions of the Code or of such Treasury regulations).

(d) Any Lender may at any time, without the consent of, or notice to, the Borrower or the Administrative Agent, sell participations to any Person (other than a natural person, the Borrower or any Affiliate or Subsidiary of the Borrower or a Disqualified Institution) (each, a "**Participant**") in all or a portion of such Lender's rights or obligations under this Agreement (including all or a portion of its Commitment or the Loans owing to it); *provided* 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 and (iii) the Borrower, the Agents and the other Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and the other Loan Documents and to approve any amendment, modification or waiver of any provision of this Agreement or any other Loan Document; *provided* that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, waiver or other modification described in the first proviso to Section 10.01 (other than clauses (d) and (i) thereof) that directly affects such Participant. Subject to

subsection (e) of this Section 10.07, the Borrower agrees that each Participant shall be entitled to the benefits of Sections 3.01 (subject to the requirements of Section 3.01 (including subsections (2), (3) and (4), as applicable as though it were a Lender)), 3.04 and 3.05 (through the applicable Lender) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to subsection (b) of this Section 10.07. To the extent permitted by applicable Law, each Participant also shall be entitled to the benefits of Section 10.10 as though it were a Lender; *provided* that such Participant agrees to be subject to Section 2.13 as though it were a Lender.

(e) Limitations upon Participant Rights. A Participant shall not be entitled to receive any greater payment under Section 3.01, 3.04 or 3.05 than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant, unless the sale of the participation to such Participant is made with the Borrower's prior written consent. Each Lender that sells a participation shall (acting solely for this purpose as a non-fiduciary agent of the Borrower) maintain a register complying with the requirements of Sections 163(f), 871(h) and 881(c)(2) of the Code and the Treasury regulations issued thereunder on which is entered the name and address of each Participant and the principal amounts (and stated interest) of each Participant's interest in the Loans or other obligations under this Agreement (the "**Participant Register**"). The entries in the Participant Register shall be conclusive absent manifest error, and such Lender and the Borrower shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary; *provided* that no Lender shall have the obligation to disclose all or a portion of the Participant Register (including the identity of the Participant or any information relating to a Participant's interest in any commitments, loans, letters of credit or other obligations under any Loan Document) to any Person except to the extent such disclosure is necessary to establish that any such commitments, loans, letters of credit or other obligations are in registered form for U.S. federal income tax purposes. For the avoidance of doubt, the Administrative Agent (in its capacity as Administrative Agent) shall have no responsibility for maintaining a Participant Register.

(f) Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement (including under its Term Note, if any) to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank or any other central bank; *provided* that no such pledge or assignment shall release such Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

(g) Notwithstanding anything to the contrary contained herein, any Lender (a "**Granting Lender**") may grant to a special purpose funding vehicle identified as such in writing from time to time by the Granting Lender to the Administrative Agent and the Borrower (an "**SPC**") the option to provide all or any part of any Loan that such Granting Lender would otherwise be obligated to make pursuant to this Agreement; *provided* that (i) nothing herein shall constitute a commitment by any SPC to fund any Loan, (ii) if an SPC elects not to exercise such option or otherwise fails to make all or any part of such Loan, the Granting Lender shall be obligated to make such Loan pursuant to the terms hereof and (iii) such SPC and the applicable Loan or any applicable part thereof shall be appropriately reflected in the Participant Register. Each party hereto hereby agrees that (i) neither the grant to any SPC nor the exercise



by any SPC of such option shall increase the costs or expenses or otherwise increase or change the obligations of the Borrower under this Agreement (including its obligations under Section 3.01, 3.04 or 3.05), (ii) no SPC shall be liable for any indemnity or similar payment obligation under this Agreement for which a Lender would be liable, and (iii) the Granting Lender shall for all purposes, including the approval of any amendment, waiver or other modification of any provision of any Loan Document, remain the Lender hereunder. The making of a Loan by an SPC hereunder shall utilize the Commitment of the Granting Lender to the same extent, and as if, such Loan were made by such Granting Lender. Notwithstanding anything to the contrary contained herein, any SPC may (i) with notice to, but without prior consent of the Borrower and the Administrative Agent and with the payment of a processing fee of \$3,500 (which processing fee may be waived by the Administrative Agent in its sole discretion), assign all or any portion of its right to receive payment with respect to any Loan to the Granting Lender and (ii) disclose on a confidential basis any non-public information relating to its funding of Loans to any rating agency, commercial paper dealer or provider of any surety or Guarantee or credit or liquidity enhancement to such SPC.

(h) [reserved].

(i) [reserved].

(j) Notwithstanding anything to the contrary contained herein, without the consent of the Borrower or the Administrative Agent, (1) any Lender may in accordance with applicable Law create a security interest in all or any portion of the Loans owing to it and the Term Note, if any, held by it and (2) any Lender that is a Fund may create a security interest in all or any portion of the Loans owing to it and the Term Note, if any, held by it to the trustee for holders of obligations owed, or securities issued, by such Fund as security for such obligations or securities; *provided* that unless and until such trustee actually becomes a Lender in compliance with the other provisions of this Section 10.07, (i) no such pledge shall release the pledging Lender from any of its obligations under the Loan Documents and (ii) such trustee shall not be entitled to exercise any of the rights of a Lender under the Loan Documents even though such trustee may have acquired ownership rights with respect to the pledged interest through foreclosure or otherwise.

(k) Notwithstanding the foregoing, no Disqualified Institution that purports to become a Lender hereunder (notwithstanding the provisions of this Agreement that prohibit Disqualified Institutions from becoming Lenders) shall be entitled to any of the rights or privileges enjoyed by the other Lenders with respect to voting, information and lender meetings. In addition, if any assignment or participation is made to any Disqualified Institution without the Borrower's express prior written consent (which consent shall state expressly that the Borrower acknowledges that the assignee Lender is a Disqualified Institution) in violation of clause (v) of Section 10.07(b), the Borrower may, in addition to any other rights and remedies that it may have against such Disqualified Institution, at its sole expense and effort, upon notice to the applicable Disqualified Institution and the Administrative Agent, (A) in the case of outstanding Term Loans held by Disqualified Institutions, purchase or prepay such Term Loan by paying the lesser of (x) the principal amount thereof and (y) the amount that such Disqualified Institution paid to acquire such Term Loans, in each case plus accrued interest, accrued fees and all other amounts (other than principal amounts) payable to it hereunder and/or



(B) require such Disqualified Institution to assign, without recourse (in accordance with and subject to the restrictions contained in Section 10.07), all of its interest, rights and obligations under this Agreement to one or more Eligible Assignees at the lesser of (x) the principal amount thereof and (y) the amount that such Disqualified Institution paid to acquire such interests, rights and obligations, in each case plus accrued interest, accrued fees and all other amounts (other than principal amounts) payable to it hereunder.

(l) The Administrative Agent shall not be responsible or have any liability for, or have any duty to ascertain, inquire into, monitor or enforce, compliance with the provisions hereof relating to Disqualified Institutions. Without limiting the generality of the foregoing, the Administrative Agent shall not (x) be obligated to ascertain, monitor or inquire as to whether any Lender or Participant or prospective Lender or Participant is a Disqualified Institution or (y) have any liability with respect to or arising out of any assignment or participation of Loans or Commitments, or disclosure of confidential information, to any Disqualified Institution.

Section 10.08 [Reserved].

Section 10.09 Confidentiality. Each of the Agents and the Lenders agrees to maintain the confidentiality of the Information in accordance with its customary procedures (as set forth below), except that Information may be disclosed (a) to its Affiliates and to its and its Affiliates' respective partners, directors, officers, employees, legal counsel, independent auditors, agents, trustees, advisors and representatives (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential, with such Affiliate being responsible for such Person's compliance with this Section 10.09; *provided, however*, that such Agent or Lender, as applicable, shall be principally liable to the extent this Section 10.09 is violated by one or more of its Affiliates or any of its or their respective employees, directors or officers), (b) to the extent requested by any regulatory authority purporting to have jurisdiction over it (including any self-regulatory authority, such as the National Association of Insurance Commissioners); *provided, however*, that each Agent and each Lender agrees to seek confidential treatment with respect to any such disclosure, (c) to the extent required by applicable laws or regulations or by any subpoena or otherwise as required by applicable Law or regulation or as requested by a governmental authority; *provided* that such Agent or such Lender, as applicable, agrees (x) that it will notify the Borrower as soon as practicable in the event of any such disclosure by such Person (except in connection with any request as part of any audit or regulatory examination) unless such notification is prohibited by law, rule or regulation and (y) to seek confidential treatment with respect to any such disclosure, (d) to any other party hereto, (e) subject to an agreement containing provisions at least as restrictive as those of this Section 10.09, to (i) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights or obligations under this Agreement or (ii) with the prior consent of the Borrower, any actual or prospective direct or indirect counterparty (or its advisors) to any swap or derivative transaction relating to the Borrower or any of their Subsidiaries or any of their respective obligations; *provided* that such disclosure shall be made subject to the acknowledgment and acceptance by such prospective Lender, Participant or Eligible Assignee that such Information is being disseminated on a confidential basis (on substantially the terms set forth in this paragraph or as is otherwise reasonably acceptable to the Borrower and the Agents, including as set forth in any confidential information memorandum or other marketing materials) in accordance with the standard syndication process of the Agents or market standards for

dissemination of such type of information which shall in any event require “click through” or other affirmative action on the part of the recipient to access such confidential information, (f) for purposes of establishing a “due diligence” defense, (g) with the consent of the Borrower, (h) to the extent such Information (x) becomes publicly available other than as a result of a breach by any Person of this Section 10.09 or any other confidentiality provision in favor of any Loan Party, (y) becomes available to any Agent, any Lender or any of their respective Affiliates on a nonconfidential basis from a source other than the Borrower or any Subsidiary thereof, and which source is not known by such Agent, such Lender or the applicable Affiliate to be subject to a confidentiality restriction in respect thereof in favor of the Borrower or any Affiliate of the Borrower or (z) is independently developed by the Agents, the Lenders or their respective Affiliates, in each case, so long as not based on information obtained in a manner that would otherwise violate this Section 10.09 or (i) in order to enforce its respective rights under any Loan Document in any action or proceeding.

For purposes of this Section 10.09, “**Information**” means all information received from any Loan Party or any Subsidiary thereof relating to any Loan Party or any Subsidiary or Affiliate thereof or their respective businesses, other than any such information that is available to any Agent or any Lender on a nonconfidential basis prior to disclosure by any Loan Party or any Subsidiary thereof; it being understood that all information received from the Borrower or any Subsidiary or Affiliate thereof after the date hereof shall be deemed confidential unless such information is clearly identified at the time of delivery as not being confidential. Any Person required to maintain the confidentiality of Information as provided in this Section 10.09 shall be considered to have complied with its obligation to do so in accordance with its customary procedures if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information.

Each Agent and each Lender acknowledges that (a) the Information may include trade secrets, protected confidential information, or material non-public information concerning the Borrower or a Subsidiary, as the case may be, (b) it has developed compliance procedures regarding the use of such information and (c) it will handle such information in accordance with applicable Law, including United States Federal and state securities Laws and to preserve its trade secret or confidential character.

The respective obligations of the Agents and the Lenders under this Section 10.09 shall survive, to the extent applicable to such Person, (x) the payment in full of the Obligations and the termination of this Agreement, (y) any assignment of its rights and obligations under this Agreement and (z) the resignation or removal of any Agent.

Section 10.10 Setoff. Subject to the terms of the Bankruptcy Court DIP Order and the Carve Out, if an Event of Default shall have occurred and be continuing, each Lender is hereby authorized at any time and from time to time, after obtaining the prior written consent of the Administrative Agent, to the fullest extent permitted by applicable law, to set off and apply any and all deposits (general or special, time or demand, provisional or final, in whatever currency) at any time held and other obligations (in whatever currency) at any time owing by such Lender to or for the credit or the account of any Loan Party against any and all of the obligations of such Loan Party then due and payable under this Agreement or any other Loan Document to such Lender, irrespective of whether or not such Lender shall have made any demand under this

Agreement or any other Loan Document; *provided* that in the event that any Defaulting Lender shall exercise any such right of setoff, (x) all amounts so set off shall be paid over immediately to the Administrative Agent for further application in accordance with the provisions of Section 2.17 and, pending such payment, shall be segregated by such Defaulting Lender from its other funds and deemed held in trust for the benefit of the Administrative Agent, and the Lenders, and (y) the Defaulting Lender shall provide promptly to the Administrative Agent a statement describing in reasonable detail the Obligations owing to such Defaulting Lender as to which it exercised such right of setoff. The rights of each Lender under this Section 10.10 are in addition to other rights and remedies (including other rights of setoff) that such Lender may have. Each Lender agrees to notify the Borrower and the Administrative Agent promptly after any such setoff and application, *provided* that the failure to give such notice shall not affect the validity of such setoff and application.

Section 10.11 Interest Rate Limitation. Notwithstanding anything to the contrary contained in any Loan Document, the interest paid or agreed to be paid under the Loan Documents shall not exceed the maximum rate of non-usurious interest permitted by applicable Law (the “**Maximum Rate**”). If any Agent or any Lender shall receive interest in an amount that exceeds the Maximum Rate, the excess interest shall be applied to the principal of the Loans or, if it exceeds such unpaid principal, refunded to the Borrower. In determining whether the interest contracted for, charged, or received by an Agent or a Lender exceeds the Maximum Rate, such Person may, to the extent permitted by applicable Law, (a) characterize any payment that is not principal as an expense, fee, or premium rather than interest, (b) exclude voluntary prepayments and the effects thereof, and (c) amortize, prorate, allocate, and spread in equal or unequal parts the total amount of interest throughout the contemplated term of the Obligations hereunder.

Section 10.12 Counterparts; Integration; Effectiveness. This Agreement may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement and the other Loan Documents constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Except as provided in Section 4.01, this Agreement shall become effective when it shall have been executed by the Administrative Agent and when the Administrative Agent shall have received counterparts hereof that, when taken together, bear the signatures of each of the other parties hereto. Delivery of an executed counterpart of a signature page of this Agreement by facsimile or other electronic imaging (including in .pdf format) means shall be effective as delivery of a manually executed counterpart of this Agreement.

Section 10.13 Electronic Execution of Assignments and Certain Other Documents. The words “execution,” “signed,” “signature,” and words of like import in any Assignment and Assumption, any Loan Document or in any amendment or other modification hereof or thereof (including waivers and consents) shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act.

Section 10.14 Survival of Representations and Warranties. Subject to Section 1.02(9), all representations and warranties made hereunder and in any other Loan Document or other document delivered pursuant hereto or thereto or in connection herewith or therewith shall survive the execution and delivery hereof and thereof. Such representations and warranties have been or will be relied upon by the Administrative Agent and each Lender, regardless of any investigation made by the Administrative Agent or any Lender or on their behalf and notwithstanding that the Administrative Agent or any Lender may have had notice or knowledge of any Default at the time of any Term Borrowing, and shall continue in full force and effect as long as any Loan or any other Obligation hereunder shall remain unpaid or unsatisfied.

Section 10.15 Severability. If any provision of this Agreement or the other Loan Documents is held to be illegal, invalid or unenforceable, (a) the legality, validity and enforceability of the remaining provisions of this Agreement and the other Loan Documents shall not be affected or impaired thereby and (b) the parties shall endeavor in good faith negotiations to replace the illegal, invalid or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the illegal, invalid or unenforceable provisions. The invalidity of a provision in a particular jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

Section 10.16 GOVERNING LAW.

(a) THIS AGREEMENT AND EACH OTHER LOAN DOCUMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK, WITHOUT REGARD TO CONFLICT OF LAWS PRINCIPLES THEREOF THAT WOULD RESULT IN THE APPLICATION OF ANY LAW OTHER THAN THE LAW OF THE STATE OF NEW YORK.

**(b) SUBJECT TO CLAUSE (E) OF THE FOLLOWING SENTENCE, ALL JUDICIAL PROCEEDINGS BROUGHT AGAINST ANY PARTY ARISING OUT OF OR RELATING HERETO OR ANY OTHER LOAN DOCUMENTS, OR ANY OF THE OBLIGATIONS, SHALL BE BROUGHT IN THE BANKRUPTCY COURT, OR IF THE BANKRUPTCY COURT DOES NOT HAVE (OR ABSTAINS FROM) JURISDICTION, ANY FEDERAL COURT OF THE UNITED STATES OF AMERICA SITTING IN THE BOROUGH OF MANHATTAN OR, IF THAT COURT DOES NOT HAVE SUBJECT MATTER JURISDICTION, IN ANY STATE COURT LOCATED IN THE CITY AND COUNTY OF NEW YORK. BY EXECUTING AND DELIVERING THIS AGREEMENT, EACH LOAN PARTY, FOR ITSELF AND IN CONNECTION WITH ITS PROPERTIES, IRREVOCABLY (A) ACCEPTS GENERALLY AND UNCONDITIONALLY THE EXCLUSIVE JURISDICTION AND VENUE OF SUCH COURTS (OTHER THAN WITH RESPECT TO ACTIONS BY ANY AGENT IN RESPECT OF RIGHTS UNDER ANY COLLATERAL DOCUMENTS GOVERNED BY LAWS OTHER THAN THE LAWS OF THE STATE OF NEW YORK OR WITH RESPECT TO ANY COLLATERAL SUBJECT THERETO); (B) WAIVES ANY DEFENSE OF FORUM NON CONVENIENS; (C) AGREES THAT SERVICE OF ALL PROCESS IN ANY SUCH PROCEEDING IN ANY SUCH COURT MAY BE MADE BY REGISTERED OR CERTIFIED MAIL, RETURN RECEIPT REQUESTED, TO THE**

**APPLICABLE LOAN PARTY AT ITS ADDRESS PROVIDED IN ACCORDANCE WITH SECTION 10.1; (D) AGREES THAT SERVICE AS PROVIDED IN CLAUSE (C) ABOVE IS SUFFICIENT TO CONFER PERSONAL JURISDICTION OVER THE APPLICABLE LOAN PARTY IN ANY SUCH PROCEEDING IN ANY SUCH COURT, AND OTHERWISE CONSTITUTES EFFECTIVE AND BINDING SERVICE IN EVERY RESPECT; AND (E) AGREES THAT AGENTS AND LENDERS RETAIN THE RIGHT TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY LAW OR TO BRING PROCEEDINGS AGAINST ANY LOAN PARTY IN THE COURTS OF ANY OTHER JURISDICTION IN CONNECTION WITH THE EXERCISE OF ANY RIGHTS UNDER ANY COLLATERAL DOCUMENT OR THE ENFORCEMENT OF ANY JUDGMENT.**

(c) THE BORROWER, HOLDINGS, THE ADMINISTRATIVE AGENT AND EACH LENDER EACH IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT IN ANY COURT REFERRED TO IN PARAGRAPH (b) OF THIS SECTION 10.16. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING IN ANY SUCH COURT.

Section 10.17 WAIVER OF RIGHT TO TRIAL BY JURY. EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 10.17.

Section 10.18 Binding Effect. This Agreement shall become effective when it shall have been executed by the Borrower, Holdings and the Administrative Agent and the Administrative Agent shall have been notified by each Lender that each such Lender has executed it and thereafter shall be binding upon and inure to the benefit of the Borrower, each Agent and each Lender and their respective successors and assigns.

Section 10.19 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 under any of the Loan Documents or the Secured Hedge Agreements (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, without the prior written consent of the Administrative Agent. The provision of this Section 10.19 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 10.20 Use of Name, Logo, etc. Each Loan Party consents to the publication in the ordinary course by Administrative Agent of customary advertising material relating to the financing transactions contemplated by this Agreement using such Loan Party's name, product photographs, logo or trademark. Such consent shall remain effective until revoked by such Loan Party in writing to the Administrative Agent.

Section 10.21 USA PATRIOT Act. Each Lender that is subject to the USA PATRIOT Act 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, it is required to obtain, verify and record information that identifies each Loan Party, which information includes the name and address of each Loan Party and other information that will allow such Lender or the Administrative Agent, as applicable, to identify each Loan Party in accordance with the USA PATRIOT Act. The Borrower shall, promptly following a request by the Administrative Agent or any Lender, provide all documentation and other information that the Administrative Agent or 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.

Section 10.22 Service of Process. EACH PARTY HERETO IRREVOCABLY CONSENTS TO SERVICE OF PROCESS IN THE MANNER PROVIDED FOR NOTICES IN SECTION 10.02. NOTHING IN THIS AGREEMENT WILL AFFECT THE RIGHT OF ANY PARTY HERETO TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY APPLICABLE LAW.

Section 10.23 No Advisory or Fiduciary Responsibility. In connection with all aspects of each transaction contemplated hereby (including in connection with any amendment, waiver or other modification hereof or of any other Loan Document), the Borrower acknowledges and agrees that (i) (A) the arranging and other services regarding this Agreement provided by the Agents and the Lenders are arm's-length commercial transactions between the Borrower and its Affiliates, on the one hand, and the Administrative Agents and the Lenders, on the other hand, (B) the Borrower has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate, and (C) the Borrower is capable of evaluating, and understands and accepts, the terms, risks and conditions of the transactions contemplated hereby and by the other Loan Documents; (ii) (A) each Agent and Lender is and has been acting solely as a principal and, except as expressly agreed in writing by the relevant parties, has not been, is not, and will not be acting as an advisor, agent or fiduciary for the Borrower or any of its Affiliates, or any other Person and (B) none of the Agents nor any Lender has any obligation to the Borrower or any of its Affiliates with respect to the transactions contemplated hereby except those obligations expressly set forth herein and in the other Loan Documents; and (iii) the Agents, the Lenders and their respective Affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Borrower and its Affiliates, and none of the Agents nor any Lender has any obligation to disclose

any of such interests to the Borrower or any of its Affiliates. To the fullest extent permitted by law, the Borrower hereby waives and releases any claims that it may have against the Agents or any Lender with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transaction contemplated hereby.

Section 10.24 Release of Collateral and Guarantee Obligations; Subordination of Liens.

(a) Subject to entry of the Interim DIP Order, the Lenders hereby irrevocably agree that the Liens granted to the Collateral Agent by the Loan Parties on any Collateral shall be automatically released (i) in full, as set forth in clause (b) below, (ii) upon the sale or other transfer of such Collateral (including as part of or in connection with any other sale or other transfer permitted hereunder) to any Person other than another Loan Party, to the extent such sale, transfer or other disposition is made in compliance with the terms of this Agreement (and the Collateral Agent may rely conclusively on a certificate to that effect provided to it by any Loan Party upon its reasonable request without further inquiry), (iii) to the extent such Collateral is comprised of property leased to a Loan Party by a Person that is not a Loan Party, upon termination or expiration of such lease, (iv) if the release of such Lien is approved, authorized or ratified in writing by the Required Lenders (or such other percentage of the Lenders whose consent may be required in accordance with Section 10.01), (v) to the extent the property constituting such Collateral is owned by any Guarantor, upon the release of such Guarantor from its obligations under the Guaranty (in accordance with the second succeeding sentence), (vi) as required by the Collateral Agent to effect any sale, transfer or other disposition of Collateral in connection with any exercise of remedies of the Collateral Agent pursuant to the Collateral Documents and (vii) to the extent such Collateral otherwise becomes Excluded Assets. Any such release shall not in any manner discharge, affect, or impair the Obligations or any Liens (other than those being released) upon (or obligations (other than those being released) of the Loan Parties in respect of) all interests retained by the Loan Parties, including the proceeds of any sale, all of which shall continue to constitute part of the Collateral except to the extent otherwise released in accordance with the provisions of the Loan Documents. Additionally, the Lenders hereby irrevocably agree that the Guarantors shall be released from the Guaranties upon consummation of any transaction permitted hereunder resulting in such Subsidiary ceasing to constitute a Restricted Subsidiary, or otherwise becoming an Excluded Subsidiary. The Lenders hereby authorize the Administrative Agent and the Collateral Agent, as applicable, to execute and deliver any instruments, documents, and agreements necessary or desirable to evidence and confirm the release of any Guarantor or Collateral pursuant to the foregoing provisions of this paragraph, all without the further consent or joinder of any Lender. Any representation, warranty or covenant contained in any Loan Document relating to any such released Collateral or Guarantor shall no longer be deemed to be repeated.

(b) Notwithstanding anything to the contrary contained herein or any other Loan Document, when all Obligations (other than (i) Hedging Obligations in respect of any Secured Hedge Agreements, (ii) Cash Management Obligations in respect of any Secured Cash Management Agreements and (iii) any contingent obligations not then due) have been paid in full and all Commitments have terminated, upon request of the Borrower, the Administrative Agent or Collateral Agent, as applicable, shall (without notice to, or vote or consent of, any Secured Party) take such actions as shall be required to release its security interest in all



Collateral, and to release all obligations under any Loan Document, whether or not on the date of such release there may be any (i) Hedging Obligations in respect of any Secured Hedge Agreements, (ii) Cash Management Obligations in respect of any Secured Cash Management Agreements and (iii) any contingent obligations not then due. Any such release of Obligations shall be deemed subject to the provision that such Obligations shall be reinstated if after such release any portion of any payment in respect of the Obligations guaranteed thereby shall be rescinded or must otherwise be restored or returned upon the insolvency, bankruptcy, dissolution, liquidation or reorganization of the Borrower or any Guarantor, or upon or as a result of the appointment of a receiver, intervenor or conservator of, or trustee or similar officer for, the Borrower or any Guarantor or any substantial part of its property, or otherwise, all as though such payment had not been made.

(c) Notwithstanding anything to the contrary contained herein or in any other Loan Document, upon request of the Borrower in connection with any Permitted Lien specified in clause (7) of the definition thereof securing obligations in respect of Indebtedness, Disqualified Stock or Preferred Stock permitted to be incurred pursuant to clause (4) of Section 7.02(b) in any Collateral, the Administrative Agent or Collateral Agent, as applicable, shall (without notice to, or vote or consent of, any Secured Party) take such actions as shall be required to subordinate the Lien on any Collateral to any such Permitted Lien to be senior to the Liens in favor of the Collateral Agent.

(d) Notwithstanding the foregoing or anything in the Loan Documents to the contrary, at the direction of the Required Lenders, the Administrative Agent may, in exercising remedies, take any and all necessary and appropriate action to effectuate a credit bid of all Loans (or any lesser amount thereof) for the Borrower's assets in a bankruptcy, foreclosure or other similar proceeding, forbear from exercising remedies upon an Event of Default, or in a bankruptcy proceeding, enter into a settlement agreement on behalf of all Lenders.

(e) Subject to entry of the Interim DIP Order, the Loan Parties will provide customary releases for any claims, demands, liabilities, disputes, remedies, causes of action, indebtedness or obligations related to or arising out of the Term Loans.

Section 10.25 [Reserved].

Section 10.26 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 the 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 the Borrower in respect of any such sum due from it to the Administrative Agent or the Lenders 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 the Administrative Agent of any sum adjudged to be so due in the Judgment Currency, the 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 to the

Administrative Agent from the Borrower in the Agreement Currency, the Borrower agrees, as a separate obligation and notwithstanding any such judgment, to indemnify the Administrative Agent or the Person to whom such obligation was owing against such loss. If the amount of the Agreement Currency so purchased is greater than the sum originally due to the Administrative Agent in such currency, the Administrative Agent agrees to return the amount of any excess to the Borrower (or to any other Person who may be entitled thereto under applicable Law).

Section 10.27 Acknowledgement and Consent to Bail-In of EEA 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 EEA 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 an EEA Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

(1) the application of any Write-Down and Conversion Powers by an EEA Resolution Authority to any such liabilities arising hereunder which may be payable to it by any party hereto that is an EEA Financial Institution; and

(2) the effects of any Bail-In Action on any such liability, including, if applicable:

(a) a reduction in full or in part or cancellation of any such liability;

(b) a conversion of all or a portion of such liability into shares or other instruments of ownership in such EEA Financial Institution, its parent undertaking, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Loan Document; or

(c) the variation of the terms of such liability in connection with the exercise of the write-down and conversion powers of any EEA Resolution Authority.

Section 10.28 Priority and Liens Applicable to Loan Parties.

(a) Upon entry of the Interim DIP Order or Final DIP Order and subject to the terms thereof, as the case may be, the Obligations, Liens and security interests in favor of the Administrative Agent shall, subject in all respects to the Carve Out and the Carve Out Reserve, at all times:

(i) pursuant to Bankruptcy Code Sections 364(c)(1), all of the Obligations shall constitute allowed superpriority administrative expense claims (“**DIP Superpriority Claims**”), which DIP Superpriority Claims in respect of the Loans shall rank pari passu with each other and superior to all other claims, subject and subordinate to, solely with respect to the Prepetition ABL Collateral, the Prepetition ABL Obligations and the ABL Adequate Protection Claims;

(ii) pursuant to Bankruptcy Code Section 364(c)(2) with respect to all other “DIP Collateral” (as defined in the Bankruptcy Court DIP Order) that was not otherwise subject to valid, perfected, enforceability and unavoidable liens on the Petition Date;

(iii) pursuant to Bankruptcy Code Section 364(c)(2), a Lien on and security interest in the proceeds of real property leases and proceeds of all claims and causes of action arising under sections 502(d), 542, 544, 545, 547, 548, 549, 550, 551, 553(b), or 724(a) of the Bankruptcy Code or any other avoidance actions under the Bankruptcy Code or applicable federal and/or state-law equivalents (the “**Avoidance Actions**”);

(iv) pursuant to Bankruptcy Code Section 364(d)(1), a first priority priming Lien on and security interest in (the “**Priming Liens**”) all now owned or hereafter acquired assets of the Loan Parties encumbered by a first priority lien under the Prepetition First Lien Loan Documents not otherwise described in clauses (i) through (v) above (now or hereafter acquired and all proceeds thereof) that were subject to a lien as of the Petition Date;

(v) pursuant to Section 364(c)(3) of the Bankruptcy Code, be secured by a perfected lien on all now owned or after acquired assets of the Loan Parties that are subject to liens permitted by the Prepetition Debt Documents, in each case that are (a) valid, perfected and non-avoidable liens in existence on the Petition Date, or (b) valid liens in existence on the Petition Date that are perfected subsequent to the Petition Date by Section 546(b) of the Bankruptcy Code (in the case of the Prepetition ABL Loan Documents, the “**Permitted Prior ABL Liens**”, in the case of the Prepetition First Lien Loan Documents, the “**Permitted Prior First Lien Liens**”, and in the case of the Prepetition Second Lien Loan Documents, the “**Permitted Prior Second Lien Liens**”, collectively, the “**Permitted Prior Liens**”), which lien shall be (x) immediately junior and subordinate to the Permitted Prior ABL Liens on the Prepetition ABL Priority Collateral, but (y) (i) senior to the Prepetition First Lien Liens on all Prepetition Term Priority Collateral subject to such Permitted Prior First Lien Liens, (ii) senior to the Prepetition Second Lien Liens on all Prepetition Term Priority Collateral subject to such Permitted Prior Second Lien Liens, and (iii) junior to the ABL Adequate Protection Liens and the Prepetition ABL Liens on all Prepetition ABL Priority Collateral but senior to the Prepetition First Lien Liens and Prepetition Second Lien Liens on all Prepetition ABL Priority Collateral subject to such Permitted Prior ABL Liens;

(vi) pursuant to Section 364(d)(1) of the Bankruptcy Code, be secured by a perfected first priority priming lien on all now owned or after acquired assets of the Loan Parties of the same nature, scope, and type as the Prepetition ABL Priority Collateral, which security interest and lien shall prime the Prepetition First Lien Liens and Prepetition Second Lien Liens on the Prepetition ABL Priority Collateral, subject and subordinate to, solely with respect to the Prepetition ABL Priority Collateral, the Prepetition ABL Liens, Permitted Prior ABL Liens, and ABL Adequate Protection Liens.

(b) The Priming Liens shall prime all of the Liens securing the Prepetition First Lien Obligations with respect to the Loan Documents, but the Liens so created as described in clauses (a)(ii), (a)(v), and (a)(vi) above shall be subject to “Permitted Liens” (as such term is

defined under the Prepetition First Lien Credit Agreement), the Carve Out, and the Carve Out Reserve in all respects.

(c) The Liens to be granted by the Bankruptcy Court shall cover all property of the Loan Parties (now or hereafter acquired and all proceeds thereof), including property or assets that do not secure the Prepetition Facilities, provided, that, subject to the entry of the Final DIP Order, the Liens shall not cover proceeds of the Avoidance Actions.

(d) All of the liens described herein with respect to the assets of the Loan Parties shall be effective and perfected as of the Interim DIP Order Entry Date and without the necessity of the execution or filing of mortgages, security agreements, pledge agreements, financing statements or other agreements.

**[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK.]**

**DIP LENDERS:**

ALL SIGNATURE PAGES FOR DIP LENDERS  
ARE ON FILE WITH THE DIP AGENT AND THE  
BORROWER

[Signature Page to DIP Credit Agreement]

**Schedule 1**

**Approved Budget**





United States Bankruptcy Court  
Southern District of Texas

In re:  
Nielsen & Bainbridge, LLC  
Official Committee Of Unsecured Creditor  
Debtors

Case No. 23-90071-drj  
Chapter 11

**CERTIFICATE OF NOTICE**

District/off: 0541-4  
Date Rcvd: Mar 06, 2023

User: ADIuser  
Form ID: pdf002

Page 1 of 4  
Total Noticed: 17

The following symbols are used throughout this certificate:

Symbol	Definition
+	Addresses marked '+' were corrected by inserting the ZIP, adding the last four digits to complete the zip +4, or replacing an incorrect ZIP. USPS regulations require that automation-compatible mail display the correct ZIP.

**Notice by first class mail was sent to the following persons/entities by the Bankruptcy Noticing Center on Mar 08, 2023:**

Recip ID	Recipient Name and Address
db	+ Cheyenne Products LLC, 12303 Technology Boulevard, Suite 950, Austin, TX 78727-6139
db	+ Design Solutions International, Inc., 12303 Technology Boulevard, Suite 950, Austin, TX 78727-6139
db	+ Dwell & Decor Outdoor LLC, 12303 Technolgy Boulevard, Suite 950, Austin, TX 78727-6139
db	+ Dwelling & Decor LLC, 12303 Technology Boulevard, Suite 950, Austin, TX 78727-6139
db	+ Home Decor Holding Company, 12303 Technology Boulevard, Suite 950, Austin, TX 78727-6139
db	+ Jimco Lamp & Manufacturing Company, 12303 Technology Boulevard, Suite 950, Austin, TX 78727-6139
db	+ KNB Holdings Corporation, 12303 Technology Boulevard, Suite 950, Austin, TX 78727-6139
db	+ N&B Industries, Inc., 12303 Technology Boulevard, Suite 950, Austin, TX 78727-6139
db	+ NBG Intermediate Holdings Inc., 12303 Technology Boulevard, Suite 950, Austin, TX 78727-6139
db	+ NBG Propco LLC, 12303 Technology Boulevard, Suite 950, Austin, TX 78727-6139
db	+ NBG Topco Holdings Inc., 12303 Technology Boulevard, Suite 950, Austin, TX 78727-6139
db	+ Nielsen & Bainbridge, LLC, 12303 Technology Boulevard, Suite 950, Austin, TX 78727-6139
db	+ Patton Picture Company, 12303 Technology Boulevard, Suite 950, Austin, TX 78727-6139
db	+ Quoizel, LLC, 12303 Technology Boulevard, Suite 950, Austin, TX 78727-6139
cr	+ WELLS FARGO BANK, NATIONAL ASSOCIATION, c/o Morgan, Lewis & Bockius LLP, One Federal Street, Boston, MA 02110-2012
cr	+ Waste Management, Inc., c/o Chamberlain Hrdlicka, ATTN: Bankruptcy Department, 1200 Smith Street, Suite 1400, Houston, TX 77002-4496
cr	+ Williamson County, Texas, c/o Julie Anne Parsons, P.O. Box 1269, Round Rock, TX 78680-1269

TOTAL: 17

**Notice by electronic transmission was sent to the following persons/entities by the Bankruptcy Noticing Center.**  
Electronic transmission includes sending notices via email (Email/text and Email/PDF), and electronic data interchange (EDI).

NONE

**BYPASSED RECIPIENTS**

The following addresses were not sent this bankruptcy notice due to an undeliverable address, \*duplicate of an address listed above, \*P duplicate of a preferred address, or ## out of date forwarding orders with USPS.

Recip ID	Bypass Reason	Name and Address
intp		Black Diamond Capital Management, LLC
cr		Initial Plan Sponsors and DIP Lenders
cr		Official Committee Of Unsecured Creditors
cr		Pension Benefit Guaranty Corporation
cr		TOYOTA INDUSTRIES COMMERCIAL FINANCE INC.

TOTAL: 5 Undeliverable, 0 Duplicate, 0 Out of date forwarding address

**NOTICE CERTIFICATION**

**I, Gustava Winters, declare under the penalty of perjury that I have sent the attached document to the above listed entities in the manner shown, and prepared the Certificate of Notice and that it is true and correct to the best of my information and belief.**

**Meeting of Creditor Notices only (Official Form 309): Pursuant to Fed .R. Bank. P.2002(a)(1), a notice containing the complete Social Security Number (SSN) of the debtor(s) was furnished to all parties listed. This official court copy contains**

District/off: 0541-4  
Date Rcvd: Mar 06, 2023

User: ADIuser  
Form ID: pdf002

Page 2 of 4  
Total Noticed: 17

**the redacted SSN as required by the bankruptcy rules and the Judiciary's privacy policies.**

Date: Mar 08, 2023

Signature: /s/Gustava Winters

## CM/ECF NOTICE OF ELECTRONIC FILING

The following persons/entities were sent notice through the court's CM/ECF electronic mail (Email) system on March 6, 2023 at the address(es) listed below:

Name	Email Address
Ha Minh Nguyen	on behalf of U.S. Trustee US Trustee ha.nguyen@usdoj.gov
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Jiangang Ou	on behalf of Creditor Committee Official Committee Of Unsecured Creditors jou@archerlaw.com
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Page 3 of 4  
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Page 4 of 4  
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