

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

In re:	)	
	)	Chapter 11
	)	
MOSAIC SUSTAINABLE FINANCE	)	Case No. 25-90156 (CML)
CORPORATION, <i>et al.</i> , ¹	)	
	)	(Joint Administration Requested)
Debtors.	)	(Emergency Hearing Requested)
	)	
	)	

**DEBTORS' EMERGENCY MOTION SEEKING
ENTRY OF INTERIM AND FINAL ORDERS
(I) AUTHORIZING DEBTORS TO (A) OBTAIN POSTPETITION
FINANCING AND (B) UTILIZE CASH COLLATERAL, (II) GRANTING
LIENS AND SUPERPRIORITY ADMINISTRATIVE EXPENSE CLAIMS,
(III) MODIFYING AUTOMATIC STAY, AND (IV) GRANTING RELATED RELIEF**

Emergency relief has been requested. Relief is requested not later than 2:30 p.m. (prevailing Central Time) on June, 9 2025.

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

A hearing will be conducted on this matter on June, 9 2025 at 2:30 p.m. (prevailing Central Time) in Courtroom 401, 4th floor, Bob Casey United States Courthouse, 515 Rusk Avenue, Houston, Texas 77002.

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

Audio communication will be by use of the Court's dial-in facility. You may access the facility at 832-917-1510. Once connected, you will be asked to enter the conference room number. Judge Lopez's conference room number is 590153. Video communication will be by use of the GoToMeeting platform. Connect via the free GoToMeeting application or click the link on Judge's

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are as follows: Mosaic Sustainable Finance Corporation (6802); Solar Mosaic LLC (3655); Modern Home LLC (4998); and SMCTX LLC (6303). The service address for each of the above Debtors is 601 12th Street, Suite 325, Oakland, California 94607.

home page. The meeting code is “JudgeLopez”. Click the settings icon in the upper right corner and enter your name under the personal information setting.

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

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

RELIEF REQUESTED

1. The Debtors seek entry of an interim order, substantially in the form attached hereto as **Exhibit A** (the “Interim Order”),² and a final order (the “Final Order” and, together with the Interim Order, the “DIP Orders”):

(a) Debtors to obtain postpetition financing on a superpriority priming senior secured basis on the terms and conditions set forth in the Interim Order and that certain *Debtor-In-Possession Credit Agreement* (as it may be amended, modified, supplemented, extended, restated or replaced from time to time, the “DIP Credit Agreement”, and together with any other agreements, instruments, and documents related thereto or in connection therewith, in each case in form and substance satisfactory to the Required DIP Lenders³, the “DIP Documents”), dated as of June 6, 2025, substantially in the form as filed with this Court and attached as **Exhibit A** hereto, by and among the Debtors, Forbright Bank (f/k/a Congressional Bank)⁴ (“Forbright”), in its capacity as agent (in such capacity, “DIP Agent”) and the financial institutions from time to time party thereto, as lenders (collectively, the “DIP Lenders” and together with the DIP Agent, the “DIP Secured Parties”), and comprised of:

(i) subject the entry of the Interim Order, a “new money” first-out delayed draw term loan facility in an aggregate principal amount of up to \$15,000,000.00 in aggregate postpetition financing plus applicable fees and premiums (the “New Money DIP Term Loan Facility”; the

² Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Interim Order, the DIP Credit Agreement (as defined herein) or the First Day Declaration (as defined herein), as applicable.

³ “Required DIP Lenders” as used herein, shall have the same meaning as “Required Lenders” under the DIP Credit Agreement.

⁴ Pursuant to the Articles of Amendment of the Articles of Incorporation of Congressional Bank dated as of January 19, 2022, the name of Congressional Bank was formally changed to Forbright Bank, effective as of January 19, 2022.

commitments thereunder, the “New Money DIP Commitments”, and the term loans extended thereunder, the “New Money DIP Term Loans”) pursuant to which (A) \$6,000,000.00 of New Money DIP Term Loans (the “Interim Amount”) shall be borrowed in a single borrowing on the Closing Date (as defined in the DIP Credit Agreement) pursuant to the Interim Order and (B) an aggregate principal amount not to exceed \$9,000,000.00, plus applicable fees and premiums, as set forth in the Approved Budget (as defined below) shall be borrowed in a single borrowing on or after the entry of the Final Order; and

(ii) subject to the entry of to the entry of the Final Order, the conversion of up to \$30,000,000.00 of the Prepetition Obligations (together with accrued and unpaid interest thereon) held by the DIP Lenders (or any of their respective designated Approved Funds (as defined in the DIP Credit Agreement)) into a second-out tranche term loan facility (the “Second Out DIP Term Loan Facility”, and together with the New Money DIP Term Loan Facility, the “DIP Facility”, and such conversion into the same, the “Second Out Roll Up”, and such converted amounts, the “Second Out DIP Term Loans”, and together with the New Money DIP Term Loans, the “DIP Loans”, and together with all other Obligations under and as defined in the DIP Credit Agreement, the “DIP Obligations”), which shall be deemed “rolled up” on a cashless basis of \$2.00 of Second Out DIP Term Loans for every \$1.00 of principal amount of New Money DIP Term Loans (i.e., \$30,000,000), based upon such DIP Term Lender’s (or any of its designated Approved Funds) *pro rata* allocation of the New Money DIP Term Loans, and shall automatically be deemed to be substituted and exchanged for, and shall be deemed to be, Second Out DIP Term Loans for all purposes hereunder as if originally funded on the Closing Date; provided, however, that if any DIP Lender’s *pro rata* share of the Second Out Roll Up exceeds the total amount of Prepetition Obligations held by such DIP Lender as of the Closing Date, such DIP Lender’s share of Second Out DIP Loans shall be reduced in an amount, and to such an extent, to ensure that the maximum amount of Second Out Roll Up of such DIP Lender shall be no greater than such DIP Lenders’ Prepetition Obligations, and the total amount of Second Out DIP Loans shall be reduced accordingly;

(b) granting the DIP Secured Parties allowed superpriority administrative expense claim status in each of the Chapter 11 Cases and any Successor Cases (as defined below), subject only to the Carve-Out and Prepetition Permitted Liens (each as defined below);

(c) subject to the terms of the Interim Order, granting to the DIP Agent (on behalf of the DIP Lenders) automatically perfected security interests in and priming liens on all of the DIP Collateral (as defined below), including, without limitation, all Cash Collateral (defined below);

(d) authorization for the Debtors' use of proceeds of the DIP Facility and Cash Collateral to: (i) provide financing for working capital and other general corporate purposes, including for (x) bankruptcy-related costs and expenses and (y) the Debtors' operations to the extent provided in, and in accordance with, the Approved Budget (as defined below), the Interim Order, and the DIP Documents; (ii) make permitted adequate protection payments as specified below; (iii) pay the principal, interest, fees, expenses, and other amounts payable and reimbursable under the DIP Documents the Interim Order as such become due, including, without limitation, the DIP Fees (as defined below) and the fees and expenses of the DIP Professionals (as defined below); and (iv) any other purposes agreed upon in the DIP Documents, in each case solely in accordance with the Approved Budget, the Interim Order, and the DIP Documents;

(e) authorization for the Debtors to use the Prepetition Collateral (as defined below), including the Cash Collateral, on an interim basis in accordance with both the Approved Budget and the DIP Documents, and providing, among other things, adequate protection to the Prepetition Secured Parties (as defined below) for any Diminution (as defined below) of their interests in the Prepetition Collateral, including the Cash Collateral;

(f) the grant of adequate protection as of the Petition Date (as defined herein) to Prepetition Secured Parties, for itself, pursuant to section 361, 362 and 363(e) of the Bankruptcy Code, for any diminution in value of their respective interests in the Prepetition Collateral resulting from the Debtors' use of Cash Collateral and imposition of the automatic stay pursuant to section 362 of the Bankruptcy Code;

(g) modification by this Court of the automatic stay imposed by section 362 of the Bankruptcy Code to the extent necessary to permit the Debtors and the DIP Agent to implement and effectuate the terms and provisions of the DIP Documents and the Interim Order, subject to notice and a hearing as provided herein;

(h) subject to entry of the Final Order, waiver of the Debtors' ability to surcharge against the Prepetition Collateral or the Collateral (as defined herein) pursuant to section 506(c) of the Bankruptcy Code or any other applicable principle of equity or law and waiver of the applicability of the "equities of the case" exception under section 552(b) of the Bankruptcy Code;

(i) scheduling of a final hearing ("Final Hearing") at which the Debtors will seek final approval of the DIP Facility and use of Cash Collateral pursuant to a proposed final order (the "Final Order" and, together with the Interim Order, the "DIP Orders"), which shall be in form and substance acceptable to the DIP Agent and the Debtors;

(j) waiver of any applicable stay (including under Bankruptcy Rule 6004) and providing for the immediate effectiveness of the Interim Order; and

(k) granting related relief.

2. In support of the Motion, the Debtors rely on the *Declaration of Mark Renzi, Chief Restructuring Officer of the Debtors, in Support of Debtors' Chapter 11 Petitions and First Day*

Motions (the “First Day Declaration”) and the *Declaration of Richard W. Morgner in Support of Debtors’ Motion for Entry of Interim and Final Orders (I) Authorizing Debtor to (A) Obtain Postpetition Financing and (B) Utilize Cash Collateral, (II) Granting Liens And Superpriority Administrative Expense Claims, (III) Modifying Automatic Stay, and (IV) Granting Related Relief* (the “DIP Declaration”), each of which is filed substantively contemporaneously herewith and incorporated herein by reference.

JURISDICTION AND VENUE

3. The United States Bankruptcy Court for the Southern District of Texas (the “Court”) has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b).

4. The Debtors confirm their consent, pursuant to rule 7008 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), to the entry of a final order by the Court in connection with this motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

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

6. The statutory and legal predicates for the relief requested herein are sections 105, 361, 362, 363(b), 363(c)(2), 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 (the “Bankruptcy Code”), Bankruptcy Rules 2002, 4001, 6003, 6004, and 9014, and rules 1075-1, 2002-1, 4001-1, 4002-1, and 9013-1 of the Bankruptcy Local Rules for the Southern District of Texas (the “Bankruptcy Local Rules”).

BACKGROUND

7. On June 6, 2025 (the “Petition Date”), each Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code commencing the above-captioned chapter 11 cases

(the “Chapter 11 Cases”). The Debtors continue to operate their businesses as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. The Debtors have filed a motion requesting joint administration of their Chapter 11 Cases pursuant to Bankruptcy Rule 1015(b) and Bankruptcy Local Rule 1015-1. No request for the appointment of a trustee or examiner has been made in these Chapter 11 Cases, and no official committees have been appointed or designated.

8. The Debtors, which are one of the oldest financing companies in the residential solar space, are a leading provider of consumer clean energy loan financing and servicing in the United States. The Debtors have funded over \$14 billion in cumulative loans since being founded in 2010 and act as servicer for nearly \$8 billion in active loans as of the Petition Date. The Debtors commenced these Chapter 11 Cases with the support of key stakeholders, including through debtor-in-possession financing provided by certain of the Debtors’ prepetition lenders, which will allow the Debtors to continue providing the highest level of servicing to their partners and consumer borrowers throughout the course of the Chapter 11 Cases. The Debtors also have a clear path to a successful conclusion of the Chapter 11 Cases supported by a stalking horse asset purchase agreement with certain prepetition lenders that will serve as a baseline for maximizing the value of the Debtors’ assets as the Debtors complete the robust marketing and sale process that was initiated prior to the Petition Date.

9. Additional factual background and information regarding the Debtors, including their business operations, their corporate and capital structure, the events leading to the commencement of these Chapter 11 Cases, and the emergency need for the relief requested in this Motion, are set forth in detail in the First Day Declaration filed contemporaneously herewith and incorporated herein by reference.

PRELIMINARY STATEMENT

10. The Debtors require immediate access to incremental liquidity in the form of postpetition financing to preserve the value of the Debtors' estates, undertake a successful sale process, and maximize recoveries for all stakeholders. Accordingly, the Debtors seek authorization to enter into the DIP Facility in an aggregate principal amount of up to \$15 million, with \$6 million of such amount available upon interim approval of this Motion. The DIP Facility will allow, and is necessary for, the Debtors to fund their ordinary course operating expenses while pursuing a value maximizing sale and/or reorganization process.

11. If approved, the Debtors will use the proceeds of the DIP Facility to, among other things, fund the Debtors' restructuring efforts, including postpetition marketing efforts and ultimately the sale of substantially all of their assets, and the administration of the Debtors' Chapter 11 Cases. Obtaining an immediate injection of cash is critical. Without the liquidity provided by the DIP Facility, the Debtors will be unable to effectuate their restructuring efforts, preventing the Debtors from maximizing the value of their estates for all stakeholders.

12. For these reasons, and for the reasons set forth below and in the DIP Declaration and First Day Declaration, the Debtors believe, in the exercise of their business judgment, that this Court's approval of and their entry into the DIP Facility will maximize value for the Debtors' stakeholders. Accordingly, the Debtors respectfully request that the Court enter the DIP Orders authorizing the Debtors' entry into the DIP Facility.

**CONCISE STATEMENT PURSUANT TO BANKRUPTCY
RULE 4001 AND COMPLEX CASE PROCEDURES**

13. As required by Bankruptcy Rules 4001(b)(1)(B) and 4001(c)(1)(B) and the *Procedures for Complex Cases in the Southern District of Texas* (the "Complex Case

Procedures”), the Debtors submit the following concise statement of the material terms of the DIP Facility:⁵

Summary of Material Terms	
Parties to the Proposed DIP Facility Bankruptcy Rule 4001(c)(1)(B)	<u>Borrower</u>: Solar Mosaic LLC. <u>Guarantors</u>: Modern Home LLC; Mosaic Sustainable Finance Corporation; and SMCTX LLC. <u>DIP Agent</u>: Forbright Bank (in such capacity, the “<u>DIP Agent</u>”). <u>DIP Lenders</u>: Certain Prepetition Lenders who elect to provide DIP financing (the “<u>DIP Lenders</u>”). <i>See</i> DIP Credit Agreement, Preamble.
DIP Facility; Roll-Up Bankruptcy Rule 4001(c)(1)(B)	Subject to the entry of the Interim Order, a “new money” first-out delayed draw term loan facility in an aggregate principal amount of up to \$15,000,000.00 in aggregate postpetition financing plus applicable fees and premiums (the “<u>New Money DIP Term Loan Facility</u>”; the commitments thereunder, the “<u>New Money DIP Commitments</u>”, and the term loans extended thereunder, the “<u>New Money DIP Term Loans</u>”) pursuant to which (A) \$6,000,000.00 of New Money DIP Term Loans (the “<u>Interim Amount</u>”) shall be borrowed in a single borrowing on the Closing Date (as defined in the DIP Credit Agreement) pursuant to the Interim Order and (B) an aggregate principal amount not to exceed \$9,000,000.00, plus applicable fees and premiums, as set forth in the Approved Budget (as defined below) shall be borrowed in a single borrowing on or after the entry of the Final Order. Subject to the entry of the Final Order, the conversion of up to \$30,000,000.00 of the Prepetition Obligations (together with accrued and unpaid interest thereon) held by the DIP Lenders (or any of their respective designated Approved Funds (as defined in the DIP Credit Agreement)) into a second-out tranche term loan facility (the “<u>Second Out DIP Term Loan Facility</u>”, and together with the New Money DIP Term Loan Facility, the “<u>DIP Facility</u>”, and such conversion into the same, the “<u>Second Out Roll Up</u>”, and such converted amounts, the “<u>Second Out DIP Term Loans</u>”, and together with the New Money DIP Term Loans, the “<u>DIP Loans</u>”, and together with all other Obligations under and as defined in the DIP Credit Agreement, the “<u>DIP Obligations</u>”, and the commitments under the <u>DIP Facility</u>, the “<u>Commitments</u>”), which shall be deemed “rolled up” on a cashless

⁵ This concise statement is qualified in its entirety by, and subject to, the DIP Documents. To the extent there is any conflict between this concise statement and the DIP Documents, the terms of the DIP Documents shall control.

	basis of \$2.00 of Second Out DIP Term Loans for every \$1.00 of principal amount of New Money DIP Term Loans (i.e., \$30,000,000), based upon such DIP Term Lender's (or any of its designated Approved Funds) <i>pro rata</i> allocation of the New Money DIP Term Loans, and shall automatically be deemed to be substituted and exchanged for, and shall be deemed to be, Second Out DIP Term Loans for all purposes hereunder as if originally funded on the Closing Date; <u>provided, however</u>, that if any DIP Lender's <i>pro rata</i> share of the Second Out Roll Up exceeds the total amount of Prepetition Obligations held by such DIP Lender as of the Closing Date, such DIP Lender's share of Second Out DIP Loans shall be reduced in an amount, and to such an extent, to ensure that the maximum amount of Second Out Roll Up of such DIP Lender shall be no greater than such DIP Lenders' Prepetition Obligations, and the total amount of Second Out DIP Loans shall be reduced accordingly. <i>See Interim Order, ¶¶ (a), J, K, 8; DIP Credit Agreement § 2.01</i>
Interest Rate Bankruptcy Rule 4001(c)(1)(B)	Subject to Section 2.08(b) of the DIP Loan Agreement, (i) each Adjusted Term SOFR Loan shall bear interest on the outstanding principal amount thereof for each Interest Period at a rate per annum equal to the Adjusted Term SOFR for such Interest Period <u>plus</u> the Applicable Rate; and (ii) each Base Rate Loan shall bear interest on the outstanding principal amount thereof from the applicable borrowing date at a rate per annum equal to the Base Rate <u>plus</u> the Applicable Rate. The Applicable Rate is thirteen percent (13.00%). Interest on each Loan shall be due and payable in cash in arrears on each Interest Payment Date applicable thereto, <i>provided</i> that an amount of such Interest equal to the amount of such Interest accrued at a rate equal to ten percent (10.00%) per annum, shall be paid in kind. <i>See DIP Loan Agreement §§ 1.01, 2.08</i>
Default Rate Bankruptcy Rule 4001(c)(1)(B)	An interest rate equal to (i) the Base Rate plus (ii) the Applicable Rate, if any, applicable to Base Rate Loans plus (iii) 2% per annum; provided that with respect to an Adjusted Term SOFR Loan, the Default Rate shall be an interest rate equal to the interest rate (including any Applicable Rate) otherwise applicable to such Loan plus 2% per annum. <i>See DIP Loan Agreement §§ 1.01, 2.08</i>
Security and Priority	To secure the DIP Obligations, effective immediately upon entry of the Interim Order, pursuant to sections 361, 362, 364(c)(2), 364(c)(3), and

Bankruptcy Rule 4001(c)(1)(B)(i)	364(d) of the Bankruptcy Code, the DIP Agent (for the benefit of the DIP Lenders), is hereby granted continuing, valid, binding, enforceable, non-avoidable, and automatically and properly perfected postpetition first priority security interests in and liens (collectively, the “<u>DIP Liens</u>”) on the DIP Collateral, and all cash and non-cash proceeds, rents, profits, and offspring of DIP Collateral. <i>See Interim Order ¶ 5</i> The DIP Liens securing the DIP Obligations are valid, automatically perfected, non-avoidable, senior in priority to the Prepetition Liens on the Prepetition Collateral and are superior to any security, mortgage, collateral interest, lien, or claim to any of the DIP Collateral (whether currently existing or hereafter created), except that the DIP Liens shall be subject only to (a) the Carve-Out and (b) the Prepetition Permitted Liens. Other than as expressly set forth herein or in the DIP Documents, the DIP Liens shall not be made subject to or <i>pari passu</i> with any lien or security interest heretofore or hereinafter granted in the Chapter 11 Cases or any Successor Cases, and shall be valid and enforceable against any trustee appointed in the Chapter 11 Cases or any Successor Cases, upon the conversion of any of the Chapter 11 Cases to a case under chapter 7 of the Bankruptcy Code (or in any other Successor Case), and/or upon the dismissal of any of the Chapter 11 Cases or Successor Cases. The DIP Liens shall not be subject to section 510, 549, or 550 of the Bankruptcy Code. No lien or interest avoided and preserved for the benefit of any Estate pursuant to section 551 of the Bankruptcy Code shall be <i>pari passu</i> with or senior to the DIP Liens. <i>See Interim Order ¶ 6</i> Subject to the Carve-Out, upon entry of the Interim Order, the DIP Secured Parties are hereby granted, pursuant to section 364(c)(1) of the Bankruptcy Code, allowed superpriority administrative expense claims in each of the Chapter 11 Cases and any Successor Cases (collectively, the “<u>DIP Superpriority Claims</u>”) for all DIP Obligations: (a) except as expressly set forth herein (including with respect to the Carve-Out), with priority over any and all administrative expense claims and unsecured claims against the Debtors or their Estates in any of the Chapter 11 Cases and any Successor Cases, at any time existing or arising, of any kind or nature whatsoever, including, without limitation, administrative expenses of the kinds specified in or ordered pursuant to sections 105, 326, 328, 330, 331, 364, 503(a), 503(b), 507(a), 507(b), 546(c), 546(d), 726, 1113, and 1114 of the Bankruptcy Code, and any other provision of the Bankruptcy Code, as provided under section 364(c)(1) of the Bankruptcy Code; and (b) which shall at all times be senior to the rights of the Debtors and their Estates, and any
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	successor trustee or other estate representative to the extent permitted by law. <i>See Interim Order ¶ 7</i>
Liens on Causes of Action Bankruptcy Rule 4001(c)(1)(B)(xi)	The DIP Secured Parties and the Prepetition Secured Parties shall be granted DIP Liens and Replacement Liens on any and all claims and causes of action, including all commercial tort claims and all claims and causes of action arising under chapter 5 of the Bankruptcy Code, including sections 502(d), 544, 545, 547, 548, 549, 550, and 553, and subject to entry of the Final Order, all proceeds thereof. <i>See Interim Order ¶¶ 5, 14</i>
Waiver/Modification of Applicability of Non-Bankruptcy law Relating Perfection or Enforceability of Liens Bankruptcy Rule 4001(c)(1)(B)(vii)	The Interim Order shall be sufficient and conclusive evidence of the attachment, validity, perfection, and priority of all liens and security interests granted in the DIP Orders, including the DIP Liens and Replacement Liens, without any further act and without the necessity of execution, filing, or recording any financing statement, mortgage, security agreement, pledge agreement, notice, or other instrument or document, or the registration of liens on any certificates of title, that may otherwise be required under the law or regulation of any jurisdiction, or the taking of any other action (including, without limitation, entering into any deposit account control agreement or other act to take possession or control of any DIP Collateral) to attach, validate, perfect or prioritize such liens and security interests, or to entitle the DIP Secured Parties and the Prepetition Secured Parties to the priorities granted therein. <i>See Interim Order ¶ 21.</i>
Carve-Out Bankruptcy Rule 4001(c)(1)(B)	As used in the Interim Order, the term “<u>Carve-Out</u>” means, collectively, the following fees and expenses: (a) all statutory fees required to be paid to the Clerk of this Court and to the Office of the United States Trustee pursuant to 28 U.S.C. § 1930(a) <i>plus</i> interest at the statutory rate, if any, pursuant to 31 U.S.C § 3717 (without regard to the Carve-Out Trigger Notice); (b) reasonable fees and expenses incurred by a trustee, if any, under section 726(b) of the Bankruptcy Code in an amount not exceeding \$50,000 (without regard to the Carve-Out Trigger Notice); (c) to the extent allowed at any time, whether by interim or final compensation order, procedural order or otherwise, all unpaid fees and expenses (including any restructuring, sale, success, or other transaction fee of any investment bankers or financial advisors of the Debtors) (the “<u>Allowed Debtor Professional Fees</u>”) incurred by persons or firms retained by the Debtors pursuant to section 327, 328 or 363 of the Bankruptcy Code (collectively, the “<u>Debtor Professionals</u>”) that are incurred on or prior to the first business day following delivery by the DIP Agent of a Carve-Out Trigger Notice, whether allowed by this Court prior to or after delivery

	of a Carve-Out Trigger Notice; and (d) Allowed Debtor Professional Fees in an aggregate amount not to exceed \$200,000 for the Debtor Professionals, incurred after the first business day following delivery by the DIP Agent of the Carve-Out Trigger Notice (including any restructuring, sale, success, or other transaction fee earned or payable to any Debtor Professional) (the amounts set forth in this clause (d) being the “<u>Post-Carve-Out Trigger Notice Cap</u>”). For the avoidance of doubt, other than the Carve-Out, no other amounts owed by any of the Debtors to any party (including any amounts set forth in the Approved Budget) as of the date of Carve-Out Trigger Notice is delivered shall be payable from the Prepetition Collateral or the DIP Collateral. For purposes of the foregoing, “<u>Carve-Out Trigger Notice</u>” shall mean a written notice delivered by email (or other electronic means) by the DIP Agent to the Debtors’ lead counsel, the U.S. Trustee, and counsel to any Committee, which notice may only be delivered following the occurrence and during the continuation of an Event of Default under the DIP Facility, stating that the Post-Carve-Out Trigger Notice Cap has been invoked. No portion of the Carve-Out, any Cash Collateral, any other DIP Collateral, or any proceeds of the DIP Facility, including any disbursements set forth in the Approved Budget or obligations benefitting from the Carve-Out, shall be used for the payment of Allowed Debtor Professional Fees, disbursements, costs or expenses incurred by any person, including, without limitation, any Committee, in connection with challenging the DIP Secured Parties’ or the Prepetition Secured Parties’ liens or claims, preventing, hindering or delaying any of the DIP Secured Parties’ or the Prepetition Secured Parties’ enforcement or realization upon any of the DIP Collateral or Prepetition Collateral, or initiating or prosecuting any claim or action against any DIP Secured Party or Prepetition Secured Party. <i>See Interim Order ¶ 35</i>
Maturity Date Bankruptcy Rule 4001(c)(1)(B)	The earliest to occur of (a) the 120th day following the Petition Date, subject to two (2) 30-day extensions, upon the written approval of the DIP Agent and the Required DIP Lenders, (b) the 30th day following the Petition Date if the Final Order has not been entered by the Bankruptcy Court on or prior to such date, (c) the date a sale of all or substantially all of the assets of the Debtors is consummated, (d) the effective date of a plan of reorganization or liquidation, (e) entry of an order by the Bankruptcy Court approving (i) a motion seeking conversion or dismissal of the Chapter 11 Cases or (ii) a motion seeking the appointment or election of a trustee, a responsible officer or examiner with enlarged powers relating to the operation of the Debtors’ business, and (f) the date any or all of the DIP Obligations are accelerated in accordance with the DIP Orders or DIP Facility. <i>See DIP Loan Agreement § 1.01</i>

DIP Fees and Expenses; Indemnity Bankruptcy Rule 4001(c)(1)(B); (c)(1)(B)(ix)	<u>Exit Fee</u>: 5.0% of the New Money DIP Commitments. The Exit Fee will be in all respects fully earned upon the entry of the Interim Order and due and payable on the earlier of (x) the repayment in full of the Obligations and (y) the Maturity Date, and shall be non-refundable and non-creditable thereafter. <u>OID Fee</u>: 5.0% of the New Money DIP Commitments. The OID Fee will be in all respects fully earned upon the entry of the Interim Order and due and payable in kind on the earlier of (x) the repayment in full of the Obligations and (y) the Maturity Date, and shall be non-refundable and non-creditable thereafter. Once earned, the OID Fee shall be capitalized into the outstanding principal amount of the Term Loans (as defined in the DIP Credit Agreement) on the date of payment and shall thereafter accrue interest in accordance with the terms of Section 2.08 hereof. The Debtors shall indemnify the DIP Agent (and any sub-agent thereof), each DIP Lender, and each Related Party of any of the foregoing Persons (each such Person being called an “<u>Indemnitee</u>”) against, and hold each Indemnitee harmless from, any and all losses, claims, damages, liabilities and related expenses (including the fees, charges and disbursements of any counsel for any Indemnitee), incurred by any Indemnitee or asserted against any Indemnitee by any Person (including the Debtors or any other Loan Party) other than such Indemnitee and its Related Parties arising out of, in connection with, or as a result of (i) the execution or delivery of the DIP Loan Agreement, any other DIP Loan Document or any agreement or instrument contemplated hereby or thereby, the performance by the parties hereto of their respective obligations hereunder or thereunder or the consummation of the transactions contemplated hereby or thereby, or, in the case of the DIP Agent (and any sub-agent thereof) and its Related Parties only, the administration of the DIP Loan Agreement and the other DIP Loan Documents (including in respect of any matters addressed in Section 3.01 of the DIP Loan Agreement), (ii) any Loan or the use or proposed use of the proceeds therefrom, (iii) any actual or alleged presence or Release of Hazardous Materials at, on, under or emanating from any property owned, leased or operated by the Borrower or any of its Subsidiaries, or any Environmental Liability related in any way to the Borrower or any of its Subsidiaries, or (iv) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory, whether brought by a third party or by the Debtors or any other Loan Party or any of the Debtors’ or such Loan Party’s directors, shareholders or creditors, and regardless of whether any Indemnitee is a party thereto; <u>provided</u> that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses are determined by a
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	court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence, bad faith or willful misconduct of such Indemnitee. <i>See</i> DIP Loan Agreement §§ 2.09, 10.04
Releases Bankruptcy Rule 4001(c)(1)(B)(viii)	Subject to paragraph 43 of the Interim DIP Order, the Debtors, on behalf of themselves and their respective Estates (including any successor trustee or other estate representative in the Chapter 11 Cases and any Successor Cases, and any party acting by, through or under the Debtors or their Estates), stipulate and agree that they absolutely and unconditionally release and forever and irrevocably discharge and acquit the DIP Agent, each DIP Lender, the Prepetition Agent, each Prepetition Lender that is a DIP Lender, in its capacity as a Prepetition Lender, and their respective affiliates and each of their respective former or current officers, partners, directors, managers, owners, members, principals, employees, agents, related funds, investors, financing sources, financial advisors, attorneys, accountants, investment bankers, consultants, representatives and other professionals and the respective successors and assigns thereof, each in their capacity as such (collectively, the “Released Parties”) from any and all obligations and liabilities to the Debtors (and their successors and assigns) and from any and all claims, counterclaims, demands, debts, accounts, contracts, disputes, liabilities, allegations, suits, controversies, proceedings, actions and causes of action arising prior to the date of the Interim Order of any kind, nature or description, whether known or unknown, foreseen or unforeseen, or liquidated or unliquidated, arising in law or equity or upon contract or tort or under any state or federal law or regulation or otherwise, arising out of or related to (as applicable) the DIP Documents, the Prepetition Loan Documents, the negotiation thereof and of the transactions contemplated thereby, and the obligations owing and the financial obligations made thereunder, or otherwise related to the Debtors, in each case that the Debtors at any time had, now have, or may have, or that their successors or assigns hereafter can or may have against any of the Released Parties for or by reason of any act, omission, matter, cause or thing whatsoever arising at any time on or prior to the date of the Interim Order. The Debtors further waive and release any defense, right of counterclaim, right of set-off, or deduction to the payment of the Prepetition Obligations that the Debtors may now have or may claim to have against the Released Parties, arising out of, connected with, or relating to any and all acts, omissions, or events occurring prior to the Court entering the Interim Order. <i>See</i> Interim Order ¶¶ H, 50

Covenants Bankruptcy Rule 4001(c)(1)(B)	<u>Affirmative Covenants</u>: Include, among others, (a) inspection rights on books and records, (b) delivery of financial reporting and other information, (c) notice of material events, (d) compliance with laws, (e) payment of taxes, (f) maintenance of insurance and licenses, (g) subsidiary further assurances, (h) reporting, including delivery of budget supplement and variance reporting, (i) satisfaction of Milestones, and (j) compliance with all orders, writs, injunctions and decrees. <i>See DIP Loan Agreement, Art. VI</i> <u>Negative Covenants</u>: Include, among others, restrictions on (a) indebtedness, (b) liens, (c) investments, (d) disposition of assets, (e) capital expenditures, (f) fundamental changes, (g) burdensome agreements, (h) conduct of business, (i) affiliate transactions, (j) use of proceeds, and (k) amendments to subordinated debt. <i>See DIP Loan Agreement, Art. VII</i>
Borrowing Conditions Bankruptcy Rule 4001(c)(1)(B)	The DIP Lenders shall not be required to fund any DIP Loan request by the Borrower unless the following conditions are satisfied: a) The representations and warranties of the Debtors and each other Loan Party in the DIP Documents shall be true and correct in all material respects (or, with respect to representations and warranties qualified by materiality, in all respects) on the date of, and upon giving effect to, the making of such DIP Loan (except for representations and warranties that expressly relate to an earlier date). b) No Default or Event of Default shall exist, or would result from the proposed Credit Extension (as defined in the DIP Loan Agreement) or from the application of the proceeds thereof. c) The DIP Agent shall have received a Request for Credit Extension. d) The DIP Agent shall have received and approved the Approved Budget and any Approved Budget and the Variance Report (as defined in the DIP Loan Agreement). e) The Interim Order, or, after the entry of the Final Order, the Final Order, shall be in full force and effect and shall not be the subject of any appeal, motion or reconsideration, stay, order of <i>See DIP Loan Agreement § 4.02</i>
Approved Budget Bankruptcy Rule 4001(c)(1)(B)	The Debtors shall prepare and deliver to the DIP Agent a 8-week cash flow forecast beginning with the week which includes the Petition Date through the eighth week thereafter, approved by the DIP Agent in its sole discretion (the “<u>Approved Budget</u>”), a copy of which is attached to the Interim Order as <u>Exhibit 2</u>, showing, among other things, projected cash receipts and disbursements in each case subject to the

	Permitted Variance (provided that fees and expenses of professional and Warehouse Settlement Payments (as defined below) from Warehouse Lenders (as defined in the DIP Loan Agreement) shall not be subject to the Permitted Variance). The Debtors shall provide updates thereto, as necessary, but which shall not be updated less than once every four weeks and shall be 13-week cash flow forecasts (as updated, the “<u>Updated Budget</u>”), in form and substantially consistent with the Approved Budget, by no later than 5:00 P.M. (Pacific Time) on the fourth Monday following the Petition Date, and on the Monday of every fourth week thereafter. “<u>Warehouse Settlement Payments</u>” means the (i) release of cash by a Warehouse Lender back to the Debtors as the result of moving loan receivables between warehouse facilities for the purpose of maximizing the advance rates thereunder if the Debtors are required to on-lend the released cash to approved contractors, (ii) principal amount of cash advances by a Warehouse Lender to the Debtors to on-lend to approved contractors in connection with new originations and/or funding the balance of partially funded loans to approved contractors in the ordinary course of business, and (iii) solar loans originated by the Debtors and sold to Warehouse Lender SPVs in exchange for the cash advances, in the case of clauses (i) through (iii), in the ordinary course of Debtors’ business in arm’s length transactions. See Interim Order ¶¶ 17, 18; DIP Loan Agreement § 1.01																
Milestones Bankruptcy Rule 4001(c)(1)(B)(vi)	The Debtors shall conduct a 363 sale process and Chapter 11 Cases in accordance with the milestones set forth below (each, a “<u>Milestone</u>”). <table border="1"> <thead> <tr> <th>Milestone</th><th>Specified Deadline</th></tr> </thead> <tbody> <tr> <td>Bankruptcy Court entry of the Interim Order</td><td>Petition Date + 2 calendar days</td></tr> <tr> <td>Filing of bidding procedures</td><td>Petition Date + 2 calendar days</td></tr> <tr> <td>Bankruptcy Court entry of the Final Order</td><td>Petition Date + 31 calendar days</td></tr> <tr> <td>Bankruptcy Court entry of order approving bidding procedures for an Acceptable Sale Transaction (as defined in the DIP Loan Agreement)</td><td>Petition Date + 31 calendar days</td></tr> <tr> <td>Commencement of an auction</td><td>Petition Date + 65 calendar days</td></tr> <tr> <td>Bankruptcy Court entry of order approving Section 363 sale</td><td>Petition Date + 70 calendar days</td></tr> <tr> <td>Section 363 sale closing</td><td>Petition Date + 80 calendar days</td></tr> </tbody> </table>	Milestone	Specified Deadline	Bankruptcy Court entry of the Interim Order	Petition Date + 2 calendar days	Filing of bidding procedures	Petition Date + 2 calendar days	Bankruptcy Court entry of the Final Order	Petition Date + 31 calendar days	Bankruptcy Court entry of order approving bidding procedures for an Acceptable Sale Transaction (as defined in the DIP Loan Agreement)	Petition Date + 31 calendar days	Commencement of an auction	Petition Date + 65 calendar days	Bankruptcy Court entry of order approving Section 363 sale	Petition Date + 70 calendar days	Section 363 sale closing	Petition Date + 80 calendar days
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	Bankruptcy Court entry of order approving plan of reorganization	Petition Date + 90 calendar days
	Effective date of plan of reorganization	Petition Date + 105 calendar days
	See DIP Loan Agreement § 6.19	
Use of Proceeds Bankruptcy Rule 4001(b)(1)(B)(ii); (c)(1)(B)	Subject to certain restrictions to be set forth in the Interim Order or Final Order, as applicable, and the DIP Documents, proceeds of the DIP Facility will be used in compliance with the terms of the Approved Budget (a) to pay transaction costs, fees and expenses which are incurred in connection with the DIP Facility, (b) to pay professional fees of the Debtors and its estate and an unsecured creditors committee, if any, in accordance with the Approved Budget, and (c) for working capital and other general corporate purposes of the Debtors. See DIP Loan Agreement § 7.10	
Adequate Protection Bankruptcy Rule 4001(c)(1)(B)(ii)	As adequate protection for any Diminution (as defined in the Interim Order) of the Prepetition Secured Parties' interest in the Prepetition Collateral, the Prepetition Agent shall receive, for the benefit of the Prepetition Lenders: a) continuing valid, binding, enforceable, and perfected postpetition liens and replacement liens pursuant to sections 361, 363(e), and 364(d)(1) of the Bankruptcy Code on the DIP Collateral, which shall be subject and subordinated only to the Carve-Out, the DIP Liens, and Prepetition Permitted Liens (the "<u>Replacement Liens</u>") and which (x) shall otherwise be senior to all other security interests in, liens on, or claims against the DIP Collateral, and (y) shall not be made subject to or <i>pari passu</i> with any lien or security interest heretofore or hereinafter granted in the Chapter 11 Cases or any Successor Cases and shall be valid and enforceable against any trustee appointed in any of the Chapter 11 Cases or any Successor Cases, and shall not be subject to sections 510, 549, or 550 of the Bankruptcy Code; b) administrative superpriority expense claims in each of the Chapter 11 Cases, junior and subordinate only to the Carve-Out and the DIP Obligations (including the DIP Superpriority Claims), pursuant to section 507(b) of the Bankruptcy Code with priority over any and all other administrative expenses, administrative expense claims and unsecured claims against the Debtors or their Estates, now existing or hereafter arising, of	

	any kind or nature whatsoever as to and to the extent provided by sections 503(b) and 507(b) of the Bankruptcy Code; c) payment of monthly interest under the Prepetition Credit Agreement, calculated at the interest rate of 1-month Term SOFR (as defined in the Prepetition Credit Agreement) + 7.00%, paid in kind, in respect of the Prepetition Revolving Loans; d) subject to the procedures set forth in paragraph 38 of the Interim Order, payment of the Prepetition Secured Parties' reasonable and documented fees, costs and expenses when due and payable in accordance with the Interim Order, including the professional fees and disbursements of Blank Rome LLP, Huron Consulting Group Inc. and any other Prepetition Professionals (as defined in the Interim Order), without the need for the filing of formal fee applications, including as to any amounts arising before or after the Petition Date; and e) the unconditional right to credit bid the Prepetition Obligations in connection with any sale of Prepetition Collateral, including, without limitation, as set forth in paragraph 40 of the Interim Order and subject to paragraph 43 of the Interim Order. <i>See Interim Order ¶ 14</i>
Marshaling; 552(b) Waiver and Waiver of 506(c) Claims Bankruptcy Rule 4001(c)(1)(B)(x)	Subject to entry of the Final Order and provisions of the Carve-Out and as a further condition of the DIP Facility and any obligation of the DIP Lenders to make credit extensions pursuant to the DIP Documents (ad the prior written consent of the Prepetition Secured Parties of the priming of the Prepetition Liens by the DIP Facility and the use of Cash Collateral), (a) no costs or expenses of administration of the Chapter 11 Cases or any Successor Cases shall be charged against or recovered from or against any or all of the DIP Secured Parties or the Prepetition Secured Parties with respect to the DIP Collateral or the Prepetition Collateral, in each case pursuant to section 105 or section 506(c) of the Bankruptcy Code or otherwise, without the prior written consent of the DIP Secured Parties or the Prepetition Secured Parties, as applicable and (b) no such consent shall be implied from any other action, inaction or acquiescence of any or all of the DIP Secured Parties or the Prepetition Secured Parties. <i>See Interim Order ¶ 46</i> The DIP Secured Parties and the Prepetition Secured Parties shall not be subject to the equitable doctrine of “marshaling” or any other similar

	doctrine with respect to any of the DIP Collateral or the Prepetition Collateral, as applicable. <i>See Interim Order ¶ 47</i> Subject to entry of the Final Order, the DIP Secured Parties and the Prepetition Secured Parties shall each be entitled to all of the rights and benefits of section 552(b) of the Bankruptcy Code, and the “equities of the case” exception under section 552(b) of the Bankruptcy Code shall not apply to the DIP Secured Parties or the Prepetition Secured Parties, as applicable with respect to proceeds, product, offspring or profits of any of the DIP Collateral or the Prepetition Collateral, as applicable. <i>See Interim Order ¶ 48</i>
Optional Prepayments Bankruptcy Rule 4001(c)(1)(B)	Loans may be prepaid from time to time, without penalty or premium, upon notice to the DIP Agent and subject to Section 3.05 of the DIP Loan Agreement. <i>See DIP Loan Agreement § 2.05</i>
Mandatory Prepayments Bankruptcy Rule 4001(c)(1)(B)	The DIP Loan Agreement provides for the following mandatory prepayments: (i) If for any reason the Total Outstandings (as defined in the DIP Loan Agreement) at any time exceed the Commitments at such time, the Borrower shall immediately prepay Term Loans in an aggregate amount equal to such excess. (ii) Upon the occurrence of a Change of Control (as defined in the DIP Loan Agreement), Borrower shall immediately prepay the aggregate outstanding principal balance of the Term Loans. (iii) The Debtors shall immediately pay or prepay the Term Loans and all other Obligations (as defined in the DIP Loan Agreement) (together with a cash reserve established by the DIP Agent to cover asserted contingent and indemnity obligations) with 100% of the Net Cash Proceeds of the following, until such Obligations are paid in full: a. any Disposition (as defined in the DIP Loan Agreement) or other sale of any, all or substantially all of Debtors’ assets pursuant to section 363 of the Bankruptcy Code simultaneous with the consummation thereof; b. any other Disposition or other sale by any Debtor of any assets, in a single transaction or series of related

	transactions; and c. extraordinary receipts (including tax refunds, indemnity payments and insurance proceeds not included as proceeds of asset dispositions but excluding sales tax receipts contemplated to be received by the Debtors as set forth in the Approved Budget) by the Debtors. Mandatory payments or prepayments and proceeds of DIP Collateral received by the Debtors will otherwise be applied in the following order of priority (unless otherwise determined by the DIP Lenders in their sole discretion), after giving effect to the Carve-Out and any other payments required pursuant to the DIP Orders: 1. <u>First</u>, to the payment of a cash reserve in an amount determined by the DIP Agent in its reasonable discretion, to be held by the DIP Agent as a reserve to pay for anticipated expense reimbursements or indemnification obligations due and payable hereunder, or fund Protective Advances; 2. <u>Second</u>, to payment of that portion of the Obligations constituting fees, indemnities, expenses and other amounts (including fees, charges and disbursements of counsel to the DIP Agent and amounts payable under <u>Article III</u>) payable to the DIP Agent in its capacity as such; 3. <u>Third</u>, to the payment of any Protective Advances made by the DIP Agent and the DIP Lenders; 4. <u>Fourth</u>, to payment of that portion of the Obligations constituting fees, indemnities and other amounts (other than principal and interest) payable to the DIP Lenders (including fees, charges and disbursements of counsel to the respective DIP Lenders) arising under the DIP Documents and amounts payable under <u>Article III</u> of the DIP Loan Agreement, ratably among them in proportion to the respective amounts described in this clause Fourth payable to them; 5. <u>Fifth</u>, to payment of that portion of the Obligations constituting accrued and unpaid interest on the Loans and other Obligations arising under the DIP Documents (other than the Roll-Up Loans and Prepetition Obligations) and the Exit Fee, ratably among the DIP Lenders in proportion to the respective amounts described in this clause Fifth payable to them; 6. <u>Sixth</u>, to payment of that portion of the Obligations constituting unpaid principal of the Term Loans (other than the Roll-Up Loans
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	and Prepetition Obligations) and the Exit Fee, ratably among the DIP Lenders in proportion to the respective amounts described in this clause held by them; 7. <u>Seventh</u>, to payment of that portion of the Obligations constituting accrued and unpaid interest on the Roll-Up Loans, ratably among the DIP Lenders in proportion to the respective amounts described in this clause payable to them; 8. <u>Eighth</u>, to payment of that portion of the Obligations constituting unpaid principal of the Roll-Up Loans, ratably among the DIP Lenders in proportion to the respective amounts described in this clause held by them; 9. <u>Ninth</u>, to payment of that portion of all other Obligations (other than Prepetition Obligations), ratably among the DIP Lenders in proportion to the respective amounts described in this clause held by them; 10. <u>Tenth</u>, to the Prepetition Agent for the payment of the Prepetition Obligations; and 11. <u>Eleventh</u>, the balance, if any, after all of the Obligations have been paid in full, to the Debtors or as otherwise required by Law. <i>See DIP Loan Agreement §§ 2.05, 8.03</i>
Events of Default Bankruptcy Rule 4001(c)(1)(B)	Include, among others, (a) failure to perform payment obligations, (b) breach of representations and warranties, (c) failure to comply with covenants, (d) breach of obligations in the DIP Documents, (e) judgments that remain unstayed, (f) cross-default, (g) certain ERISA Events, (h) a Change of Control; and (i) certain events related to the Chapter 11 Cases and sale process. <i>See DIP Loan Agreement § 8.01</i>
Stipulations as to Prepetition Claims and Liens Bankruptcy Rule 4001(c)(1)(B)(iii)	In the Interim Order, the Debtors, for themselves and on behalf of their estates, admit, stipulate, acknowledge and agree as follows: <i>Validity of Prepetition Liens and Prepetition Obligations.</i> The Prepetition Liens are (i) valid, binding, perfected, duly recorded and enforceable liens on, and security interests in, all of the Debtors' respective right, title, and interest in, and to, the Prepetition Collateral and (ii) not subject to, pursuant to the Bankruptcy Code or other applicable law (foreign or domestic), avoidance, disallowance, reduction, recharacterization, recovery, subordination (whether equitable, contractual, or otherwise), attachment, offset, recoupment, counterclaim, defense, "claim" (as defined in the Bankruptcy Code),

	impairment, or any other challenge of any kind by any person or entity. Each Debtor irrevocably releases and waives, for itself and its Estate, any right to challenge or contest in any way the scope, extent, perfection, priority, validity, non-avoidability, or enforceability of the Prepetition Liens or the validity, or enforceability of the Prepetition Loan Documents or the validity, enforceability, or priority of payment of the Prepetition Obligations, and forever releases and waives, any claims, objections, challenges, counterclaims, causes of action, defenses, setoff rights, obligations, rights to subordinate, or any other liabilities, whether arising in equity or under the Bankruptcy Code or applicable nonbankruptcy law, against the Prepetition Secured Parties, or any of their respective affiliates, agents, attorneys, consultants, advisors, professionals, officers, directors, and employees from the beginning of time through the Petition Date. The Prepetition Liens were granted to the Prepetition Secured Parties for fair consideration and reasonably equivalent value and were granted in consideration of the making and/or continued making of loans, commitments, and/or other financial accommodations under the Prepetition Loan Documents. No portion of the Prepetition Obligations or any payments made to the Prepetition Secured Parties or applied to or paid on account of the obligations owing under the Prepetition Loan Documents prior to the Petition Date is subject to any contest, attack, rejection, recovery, recoupment, reduction, defense, counterclaim, offset, subordination, recharacterization, avoidance, or other claim, cause of action, or other challenge of any nature under the Bankruptcy Code or applicable non-bankruptcy law. <i>See Interim Order ¶ G</i>
Effects of Stipulations Bankruptcy Rule 4001(c)(1)(B)(iii)	The Debtors' Stipulations shall be binding upon the Debtors upon entry of the Interim Order, and upon their Estates and any successor thereto in all circumstances for all purposes immediately upon entry of the Final Order. The Debtors' Stipulations shall be binding upon each other party-in-interest, except to the extent such party in interest <i>first</i> obtains standing (including any chapter 11 trustee or if the Chapter 11 Cases are converted to cases under chapter 7 prior to the expiration of the Challenge Period, the chapter 7 trustee in such Successor Case), by no later than the date that is the earlier of (a) as to any Committee, sixty (60) calendar days after the appointment of such Committee, (b) as to all parties in interest other than a Committee, one business day before the hearing approving a sale of substantially all of the Debtors' assets and (c) as to all parties in interest other than a Committee, seventy-five (75) calendar days following the date of entry of the Interim Order (such time period shall be referred to as the "<u>Challenge Period</u>") and <i>second</i>, obtains a final, non-appealable order in favor of such party-in-interest sustaining any such Challenge (as defined below) in any such timely-filed contested matter or adversary proceeding (any such

Challenge timely brought for which such a final and non-appealable order is so obtained, a “Successful Challenge”). For the purposes of the Interim Order, a “Challenge” shall mean a timely and properly filed contested matter or adversary proceeding challenging or otherwise objecting to the admissions, stipulations, findings, or releases set forth in the Interim Order, including the stipulations contained in the Debtors’ Stipulations, including but not limited to those in relation to (i) the amount, validity, extent, priority, or perfection of the mortgages, security interests, and liens of the Prepetition Agent with respect to the Prepetition Collateral; (ii) the validity, allowability and priority of the Prepetition Obligations; and (iii) any releases set forth or agreed to herein or pursuant to the DIP Documents. The Challenge Period shall terminate on the date that is the next calendar day after the expiration of the Challenge Period in the event that either no Challenge is raised during the Challenge Period or, with respect only to those parties who file a Challenge, such Challenge is fully and finally adjudicated (collectively, the “Challenge Period Termination Date”). The filing of a motion seeking standing to file a Challenge before expiration of the Challenge Period, which attaches a proposed Challenge, shall extend the Challenge Period solely with respect to that party until two (2) business days after this Court approves the standing motion, or such other time period ordered by this Court in approving the standing motion and solely with respect to the Challenges asserted in the complaint. Except as otherwise expressly provided herein, from and after the Challenge Period Termination Date and for all purposes in these Chapter 11 Cases and any Successor Cases (and after the dismissal of these Chapter 11 Cases or any Successor Cases), and without further notice, motion, or application to, order of, or hearing before this Court, (1) any and all payments made to or for the benefit of the Prepetition Secured Parties or otherwise authorized by the Interim Order (whether made prior to, on, or after the Petition Date) shall be indefeasible and not be subject to counterclaim, set-off, subordination, recharacterization, defense, disallowance, recovery, or avoidance by any party in interest, (2) any and all such Challenges by any party-in-interest shall be deemed to be forever released, waived, and barred, (3) all of the Prepetition Obligations shall be deemed to be fully allowed claims within the meaning of section 506 of the Bankruptcy Code, and (4) the Debtors’ Stipulations and releases shall be binding on all parties in interest in these Chapter 11 Cases or any Successor Cases, including any Committee or chapter 11 or chapter 7 trustee. Notwithstanding the foregoing, to the extent any Challenge is timely asserted, the Debtors’ Stipulations and the other provisions in clauses (1) through (4) in the immediately preceding sentence shall nonetheless remain binding and preclusive on any Committee and on any other party-in-interest from and after the Challenge Period Termination Date, except to the extent that such Debtors’ Stipulations

	or the other provisions in clauses (1) through (4) of the immediately preceding sentence were expressly challenged in such Challenge and such Challenge becomes a Successful Challenge. Notwithstanding any provision to the contrary herein, nothing in the Interim Order shall be construed to grant standing on any party in interest, including any Committee, to bring any Challenge on behalf of the Debtors' Estates. The failure of any party-in-interest, including any Committee, to obtain an order of this Court prior to the Challenge Period Termination Date granting standing to bring any Challenge on behalf of the Debtors' Estates shall not be a defense to failing to commence a Challenge prior to the Challenge Period Termination Date as required under paragraph 43 or to require or permit an extension of the Challenge Period Termination Date. To the extent any such Challenge is timely and properly commenced, the Prepetition Secured Parties shall be entitled to payment of the related costs and expenses, including, but not limited to, reasonable attorneys' fees, incurred in defending themselves and the other Prepetition Secured Parties in any such proceeding as adequate protection. This Court may fashion an appropriate remedy in the event of a Successful Challenge. <i>See Interim Order ¶ 43</i>
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STATEMENT REGARDING SIGNIFICANT PROVISIONS

14. The Interim Order contains the following provisions (the "Significant Provisions") identified in section C, paragraph 8 of the Complex Case Procedures:

- a. ***Sale or Plan Confirmation Milestones.*** The DIP Loan Agreement incorporates milestones with respect to entry of an order approving sale procedures, the submission of final qualified bids, the occurrence of an auction (if required), the approval of the Acceptable Sale Transaction (as defined in the DIP Loan Agreement) and the consummation of the Acceptable Sale Transaction. *See* DIP Loan Agreement § 6.19; Interim Order ¶ 29. These milestones were heavily negotiated and required by the DIP Lenders as a condition to providing the DIP Facility and to provide for efficient administration of the Chapter 11 Cases given the Debtors' strained liquidity position. *See* DIP Decl. ¶ 13. The Debtors believe that the milestones offer sufficient time for the Debtors to effectively market their assets and complete the transactions contemplated in the Chapter 11 Cases, include the sale.
- b. ***Roll-Ups.*** The Debtors are seeking approval of a roll-up of prepetition debt. However, the inclusion of the roll-up is subject to the entry of the Final Order, so parties in interest will have sufficient notice and opportunity to object. *See* DIP Credit Agreement § 2.01; Interim Order ¶¶ J, K, 8.

- c. ***Liens on Avoidance Actions or Proceeds of Avoidance Actions.*** The Debtors are seeking approval of DIP Liens and Replacement Liens on any and all claims and causes of action, including all claims and causes of action arising under chapter 5 of the Bankruptcy Code, including sections 502(d), 544, 545, 547, 548, 549, 550, and 553 (“Avoidance Actions”) and proceeds thereof. However, the inclusion of proceeds of Avoidance Actions as DIP Collateral is subject to the entry of the Final Order, so parties in interest will have sufficient notice and an opportunity to object. *See* Interim Order ¶¶ 5, 14.
- d. ***Default Provisions and Remedies.*** The DIP Documents contain Event of Default provisions and will allow for remedies by the DIP Agent upon direction by the Required DIP Lenders following the occurrence of an Event of Default, subject to the five (5) business day Remedies Notice Period. If, prior to the exercise or enforcement of certain rights, the Debtors wish to determine whether an Event of Default has occurred, the Debtors may seek an Emergency Hearing during the Remedies Notice Period (each as defined in the Interim Order). *See* DIP Loan Agreement §§ 8.01, 8.02; Interim Order ¶¶ 28, 30, 32. The Events of Default appropriately balance the DIP Lenders’ need for protection and the Debtors’ need for postpetition financing and continued use of Cash Collateral. In addition, the DIP Agent must provide five (5) business days’ written notice to the Debtors. During the Remedies Notice Period, the Debtors may use Cash Collateral and proceeds of the DIP Facility to pay such amounts critical to the preservation of the Debtors and their estates in accordance with the Approved Budget, including amounts permitted under the Carve-Out. Therefore, the Interim Order does not provide for the automatic lifting of the stay upon Event of Default.
- e. ***Release of Claims Against the Released Parties.*** The Interim Order provides for the release and discharge of each of the Released Parties (as defined in the Interim Order) from, among other things, any and all liabilities, claims and causes of action arising under, in connection with, or related to the Debtors or their estates, the extent, amount validity, enforceability arising out of or related to (as applicable) the DIP Documents, the Prepetition Loan Documents, the negotiation thereof and of the transactions contemplated thereby and the obligations owing and the financial obligations made thereunder, or otherwise related to the Debtors, in each case that the Debtors at any time had, now have or may have, or that their successors or assigns hereafter can or may have against any of the Released Parties for or by reason of any act, omission, matter, cause or thing whatsoever arising at any time on or prior to the date of the Interim Order. *See* Interim Order ¶ H. The release is a material inducement to the DIP Secured Parties to provide the DIP Facility and is being provided in exchange for consideration in the form of the DIP Facility and the DIP Lenders’ consent to the Debtors’ use of Cash Collateral, which is essential to the Debtors’ ability to fund the competitive sale process and the Chapter 11 Cases. Further, the Debtors are not aware of any meaningful claims

against the DIP Secured Parties and Prepetition Secured Parties. The release complies with the requirements of paragraph 9 of the Complex Case Procedures because it is subject to the Challenge Period. *See* Interim Order ¶ 43.

- f. ***Limitations on the Use of Cash Collateral or DIP Proceeds to Pay Fees for Advisors to Official Committees or Future Trustees.*** As set forth in the Interim DIP Order, none of the DIP Proceeds or the Cash Collateral, or the Carve Out may be used, or any other funds may be used by the Debtors, any statutory or non-statutory committee appointed or formed in these chapter 11 cases, or any other party-in-interest (including without limitation any chapter 7 trustee or chapter 11 trustee or examiner appointed in these chapter 11 cases or any successor cases) to investigate, prepare, assert, initiate, support, or prosecute any claim, counterclaim, or cause of action against the DIP Secured Parties or the Prepetition Secured Parties, subject to a \$25,000 investigation carve-out in favor of any official committee of unsecured creditors to investigate the validity, enforceability, extent, perfection, or priority of the Prepetition Secured Parties, the Prepetition Obligations and the Prepetition Liens.
- g. ***Priming Liens.*** The Interim Order does not provide for any non-consensual priming liens. The Interim Order, which provides the DIP Agent, for its own benefit and the benefit of the DIP Lenders, with first priority senior priming security interests in and liens upon the Prepetition Collateral, subject only to the Carve-Out and any Prepetition Permitted Liens, has been consented to by the lenders under the Prepetition Credit Agreement. *See* DIP Loan Agreement § 6.12, Interim Order ¶ 6. It is appropriate to provide priming liens to the DIP Lenders to secure the DIP Obligations because the Prepetition Secured Parties are receiving adequate protection in the form of replacement liens and superpriority claims under section 507(b) of the Bankruptcy Code to the extent of any diminution in value of their interest in their collateral, among other protections, including budget compliance and reporting. The Prepetition Secured Parties will also receive payment of certain professional fees and expenses, as well as payment in-kind of accrued and unpaid prepetition interest and current postpetition interest.
- h. ***No Other Provisions That Limit the Ability of Estate Fiduciaries to Fulfill Their Duties.*** The DIP Credit Agreement and the Interim Order do not include any provisions that limit the ability of estate fiduciaries to fulfil their duties.

15. In light of the foregoing, the Significant Provisions are appropriate under the facts and circumstances of the Chapter 11 Cases. Accordingly, the Significant Provisions should be approved.

ADDITIONAL BACKGROUND

1. Debtors' Prepetition Capital Structure

A. Prepetition Secured Loan

16. On or about June 22, 2021, Solar Mosaic, as borrower, entered into a that certain Credit Agreement (as amended, restated, amended and restated, supplemented, or otherwise modified from time to time, the "Prepetition Credit Agreement" and (x) the Loans extended and as defined thereunder, the "Prepetition Loans" and (y) the Obligations arising and as thereunder, including the Prepetition Loans, the "Prepetition Obligations") with the financial institutions from time to time party thereto as Lenders (the "Prepetition Lenders") and Forbright Bank (f/k/a Congressional Bank), as administrative agent (in such capacity, the "Prepetition Agent" and together with the Prepetition Lenders, the "Prepetition Secured Parties").

17. As of the Petition Date, the Prepetition Loans consist of a revolving credit facility in the aggregate principal amount of \$113,571,459.11. Certain of the Prepetition Lenders, none of whom are DIP Lenders, are affiliates of the Debtors.

18. The Debtors' obligations under the Prepetition Credit Facilities are secured by substantially all of the Debtors' assets in accordance with that certain Amended and Restated Security and Pledge Agreement, dated as of April 14, 2023, entered into among Solar Mosaic, Modern Home, LLC, MSFC, and the Prepetition Agent, as the same may be amended, restated, amended and restated, supplemented, or otherwise modified from time to time.

2. Debtors' Need for Postpetition Financing

19. In the months preceding the Petition Date, the Debtors have faced significant operational and liquidity challenges. As set forth in detail in the First Day Declaration, these challenges related largely to unfavorable capital markets and rising interest rates, which have prevented the Debtors from accessing other sources of liquidity. At the same time, a reduction in

consumer demand for solar installation, driven chiefly by political uncertainty around the future of solar ITCs and a slowing macroeconomic outlook, has negatively impacted the Debtors' revenues, further exacerbating the already tight liquidity situation. These same factors, among others, have also hindered the Debtors' ability to enter into agreements with new or existing lending partners for financing additional Warehouse capacity.

3. Debtors' Efforts to Obtain Postpetition Financing

20. In August, 2024, the Company retained Rockefeller Capital Management ("Rockefeller") to assist the Company in soliciting a potential recapitalization transaction. As part of this process, Rockefeller contacted approximately seven (7) parties and received no more than two (2) indications of interest, which culminated in the negotiation of a term sheet with a potential investor that contemplated an equity investment in the Company. The Company and its advisors worked diligently to pursue this potential recapitalization transaction, including providing extensive diligence materials to the interest party, conducting management meetings, and vigorously negotiating the terms of the transaction. Unfortunately, despite the Company's efforts, the potential transaction failed to materialize.

21. Once it became clear that the contemplated recapitalization would not be consummated and that the Company had no other actionable prospects for an out-of-court solution to its worsening liquidity challenges, the Company and its advisors quickly pivoted to preparing for a chapter 11 bankruptcy filing and seeking support from key stakeholders, potential investors, and other interested parties.

22. The Debtors retained Jefferies LLC ("Jefferies") to, among other things, market the Company's assets in connection with a sale in chapter 11 proceeding and solicit funding for debtor-in-possession financing. Prior to the Petition Date, Jefferies contacted 6 potential strategic purchasers and 4 potential financial purchasers, of whom, 6 executed non-disclosure agreements

to receive access to a secure data room containing diligence materials. While none of these parties was willing to provide a debtor-in-possession loan or proceed as a stalking horse bidder as of the Petition Date, the Company believes that a number of these interested parties are likely to submit bids for all or some combination of the Company's assets as the marketing and sale process continues during the course of these Chapter 11 Cases

23. On or around March 26, 2025, the Debtors and Forbright, its largest Prepetition Lender, began materially advancing negotiations regarding the terms, restrictions, fees, and other provisions of the Prepetition Lender's DIP financing proposal. The Debtors continued this negotiation process with the Prepetition Lender concurrently with the negotiations with other interested parties. As a result of these efforts and the negotiations with the Prepetition Lender and other interested parties, the Debtors determined in their business judgment that there was no proposal for debtor-in-possession financing available to the Debtors on terms better than those provided by the Prepetition Lender, especially after taking into account certain concessions provided by the Prepetition Lender during the course of negotiations. In particular, no party was willing to extend debtor-in-possession financing to the Debtors on an unsecured or junior basis. Accordingly, on June 6, 2025, the Debtors and the DIP Lenders entered into DIP Credit Agreement, which is attached to the Interim Order as Exhibit 1.

BASIS FOR RELIEF REQUESTED

A. Debtors Should Be Authorized to Enter Into DIP Credit Agreement

1. Entering Into DIP Facility Is a Sound Exercise of Debtors' Business Judgment

24. Section 364 of the Bankruptcy Code authorizes a debtor to obtain secured or superpriority financing under certain circumstances discussed in detail below. Courts grant a debtor-in-possession considerable deference in acting in accordance with its business judgment in obtaining postpetition secured credit, so long as the agreement to obtain such credit does not run

afoul of the provisions of, and policies underlying, the Bankruptcy Code. *See, e.g., In re EXCO Res., Inc.*, No. 18-30155 (D.I. 97) (Bankr. S.D. Tex. Jan. 18, 2019) (order approving postpetition financing as exercise of debtors’ business judgment); *In re N. Bay Gen. Hosp., Inc.*, No. 08-20368 (Bankr. S.D. Tex. July 11, 2008) (order approving postpetition financing as exercise of debtors’ business judgment); *In re Ames Dep’t Stores, Inc.*, 115 B.R. 34, 40 (Bankr. S.D.N.Y. 1990) (“[C]ases consistently reflect that the court’s discretion under section 364 [of the Bankruptcy Code] is to be utilized on grounds that permit [a debtor’s] reasonable business judgment to be exercised so long as the financing agreement does not contain terms that leverage the bankruptcy process and powers or its purpose is not so much to benefit the estate as it is to benefit a party-in-interest.”).

25. Specifically, to determine whether the business judgment standard is met, a court need only “examine whether a reasonable business person would make a similar decision under similar circumstances.” *In re Exide Techs.*, 340 B.R. 222, 239 (Bankr. D. Del. 2006); *see also In re Curlew Valley Assocs.*, 14 B.R. 506, 513–14 (Bankr. D. Utah 1981) (noting that courts should not second guess a debtor’s business decision when that decision involves “a business judgment made in good faith, upon a reasonable basis, and within the scope of [the debtor’s] authority under the [Bankruptcy] Code”). Furthermore, in considering whether the terms of postpetition financing are fair and reasonable, courts consider the terms in light of the relative circumstances of both the debtor and the potential lender. This includes the recognition that a debtor may have to enter into “hard bargains” to acquire funds for its reorganization. *In re Elingsen McLean Oil Co., Inc.*, 65 B.R. 358, 365 n.7 (W.D. Mich. 1986). Finally, the Court may also appropriately take into consideration non-economic benefits to the Debtors offered by a proposed postpetition facility. As the Bankruptcy Court for the Southern District of New York has explained:

Although all parties . . . are naturally motivated to obtain financing on the best possible terms, a business decision to obtain credit from a particular lender is almost never based purely on economic terms. Relevant features of the financing must be evaluated, including noneconomic elements such as the timing and certainty of closing, the impact on creditor constituencies and the likelihood of a successful reorganization. This is particularly true in a bankruptcy setting where cooperation and established allegiances with creditor groups can be a vital part of building support for a restructuring that ultimately may lead to a confirmable reorganization plan. That which helps foster consensus may be preferable to a notionally better transaction that carries the risk of promoting unwanted conflict.

In re ION Media Networks, Inc., No. 09-13125, 2009 WL 2902568, at *4 (Bankr. S.D.N.Y. Jul. 6, 2009).

26. The Debtors' determination to move forward with the DIP Facility is an exercise of their sound business judgment following an extensive arm's-length negotiation process and careful evaluation of available alternatives. Having analyzed the advantages and disadvantages of the proposed DIP Facility, as well as the advantages and disadvantage of other potential financing sources, the Debtors believe that they have obtained the best financing available under the totality of the circumstances and that the proposed DIP Facility will position the Debtors to maximize the value of their estates. Accordingly, the Court should authorize the Debtors' entry into the DIP Facility.

2. The Debtors Should Be Authorized to Grant Liens, Including Priming Liens, and Superpriority Claims

27. The Debtors propose to obtain the DIP Facility by providing security interests and liens as set forth in the DIP Documents pursuant to section 364(c) and 364(d)(1) of the Bankruptcy Code. Specifically, the Debtors propose to provide to the DIP Lenders continuing, valid, binding, enforceable, non-avoidable, and automatically and properly perfected postpetition security interests in and liens on the DIP Collateral. The Debtors also seek authority to grant the DIP Lenders super priority claims.

28. Section 364(c) of the Bankruptcy Code requires a finding, made after notice and a hearing, that a debtor seeking postpetition financing on a secured basis cannot “obtain unsecured credit allowable under section 503(b)(1) of [the Bankruptcy Code] as an administrative expense.” 11 U.S.C. § 364(c).

29. In addition, under section 364(d)(1) of the Bankruptcy Code, courts may, after notice and a hearing, authorize a debtor to obtain postpetition credit secured by a “priming” lien from affected secured parties if (a) the debtor obtains the consent of such parties or (b) the debtor cannot obtain credit elsewhere and the interests of existing lienholders are adequately protected. 11 U.S.C. § 364(d)(1). Specifically, section 364(d)(1) provides, in relevant part, that a court may, after notice and a hearing:

authorize the obtaining of credit or the incurring of debt secured by a senior or equal lien on property of the estate that is subject to a lien only if-

(A) the [debtor] is unable to obtain credit otherwise; and

(B) there is adequate protection of the interest of the holder of the lien on the property of the estate on which such senior or equal lien is proposed to be granted.

11 U.S.C. § 364(d)(1).

30. In evaluating proposed postpetition financing under sections 364(c) and 364(d)(1) of the Bankruptcy Code, courts perform a qualitative analysis and generally consider various factors including whether:

1. unencumbered credit or alternative financing without superpriority status is available to the debtor;
2. the credit transactions are necessary to preserve assets of the estate;
3. the terms of the credit agreement are fair, reasonable, and adequate;
4. the proposed financing agreement was negotiated in good faith and at arm’s length and entry thereto is an exercise of sound and reasonable business judgment and in the best interest of the debtors’ estate and their creditors; and

5. the proposed financing agreement adequately protects prepetition secured creditors.

See, e.g., In re Aqua Assoc., 123 B.R. 192 (Bankr. E.D. Pa. 1991) (applying the first three factors in making a determination under section 364(c)); *In re Crouse Group, Inc.*, 71 B.R. 544 (Bankr. E.D. Pa. 1987) (same); *Bland v. Farmworker Creditors*, 308 B.R. 109, 113-14 (S.D. Ga. 2003) (applying all factors in making a determination under section 364(d))

31. The Debtors do not believe that alternative sources of financing are reasonably available or could be timely obtained in light of the Debtors' liquidity runway and impending defaults under its financing facilities and related contracts. The Debtors have been operating under significant liquidity and operational constraints over the last several months, and no lender was willing to extend credit to the Debtors on an unsecured basis. *See* DIP Decl., ¶ 9, 15. And, as noted above and described in the DIP Declaration, the Debtors believe that the proposed DIP Facility is the Debtors' best and only available source of postpetition funding under the circumstances and is critical to preserving the Debtors' enterprise value and positioning the Debtors to run a value-maximizing sale process. Thus, the Debtors have determined that the DIP Facility provides the best opportunity available to the Debtors under the circumstances to fund these Chapter 11 Cases.

32. Absent the proposed DIP Facility, which will provide the Debtors with access to liquidity to administer the Chapter 11 Cases, the value of the Debtors' estates would be significantly impaired to the detriment of all stakeholders. Without postpetition financing, the Debtors lack sufficient funds to continue operations, pay their debts as they come due, and cover the projected costs of the Chapter 11 Cases. *See* DIP Decl. ¶ 8. Under the circumstances, the Debtors believe that the terms of the proposed DIP Facility, taken as a whole, are fair and reasonable. *See* DIP Decl. ¶ 20. For these reasons, the Debtors submit that they have met the standard for obtaining postpetition financing.

33. For the reasons discussed herein, including the terms of the proposed DIP Facility as well as the unavailability of alternative sources of financing, the Debtors satisfy the standards required to access postpetition financing on a superpriority claim and priming lien basis under sections 364(c) and 364(d) of the Bankruptcy Code.

3. The Debtors Should Be Authorized to Pay DIP Fees

34. Under the DIP Documents, the Debtors have agreed, subject to Court approval, to pay the DIP Lenders certain fees as noted above and set forth in the DIP Credit Agreement. It is understood and agreed by all parties, including the Debtors, that this compensation is an integral component of the overall terms of the DIP Facility, and was required by the DIP Lenders as consideration for the extension of postpetition financing. The OID Fee and Exit Fee (as defined in the DIP Credit Agreement) are each earned as of the entry of the Interim Order but not payable until the entry of the Final Order.

35. The Debtors believe the DIP Lenders agreed to provide the DIP Loans with the specific intent to both fully fund the Debtors' reorganization while simultaneously keeping the postpetition financing narrowly tailored to meet the Debtors' restructuring needs. The DIP Lenders and the Debtors, along with their advisors, extensively negotiated the terms of the proposed DIP Facility. Such negotiations included numerous drafts of key documents, including the proposed Interim Order and the DIP Credit Agreement, term sheets and various discussions both amongst the Debtors, the DIP Lenders, and their respective advisors. After the weeks'-long negotiations, the Debtors believe that the terms of the proposed DIP Facility, including the fees and conditions contained therein, represent the best available terms for the Debtors. *See* DIP Decl. ¶ 11. Accordingly, the Court should authorize the Debtors to incur such obligations under the DIP Documents in connection with entering into those agreements.

B. The Debtors Should Be Authorized to Use Cash Collateral and Provide Adequate Protection

36. Section 363 of the Bankruptcy Code generally governs the use of estate property. Section 363(c)(2) conditions use of Cash Collateral upon (a) obtaining consent of each party that has an interest in the Cash Collateral; or (b) “the court, after notice and a hearing, authorizes such use, sale, or lease in accordance with the provisions of this section.” Further, the use of cash collateral may be prohibited or conditioned, upon proper request, as is necessary to adequately protect any interest in cash collateral. *See* 11 U.S.C. §363(e).

37. Here, the Prepetition Lender consents (and is permitted under the terms of the Prepetition Loan Documents to grant such consent) to the Debtors’ use of the Cash Collateral (as well as the Prepetition Collateral), subject to the terms and limitations set forth in the DIP Credit Agreement and the Interim Order. As explained more fully herein, the Debtors have provided the Prepetition Lender with fair and reasonable adequate protection, as set forth in the Interim Order. Accordingly, the Court should authorize the Debtors’ use of Cash Collateral in accordance with the terms and conditions set forth in the DIP Credit Agreement and the Interim Order.

38. Section 363(e) of the Bankruptcy Code provides that, “on request of an entity that has an interest in property used . . . or proposed to be used by a debtor in possession, the court . . . shall prohibit or condition such use . . . as is necessary to provide adequate protection of such interest.” 11 U.S.C. § 363(e). If a secured creditor does not consent to the debtor’s proposed use of cash collateral, the court must ensure that the creditor’s interests are adequately protected. *See id.* Thus, courts are required to balance the protection offered to a secured creditor against the debtor’s need to use cash in its reorganization effort. *Stein v. U.S. Farmers Home Admin. (In re Stein)*, 19 B.R. 458, 459 (Bankr. E.D. Pa. 1982). In determining whether a creditor is adequately protected, courts “will generally permit the business operation to continue, at least to the point of

plan formulation, if the debtors make a solid evidentiary showing to support their projections.” *In re Dynaco Corp.*, 162 B.R. 389, 395 (Bankr. D.N.H. 1993).

39. “The concept of ‘adequate protection’ is not defined in the [Bankruptcy] Code except by the implications of the examples of adequate protection listed in § 361.” *In re Beker Indus. Corp.*, 58 B.R. 725, 736 (Bankr. S.D.N.Y. 1986). Section 361 of the Bankruptcy Code contains a non-exhaustive list of acceptable forms of adequate protection, including a cash payment or periodic cash payments, additional liens, replacement liens, and the “indubitable equivalent of such entity’s interest in such property.” 11 U.S.C. § 361. While section 361 of the Bankruptcy Code provides examples of forms of adequate protection, such as granting replacement liens and administrative claims, courts decide what constitutes sufficient adequate protection on a case-by-case basis. *In re Swedeland Dev. Grp., Inc.*, 16 F.3d 552, 564 (3d Cir. 1994).

40. The concept of adequate protection exists to protect a secured creditor from diminution in value of its interest in collateral during the pendency of the bankruptcy case. *See In re Carbone Cos.*, 395 B.R. 631, 635 (Bankr. N.D. Ohio 2008) (“The test is whether the secured party’s interest is protected from diminution or decrease as a result of the proposed use of cash collateral); *see also In re Cont’l Airlines, Inc.*, 154 B.R. 176, 180,81 (Bankr. D. Del. 1993) (holding that adequate protection for use of cash collateral under section 363 is limited to use-based decline in value).

41. After arms’ length and good faith negotiations, the Prepetition Lender has agreed to consent to the use of the Prepetition Collateral (as defined in the Interim Order), including Cash Collateral, subject to the provision by the Debtors of adequate protection. Among other things, the adequate protection contemplated by the DIP Orders is designed to protect the Prepetition Lender’s interests in the Debtors’ property from any diminution in value caused by the automatic stay, by

the Debtors' use of the Cash Collateral, during the pendency of these Chapter 11 Cases and by the priming of the Prepetition Lender's liens by the DIP Liens. Specifically, the Debtors have agreed to provide the following forms of adequate protection (collectively, the "Adequate Protection Obligations"):

1. monthly payments of the reasonable fees, costs and expenses of the Prepetition Secured Parties (including professional fees),
2. monthly interest payments to the Prepetition Lenders at the interest rate of 1-month Term SOFR (as defined in the Prepetition Credit Agreement) + 7.00%, paid in kind,
3. replacement liens on the DIP Collateral that shall be junior only to the DIP Liens and any Prepetition Permitted Liens,
4. superpriority administrative expense claims with priority over any and all administrative expenses, whether heretofore or hereafter incurred, of the kind specified in sections 503(b) or 507(a) of the Bankruptcy Code, other than the Superpriority Claims of the DIP Lenders and DIP Agent and the Carve-Out, subject to payment priority consistent with the Prepetition Credit Agreement, and
5. an acknowledgement of the unconditional right to credit bid the Prepetition Obligations in a sale of the Prepetition Collateral and (B) as otherwise required by the Bankruptcy Court pursuant to sections 361, 507, 363(e) and 364(d)(1) of the Bankruptcy Code or otherwise.

42. Therefore, the Debtors submit that the proposed Adequate Protection Obligations are sufficient to protect the Prepetition Lender from any diminution in value to the Cash Collateral and Prepetition Collateral. *See In re Satcon Tech. Corp.*, No. 12-12869 (KG), 2012 WL 6091160, at *6, *7 (Bankr. D. Del. Dec. 7, 2012) (finding that "(i) interest payments at the applicable default rate, (ii) payment of the Secured Lenders' legal fees and expenses incurred in these chapter 11 cases and (iii) replacement liens on the collateral" to be appropriate forms of adequate protection that "protect a secured creditor from diminution in the value of its interest in the particular collateral during the period of use by the debtor."); COLLIER ON BANKR. ¶ 361.01 (16th ed. 2020) ("Section 361 of the Code suggests three forms of adequate protection, but the list is not inclusive:

(1) periodic payments; (2) additional or replacement liens; and (3) such other relief as will result in the realization of the ‘indubitable equivalent’ of the entity’s interest.”).

43. In light of the foregoing, the Debtors further submit that the proposed Adequate Protection Obligations to be provided for the benefit of the Prepetition Lender are appropriate. Thus, the Debtors’ provision of the Adequate Protection Obligations is not only necessary to protect against any diminution in value but is fair and appropriate under the circumstances of these Chapter 11 Cases to ensure the Debtors are able to continue using the Cash Collateral, subject to the terms and limitations set forth in the Interim Order, for the benefit of their estates and all parties in interest.

C. The Proposed Repayment of Prepetition Indebtedness Should Be Approved

44. Section 363(b) of the Bankruptcy Code permits a debtor to use, sell, or lease property, other than in the ordinary course of business, with court approval. Courts in the Fifth Circuit have recognized that it is appropriate to authorize the payment of prepetition obligations where necessary to protect and preserve the estate, including an operating business’s going-concern value. *See, e.g., In re CoServ, L.L.C.*, 273 B.R. 487, 497 (Bankr. N.D. Tex. 2002) (authorizing payment of certain prepetition claims pursuant to “doctrine of necessity”); *In re Equalnet Commc’ns Corp.*, 258 B.R. 368, 369-70 (Bankr. S.D. Tex. 2000) (business transactions critical to the survival of the business of the debtor are exceptions to the general rule of nonpayment of prepetition claims prior to plan confirmation). The business judgment rule shields a debtor’s management from judicial second-guessing. *In re Johns-Manville Corp.*, 60 B.R. 612, 615¶16 (Bankr. S.D.N.Y. 1986) (“[T]he [Bankruptcy] Code favors the continued operation of a business by a debtor and a presumption of reasonableness attaches to a debtor’s management decisions.”).

45. Repayment of prepetition debt (often referred to as a “roll-up”) is a common feature in debtor-in-possession financing arrangements. The importance of “roll-up” features in DIP facilities has been repeatedly recognized by courts in this district and others, and such courts have granted relief similar to the relief requested herein. *See, e.g., In re Ascend Performance Materials*, No. 25-90127 (CML) (Bankr. S.D. Tex. Apr. 23, 2025) (Docket No. 96) (authorizing roll-up of \$150 million in prepetition term loan obligations and a “creeping” roll-up of ABL obligations upon entry of the interim order); *In re Mitel*, No. 25-90090 (CML) (Bankr. S.D. Tex. Mar. 11, 2025) (Docket No. 61) (authorizing roll-up of \$62 million in prepetition obligations upon entry of the interim order); *In re DocuData Solutions, L.C.*, No. 25-90023 (CML) (Bankr. S.D. Tex. Mar. 4, 2025) (Docket No. 58) (authorizing roll-up of \$75 million in prepetition obligations upon entry of the interim order); *In re Vertex Energy, Inc.*, No. 24-90507 (CML) (Bankr. S.D. Tex. Sept. 25, 2024) (Docket No. 53) (authorizing approximately \$280 million DIP that included approximately \$200 million in prepetition debt); *In re Hornblower Holdings LLC*, No. 24-90061 (MI) (Bankr. S.D. Tex. Feb. 22, 2024) (Docket No. 72) (authorizing refinancing of an aggregate \$439.9 million in prepetition obligations upon entry of the interim order); *In re Diebold Holding Company, LLC*, No. 23-90602 (DRJ) (Bankr. S.D. Tex. June 2, 2023) (Docket No. 90) (authorizing refinancing of an aggregate \$733 million in prepetition obligations upon entry of the interim order); *In re QualTek Services Inc.*, No. 23-90614 (CML) (Bankr. S.D. Tex. May 25, 2023) (Docket No. 103) (authorizing roll-up of \$25 million in prepetition term loan obligations and “creeping” roll-up of prepetition revolving credit facility obligations upon entry of the interim order).

46. As set forth above, the Interim Order provides that, the “Obligations” under the Prepetition Credit Agreement owed to the DIP Lenders in their capacity as Prepetition Lenders shall immediately, automatically, and irrevocably be deemed to have been converted into DIP

Loans on a cashless basis of \$2.00 of Prepetition Loans for every \$1.00 of the New Money DIP Term Loans, provided, that, the OID Fee and Exit Fee shall not count towards the Second-Out Roll-Up. Subject to the foregoing limits, the DIP Loans shall be available under the DIP Facility in increments of no less than \$1,000,000 per draw. This is a sound exercise of the Debtors' business judgment and is a material component of the structure of the DIP Facility, which was required by the DIP Lenders as a condition to their commitment to provide postpetition financing. Without access to the DIP Facility to fund the administration of these Chapter 11 Cases and the orderly sale and wind down of the Debtors' business, the Debtors' business would cease and they would likely be forced to liquidate—a value destructive alternative for all stakeholders.

47. The simple economic reality is that a restructuring of the Debtors' businesses comes at a price, which in this case the Debtors believe to be reasonable. The Prepetition Lender is unlikely to continue to lend postpetition without some assurance regarding their prepetition claims. Absent the prepetition lenders' support, the early days of the Debtors' Chapter 11 Cases could devolve into a costly, value-destructive priming fight. In contrast, the Second-Out Roll-Up merely affects the timing, not the amount or certainty, of the Prepetition Lender's recovery—the secured claims arising under the Prepetition Credit Agreement are required by section 1129 of the Bankruptcy Code to be satisfied in full before recoveries to junior creditors may be provided, absent consent of such secured parties (which consent the Debtors do not presently have).

48. Given these circumstances, the Second-Out Roll-Up is reasonable, appropriate, and a sound exercise of the Debtors' business judgment.

D. Scope of Carve-Out Is Necessary and Appropriate

49. The Interim Order provides that the DIP Liens are subject to the Carve-Out (as described above). Without the Carve-Out, the Debtors and other parties in interest may be deprived of certain rights and powers because the services for which professionals may be

compensated in these Chapter 11 Cases would be restricted. *See In re Ames Dep't Stores, Inc.*, 115 B.R. 34, 40 (Bankr. S.D.N.Y. 1990) (observing that courts insist on carve-outs for professionals representing parties in interest because “[a]bsent such protection, the collective rights and expectations of all parties-in-interest are sorely prejudiced”). The Carve-Out does not directly or indirectly deprive the Debtors’ estates or other parties in interest of possible rights and powers. Additionally, the Carve-Out protects against administrative insolvency during the course of these Chapter 11 Cases by ensuring that assets remain for the payment of amounts to the Clerk of the Court or U.S. Trustee fees, and professional fees of the Debtors. Accordingly, the Debtors submit that the Carve-Out, as set forth in the Interim Order, is appropriate and should be approved.

E. The DIP Lenders Should Be Deemed a Good-Faith Lender under Bankruptcy Code Section 364(e)

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

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

51. As explained herein and in the First Day Declaration and DIP Declaration, the terms of the DIP Facility are the result of (a) the Debtors’ reasonable and informed determination that the DIP Lenders offered the most favorable terms on which to obtain vital postpetition financing, and (b) extensive arms’-length, good-faith negotiations between the Debtors and the DIP Lenders. The Debtors submit that the terms and conditions of the DIP Facility are reasonable and appropriate under the circumstances, and the proceeds of the DIP Facility will be used only for

purposes that are permissible under the Bankruptcy Code. Further, no consideration is being provided to the DIP Lenders other than as described herein. Accordingly, the Court should find that the DIP Lenders are a “good faith” lender within the meaning of section 364(e) of the Bankruptcy Code and is entitled to all of the protections afforded by that section.

F. The Automatic Stay Should Modified on a Limited Basis

52. The Interim Order provides that the automatic stay provisions of section 362 of the Bankruptcy Code will be modified to allow the DIP Lenders to file any financing statements, security agreements, notices of liens, and other similar instruments and documents in order to validate and perfect the liens and security interests granted to them under the Interim Order. The Interim Order further provides that the automatic stay is modified as necessary to permit the Debtors to grant the DIP Liens to the DIP Lenders and to incur all liabilities and obligations set forth in the Interim Order. Finally, the proposed Interim Order provides that, following the occurrence of an Event of Default, the automatic stay shall be vacated and modified to the extent necessary to permit the DIP Lenders to exercise all rights and remedies in accordance with the DIP Documents, or applicable law following four business days’ notice to the Debtors, the Committee, and the U.S. Trustee, during which time the Debtors may seek injunctive relief.

53. These provisions were part of the negotiations over the terms and conditions of the DIP Facility (including Cash Collateral). Notably, the exercise of remedies (including with respect to prepetition claims and collateral) will be subject to five days’ notice (or otherwise extended by the Court) to allow the Debtors to seek other relief. Under these circumstances, the Debtors believe that the extent of the modifications to the automatic stay under the Interim Order is reasonable and should be approved.

G. Request for Interim Hearing: Failure to Obtain, on an Interim Basis, Immediate Access to the DIP Facility Would Cause Immediate and Irreparable Harm

54. Bankruptcy Rules 4001(b) and 4001(c) provide that a final hearing on a motion to obtain credit pursuant to section 364 of the Bankruptcy Code or to use cash collateral pursuant to section 363 of the Bankruptcy Code may not be commenced earlier than fourteen (14) days after the service of such motion. However, Bankruptcy Rules 4001(b)(2) and (c)(2) allow the Court to (a) hold a preliminary expedited hearing on the motion and authorize the obtaining of credit and use of cash collateral if so requested and (b) authorize, to the extent necessary to avoid immediate and irreparable harm to the estate, the use of cash collateral or the obtaining of credit.

55. The Debtors request that the Court hold a hearing to consider entry of the Interim Order authorizing the Debtors—in the period from and after entry of the Interim Order until the Final Hearing—to borrow funds under the DIP Facility in accordance with the Approved Budget.

56. The Approved Budget was developed by the Debtors and their professionals, and together with the DIP Lenders, to ensure that the Debtors have sufficient funds to operate their business in the ordinary course while running a value-maximizing sale process and paying their administrative expenses. Further, the Approved Budget contemplates that in the period from and after entry of the Interim Order until the Final Hearing the Debtors will use only those funds necessary to avoid immediate and irreparable harm.

EMERGENCY CONSIDERATION

57. The Debtors request emergency consideration of this Motion pursuant to Bankruptcy Rule 6003, which empowers a court to grant relief within the first 21 days after the commencement of a chapter 11 case “to the extent that relief is necessary to avoid immediate and irreparable harm.” The failure to receive the requested relief during the first 21 days of these Chapter 11 Cases would severely disrupt the Debtors’ operations and significantly impact the

Debtors' ability to swiftly and efficiently move forward with a value-maximizing process. Accordingly, the Debtors have satisfied the "immediate and irreparable harm" standard of Bankruptcy Rule 6003 and request that the Court approve the relief requested in this Motion on an emergency basis.

WAIVER OF BANKRUPTCY RULE 4001(a)(3)

58. Bankruptcy Rule 4001(a)(3) provides that an "order granting a motion for relief from an automatic stay made in accordance with Rule 4001(a)(1) is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise." As explained herein, access to the DIP Facility is essential to prevent irreparable damage to the Debtors' estates.

59. Accordingly, ample cause exists to justify the waiver of the 14-day stay imposed by Bankruptcy Rule 4001(a)(3), and the Debtors requests of waiver of the stay, to the extent such stay applies.

WAIVER OF BANKRUPTCY RULES 6004(a) and (h)

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

RESERVATION OF RIGHTS

61. Nothing contained herein or any actions taken pursuant to such relief requested is intended or shall be construed as (a) an admission as to the amount of, basis for, or validity of any claim against a Debtor entity under the Bankruptcy Code or other applicable non-bankruptcy law; (b) a waiver of the Debtors' or any other party in interest's rights to dispute any claim on any grounds; (c) a promise or requirement to pay any claim; (d) an implication or admission that any particular claim is of a type specified or defined in this Motion or any order granting the relief

requested by this Motion or a finding that any particular claim is an administrative expense claim or other priority claim; (e) a waiver of any claims or causes of action which may exist against any creditor or interest holder; (f) a request or authorization to assume, adopt, or reject any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (g) a waiver or limitation of the Debtors', or any other party in interest's, rights under the Bankruptcy Code or any other applicable law; (h) an admission as to the validity, priority, enforceability, or perfection of any lien on, security interest in, or other encumbrance of property of the Debtors' estates; or (i) a concession by the Debtors that any liens (contractual, common law, statutory, or otherwise) that may be satisfied pursuant to the relief requested in this Motion are valid and the rights of all parties in interest are expressly reserved to contest the extent, validity, or perfection or seek avoidance of all such liens. If the Court grants the relief sought herein, any payment made pursuant to an order of the Court is not intended and should not be construed as an admission as to the validity or priority of any claim or a waiver of the Debtors' or any other party in interest's rights to subsequently dispute such claim.

NOTICE

62. The Debtors will provide notice of this Motion to: (a) the Office of the United States Trustee for the Southern District of Texas; (b) the holders of the 30 largest unsecured claims against the Debtors (on a consolidated basis); (c) the Prepetition Agent; (d) the DIP Agent; (e) the Office of the United States Attorney for the Southern District of Texas; (f) the state attorneys general for states in which the Debtors conduct business; (g) the Internal Revenue Service; (h) the Contract Counterparties, and (i) any party that has requested notice pursuant to Bankruptcy Rule 2002. In view of the nature of the relief requested, the Debtors respectfully submit that no other or further notice need be provided.

[Remainder of Page Intentionally Left Blank]

WHEREFORE, the Debtors respectfully request entry of the Interim Order, substantially in the form attached hereto as **Exhibit A**, and subsequently the Final Order, (a) granting the relief requested herein, and (b) granting such other relief as is just and proper.

Dated: June 6, 2025
Houston, Texas

/s/ Charles Persons

PAUL HASTINGS LLP

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-and-

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Proposed Counsel to the Debtors and Debtors in Possession

EXHIBIT A

Proposed Interim Order

satisfactory to the Required DIP Lenders², the “**DIP Documents**”), dated as of June 6, 2025, substantially in the form as filed with this Court and attached as **Exhibit 1** hereto, by and among the Debtors, Forbright Bank (f/k/a Congressional Bank)³ (“**Forbright**”), in its capacity as agent (in such capacity, “**DIP Agent**”) and the financial institutions from time to time party thereto, as lenders (collectively, the “**DIP Lenders**” and together with the DIP Agent, the “**DIP Secured Parties**”), and comprised of:

(i) subject to the entry of this Interim Order, a “new money” first-out delayed draw term loan facility in an aggregate principal amount of up to \$15,000,000.00 in aggregate postpetition financing plus applicable fees and premiums (the “**New Money DIP Term Loan Facility**”; the commitments thereunder, the “**New Money DIP Commitments**”, and the term loans extended thereunder, the “**New Money DIP Term Loans**”) pursuant to which (A) \$6,000,000.00 of New Money DIP Term Loans (the “**Interim Amount**”) shall be borrowed in a single borrowing on the Closing Date (as defined in the DIP Credit Agreement) pursuant to this Interim Order and (B) an aggregate principal amount not to exceed \$9,000,000.00, plus applicable fees and premiums, as set forth in the Approved DIP Budget (as defined below) shall be borrowed in a single borrowing on or after the entry of the Final Order;

(ii) subject to the entry of the Final Order, the conversion of up to \$30,000,000.00 of the Prepetition Obligations (together with accrued and unpaid interest thereon) held by the DIP Lenders (or any of their respective designated Approved Funds (as defined in the DIP Credit Agreement)) into a second-out tranche term loan facility (the “**Second Out DIP Term Loan Facility**”, and together with the New Money DIP Term Loan Facility, the “**DIP Facility**”, and such conversion into the same, the “**Second Out Roll Up**”, and such converted amounts, the “**Second Out DIP Term Loans**”, and together with the New Money DIP Term Loans, the “**DIP Loans**”, and together with all other Obligations under and as defined in the DIP Credit Agreement, the “**DIP Obligations**”), which shall be deemed “rolled up” on a cashless basis of \$2.00 of Second Out DIP Term Loans for every \$1.00 of principal amount of New Money DIP Term Loans (i.e., \$30,000,000.00), based upon such DIP Lender’s (or any of its designated Approved Funds) *pro rata* allocation of the New Money DIP Term Loans, and shall automatically be deemed to be substituted and exchanged for, and shall be deemed to be, Second Out DIP Term Loans for all purposes hereunder as if originally funded on the Closing Date; provided, however, that if any DIP Lender’s *pro rata* share of the Second Out Roll Up exceeds the total amount of Prepetition Obligations held by such DIP Lender as of the Closing Date, such DIP Lender’s share of Second Out DIP Loans shall be reduced in an amount, and to such an extent, to ensure that the maximum amount of Second Out Roll Up of such DIP Lender shall be no greater

² “**Required DIP Lenders**” as used herein, shall have the same meaning as “Required Lenders” under the DIP Credit Agreement.

³ Pursuant to the Articles of Amendment of the Articles of Incorporation of Congressional Bank dated as of January 19, 2022, the name of Congressional Bank was formally changed to Forbright Bank, effective as of January 19, 2022.

than such DIP Lenders' Prepetition Obligations, and the total amount of Second Out DIP Loans shall be reduced accordingly;

(b) granting the DIP Secured Parties allowed superpriority administrative expense claim status in each of the Chapter 11 Cases and any Successor Cases (as defined below), subject only to the Carve-Out and Prepetition Permitted Liens (each as defined below);

(c) subject to the terms of this Interim Order, granting to the DIP Agent (on behalf of the DIP Lenders) automatically perfected security interests in and priming liens on all of the DIP Collateral (as defined below), including, without limitation, all Cash Collateral (defined below);

(d) authorization for the Debtors' use of proceeds of the DIP Facility and Cash Collateral to: (i) provide financing for working capital and other general corporate purposes, including for (x) bankruptcy-related costs and expenses and (y) the Debtors' operations to the extent provided in, and in accordance with, the Approved Budget (as defined below), this Interim Order, and the DIP Documents; (ii) make permitted adequate protection payments as specified below; (iii) pay the principal, interest, fees, expenses, and other amounts payable and reimbursable under the DIP Documents or this Interim Order as such become due, including, without limitation, the DIP Fees (as defined below) and the fees and expenses of the DIP Professionals (as defined below); and (iv) any other purposes agreed upon in the DIP Documents, in each case solely in accordance with the Approved Budget, this Interim Order, and the DIP Documents;

(e) authorization for the Debtors to use the Prepetition Collateral (as defined below), including the Cash Collateral, on an interim basis in accordance with both the Approved Budget and the DIP Documents, and providing, among other things, adequate protection to the Prepetition Secured Parties (as defined below) for any Diminution (as defined below) of their interests in the Prepetition Collateral, including the Cash Collateral;

(f) the grant of adequate protection as of the Petition Date (as defined herein) to Prepetition Secured Parties, for itself, pursuant to sections 361, 362 and 363(e) of the Bankruptcy Code, for any diminution in value of their respective interests in the Prepetition Collateral resulting from the Debtors' use of Cash Collateral and imposition of the automatic stay pursuant to section 362 of the Bankruptcy Code;

(g) modification by this Court of the automatic stay imposed by section 362 of the Bankruptcy Code to the extent necessary to permit the Debtors and the DIP Agent to implement and effectuate the terms and provisions of the DIP Documents and this Interim Order, subject to notice and a hearing as provided herein;

(h) subject to entry of the Final Order, waiver of the Debtors' ability to surcharge against the Prepetition Collateral or the Collateral (as defined herein) pursuant to section 506(c) of the Bankruptcy Code or any other applicable principle of equity or law and waiver of the applicability of the "equities of the case" exception under section 552(b) of the Bankruptcy Code;

(i) scheduling of a final hearing (“**Final Hearing**”) at which the Debtors will seek final approval of the DIP Facility and use of Cash Collateral pursuant to a proposed final order (the “**Final Order**” and, together with this Interim Order, the “**DIP Orders**”), which shall be in form and substance acceptable to the DIP Agent and the Debtors;

(j) waiver of any applicable stay (including under Bankruptcy Rule 6004) and providing for the immediate effectiveness of this Interim Order; and

(k) granting related relief.

This Court having considered the Motion, the exhibits attached thereto, the *Declaration of Mark A. Renzi, Chief Restructuring Officer of the Debtors, in Support of Debtors’ Chapter 11 Petitions and First Day Motions* [ECF No. [•]], the *Declaration of Richard W. Morgner in Support of Debtors’ Emergency Motion Seeking Entry of Interim and Final Orders (I) Authorizing Debtors to (A) Obtain Postpetition Financing and (B) Utilize Cash Collateral, (II) Granting Liens and Superpriority Administrative Expense Claims, (III) Modifying Automatic Stay, and (IV) Granting Related Relief* [ECF No. [•]], the DIP Credit Agreement, all other DIP Documents, and the evidence submitted and argument made at the interim hearing (the “**Interim Hearing**”); and notice of the Interim Hearing having been provided in accordance with Bankruptcy Rules 2002, 4001(b), (c) and (d), and all applicable Local Rules; and the Interim Hearing having been held and concluded; and all objections, if any, to the interim relief requested in the Motion having been withdrawn, resolved, or overruled by this Court; and it appearing that approval of the interim relief requested in the Motion is necessary to avoid immediate and irreparable harm to the Debtors and their estates (the “**Estates**”) pending the Final Hearing, and otherwise is fair and reasonable and in the best interests of the Debtors, their Estates and all parties-in-interest, and is essential for the continued operation of the Debtors’ businesses and the preservation of the value of the Debtors’ assets; and this Court having determined that the legal and factual bases set forth in the Motion

establish just cause for the relief granted herein; and it appearing that the Debtors' entry into the DIP Credit Agreement and the other 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;

THIS COURT HEREBY MAKES THE FOLLOWING FINDINGS OF FACT AND CONCLUSIONS OF LAW:⁴

A. *Disposition.* The relief requested in the Motion is granted on an interim basis in accordance with the terms of this Interim Order. Any objections to the Motion that have not been withdrawn, waived, or settled, and all reservations of rights included therein, are hereby denied, and overruled on the merits. This Interim Order shall become effective immediately upon its entry and any applicable stay (including under Bankruptcy Rule 6004) is waived to permit such effectiveness.

B. *Petition Date.* On June 6, 2025 ("**Petition Date**"), each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code ("**Chapter 11 Cases**") with this Court.

C. *Debtors in Possession.* The Debtors continue to operate their businesses and manage their properties as debtors and debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No party has requested the appointment of a trustee or examiner in these Chapter 11 Cases.

D. *Jurisdiction and Venue.* This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States

⁴ In accordance with Bankruptcy Rule 7052, any proposed finding of fact more properly classified as a proposed legal conclusion shall be deemed as such, and any proposed conclusion of law more properly classified as a proposed factual finding shall also be deemed as such.

District Court for the Southern District of Texas, dated May 24, 2012. Consideration of the Motion constitutes a core proceeding under 28 U.S.C. § 157(b)(2). This Court may enter a final order consistent with Article III of the United States Constitution. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory predicates for the relief granted herein are sections 105, 361, 362, 363, 506, 507, and 552 of the Bankruptcy Code, Bankruptcy Rules 2002, 4001, 6003, 6004, and 9014, Local Rules 2002-1, 4001-1, 4002-1, and 9013-1.

E. *Committee Formation.* As of the date hereof, no official committee of unsecured creditors (with any other statutory committee, “**Committee**”) has been appointed in these Chapter 11 Cases.

F. *Notice.* In accordance with Bankruptcy Rules 2002, 4001(b), (c), and (d), and 9014, and the Local Rules, notice of the Interim Hearing and the emergency relief requested in the Motion has been provided by the Debtors to (i) the Office of the United States Trustee for Region 7 (the “**U.S. Trustee**”); (ii) the Debtors’ 20 largest unsecured creditors on a consolidated basis; (iii) counsel to Forbright; (iv) the United States Attorney for the Southern District of Texas; (v) the offices of the attorneys general for the states in which the Debtors operate; (vi) the Internal Revenue Service; and (vii) any party that has requested notice pursuant to Bankruptcy Rule 2002. As the Motion is seeking “first day” relief, within two business days of the hearing on the Motion, the Debtors will serve copies of the Motion and any order entered with respect to the Motion as required by Local Rules 2002-1, 4001-1, 4002-1, and 9013-1.

G. *Debtors’ Representations and Stipulations.* Without prejudice to the rights of any other party, but in each case subject to the limitations contained in paragraph 43 below, the Debtors represent, admit, stipulate, and agree (collectively, “**Debtors’ Stipulations**”) as follows:

(i) *Prepetition Credit Facility.* Solar Mosaic, the prepetition lending institutions that are or may from time to time become parties thereto (together with their respective successors and assigns, collectively, “**Prepetition Lenders**”) and Forbright, as a Prepetition Lender and as agent for the Prepetition Lenders (in such capacity, “**Prepetition Agent**,” and collectively with the Prepetition Lenders, the “**Prepetition Secured Parties**”) are parties to that certain Credit Agreement dated June 22, 2021 (as amended, modified, restated, amended and restated, and/or supplemented from time to time, the “**Prepetition Credit Agreement**” and, collectively with all agreements, documents, notes, mortgages, security agreements, pledges, guarantees, subordination agreements, deeds, instruments, indemnities, indemnity letters, fee letters, assignments, charges, amendments, and any other agreements delivered pursuant thereto or in connection therewith, including the “Loan Documents” as such term is defined in the Credit Agreement, “**Prepetition Loan Documents**”), pursuant to which the Prepetition Lenders provided Solar Mosaic with a revolving loan credit facility (“**Prepetition Credit Facility**,” and such loans extended and as defined thereunder, “**Prepetition Revolving Loans**”). The Prepetition Credit Facility as of the Petition Date consists of Prepetition Revolving Loans in a maximum principal amount of \$113,571,459.11. Debtor Modern Home LLC (“**Modern Home**”) guaranteed payment in full of all of Solar Mosaic’s obligations under the Prepetition Loan Documents pursuant to that certain Guaranty dated as of June 22, 2021 (as amended, restated, supplemented or otherwise modified from time to time, the “**Modern Home Guaranty**”). Debtor Mosaic Sustainable Finance Corporation (“**Parent**”) guaranteed payment in full of all of Solar Mosaic’s obligations under the Prepetition Loan Documents pursuant to that certain Guaranty dated as of November 9, 2021 (as amended, restated, supplemented or otherwise modified from time to time, the “**Parent Guaranty**,” and together with the Modern Home Guaranty, the “**Guarantees**”). All indebtedness,

liabilities, and obligations arising under the Prepetition Loan Documents, specifically including all “Obligations” as defined in the Prepetition Credit Agreement are referred to herein as “**Prepetition Obligations**.” Each of the Prepetition Loan Documents is valid, binding, and, subject to applicable bankruptcy law, enforceable against the Debtors party to any Prepetition Loan Documents.

(ii) *Prepetition Obligations.* As of the Petition Date, the Debtors were justly and lawfully indebted and liable under the Prepetition Loan Documents, jointly and severally, without defense, counterclaim, reduction or offset of any kind, in the aggregate principal amount of not less than \$113,571,459.11 in respect of loans and other financial accommodations made by the Prepetition Lenders, comprised of the principal amount of Prepetition Revolving Loans outstanding under the Prepetition Credit Facility pursuant to, and in accordance with, the Prepetition Credit Agreement, the Guarantees and the other Prepetition Loan Documents, plus accrued and unpaid interests, fees, costs and expenses (including counsel, financial advisors, consultants, accountants, to the extent applicable, chargeable or reimbursable under the Prepetition Loan Documents) with respect to each of the foregoing.

(iii) *Prepetition Liens.* Pursuant to and as more particularly described in the Prepetition Loan Documents, the Prepetition Obligations are secured by, among other things, first priority liens on, security interests in, and assignments and pledges of (collectively, “**Prepetition Liens**”), all of the Debtors’ right, title, and interest in the “Collateral” (as defined in the Prepetition Credit Agreement) in existence as of the Petition Date (hereafter, “**Prepetition Collateral**”), subject only to validly perfected, enforceable and non-avoidable liens otherwise existing as of the Petition Date or validly perfected subsequent to the Petition Date as permitted by section 546(c)

of the Bankruptcy Code (collectively, “**Prepetition Permitted Liens**” and each a “**Prepetition Permitted Lien**”).

(iv) *Prepetition Control Agreements.* The Debtors maintain their cash management systems with Wells Fargo Bank, National Association (“**Wells Fargo**”). In order to perfect the Prepetition Liens in the Prepetition Collateral, Solar Mosaic, Modern Home, Wells Fargo, and Prepetition Agent for the benefit of the Prepetition Lenders entered into a Deposit Account Control Agreement dated July 22, 2021 (the “**Closing DACA**”) which provides for Agent’s control over Solar Mosaic’s account ending in 2610 and Modern Home’s account ending 4539. Later, on August 24, 2022, Parent, the Prepetition Agent, and Wells Fargo entered into a Deposit Account and Sweep Investment Control Agreement dated as of (the “**2022 DACA**”) that provides for the Prepetition Agent’s control over Parent’s account ending in 7409. In addition, pursuant to that certain Account Control Agreement dated as of April 14, 2023 (the “**SACA**,” and collectively with the Closing DACA and the 2022 DACA, the “**Control Agreements**”), by and among Solar Mosaic, the Prepetition Agent and Wilmington Trust, National Association, as securities intermediate (in such capacity, the “**Securities Intermediary**”), the Prepetition Agent received control over Solar Mosaic’s trust account maintained with the Securities Intermediary. The Control Agreements establish Prepetition Liens on the accounts subject to the Control Agreements.

(v) *Validity of Prepetition Liens and Prepetition Obligations.* The Prepetition Liens are (i) valid, binding, perfected, duly recorded and enforceable liens on, and security interests in, all of the Debtors’ respective right, title, and interest in, and to, the Prepetition Collateral and (ii) not subject to, pursuant to the Bankruptcy Code or other applicable law (foreign or domestic), avoidance, disallowance, reduction, recharacterization, recovery, subordination (whether

equitable, contractual, or otherwise), attachment, offset, recoupment, counterclaim, defense, “claim” (as defined in the Bankruptcy Code), impairment, or any other challenge of any kind by any person or entity. Each Debtor irrevocably releases and waives, for itself and its Estate, any right to challenge or contest in any way the scope, extent, perfection, priority, validity, non-avoidability, or enforceability of the Prepetition Liens or the validity, or enforceability of the Prepetition Loan Documents or the validity, enforceability, or priority of payment of the Prepetition Obligations, and forever releases and waives, any claims, objections, challenges, counterclaims, causes of action, defenses, setoff rights, obligations, rights to subordinate, or any other liabilities, whether arising in equity or under the Bankruptcy Code or applicable nonbankruptcy law, against the Prepetition Secured Parties, or any of their respective affiliates, agents, attorneys, consultants, advisors, professionals, officers, directors, and employees from the beginning of time through the Petition Date. The Prepetition Liens were granted to the Prepetition Secured Parties for fair consideration and reasonably equivalent value and were granted in consideration of the making and/or continued making of loans, commitments, and/or other financial accommodations under the Prepetition Loan Documents. No portion of the Prepetition Obligations or any payments made to the Prepetition Secured Parties or applied to or paid on account of the obligations owing under the Prepetition Loan Documents prior to the Petition Date is subject to any contest, attack, rejection, recovery, recoupment, reduction, defense, counterclaim, offset, subordination, recharacterization, avoidance, or other claim, cause of action, or other challenge of any nature under the Bankruptcy Code or applicable non-bankruptcy law.

H. *Releases.* Subject to paragraph 43 hereof, the Debtors, on behalf of themselves and their respective Estates (including any successor trustee or other estate representative in the Chapter 11 Cases and any Successor Cases, and any party acting by, through or under the Debtors

or their Estates), hereby stipulate and agree that they absolutely and unconditionally release and forever and irrevocably discharge and acquit the DIP Agent, each DIP Lender, the Prepetition Agent, each Prepetition Lender that is a DIP Lender, in its capacity as a Prepetition Lender, and their respective affiliates and each of their respective former or current officers, partners, directors, managers, owners, members, principals, employees, agents, related funds, investors, financing sources, financial advisors, attorneys, accountants, investment bankers, consultants, representatives and other professionals and the respective successors and assigns thereof, each in their capacity as such (collectively, the “**Released Parties**”) from any and all obligations and liabilities to the Debtors (and their successors and assigns) and from any and all claims, counterclaims, demands, debts, accounts, contracts, disputes, liabilities, allegations, suits, controversies, proceedings, actions and causes of action arising prior to the date of this Interim Order of any kind, nature or description, whether known or unknown, foreseen or unforeseen, or liquidated or unliquidated, arising in law or equity or upon contract or tort or under any state or federal law or regulation or otherwise, arising out of or related to (as applicable) the DIP Documents, the Prepetition Loan Documents, the negotiation thereof and of the transactions contemplated thereby, and the obligations owing and the financial obligations made thereunder, or otherwise related to the Debtors, in each case that the Debtors at any time had, now have, or may have, or that their successors or assigns hereafter can or may have against any of the Released Parties for or by reason of any act, omission, matter, cause or thing whatsoever arising at any time on or prior to the date of this Interim Order. The Debtors further waive and release any defense, right of counterclaim, right of set-off, or deduction to the payment of the Prepetition Obligations that the Debtors may now have or may claim to have against the Released Parties, arising out of,

connected with, or relating to any and all acts, omissions, or events occurring prior to this Court entering this Interim Order.

I. *No Control.* None of the DIP Secured Parties or the Prepetition Secured Parties that are DIP Secured Parties, in their capacity as a Prepetition Secured Party controls the Debtors or their properties or operations, has authority to determine the manner in which any of the Debtors' operations are conducted, or is a control person or insider (as defined in the Bankruptcy Code) of the Debtors or any of their affiliates by virtue of any of the actions taken with respect to, in connection with, related to, or arising from this Interim Order, the DIP Facility, the DIP Liens (as defined below), the DIP Obligations, the DIP Documents, the Prepetition Credit Facility, the Prepetition Liens, the Prepetition Obligations, the Prepetition Loan Documents, or the transactions contemplated hereunder or thereunder.

J. *Roll-Up of Prepetition Obligations Into DIP Obligations.* Subject to entry of the Final Order providing such relief, the conversion of up to \$30,000,000.00 on the date of the entry of the Final Order shall be automatically deemed "rolled up" and converted into the DIP Facility, on a cashless basis of \$2.00 of Second Out DIP Term Loans for every \$1.00 of principal amount of New Money DIP Term Loans (i.e., \$30,000,000.00), funded before or after entry of the Final Order and shall automatically be deemed to be substituted and exchanged for, and shall be deemed to be, Second Out DIP Term Loans for all purposes hereunder; provided, however, that if any DIP Lender's *pro rata* share of the Second Out Roll Up exceeds the total amount of Prepetition Obligations held by such DIP Lender as of the funding date, such DIP Lender's share of Second Out DIP Loans shall be reduced in an amount, and to such an extent, to ensure that the maximum amount of Second Out Roll Up of such DIP Lender shall be no greater than such DIP Lenders' Prepetition Obligations, and the total amount of Second Out DIP Loans shall be reduced

accordingly. From and after the date of the entry of the Final Order, the outstanding aggregate amount of Prepetition Obligations held by each such DIP Lender (or any of its designated Approved Funds) shall be automatically and irrevocably deemed reduced by the amount of the Second Out DIP Term Loans held by such DIP Lender (or any of its designated Approved Funds). The Second Out DIP Term Loans shall be subordinated in right of payment from the proceeds of the DIP Collateral to the New Money DIP Term Loans and shall only be entitled to payment from such proceeds after the New Money DIP Term Loans have been paid in full.

K. Notwithstanding any other provision of this Interim Order or the DIP Documents, all rights of the Prepetition Secured Parties shall be fully preserved, including with respect to the Prepetition Obligations subject to the Second Out Roll Up. The Second Out Roll Up is an inextricable component of the DIP Facility, and the Prepetition Secured Parties would not otherwise consent to the use of their Cash Collateral or the subordination of the Prepetition Liens to the DIP Liens, and the DIP Secured Parties would not be willing to provide the DIP Facility or extend credit to the Debtors thereunder without the inclusion of the Second Out DIP Term Loans in the DIP Obligations. The Second Out DIP Term Loan Facility will enable the Debtors to obtain urgently needed financing to administer these Chapter 11 Cases and fund their operations.

L. *Adequate Protection for the Prepetition Secured Parties.* As a result of the authorization for the Debtors' sale, use, or lease of Prepetition Collateral and the imposition or enforcement of the automatic stay of section 362 of the Bankruptcy Code, the Prepetition Secured Parties are entitled to receive adequate protection pursuant to sections 361, 362, and 363 of the Bankruptcy Code for any diminution in the value, from and after the Petition Date, of their interests in the Prepetition Collateral resulting from the automatic stay and/or from the Debtors' use of the Prepetition Collateral (collectively, "**Diminution**"). As adequate protection for the imposition of

the automatic stay and such use of the Prepetition Collateral, the Prepetition Secured Parties will receive the adequate protection described in this Interim Order, and, in light of such adequate protection, the requisite Prepetition Secured Parties have consented to the Debtors' use of the Cash Collateral, solely on the terms and conditions set forth in this Interim Order and the DIP Documents. The adequate protection provided herein, and other benefits and privileges contained herein are consistent with and authorized by the Bankruptcy Code and is offered by the Debtors to protect such parties' interests in the Prepetition Collateral in accordance with sections 361, 362 and 363 of the Bankruptcy Code. The adequate protection provided herein, and other benefits and privileges contained herein are necessary in order to (i) protect the Prepetition Secured Parties from any Diminution of their interests in the value of the Prepetition Collateral (including the proceeds thereof) and (ii) obtain the foregoing consents and agreements.

M. *Cash Collateral.* For purposes of this Interim Order, the term "**Cash Collateral**" shall be deemed to include, without limitation, all of each Debtor's "Cash Collateral" as defined under section 363 of the Bankruptcy Code, all deposits subject to setoff and cash arising from the collection or other conversion to cash of any and all property (whether real or personal) in which the Prepetition Secured Parties have valid, perfected security interests, liens or mortgages, regardless of whether such security interests, liens, or mortgages existed as of the Petition Date or arise thereafter or pursuant to this Interim Order; provided, that, Warehouse Settlement Payments (as defined in the DIP Credit Agreement), if any, shall not constitute Cash Collateral hereunder.

N. *Section 552(b); Section 506(c).* Subject to entry of the Final Order, each of the Prepetition Secured Parties are entitled to (a) all of the rights and benefits of section 552(b) of the Bankruptcy Code in connection with the use of any of the Prepetition Collateral and Cash Collateral and the "equities of the case" exception under section 552(b) of the Bankruptcy Code

shall not apply to them with respect to the proceeds, products, offspring or profits with respect to any of the Prepetition Collateral and Cash Collateral, and (b) a waiver by the Debtors' and their respective Estates of their right to surcharge the Prepetition Collateral and Cash Collateral pursuant to section 506(c) of the Bankruptcy Code.

O. *Necessity of Relief Requested.* Good cause has been shown for the entry of this Interim Order. The Debtors have an immediate need to continue to use Cash Collateral to, among other things, fund the orderly continuation of their businesses, meet payroll obligations, maintain the confidence of their customers and vendors, pay their operating expenses, and preserve their going-concern value, consistent with the Approved Budget. In the absence of the availability of such liquidity in accordance with the terms hereof, the continued operation of the Debtors' businesses would not be possible, and serious and irreparable harm to the Debtors, their Estates and their creditors would occur. The terms for the Debtors' use of Cash Collateral pursuant to this Interim Order are fair and reasonable, reflect the Debtors' exercise of prudent business judgment consistent with their fiduciary duties, and constitute reasonably equivalent value and fair consideration. The Debtors have requested entry of this Interim Order pursuant to Bankruptcy Rule 4001(b)(2) and (d). Absent granting the relief sought herein, the Debtors' Estates would be immediately and irreparably harmed. The continued use of Cash Collateral in accordance with this Interim Order is therefore in the best interests of the Debtors and their Estates, their creditors, and other parties in interest.

P. *Use of Cash Collateral.* All Cash Collateral, including proceeds of the Prepetition Collateral shall be used only for: (i) working capital; (ii) other general corporate purposes of the Debtors; and (iii) the satisfaction of the costs and expenses of administering the Chapter 11 Cases, in accordance with the Approved Budget (attached hereto as **Exhibit 2**).

Q. *Need for Immediate Entry of this Interim Order.* The Debtors have requested immediate entry of this Interim Order pursuant to Bankruptcy Rule 4001(b)(2). The permission granted herein to use Cash Collateral (and provide adequate protection therefor) is necessary, essential, and appropriate to avoid immediate and irreparable harm to the Debtors. This Court concludes that entry of this Interim Order is in the best interests of the Debtors' Estates and creditors as its implementation will, among other things, allow the Debtors to preserve and maintain the value of their assets and businesses and enhance the Debtors' prospects for a successful reorganization.

R. Based upon the foregoing findings and conclusions, and upon the record made before this Court at the Interim Hearing, and good and sufficient cause appearing therefor;

IT IS HEREBY ADJUDGED AND ORDERED that:

1. Motion Granted. The Motion is granted on an interim basis as set forth herein, and entry into the DIP Credit Agreement and other DIP Documents is authorized, and the use of Cash Collateral is authorized, in each case, subject to the terms and conditions set forth in this Interim Order. All objections to this Interim Order to the extent not withdrawn, waived, settled, or resolved, and all reservations of rights included therein, are hereby denied and overruled on the merits. This Interim Order shall become effective immediately upon its entry.

DIP Facility Authorization

2. Authorization of the DIP Financing.

(a) The Debtors are expressly and immediately authorized and empowered to enter into, execute and deliver the DIP Documents and to incur and to perform the DIP Obligations in accordance with, and subject to, the terms of this Interim Order and the DIP Documents, and to execute, deliver, and perform under all instruments, certificates, agreements, and documents that

may be required or necessary for the performance by the Debtors under the DIP Documents and the creation and perfection of the DIP Liens described in and provided for by this Interim Order and the DIP Documents. Upon execution and delivery, the DIP Documents shall represent legal, valid, and binding obligations of the Debtors, enforceable against each of the Debtors and their Estates in accordance with their terms. Each manager, member, or officer of the Debtors acting individually is hereby authorized to execute and deliver each of the DIP Documents, such execution and delivery to be conclusive evidence of such manager's, member's, or officer's respective authority to act in the name of and on behalf of the applicable Debtor; provided that the DIP Credit Agreement shall be deemed executed and delivered upon entry of this Interim Order.

(b) The Debtors are hereby authorized and directed to pay, in accordance with this Interim Order, any principal, interest, fees, expenses, and other amounts described in the DIP Documents and this Interim Order, as such amounts become due and owing, without need to obtain further Court approval (except as otherwise provided herein or in the DIP Documents) subject to and in accordance with the terms hereof and thereof, including, without limitation, the DIP Fees, as well as the reasonable and documented fees and disbursements of Blank Rome LLP, Huron Consulting Group Inc., and any other DIP Professionals, as set forth herein and in the DIP Documents and subject to the provisions of paragraph 38 of this Interim Order, whether or not such professional fees and disbursements arose before or after the Petition Date and whether or not the transactions contemplated hereby are consummated, to implement all applicable reserves and to take any other actions that may be necessary or appropriate, all to the extent provided in this Interim Order and the DIP Documents

3. Authorization to Borrow. To prevent immediate and irreparable harm to the Debtors' Estates, and to enable the Debtors to continue to operate their businesses and preserve

and maximize the value of their Estates, subject to the terms and conditions set forth in the DIP Documents and this Interim Order, the Debtors are hereby authorized to borrow the Interim Amount, subject to any limitations on, or conditions to, borrowing under the DIP Documents, which borrowings shall be used solely for purposes permitted under the DIP Documents, including, without limitation, to provide working capital for the Debtors and to pay interest, fees, costs, charges and expenses, in each case, in accordance with this Interim Order, the DIP Documents, and the Approved Budget.

4. DIP Obligations. The DIP Documents and this Interim Order shall constitute and evidence the validity and binding effect of the DIP Obligations. All DIP Obligations shall be enforceable against the Debtors, their Estates, and any successors thereto, including without limitation, any trustee appointed in the Chapter 11 Cases, or in any case under chapter 7 of the Bankruptcy Code upon the conversion of any of the Chapter 11 Cases, or in any other proceedings superseding or related to any of the foregoing (collectively, the “**Successor Cases**”). Upon entry of this Interim Order, and subject to the Carve-Out, the DIP Obligations will include all loans, guarantees, reimbursement obligations, and any other indebtedness or obligations, contingent or absolute, which may now or from time to time be owing by any of the Debtors to the DIP Secured Parties, including, without limitation, all principal, accrued interest, costs, charges, fees, expenses and other amounts under the DIP Documents. The Debtors shall be jointly and severally liable for the DIP Obligations. The DIP Obligations shall become due and payable, without notice or demand, on the Termination Date (as defined below). No obligation, payment, transfer, or grant of collateral security hereunder or under the DIP Documents (including any DIP Obligation or DIP Lien) to the DIP Secured Parties, and including in connection with any adequate protection provided hereunder, shall be stayed, restrained, voidable, avoidable, or recoverable, under the

Bankruptcy Code or under any applicable law (including, without limitation, under sections 502(d), 544, and 547 to 550 of the Bankruptcy Code or under any applicable state Uniform Voidable Transactions Act, Uniform Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act, or similar statute or common law), or be subject to any disgorgement, avoidance, reduction, setoff, recoupment, offset, recharacterization, subordination (whether equitable, contractual, or otherwise), claim, counterclaim, charge, assessment, cross-claim, defense, or any other liability or challenge under the Bankruptcy Code or any applicable law or regulation by any person or entity for any reason.

5. DIP Collateral. To secure the DIP Obligations, effective immediately upon entry of this Interim Order, pursuant to sections 361, 362, 364(c)(2), 364(c)(3), and 364(d) of the Bankruptcy Code, the DIP Agent (for the benefit of the DIP Lenders), is hereby granted continuing, valid, binding, enforceable, non-avoidable, and automatically and properly perfected postpetition first priority security interests in and liens (collectively, the “**DIP Liens**”) on the DIP Collateral, and all cash and non-cash proceeds, rents, profits, and offspring of DIP Collateral.⁵

⁵ “**DIP Collateral**” means: all property of the estate under section 541 of the Bankruptcy Code, including all real and personal property, whether now existing or hereafter arising and wherever located, tangible and intangible, of each of the Debtors, including: (a) all cash, cash equivalents, deposit accounts, securities accounts, accounts, other receivables (including credit card receivables), chattel paper, contract rights, inventory (wherever located), instruments, documents, securities (whether or not marketable) and investment property (including all of the issued and outstanding capital stock of each of its subsidiaries), hedge agreements, real estate, furniture, fixtures, equipment (including documents of title), goods, franchise rights, trade names, trademarks, service marks, copyrights, patents, license rights, intellectual property, general intangibles (including, for the avoidance of doubt, payment intangibles), rights to the payment of money (including tax refunds and any other extraordinary payments), supporting obligations, guarantees, letter of credit rights, commercial tort claims, causes of action, and all substitutions, indemnification rights, all present and future intercompany debt, books and records related to the foregoing, accessions and proceeds of the foregoing, wherever located, including insurance or other proceeds; (b) subject to entry of a Final Order providing for such relief, the proceeds of any avoidance actions brought pursuant to Chapter 5 of the Bankruptcy Code or applicable state law equivalents; (c) proceeds from the Debtors’ exercise of rights under section 506(c) and 550 of the Bankruptcy Code; (d) all Prepetition Collateral; (e) all property of the Debtors that was not otherwise subject to valid, perfected, enforceable and unavoidable liens on the Petition Date; and

6. DIP Liens. The DIP Liens securing the DIP Obligations are valid, automatically perfected, non-avoidable, senior in priority to the Prepetition Liens on the Prepetition Collateral and are superior to any security, mortgage, collateral interest, lien, or claim to any of the DIP Collateral (whether currently existing or hereafter created), except that the DIP Liens shall be subject only to (a) the Carve-Out and (b) the Prepetition Permitted Liens. Other than as expressly set forth herein or in the DIP Documents, the DIP Liens shall not be made subject to or *pari passu* with any lien or security interest heretofore or hereinafter granted in the Chapter 11 Cases or any Successor Cases, and shall be valid and enforceable against any trustee appointed in the Chapter 11 Cases or any Successor Cases, upon the conversion of any of the Chapter 11 Cases to a case under chapter 7 of the Bankruptcy Code (or in any other Successor Case), and/or upon the dismissal of any of the Chapter 11 Cases or Successor Cases. The DIP Liens shall not be subject to section 510, 549, or 550 of the Bankruptcy Code. No lien or interest avoided and preserved for the benefit of any Estate pursuant to section 551 of the Bankruptcy Code shall be *pari passu* with or senior to the DIP Liens.

7. DIP Superpriority Claims. Subject to the Carve-Out, upon entry of this Interim Order, the DIP Secured Parties are hereby granted, pursuant to section 364(c)(1) of the Bankruptcy Code, allowed superpriority administrative expense claims in each of the Chapter 11 Cases and any Successor Cases (collectively, the “**DIP Superpriority Claims**”) for all DIP Obligations: (a) except as expressly set forth herein (including with respect to the Carve-Out), with priority over

(f) all proceeds from the sale, assignment, or other disposition of (i) any leased real property and (ii) the Debtors’ right to select, identify, and designate which commercial leases may be assumed and assigned under section 365 of the Bankruptcy Code. Notwithstanding the foregoing, DIP Collateral shall not include the Debtors’ real property leases (but shall include all proceeds of such leases) solely to the extent that the grant of a DIP Lien is prohibited or restricted by the terms of such real property lease or applicable non-bankruptcy law to attach to any such real property lease. For avoidance of doubt, Warehouse Settlement Payments, if any, and “Excluded Property” (as defined in the DIP Credit Agreement) shall not constitute DIP Collateral.

any and all administrative expense claims and unsecured claims against the Debtors or their Estates in any of the Chapter 11 Cases and any Successor Cases, at any time existing or arising, of any kind or nature whatsoever, including, without limitation, administrative expenses of the kinds specified in or ordered pursuant to sections 105, 326, 328, 330, 331, 364, 503(a), 503(b), 507(a), 507(b), 546(c), 546(d), 726, 1113, and 1114 of the Bankruptcy Code, and any other provision of the Bankruptcy Code, as provided under section 364(c)(1) of the Bankruptcy Code; and (b) which shall at all times be senior to the rights of the Debtors and their Estates, and any successor trustee or other estate representative to the extent permitted by law.

8. DIP Roll-Up Obligations. Immediately upon entry of the Final Order providing such relief, the conversion of up to \$30,000,000.00 on the date of the entry of the Final Order shall be automatically deemed “rolled up” and converted into the DIP Facility, on a cashless basis of \$2.00 of Second Out DIP Term Loans for every \$1.00 of principal amount of New Money DIP Term Loans (i.e., \$30,000,000.00), funded before or after entry of the Final Order and shall automatically be deemed to be substituted and exchanged for, and shall be deemed to be, Second Out DIP Term Loans for all purposes hereunder.

9. No Obligation to Extend Credit. The DIP Secured Parties shall have no obligation to make any loan or advance under the DIP Documents unless all of the conditions precedent under the DIP Documents and this Interim Order have been satisfied in full or waived by the Required DIP Lenders in their sole discretion in accordance with the terms of the DIP Documents.

10. Use of Proceeds of DIP Facility. From and after the Petition Date, the Debtors shall use advances of credit under the DIP Facility only for the purposes specifically set forth in this Interim Order and the DIP Documents, and only in compliance with the Approved Budget (subject to the Permitted Variances (as defined below)) and the terms and conditions in this Interim Order

and the DIP Documents (a) to pay transaction costs, fees, and expenses that are incurred in connection with the DIP Facility, (b) to pay fees and expenses of the Debtor and Lender Professionals (both as defined below), (c) for working capital and other general corporate purposes permitted by the DIP Documents (including the Debtors' U.S. operations and operations of foreign non-debtors), and (d) to pay Statutory Fees (as defined below).

11. No Monitoring Obligation. The DIP Secured Parties shall have no obligation or responsibility to monitor the Debtors' use of the DIP Facility, and the DIP Secured Parties may rely upon the Debtors' representation that the use of the DIP Facility at any time is in accordance with the requirements of this Interim Order and the DIP Documents and in compliance with the Approved Budget (subject to the Permitted Variances).

Authorization to Use Cash Collateral

12. Authorization to Use Cash Collateral. Subject to the terms and conditions of this Interim Order and the DIP Documents, and in accordance with the Approved Budget (subject to the Permitted Variances), the Debtors are authorized to use Cash Collateral until the expiration of the Remedies Notice Period (as defined below) following the Termination Date. Nothing in this Interim Order shall authorize the disposition of any assets of the Debtors outside the ordinary course of business, or any Debtor's use of any Cash Collateral or other proceeds resulting therefrom, except as expressly permitted by this Interim Order and the DIP Documents, and in accordance with the Approved Budget (subject to the Permitted Variances).

13. Consent of Prepetition Secured Parties. The requisite Prepetition Secured Parties hereby consent to (a) the provisions of this Interim Order including the Debtors' entry into the DIP Facility on an interim basis, (b) the granting of the DIP Liens and DIP Superpriority Claims on the

terms and subject to the conditions set forth herein (including the Carve-Out), and (c) the Approved Budget.

14. Adequate Protection for Prepetition Secured Parties. As adequate protection for any Diminution of the Prepetition Secured Parties' interest in the Prepetition Collateral, the Prepetition Agent shall receive, for the benefit of the Prepetition Lenders:

(a) continuing valid, binding, enforceable, and perfected postpetition liens and replacement liens pursuant to sections 361, 363(e), and 364(d)(1) of the Bankruptcy Code on the DIP Collateral, which shall be subject and subordinated only to the Carve-Out, the DIP Liens, and Prepetition Permitted Liens (the "**Replacement Liens**") and which (x) shall otherwise be senior to all other security interests in, liens on, or claims against the DIP Collateral, and (y) shall not be made subject to or *pari passu* with any lien or security interest heretofore or hereinafter granted in the Chapter 11 Cases or any Successor Cases and shall be valid and enforceable against any trustee appointed in any of the Chapter 11 Cases or any Successor Cases, and shall not be subject to sections 510, 549, or 550 of the Bankruptcy Code;

(b) administrative superpriority expense claims in each of the Chapter 11 Cases (the "**Adequate Protection Superpriority Claims**"), junior and subordinate only to the Carve-Out and the DIP Obligations (including the DIP Superpriority Claims), pursuant to section 507(b) of the Bankruptcy Code with priority over any and all other administrative expenses, administrative expense claims and unsecured claims against the Debtors or their Estates, now existing or hereafter arising, of any kind or nature whatsoever as to and to the extent provided by sections 503(b) and 507(b) of the Bankruptcy Code;

(c) payment of monthly interest under the Prepetition Credit Agreement, calculated at the interest rate of 1-month Term SOFR (as defined in the Prepetition Credit Agreement) + 7.00%, paid in kind, in respect of the Prepetition Revolving Loans;

(d) subject to the procedures set forth in paragraph 38 of this Interim Order, payment of the Prepetition Secured Parties' reasonable and documented fees, costs and expenses when due and payable in accordance with this Interim Order, including the professional fees and disbursements of Blank Rome LLP, Huron Consulting Group Inc. and any other Prepetition Professionals (as defined below), without the need for the filing of formal fee applications, including as to any amounts arising before or after the Petition Date; and

(e) the unconditional right to credit bid the Prepetition Obligations in connection with any sale of Prepetition Collateral, including, without limitation, as set forth in paragraph 40 hereof and subject to paragraph 43 hereof.

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

Provisions Common to DIP Financing and Use of Cash Collateral

16. Amendment of the DIP Documents. The Debtors, the DIP Agent, and the Required DIP Lenders (or such DIP Lenders as may otherwise be required in the DIP Documents) may enter into one or more amendments, waivers, consents, or other modifications to and under the DIP Documents, in each case in accordance with the terms of the applicable DIP Documents and in such form as the Debtors, the DIP Agent, and the Required DIP Lenders (or such DIP Lenders as may otherwise be required in the DIP Documents) agree, in such applicable DIP Lenders' sole discretion, and no further approval of this Court shall be required for any amendment, waiver, consent, or other modification to and under the DIP Documents (and any fees paid in connection therewith) that does not materially and adversely affect the Debtors or which does not (a) shorten the maturity of the DIP Facility, (b) increase the principal amount of or the rate of interest on the DIP Facility, or (c) change any event of default, add any covenants, or amend the covenants to be materially more restrictive; provided, however, any such material amendment, waiver, consent, or other modification shall be subject to further Court approval. Copies of all amendments and modifications to and under the DIP Documents, regardless of materiality, shall be provided to the U.S. Trustee and counsel to the Committee (if any). No consents required hereunder by any of the DIP Secured Parties or the Prepetition Secured Parties, including to any such amendment, waiver, consent, or modification shall be implied by any action, inaction, or acquiescence of the DIP Secured Parties or the Prepetition Secured Parties, as applicable.

17. Approved Budget.

(a) Attached to this Interim Order as **Exhibit 2** is a 8-week cash flow forecast beginning with the week which includes the Petition Date through the eighth week thereafter, approved by the DIP Agent in its sole discretion, which sets forth, among other things, projected cash receipts and cash disbursements (the "**Approved Budget**"). The Debtors shall deliver to the

DIP Agent an updated 13-week cash flow forecast, as necessary, but which shall not be updated less than once every four weeks (each, as updated, an “**Updated Budget**”), in form substantially consistent with the Approved Budget, by no later than 5:00 P.M. (Pacific Time) on the fourth Monday following the Petition Date, and on the Monday of every fourth week thereafter (each such date, an “**Updated Budget Delivery Date**”). If such Updated Budget is in form and substance satisfactory to the DIP Agent, and upon the approval in writing of any such Updated Budget by the DIP Agent, it shall become the “Approved Budget” for purposes of the DIP Documents and this Interim Order. Any amendments, supplements, or modifications to the Approved Budget or an Approved Budget Variance Report (as defined below) shall be subject to the prior written approval of the DIP Agent prior to the implementation thereof. Until any such Updated Budget, amendment, supplement, or modification has been approved in writing by the DIP Agent, the Debtors shall be subject to and be governed by the terms of the Approved Budget then in effect. Every two weeks, beginning with the second full week ended after the Petition Date, the Debtors shall provide a report to the DIP Agent with the fees and expenses of Debtor Professionals incurred in the trailing two-week period. For avoidance of doubt, to the extent that the fees and expenses of the Lender Professionals, Debtor Professionals, and professionals engaged by the Committee, if any, exceed the amounts projected in the Approved Budget for any period, such excess shall not constitute an Event of Default hereunder.

(b) The Approved Budget is approved on an interim basis. The proceeds of the DIP Facility and the Cash Collateral under this Interim Order shall be used by the Debtors strictly in accordance with the Approved Budget (subject to Permitted Variances), this Interim Order, and the DIP Documents.

(c) Other than with respect to the Carve-Out, none of the DIP Secured Parties' and the Prepetition Secured Parties' consent to, or acknowledgement of, the Approved Budget shall be construed as consent to use the proceeds of the DIP Facility beyond the Maturity Date or the Termination Date, as applicable, or the use of Cash Collateral beyond the expiration of the Remedies Notice Period following the Termination Date, regardless of whether the aggregate funds shown on the Approved Budget have been expended.

(d) Notwithstanding anything to the contrary herein, the Debtors shall pay the fees, costs and expenses of the Lender Professionals in accordance with the DIP Documents and this Interim Order without reference to the Approved Budget.

18. Budget Reporting and Testing. The Debtors shall at all times comply with the Approved Budget, subject to the Permitted Variances (as defined below). By no later than 5:00 P.M. (Pacific Time) on Thursday, June 19, 2025 (the "**First Testing Date**"), and no later than 5:00 P.M. (Pacific Time) on each Thursday after the First Testing Date (together with the First Testing Date, each a "**Testing Date**"), the Debtors shall deliver to the DIP Agent a variance report for the applicable Testing Period (as defined below) in form and detail acceptable to the DIP Agent (which shall include, on a line-by-line basis, each of the actual cumulative operating disbursements, capital expenditures, and non-operating disbursements) (an "**Approved Budget Variance Report**") showing comparisons of actual performance versus the Approved Budget for (a) the First Testing Date, the preceding period beginning on the Petition Date, and on each Testing Date thereafter, the immediately preceding week compared to the Approved Budget and (b) the immediately preceding cumulative four-week period compared to the Approved Budget. Cash disbursements may vary from the cumulative four-week period of the Approved Budget by no more than fifteen percent (15%) on an aggregate basis for all disbursement line items (taken

together) (a “**Permitted Variance**”); provided, that, (i) no Permitted Variance is permitted with respect to the minimum Liquidity set forth in the Approved Budget and (ii) Warehouse Settlement Payments from Warehouse Lenders (both as defined in the DIP Credit Agreement) and fees and expenses of Lender Professionals, Debtor Professionals, and professionals engaged by the Committee, if any, shall not be subject to the Permitted Variance testing.

19. Additional Reporting. The Debtors shall deliver to the DIP Agent and the Prepetition Agent each of the reports and other information set forth in Article VI of the DIP Credit Agreement within the timeframe set forth therein, in form and detail acceptable to the DIP Agent and the Prepetition Agent. The Debtors shall also make the Debtor Professionals reasonably available upon reasonable notice for telephonic or virtual meetings to update the DIP Secured Parties, the Prepetition Secured Parties and the Lender Professionals on all matters affecting the Debtors and the Chapter 11 Cases, including with respect to the efforts to market and sell the DIP Collateral.

20. Modification of Automatic Stay. The automatic stay of section 362 of the Bankruptcy Code is hereby modified and vacated to the extent necessary to permit the Debtors, the DIP Secured Parties and the Prepetition Secured Parties to accomplish the transactions contemplated by this Interim Order.

21. Perfection of DIP Liens and Replacement Liens. This Interim Order shall be sufficient and conclusive evidence of the creation, validity, perfection, and priority of all liens granted herein, including the DIP Liens and the Replacement Liens, without the necessity of filing or recording any financing statement, mortgage, deed of trust, notice, or other instrument or document which may otherwise be required under the law or regulation of any jurisdiction or the taking of any other action (including, for the avoidance of doubt, entering into any deposit account

control agreement) to validate or perfect (in accordance with applicable non-bankruptcy law) the DIP Liens and the Replacement Liens or to entitle the DIP Secured Parties and the Prepetition Secured Parties to the priorities granted herein. Notwithstanding the foregoing, the DIP Agent and the Prepetition Agent (for the benefit of the DIP Secured Parties and the Prepetition Lenders, respectively) are authorized, but not required, to file, as each deems necessary or advisable, such financing statements, security agreements, mortgages, notices of liens, and other similar documents to perfect in accordance with applicable non-bankruptcy law or to otherwise evidence the DIP Liens and the Replacement Liens, and all such financing statements, mortgages, notices, and other documents shall be deemed to have been filed or recorded as of the Petition Date; provided, however, that no such filing or recordation shall be necessary or required in order to create or perfect the DIP Liens or the Replacement Liens. The Debtors are authorized and directed to execute and deliver promptly upon demand to the DIP Agent and the Prepetition Agent all such financing statements, mortgages, notices and other documents as each may reasonably request, so long as the cost of maintaining or perfecting the security interest is not excessive in view of the benefits to be obtained. The DIP Agent and the Prepetition Agent may each, in its discretion, file a photocopy of this Interim Order as a financing statement with any filing or recording office or with any registry of deeds or similar office in addition to or in lieu of such financing statements, notices of lien or similar instruments. To the extent that the Prepetition Agent is, with respect to the DIP Collateral, the secured party under any security agreement, mortgage, leasehold mortgage, landlord waiver, credit card processor notices or agreements, bailee letters, custom broker agreements, financing statement, account control agreements, or any other Prepetition Loan Documents or is listed as loss payee, lenders' loss payee or additional insured under any of the Debtors' insurance policies, the DIP Agent (for the benefit of the DIP Secured Parties) shall also

be deemed to be the secured party or mortgagee, as applicable, under such documents or to be the loss payee or additional insured, as applicable. The Prepetition Agent shall act as agent for the DIP Secured Parties solely for purposes of perfecting the DIP Secured Parties' liens on all DIP Collateral that, without giving effect to the Bankruptcy Code and this Interim Order, is of a type such that perfection of a lien therein may be accomplished only by possession or control by a secured party (including any deposit account control agreement), and all of the Prepetition Agent's respective rights in such DIP Collateral shall inure to the benefit of and be exercisable exclusively by the DIP Agent until the DIP Obligations have been indefeasibly repaid in full in cash; *provided*, that the DIP Agent may, in its sole discretion, require the Debtors and the Prepetition Agent to (and the Debtors and the Prepetition Agent shall) use commercially reasonable efforts to provide the DIP Agent with such possession or control of certain DIP Collateral as is necessary to perfect the DIP Obligations and DIP Liens. Notwithstanding the foregoing, in the event any of the Chapter 11 Cases or Successor Cases are dismissed prior to the indefeasible payment in full of the DIP Obligations, such order dismissing any Chapter 11 Cases or Successor Cases shall not be effective for five (5) business days to permit the DIP Agent and the Prepetition Agent to enter into any agreements or file any documents (including credit agreements, financing statements, mortgages, or other notices or documents) evidencing the DIP Obligations and the perfection and priority of the DIP Liens and Replacement Liens, and during such period, the Debtors shall comply with all reasonable requests of the DIP Agent and the Prepetition Agent to ensure the perfection of the DIP Liens and the Replacement Liens, as applicable.

22. Access to Books and Records. The Debtors will (a) maintain books, records, and accounts to the extent and as required by the DIP Documents, (b) cooperate with, consult with, and, subject to attorney-client privilege, work product doctrine, and any similar applicable

protections, provide to the DIP Agent and the DIP Lenders all such information and documents that any or all of the Debtors are obligated to provide under the DIP Documents or the provisions of this Interim Order or as otherwise reasonably requested by the DIP Agent and the DIP Lenders, (c) during normal business hours, upon reasonable advance notice, permit consultants, advisors and other representatives (including third party representatives) of the DIP Agent and the DIP Lenders to visit and inspect any of the Debtors' respective properties, to examine and make abstracts or copies from any of their respective books and records, to conduct a collateral audit and analysis of their respective inventory and accounts, to tour the Debtors' business premises and other properties, and to discuss, and to engage in discussions with their respective senior management and independent public accountants to the extent required by the DIP Documents or the Prepetition Loan Documents, and (d) permit the DIP Secured Parties and the Prepetition Secured Parties, and their respective consultants, advisors and other representatives, to consult with the Debtors' management and advisors on matters concerning the Debtors' businesses, financial condition, operations and assets.

23. Proceeds of Subsequent Financing. If the Debtors, any trustee, any examiner with expanded powers, or any responsible officer subsequently appointed in these Chapter 11 Cases or any Successor Cases, shall obtain credit or incur debt pursuant to sections 364(b), 364(c) or 364(d) of the Bankruptcy Code or in violation of the DIP Documents or this Interim Order at any time prior to the indefeasible repayment in full in cash of all DIP Obligations and the termination of the DIP Lenders' obligation to extend credit under the DIP Facility, including subsequent to the confirmation of any plan with respect to any or all of the Debtors and the Debtors' Estates, and such facilities are secured by any DIP Collateral, then all cash proceeds derived from such credit or debt shall within two (2) business days be turned over to the DIP Agent (for the benefit of the

DIP Secured Parties) to be distributed in accordance with this Interim Order and the DIP Documents. For the avoidance of doubt, if the Debtors, any trustee, any examiner with expanded powers, or any responsible officer subsequently appointed in the Chapter 11 Cases, or any Successor Cases, shall obtain credit or incur debt (other than the DIP Facility) pursuant to section 364(d) of the Bankruptcy Code at any time prior to the indefeasible repayment in full in cash of the Prepetition Obligations, the Prepetition Secured Parties' rights to object to the Debtors' use of Cash Collateral and assert a lack of adequate protection shall be fully preserved.

24. Cash Management. The Debtors shall maintain their cash management system in compliance with the terms and conditions of any interim and/or final order, which shall be reasonably acceptable to the DIP Agent and the Required DIP Lenders, granting the Debtors authorization to continue their cash management systems and certain related relief (as amended, supplemented, or otherwise modified, the "**Cash Management Order**"), the DIP Documents, and this Interim Order.

25. Maintenance of DIP Collateral. Until the indefeasible payment in full in cash of all DIP Obligations and Prepetition Obligations and the termination of the DIP Lenders' obligation to extend credit under the DIP Facility, the Debtors shall: (a) insure the DIP Collateral as required under the DIP Documents or the Prepetition Loan Documents, as applicable; and (b) maintain the cash management system consistent with the terms and conditions of the Cash Management Order, the DIP Documents, and this Interim Order.

26. Disposition of DIP Collateral. Other than in connection with an Acceptable Sale Transaction (as defined in the DIP Credit Agreement), the Debtors shall not sell, transfer, lease, encumber, or otherwise dispose of any portion of the DIP Collateral or Prepetition Collateral, other than in the ordinary course of business or as otherwise permitted by the DIP Documents. Except

as may be provided in the DIP Documents, the Debtors are authorized and directed, upon the closing of a sale of any of the DIP Collateral, to pay all net cash proceeds of any such sale within two (2) business days of receipt thereof to the DIP Agent (for the benefit of the DIP Secured Parties) and the Prepetition Agent (for the benefit of the Prepetition Lenders), first to satisfy the DIP Obligations and then to satisfy the Prepetition Obligations in accordance with this Interim Order and the DIP Documents, and any order approving the sale of such DIP Collateral shall provide that the sale is conditioned upon the payment in full of the DIP Obligations (except to the extent otherwise agreed in writing by the DIP Agent (on behalf of the Required DIP Lenders)).

27. Termination Date. On the Termination Date, without further order of or application to this Court, and notwithstanding the automatic stay, all DIP Obligations shall be immediately due and payable, and all commitments to extend credit under the DIP Facility will terminate other than as excepted from such termination by the Carve-Out.

28. Events of Default. Until the DIP Obligations are indefeasibly paid in full in cash and all commitments thereunder are terminated in accordance with the DIP Documents, the occurrence of any of the following events, unless waived by the Required DIP Lenders (or as otherwise provided in the DIP Documents) in writing (which may be by electronic mail) and in accordance with the terms of the DIP Documents, shall constitute an event of default (collectively, the “**Events of Default**”): (a) the failure of the Debtors to perform, in any material respect, any of the terms, provisions, conditions, covenants, or obligations under this Interim Order, including, without limitation, the failure to make any payment under this Interim Order when due, the failure to comply with any Milestone (as defined in the DIP Credit Agreement), or the failure to comply with the Approved Budget (subject to the Permitted Variances); and (b) the occurrence and

continuation of any other Event of Default under, and as defined in, the DIP Credit Agreement or any other DIP Documents (subject to any notice and cure periods set forth therein).

29. Milestones. As a condition to the DIP Facility and the use of Cash Collateral, the Debtors have agreed to the Milestones. For the avoidance of doubt, unless waived, modified or extended in writing by the Required DIP Lenders in their sole discretion, the failure of the Debtors to meet the Milestones by the applicable specified deadlines set forth thereof shall constitute an Event of Default under the DIP Documents and this Interim Order.

30. Rights and Remedies Upon Event of Default. Upon the occurrence and during the continuation of any Event of Default that has not been waived by the DIP Agent (at the direction of the Required DIP Lenders), the DIP Agent (at the direction of the Required DIP Lenders, or as otherwise provided in the DIP Documents) may deliver a written notice to the Debtors (and their lead counsel), the Prepetition Agent, and the U.S. Trustee (collectively, the “**Remedies Notice Parties**”, and any such declaration shall be referred to herein as a “**Termination Declaration**”), which shall be filed on the docket of the Chapter 11 Cases, declaring that upon expiration of not less than five (5) business days’ thereafter (which period may run concurrently with the Remedies Notice Period), notwithstanding the provisions of section 362 of the Bankruptcy Code and without any application, motion or notice to, hearing before, or order from this Court (but subject to the terms of paragraph 32 hereof): (a) (i) all DIP Obligations owing under the DIP Documents and this Interim Order shall be immediately due and payable, (ii) the commitment of each DIP Lender to make DIP Loans shall be terminated, whereupon such commitments shall be terminated to the extent any such commitment remains under the DIP Facility, (iii) the DIP Facility and the DIP Documents as to any future liability or obligation of the DIP Lenders or DIP Agent, shall be terminated without affecting any of the DIP Liens or the DIP Obligations, and (iv) the application

of the Carve-Out shall have occurred following the delivery of the Carve-Out Trigger Notice (as defined below) to the Remedies Notice Parties; (b) interest, including, where applicable, default interest, shall accrue and be paid as set forth in the DIP Documents; and (c) upon delivery of the Termination Declaration, the DIP Agent (at the direction of the Required DIP Lenders) shall be deemed to have declared a termination, reduction, or restriction on the ability of the Debtors to use Cash Collateral, other than to (x) pay expenses set forth in the Approved Budget that are necessary to avoid immediate and irreparable harm to the Debtors' Estates and (y) fund to the Professional Fee Reserve (as defined below) fees of Debtor Professionals incurred before or on the first business day following delivery of a Carve-Out Trigger Notice (to the extent not previously funded to the Professional Fee Reserve) and the Post-Carve-Out Trigger Notice Cap. The earliest date on which a Termination Declaration is delivered by the DIP Agent (at the direction of the Required DIP Lenders) to the Remedies Notice Parties and filed on the Docket shall be referred to herein as the **"Termination Date."** Following the Termination Date, and subject to paragraph 32 hereof, no DIP Secured Party or Prepetition Secured Party shall be required to consent to the use of any Cash Collateral or provide any loans or other financial accommodations under the DIP Facility, absent further order of this Court. The Termination Declaration shall be given by electronic mail (or other electronic means) to counsel to the Remedies Notice Parties. Notwithstanding the foregoing, following an Event of Default, the Warehouse Settlement Payments (as defined in the DIP Credit Agreement) shall not be subject to the exercise of remedies by the DIP Lenders or DIP Agent without the consent of the applicable Warehouse Lender.

31. **No Waiver by Failure to Seek Relief.** The rights and remedies of the DIP Secured Parties and the Prepetition Secured Parties are cumulative and not exclusive of any rights or remedies that the DIP Secured Parties or the Prepetition Secured Parties may have under the DIP

Documents, the Prepetition Loan Documents, applicable law, or otherwise. The failure or delay on the part of any of the DIP Secured Parties or the Prepetition Secured Parties to seek relief or otherwise exercise their rights and remedies under this Interim Order, the DIP Documents, the Prepetition Loan Documents, or applicable law, as the case may be, shall not constitute a waiver of any of their respective rights or be deemed as an admission that no Event of Default has occurred. No delay on the part of any party in the exercise of any right or remedy under this Interim Order, the DIP Documents, or the Prepetition Loan Documents shall preclude any other or further exercise of any such right or remedy or the exercise of any other right or remedy. Except as expressly set forth herein, none of the rights or remedies of any party under this Interim Order, the DIP Documents, and the Prepetition Loan Documents shall be deemed to have been amended, modified, suspended, or waived unless such amendment, modification, suspension, or waiver is express, in writing and signed by the requisite parties under the DIP Documents and the requisite parties under the Prepetition Loan Documents, as applicable. No consents required hereunder by any of the DIP Secured Parties or the Prepetition Secured Parties shall be implied by any inaction or acquiescence by any of the DIP Secured Parties or the Prepetition Secured Parties (as applicable).

32. Emergency Hearing. The Debtors may seek an emergency hearing on an expedited basis (the “**Emergency Hearing**”) during the five (5) business days following the date a Termination Declaration is delivered (such five (5) business day period, the “**Remedies Notice Period**”) for the sole purpose of determining whether an Event of Default has in fact occurred or is continuing, and the Debtors hereby waive their right to and shall not be entitled to seek relief, including, without limitation, under section 105 of the Bankruptcy Code, to the extent that such relief would in any way impair or restrict the rights and remedies of the DIP Secured Parties or, if

applicable, the Prepetition Secured Parties; provided that if the Emergency Hearing is requested to be heard prior to the expiration of the Remedies Notice Period but is scheduled for a later date by this Court, the Remedies Notice Period shall be automatically extended to the date of such hearing. During the Remedies Notice Period, the Debtors shall continue to have the right to use Cash Collateral in accordance with the terms of this Interim Order, solely to pay necessary expenses set forth in the Approved Budget to avoid immediate and irreparable harm to the Estates, and fund to the Professional Fee Reserve fees of Debtor Professionals incurred before or on the first business day following delivery of a Carve-Out Trigger Notice (to the extent not previously funded to the Professional Fee Reserve) and the Post-Carve-Out Trigger Notice Cap. At the end of the Remedies Notice Period, unless this Court has entered an order to the contrary, the Debtors' right to use Cash Collateral shall immediately cease, and the DIP Secured Parties shall have the rights set forth immediately below.

33. Certain Rights and Remedies Following Termination Date. Following the Termination Date and upon either the expiration of the Remedies Notice Period or pursuant to an order of this Court (which may authorize the remedies set forth in this paragraph or any other appropriate remedy as then determined by this Court), the DIP Agent (on behalf of the DIP Lenders) and the Prepetition Agent (on behalf of the Prepetition Lenders) shall be, subject to the Carve-Out, entitled to exercise all rights and remedies in accordance with the DIP Documents, the Prepetition Loan Documents, the DIP Orders, and applicable law and shall be permitted to satisfy the relevant DIP Obligations, DIP Liens, Prepetition Obligations and Prepetition Liens based on the priorities set forth in the DIP Orders and the DIP Documents, subject to the Carve-Out and any Prepetition Permitted Liens. Following the Termination Date, except as otherwise ordered by this Court: (a) the Debtors are hereby authorized and directed to, with the exclusion of the Carve-Out,

remit to the DIP Agent (for the benefit of the DIP Lenders) one-hundred percent (100%) of all collections, remittances, and proceeds of the DIP Collateral in accordance with the DIP Documents, (b) the DIP Agent (at the direction of the Required DIP Lenders or as otherwise provided in the DIP Documents) may compel the Debtors to seek authority to (i) sell or otherwise dispose of all or any portion of the DIP Collateral (or any other property of the Debtors to the extent a lien is not permitted by law to attach to such property, the proceeds of which are DIP Collateral) pursuant to section 363 of the Bankruptcy Code (or any other applicable provision) on terms and conditions pursuant to sections 363 and 365 of the Bankruptcy Code, and other applicable provisions of the Bankruptcy Code, and (ii) assume and assign any lease or executory contract included in the DIP Collateral to the DIP Agent's designees in accordance with and subject to section 365 of the Bankruptcy Code, (c) the DIP Agent (at the direction of the Required DIP Lenders) may direct the Debtors to (and the Debtors shall comply with such direction to) dispose of or liquidate the DIP Collateral (or any other property of the Debtors to the extent a lien is not permitted by law to attach to such property, the proceeds which are DIP Collateral) via one or more sales of such DIP Collateral or property and/or the monetization of other DIP Collateral or property, (d) the DIP Agent may (at the direction of the Required DIP Lenders), or may direct the Debtors to (and the Debtors shall comply with such direction to), collect any and all accounts receivable, (e) the DIP Agent (for the benefit of the DIP Lenders) shall be authorized to succeed to any and all of the Debtors' rights and interests under any licenses for the use of any intellectual property in order to complete the production and sale of any inventory with respect to the DIP Collateral, and (f) the Debtors shall take all action that is reasonably necessary to cooperate with the DIP Lenders in the exercise of their rights and remedies and to facilitate the realization of the DIP Collateral by

the DIP Lenders in a manner consistent with the priorities set forth in this Interim Order and the DIP Documents.

34. Access to DIP Collateral. Notwithstanding anything contained herein to the contrary and without limiting any other rights or remedies of the DIP Secured Parties under the Interim Order, the DIP Documents and applicable law, after the occurrence of the Termination Date and upon the expiration of the Remedies Notice Period, for the purpose of exercising any remedy with respect to any of the DIP Collateral, the DIP Agent (or any of its employees, agents, consultants, contractors, or other professionals) (collectively, the “**Enforcement Agents**”) shall have the right (to be exercised at the direction of the Required DIP Lenders), to: (a) enter upon, occupy, and use any real or personal property, fixtures, equipment, leasehold interests, or warehouse arrangements owned or leased by the Debtors; (b) enter into the premises of any Debtor in connection with the orderly sale or disposition of the DIP Collateral (including, without limitation, to complete any work in process); (c) exercise any rights of the Debtors to access any DIP Collateral (including inventory) held by any third party; provided, however, the Enforcement Agents may only be permitted to do so in accordance with (i) existing rights under applicable non-bankruptcy law, including, without limitation, applicable leases, (ii) any prepetition (and, if applicable, postpetition) landlord waivers or consents, or (iii) further order of this Court on motion and notice appropriate under the circumstances; and (d) use any and all trademarks, tradenames, copyrights, licenses, patents, equipment or any other similar assets of the Debtors, or assets which are owned by or subject to a lien of any third party and which are used by the Debtors in their businesses; provided, however, the Enforcement Agents may only use such assets to the extent permitted by applicable non-bankruptcy law. The Enforcement Agents will be responsible for the payment of any applicable fees, rentals, royalties, or other amounts owing to such lessor, licensor

or owner of such property (other than the Debtors) on a *per diem* basis and solely for the period of time that the Enforcement Agents actually occupy any real property or use the equipment or the intellectual property (but in no event for any accrued and unpaid fees, rentals, or other amounts owing for any period prior to the date that the Enforcement Agents actually occupy or use such assets or properties). Nothing contained herein shall require the Enforcement Agents to assume any lease as a condition to the rights afforded in this paragraph 34.

35. Carve-Out. Upon entry of this Interim Order, each of the DIP Liens, the DIP Superpriority Claims, the Prepetition Liens, the Replacement Liens, and the Adequate Protection Superpriority Claims shall be subject to payment of the Carve-Out.

(a) **“Carve-Out”** means, collectively, the following fees and expenses: (a) all statutory fees required to be paid to the Clerk of this Court and to the Office of the United States Trustee pursuant to 28 U.S.C. § 1930(a) *plus* interest at the statutory rate, if any, pursuant to 31 U.S.C § 3717 (without regard to the Carve-Out Trigger Notice); (b) reasonable fees and expenses incurred by a trustee, if any, under section 726(b) of the Bankruptcy Code in an amount not exceeding \$50,000 (without regard to the Carve-Out Trigger Notice) (the amounts in these clauses (a) and (b), **“Statutory Fees”**); (c) to the extent allowed at any time, whether by interim or final compensation order, procedural order or otherwise, all unpaid fees and expenses (including any restructuring, sale, success, or other transaction fee of any investment bankers or financial advisors of the Debtors) (the **“Allowed Debtor Professional Fees”**) incurred by persons or firms retained by the Debtors pursuant to section 327, 328 or 363 of the Bankruptcy Code (collectively, the **“Debtor Professionals”**) that are incurred on or prior to the first business day following delivery by the DIP Agent of a Carve-Out Trigger Notice, whether allowed by this Court prior to or after delivery of a Carve-Out Trigger Notice; and (d) Allowed Debtor Professional Fees in an aggregate

amount not to exceed \$200,000 for the Debtor Professionals, incurred after the first business day following delivery by the DIP Agent of the Carve-Out Trigger Notice (including any restructuring, sale, success, or other transaction fee earned or payable to any Debtor Professional) (the amounts set forth in this clause (d) being the “**Post-Carve-Out Trigger Notice Cap**”). For the avoidance of doubt, other than the Carve-Out, no other amounts owed by any of the Debtors to any party (including any amounts set forth in the Approved Budget) as of the date of Carve-Out Trigger Notice is delivered shall be payable from the Prepetition Collateral or the DIP Collateral. 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 to the Debtors’ lead counsel, the U.S. Trustee, and counsel to any Committee, which notice may only be delivered following the occurrence and during the continuation of an Event of Default under the DIP Facility, stating that the Post-Carve-Out Trigger Notice Cap has been invoked. No portion of the Carve-Out, any Cash Collateral, any other DIP Collateral, or any proceeds of the DIP Facility, including any disbursements set forth in the Approved Budget or obligations benefitting from the Carve-Out, shall be used for the payment of Allowed Debtor Professional Fees, disbursements, costs or expenses incurred by any person, including, without limitation, any Committee, in connection with challenging the DIP Secured Parties’ or the Prepetition Secured Parties’ liens or claims, preventing, hindering or delaying any of the DIP Secured Parties’ or the Prepetition Secured Parties’ enforcement or realization upon any of the DIP Collateral or Prepetition Collateral, or initiating or prosecuting any claim or action against any DIP Secured Party or Prepetition Secured Party.

(b) **Carve-Out Reserve.** Contemporaneously with the initial funding of the DIP Facility, the Debtors will transfer cash proceeds from the DIP Facility in an amount equal to the total budgeted weekly fees and expenses of the Debtor Professionals for the first weekly period set

forth in the Approved Budget. On each Monday thereafter, until receipt of a Carve-Out Trigger Notice, the Debtors will transfer, from the cash proceeds of the DIP Loans and/or cash on hand, an amount equal to the total fees, costs, and expenses as set forth in the Approved Budget incurred by the Debtor Professionals in the immediately preceding weekly period, in each case, including any restructuring, sale, success or other transaction fee of any investment bankers or financial advisors of the Debtors, into a segregated escrow account held in trust solely for the benefit of the Debtor Professionals and not subject to the control of the DIP Agent or the DIP Lenders (the “**Professional Fee Reserve**”); provided, that, to the extent that the amount so incurred by the Debtor Professionals exceeds the amount provided in the Approved Budget for the preceding week (as measured on each Monday), the Debtors shall fund such excess to the Professional Fee Reserve on the Monday of the following week. Upon the delivery of a Carve-Out Trigger Notice, the Carve-Out Trigger Notice shall (1) be deemed a request by the Debtors to fund, and the DIP Lenders shall fund, DIP Loans under the DIP Facility, in an amount equal to (i) the sum of the aggregate unpaid amount of the total weekly fees of Debtor Professionals incurred before or on the first business day following delivery of a Carve-Out Trigger Notice (to the extent not previously funded to the Professional Fee Reserve) and (ii) the Post-Carve-Out Trigger Notice Cap (less any amounts already funded into the Professional Fee Reserve in respect of such amounts) (any such amounts actually advanced shall constitute DIP Loans); and (2) 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 amounts set forth in clauses (i) and (ii) (less any amounts already funded into the Professional Fee Reserve in respect of such amounts). For the avoidance of doubt, in no event shall any DIP Lender be required to fund any amount in excess of its respective commitment to fund the New Money DIP Commitments. Amounts funded into the

Professional Fee Reserve shall be considered used by the Debtors at such time as they are deposited into the Professional Fee Reserve for distribution to Debtor Professionals in accordance with orders of this Court. The Debtors shall use funds held in the Professional Fee Reserve exclusively to pay Allowed Debtor Professional Fees accruing prior to the Termination Date as they become allowed and payable pursuant to the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, and any interim or final orders of this Court. Any amounts remaining in the Professional Fee Reserve after payment of the Carve-Out, including to fund the Post-Carve-Out Trigger Notice Cap to the extent of any excess funds after paying Allowed Professional Fees accrued as of the Carve-Out Trigger Notice delivery, shall be paid to the DIP Agent for the benefit of the DIP Lenders, unless the DIP Obligations have been indefeasibly paid in full in cash, and all New Money DIP Commitments have been terminated, in which case any such excess shall be paid to the Prepetition Agent for the benefit of the Prepetition Lenders.

(c) Funds transferred to the Professional Fee Reserve shall be subject to the DIP Liens, DIP Superpriority Claims, Replacement Liens, and Adequate Protection Superpriority Claims granted hereunder to the extent of such reversionary interest; provided that, for the avoidance of doubt, such liens and claims shall first be subject in all respects to the Carve-Out.

(d) Notwithstanding anything to the contrary in the DIP Documents, this Interim Order, or any other Court order, the Professional Fee Reserve and the amounts on deposit in the Professional Fee Reserve shall be available and used only to satisfy Allowed Debtor Professional Fees accruing prior to the Termination Date benefitting from the Carve-Out, and the other obligations that are a part of the Carve-Out. The failure of the Professional Fee Reserve to satisfy Allowed Debtor Professional Fees in full shall not affect the priority of the Carve-Out;

provided, that, to the extent the Professional Fee Reserve is actually funded, the Carve-Out shall be reduced by such funded amount on a dollar-for-dollar basis.

(e) No Direct Obligation to Pay Professional Fees; No Waiver of Right to Object to Fees. No DIP Secured Party or Prepetition Secured Party shall be responsible for the direct payment or reimbursement of any fees or disbursements of any of the Debtor Professionals incurred in connection with the Chapter 11 Cases or any Successor Cases under any chapter of the Bankruptcy Code. Nothing in this Interim Order or otherwise shall be construed to obligate any of the DIP Secured Parties or the Prepetition Secured Parties in any way to compensate, or to reimburse expenses of, any of the Debtor Professionals, or to guarantee that the Debtors or their Estates have sufficient funds to pay such compensation or reimbursement. Nothing herein shall be construed as consent to the allowance of any professional fees or expenses of any of the Debtors, any Committee, any other official or unofficial committee in these Chapter 11 Cases or any Successor Cases, or of any other person or entity, or shall affect the right of any party to object to the allowance and payment of any such fees and expenses.

36. Good Faith Under Section 364(e) of the Bankruptcy Code; No Modification or Stay of this Interim Order. The DIP Secured Parties and the Prepetition Secured Parties have acted in good faith in connection with this Interim Order and are entitled to rely upon the protections granted herein and by section 364(e) of the Bankruptcy Code. Based on the findings set forth in this Interim Order and the record made during the Interim Hearing, and in accordance with section 364(e) of the Bankruptcy Code, in the event any or all of the provisions of this Interim Order are hereafter modified, amended, or vacated by a subsequent order of this Court or any other court, the DIP Secured Parties and the Prepetition Secured Parties are entitled to the protections provided in section 364(e) of the Bankruptcy Code. Any such modification, amendment, or vacatur shall

not affect the validity and enforceability of any advances previously made or made hereunder, or lien, claim, or priority authorized or created hereby.

37. Approval of DIP Fees. In consideration for the DIP Facility and the consent to the use of Cash Collateral in accordance with the terms of this Interim Order, the DIP Secured Parties shall be paid all fees, expenses and other amounts payable under the DIP Documents as such become due, including, without limitation, the Exit Fee and the OID Fee (each as defined in the DIP Credit Agreement), and, subject to the terms of paragraph 38 hereof, all reasonable and documented out-of-pocket costs and expenses, including legal fees of the DIP Agent and the DIP Lenders, financial advisor fees, and other similar fees, costs and expenses incurred in connection with the DIP Facility and the Chapter 11 Cases, including, without limitation, the reasonable and documented fees and expenses of (a) counsel to the DIP Secured Parties, (b) specialty or local counsel to the DIP Secured Parties in each relevant jurisdiction and (c) in the case of an actual or perceived conflict of interest with respect to any of the foregoing counsel, one additional counsel to each group of affected DIP Lenders similarly situated and taken as a whole (all such fees, together, the “**DIP Fees**”). The DIP Fees shall be fully earned and payable in accordance with the terms of the DIP Documents, without the need for any further order of this Court. The DIP Fees shall be part of the DIP Obligations. Any and all DIP Fees paid prior to the Petition Date by any of the Debtors to the DIP Secured Parties in connection with or with respect to the DIP Facility in each case is hereby approved in full.

38. Lender Professionals’ Fees. Professionals for the DIP Secured Parties (the “**DIP Professionals**”) and professionals for the Prepetition Secured Parties that are DIP Secured Parties, in their capacity as a Prepetition Secured Party (the “**Prepetition Professionals**,” and together with the DIP Professionals, the “**Lender Professionals**”) shall not be required to comply with the

U.S. Trustee fee guidelines or file applications or motions with, or obtain approval of, this Court for compensation and reimbursement of fees and expenses. The Lender Professionals shall submit copies of summary and redacted invoices to the Debtors, Debtors' counsel, counsel to the Committee, if any, and the U.S. Trustee. The invoices shall provide only the total aggregate number of hours billed and a summary description of services provided and the expenses incurred by the applicable party and/or professionals, and shall be subject to all applicable privilege and work product doctrines. If the Debtors or U.S. Trustee object to the reasonableness of the fees and expenses of any Lender Professional and the parties cannot resolve such objection by 4:00 P.M. (Central Time) on the date that is ten (10) days after electronic delivery of such invoices (the "**Fee Objection Deadline**"), then the Debtors or U.S. Trustee, as the case may be, shall file with this Court and serve on such Lender Professional a written objection (the "**Fee Objection**"), and any failure by any such party to file a Fee Objection by the Fee Objection Deadline shall constitute a waiver of any right of such party to object to the applicable invoice. Notwithstanding any provision herein to the contrary, any objection to, and any hearing on an objection to, payment of any fees, costs, and expenses set forth in a professional fee invoice in respect of the Lender Professionals shall be limited to the reasonableness of the particular items or categories of the fees, costs, and expenses that are the subject of such objection. The Debtors shall timely pay in accordance with the terms and conditions of this Interim Order and the DIP Documents (a) the undisputed fees, costs, and expenses reflected on any invoice to which a Fee Objection has been timely filed and (b) all fees, costs, and expenses on any invoice to which no Fee Objection has been timely filed.

39. **Indemnification.** The Debtors shall indemnify and hold harmless the DIP Secured Parties, each of their respective successors, assigns, affiliates, parents, subsidiaries, partners,

controlling persons, representatives, agents, attorneys, advisors, financial advisors, consultants, professionals, officers, directors, members, managers, shareholders, and employees past, present, and future, and their respective heirs, predecessors, successors and assigns in accordance with, and subject to, the terms and conditions of this Interim Order and the DIP Documents except to the extent resulting from such party's gross negligence, bad faith, or willful misconduct as determined by a final non-appealable judgment of a court of competent jurisdiction.

40. Right to Credit Bid. In connection with any sale or other disposition of the DIP Collateral or the Prepetition Collateral including any sales occurring under or pursuant to section 363 of the Bankruptcy Code, any plan of reorganization or plan of liquidation under section 1129 of the Bankruptcy Code, or a sale or disposition by a chapter 7 trustee for any of the Debtors (any of the foregoing sales or dispositions, a "**Sale**"), the DIP Agent (at the direction of the Required DIP Lenders) and, subject to paragraph 43 of this Interim Order, the Prepetition Agent (at the direction of the Required Lenders (as defined in the Prepetition Credit Agreement)), in each case, shall be authorized subject to section 363(k) of the Bankruptcy Code to credit bid on a dollar-for-dollar basis any or all of the full amount of the respective outstanding DIP Obligations (including all Second Out DIP Term Loans) and Prepetition Obligations up to the full amount of the DIP Obligations and Prepetition Obligations, respectively, including any accrued interest, expenses, and fees, in a Sale (including any deposit in connection with such Sale) of any DIP Collateral or Prepetition Collateral, whether such Sale is effectuated through section 363 or 1129 of the Bankruptcy Code, by a chapter 7 trustee, or otherwise, without the need for further court authorization. The DIP Agent (at the direction of the Required DIP Lenders) and the Prepetition Agent (at the direction of the Required Lenders (as defined in the Prepetition Credit Agreement)), in each case, shall each have the absolute right to assign, transfer, sell, or otherwise dispose of their

respective rights to credit bid to any acquisition vehicle formed in connection with such bid or other designee.

41. Proofs of Claim. Neither the DIP Secured Parties nor the Prepetition Secured Parties will be required to file proofs of claim in any of the Chapter 11 Cases or Successor Cases for any claim arising under the DIP Documents or the Prepetition Loan Documents, including any claim for adequate protection by the Prepetition Secured Parties. The Debtors' stipulations, admissions, and acknowledgments and the provisions of this Interim Order shall be deemed to constitute timely filed proofs of claim for the DIP Secured Parties and the Prepetition Secured Parties with regard to all claims arising under the DIP Documents and the Prepetition Loan Documents, and, as a result, the DIP Obligations and the Prepetition Obligations shall be deemed allowed for all purposes in accordance with section 502(a) of the Bankruptcy Code.

Limitations on Use of DIP Proceeds, Cash Collateral and Carve-Out. Except as otherwise permitted in this Interim Order and the Approved Budget, the DIP Collateral, the Prepetition Collateral, the Cash Collateral, and the Carve-Out may not be used in connection with: (a) preventing, hindering, or delaying the DIP Secured Parties' or the Prepetition Secured Parties' enforcement or realization upon any of the DIP Collateral or the Prepetition Collateral; (b) using or seeking to use Cash Collateral or selling or otherwise disposing of DIP Collateral outside the ordinary course of business without the prior written consent of the DIP Agent and the Required DIP Lenders; (c) outside the ordinary course of business, using or seeking to use any insurance proceeds constituting DIP Collateral without the prior written consent of the DIP Agent and the Required DIP Lenders; (d) incurring any indebtedness without the prior written consent of the DIP Agent and the Required DIP Lenders; (e) seeking to amend or modify any of the rights granted to the DIP Secured Parties or the Prepetition Secured Parties under this Interim Order, the DIP

Documents, or the Prepetition Loan Documents; (f) objecting to or challenging in any way the DIP Liens, the DIP Obligations, the Prepetition Liens, the Prepetition Obligations, the DIP Collateral (including Cash Collateral) or, as the case may be, the Prepetition Collateral, or any other claims or liens, held by or on behalf of any of the DIP Secured Parties or the Prepetition Secured Parties, respectively; (g) asserting, commencing, or prosecuting any claims or causes of action whatsoever, including, without limitation, any actions under chapter 5 of the Bankruptcy Code, applicable state law equivalents, any so-called “lender liability” claims and causes of action or other actions to recover or disgorge payments against the DIP Secured Parties, the Prepetition Secured Parties, or any of their respective affiliates, successors, assigns, partners, shareholders, controlling persons, directors, officers, employees, agents, attorneys, advisors, and professionals; (h) litigating, objecting to, challenging, contesting in any manner, or raising any defenses to, the validity, extent, amount, perfection, priority, or enforceability of any of the DIP Obligations, the DIP Liens, the Prepetition Obligations, the Prepetition Liens, or any other rights or interests of the DIP Secured Parties or the Prepetition Secured Parties; or (i) seeking to subordinate, recharacterize, disallow, or avoid the DIP Obligations or the Prepetition Obligations; provided, however, that no more than \$25,000 of the DIP Collateral, Prepetition Collateral, DIP Loans, Cash Collateral, proceeds of any of the foregoing, any portion of the Carve-Out or any other funds may be used for allowed fees and expenses incurred by any Committee prior to expiration of the Challenge Period to investigate (but not to litigate, contest, initiate, assert, join, commence, support or prosecute any claim, cause of action or Challenge, including by way of discovery, with respect to), the validity, enforceability, extent, perfection or priority of the Prepetition Liens, the Prepetition Obligations and the Prepetition Loan Documents; provided further that nothing herein shall prohibit the Debtors’ use of the DIP Collateral, Prepetition Collateral, DIP Loans, Cash Collateral, proceeds of any of the

foregoing, any portion of the Carve-Out or any other funds to respond to investigations by the Committee.

42. Effect of Stipulations on Third Parties. The Debtors' Stipulations contained in paragraph G and releases in paragraph H hereof shall be binding in all circumstances upon the Debtors upon entry of this Interim Order, and upon their Estates and any successor thereto in all circumstances for all purposes immediately upon entry of the Final Order. The Debtors' Stipulations shall be binding upon each other party-in-interest, except to the extent such party in interest *first* obtains standing (including any chapter 11 trustee or if the Chapter 11 Cases are converted to cases under chapter 7 prior to the expiration of the Challenge Period, the chapter 7 trustee in such Successor Case), by no later than the date that is the earlier of (a) as to any Committee, sixty (60) calendar days after the appointment of such Committee, (b) as to all parties in interest other than a Committee, one business day before the hearing approving a sale of substantially all of the Debtors' assets and (c) as to all parties in interest other than a Committee, seventy-five (75) calendar days following the date of entry of this Interim Order (such time period shall be referred to as the "**Challenge Period**") and *second*, obtains a final, non-appealable order in favor of such party-in-interest sustaining any such Challenge (as defined below) in any such timely-filed contested matter or adversary proceeding (any such Challenge timely brought for which such a final and non-appealable order is so obtained, a "**Successful Challenge**"). For the purposes of this Interim Order, a "**Challenge**" shall mean a timely and properly filed contested matter or adversary proceeding challenging or otherwise objecting to the admissions, stipulations, findings, or releases set forth in this Interim Order, including the stipulations contained in the Debtors' Stipulations, including but not limited to those in relation to (i) the amount, validity, extent, priority, or perfection of the mortgages, security interests, and liens of the Prepetition Agent

with respect to the Prepetition Collateral; (ii) the validity, allowability and priority of the Prepetition Obligations; and (iii) any releases set forth or agreed to herein or pursuant to the DIP Documents. The Challenge Period shall terminate on the date that is the next calendar day after the expiration of the Challenge Period in the event that either no Challenge is raised during the Challenge Period or, with respect only to those parties who file a Challenge, such Challenge is fully and finally adjudicated (collectively, the “**Challenge Period Termination Date**”). The filing of a motion seeking standing to file a Challenge before expiration of the Challenge Period, which attaches a proposed Challenge, shall extend the Challenge Period solely with respect to that party until two (2) business days after this Court approves the standing motion, or such other time period ordered by this Court in approving the standing motion and solely with respect to the Challenges asserted in the complaint. Except as otherwise expressly provided herein, from and after the Challenge Period Termination Date and for all purposes in these Chapter 11 Cases and any Successor Cases (and after the dismissal of these Chapter 11 Cases or any Successor Cases), and without further notice, motion, or application to, order of, or hearing before this Court, (1) any and all payments made to or for the benefit of the Prepetition Secured Parties or otherwise authorized by this Interim Order (whether made prior to, on, or after the Petition Date) shall be indefeasible and not be subject to counterclaim, set-off, subordination, recharacterization, defense, disallowance, recovery, or avoidance by any party in interest, (2) any and all such Challenges by any party-in-interest shall be deemed to be forever released, waived, and barred, (3) all of the Prepetition Obligations shall be deemed to be fully allowed claims within the meaning of section 506 of the Bankruptcy Code, and (4) the Debtors’ Stipulations and releases shall be binding on all parties in interest in these Chapter 11 Cases or any Successor Cases, including any Committee or chapter 11 or chapter 7 trustee. Notwithstanding the foregoing, to the extent any Challenge is

timely asserted, the Debtors' Stipulations and the other provisions in clauses (1) through (4) in the immediately preceding sentence shall nonetheless remain binding and preclusive on any Committee and on any other party-in-interest from and after the Challenge Period Termination Date, except to the extent that such Debtors' Stipulations or the other provisions in clauses (1) through (4) of the immediately preceding sentence were expressly challenged in such Challenge and such Challenge becomes a Successful Challenge. Notwithstanding any provision to the contrary herein, nothing in this Interim Order shall be construed to grant standing on any party in interest, including any Committee, to bring any Challenge on behalf of the Debtors' Estates. The failure of any party-in-interest, including any Committee, to obtain an order of this Court prior to the Challenge Period Termination Date granting standing to bring any Challenge on behalf of the Debtors' Estates shall not be a defense to failing to commence a Challenge prior to the Challenge Period Termination Date as required under this paragraph 43 or to require or permit an extension of the Challenge Period Termination Date. To the extent any such Challenge is timely and properly commenced, the Prepetition Secured Parties shall be entitled to payment of the related costs and expenses, including, but not limited to, reasonable attorneys' fees, incurred in defending themselves and the other Prepetition Secured Parties in any such proceeding as adequate protection. This Court may fashion an appropriate remedy in the event of a Successful Challenge.

43. No Third-Party Rights. Except as explicitly provided for herein or in any of the DIP Documents, this Interim Order does not create any rights for the benefit of any third party, creditor, equity holder, or direct, indirect, or incidental beneficiary.

44. No Lender Liability. In determining to make any loan (whether under the DIP Documents or otherwise) or to permit the use of Cash Collateral or in exercising any rights or remedies as and when permitted pursuant to this Interim Order or the DIP Documents or taking

any other act permitted under this Interim Order and the DIP Documents, none of the DIP Secured Parties or the Prepetition Secured Parties shall, in their capacities as such, (a) be considered or deemed to be in control of the operations of the Debtors or to be acting as a “responsible person” or “owner or operator” with respect to the operation or management of the Debtors (as such terms, or any similar terms, are used in the *United States Comprehensive Environmental Response, Compensation and Liability Act*, 42 U.S.C. §§ 9601 *et seq.*, as amended, or any similar federal, state or local statute or regulation), (b) be considered or deemed to be a joint employer with any of the Debtors, or (c) owe any fiduciary duty to the Debtors, their respective creditors, shareholders, or Estates. Furthermore, nothing in this Interim Order shall in any way be construed or interpreted to impose or allow the imposition upon any of the DIP Secured Parties or the Prepetition Secured Parties of any liability for any claims arising from the prepetition or postpetition activities of any of the Debtors and their respective affiliates (as defined in section 101(2) of the Bankruptcy Code).

45. Section 506(c) Claims. Subject to entry of the Final Order and the provisions of the Carve-Out and as a further condition of the DIP Facility and any obligation of the DIP Lenders to make credit extensions pursuant to the DIP Documents (and the prior written consent of the Prepetition Secured Parties of the priming of the Prepetition Liens by the DIP Facility and the use of Cash Collateral), (a) no costs or expenses of administration of the Chapter 11 Cases or any Successor Cases shall be charged against or recovered from or against any or all of the DIP Secured Parties or the Prepetition Secured Parties with respect to the DIP Collateral or the Prepetition Collateral, in each case pursuant to section 105 or section 506(c) of the Bankruptcy Code or otherwise, without the prior written consent of the DIP Secured Parties or the Prepetition Secured

Parties, as applicable and (b) no such consent shall be implied from any other action, inaction, or acquiescence of any or all of the DIP Secured Parties or the Prepetition Secured Parties.

46. No Marshaling. The DIP Secured Parties and the Prepetition Secured Parties shall not be subject to the equitable doctrine of “marshaling” or any other similar doctrine with respect to any of the DIP Collateral or the Prepetition Collateral, as applicable.

47. Section 552(b). Subject to entry of the Final Order, the DIP Secured Parties and the Prepetition Secured Parties shall each be entitled to all of the rights and benefits of section 552(b) of the Bankruptcy Code, and the “equities of the case” exception under section 552(b) of the Bankruptcy Code shall not apply to the DIP Secured Parties or the Prepetition Secured Parties, as applicable with respect to proceeds, product, offspring or profits of any of the DIP Collateral or the Prepetition Collateral, as applicable.

48. Exculpation. Nothing in this Interim Order or the DIP Documents shall in any way be construed or interpreted to impose or allow the imposition upon the DIP Secured Parties or the Prepetition Secured Parties that are DIP Secured Parties, in their capacities as a Prepetition Secured Party, any liability for any claims arising from the prepetition or postpetition activities of the Debtors, including with respect to the operation of their businesses, in connection with their restructuring efforts or administration of these Chapter 11 Cases. In addition, (a) the DIP Secured Parties shall not in any way or manner be liable or responsible for: (i) the safe-keeping of the DIP Collateral, (ii) any loss or damage thereto occurring or arising in any manner or fashion from any cause, (iii) any Diminution thereof, or (iv) any act or default of any carrier, servicer, bailee, custodian, forwarding agency or other person, and (b) all risk of loss, damage, or destruction of the DIP Collateral shall be borne by the Debtors.

49. Release of DIP Secured Parties and Prepetition Secured Parties. Upon entry of this Interim Order, the Debtors, on their own behalf and on behalf of their respective Estates, forever and irrevocably: (a) release, discharge, and acquit each of the DIP Secured Parties and the Prepetition Secured Parties that are DIP Secured Parties, in their capacities as Prepetition Secured Parties and each of their former or current officers, employees, directors, agents, representatives, owners, members, partners, financial advisors, legal advisors, shareholders, managers, consultants, accountants, attorneys, affiliates, and predecessors-in-interest of and from any and all claims, demands, liabilities, responsibilities, disputes, remedies, causes of action, indebtedness and obligations, of every type, including, without limitation, any so-called “lender liability” or equitable subordination claims or defenses, solely with respect to or relating to the negotiation and entry into the DIP Documents; and (b) waive, discharge and release any and all defenses (including, without limitation, offsets and counterclaims of any nature or kind) as to the validity, perfection, priority, enforceability, and avoidability of the DIP Liens, the DIP Obligations, the Prepetition Liens or the Prepetition Obligations.

50. Limitation on Liability. Nothing in this Interim Order or the DIP Documents shall in any way be construed or interpreted to impose or allow the imposition upon the DIP Secured Parties or the Prepetition Secured Parties that are DIP Secured Parties, in their capacity as a Prepetition Secured Party, of any liability for any claims arising from the prepetition or postpetition activities of the Debtors, including with respect to the operation of their businesses, in connection with their restructuring efforts or administration of these Chapter 11 Cases.

51. Insurance Proceeds and Policies. Upon entry of this Interim Order and to the fullest extent provided by applicable law, the DIP Agent (for the benefit of the DIP Lenders), shall be, and shall be deemed to be, without any further action or notice, named as additional insured and

loss payee on each insurance policy maintained by the Debtors that in any way relates to the DIP Collateral.

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

53. If any of the Debtors propose or support any plan of reorganization or sale of all or substantially all of the Debtors' assets, or order confirming such plan or approving such sale, that is not conditioned upon the indefeasible payment (including by credit bid) of the DIP Obligations, the Prepetition Obligations, and the payment of the Debtors' obligations with respect to the adequate protection provided for herein, in full in cash within a commercially reasonable period of time (and in no event later than the effective date of such plan of reorganization or sale) (a "Non-Consensual Plan or Sale") without the written consent of the DIP Agent (acting at the direction of the Required DIP Lenders) and the Prepetition Agent (acting at the direction of the Required Lenders (as defined in the Prepetition Credit Agreement)), the Debtors' proposal or support of a Non-Consensual Plan or Sale, or the entry of an order with respect thereto, shall constitute an Event of Default hereunder and under the DIP Documents.

54. Joint and Several. Nothing in this Interim Order shall be construed to constitute a substantive consolidation of any of the Debtors' Estates; provided however, that the Debtors shall

be jointly and severally liable for the DIP Obligations and all other obligations hereunder in accordance with the terms of this Interim Order and the DIP Documents.

55. Survival. The provisions of this Interim Order and any actions taken pursuant hereto shall survive entry of any order which may be entered: (a) confirming any plan of reorganization in any of the Chapter 11 Cases; (b) converting any of the Chapter 11 Cases to a case under chapter 7 of the Bankruptcy Code; (c) dismissing any of the Chapter 11 Cases or any Successor Cases; or (d) pursuant to which this Court abstains from hearing any of the Chapter 11 Cases or any Successor Cases. The terms and provisions of this Interim Order, including the claims, liens, security interests and other protections granted to the DIP Secured Parties and the Prepetition Secured Parties pursuant to this Interim Order and the DIP Documents, shall continue in the Chapter 11 Cases, in any Successor Cases, or following dismissal of the Chapter 11 Cases or any Successor Cases, and shall maintain their priority as provided by this Interim Order until: (i) in respect of the DIP Facility, all the DIP Obligations, pursuant to the DIP Documents and this Interim Order, have been indefeasibly paid in full in cash (such payment being without prejudice to any terms or provisions contained in the DIP Facility which survive such discharge by their terms), and all commitments to extend credit under the DIP Facility are terminated; and (ii) in respect of the Prepetition Credit Facility, all of the Prepetition Obligations pursuant to the Prepetition Loan Documents and this Interim Order, have been indefeasibly paid in full in cash. The terms and provisions concerning the indemnification of the DIP Secured Parties shall continue in the Chapter 11 Cases, in any Successor Cases, following dismissal of the Chapter 11 Cases or any Successor Cases, and following termination of the DIP Documents and/or the indefeasible repayment of the DIP Obligations. In addition, the terms and provisions of this Interim Order shall continue in full force and effect for the benefit of the Prepetition Secured Parties notwithstanding

the repayment in full or termination of the DIP Obligations until such time as the Prepetition Obligations have been indefeasibly paid in full in cash.

56. Priority of Terms. To the extent of any conflict between or among (a) the express terms or provisions of any of the DIP Documents, the Motion, or the Cash Management Order, on the one hand, and (b) the terms and provisions of this Interim Order, on the other hand, unless such term or provision herein is phrased in terms of “as defined in” or “as set forth in” any of the DIP Documents, the Prepetition Credit Agreement or any other Prepetition Loan Documents, or other agreement or document, the terms and provisions of this Interim Order shall govern.

57. Final Hearing. The Final Hearing on the Motion shall be held on _____, 2025 at __:___.m. (ET), or such other date as ordered by this Court. The Debtors shall, on or before [____], 2025, cause to be mailed copies of a notice of the entry of this Interim Order, together with a copy of this Interim Order and a copy of the Motion, to the parties having been given notice of the Interim Hearings, to any party that has filed prior to such date a request for notices with this Court. Any objections or responses to entry of a final order on the Motion shall be filed on or before 4:00 p.m., prevailing Central Time, on [____], 2025, and shall be served on: (a) proposed counsel to the Debtors, Paul Hastings LLP, 2001 Ross Ave, Suite #2700, Dallas, TX 75201, Attn. Charles Persons (CharlesPersons@paulhastings.com), 71 S. Wacker Drive, Forty-Fifth Floor, Chicago, IL 60606, Attn. Matt Murphy (mattmurphy@paulhastings.com), Mike Jones (michaeljones@paulhastings.com), Will Reily (williamreily@paulhastings.com); (b) counsel to Agent, Blank Rome LLP, 444 West Lake Street, Suite 1650, Chicago, IL 60606, Attn: Kenneth J. Ottaviano (email: Ken.Ottaviano@blankrome.com); (c) counsel to any official committee appointed in these Chapter

11 Cases; and (d) the Office of the United States Trustee for the Southern District of Texas, 515 Rusk Street, Suite 3516, Houston, TX 77002.

58. Necessary Action. The Debtors are authorized to take any and all such actions and to make, execute and deliver any and all instruments as may be reasonably necessary to implement the terms and conditions of this Interim Order and the transactions contemplated hereby.

59. Enforceability. This Interim Order shall constitute findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052 and shall take effect and be enforceable immediately upon entry thereof. Notwithstanding Bankruptcy Rules 4001(a)(3), 6004(h), 6006(d), 7062, or 9014 of the Bankruptcy Rules, any applicable Local Rules, or Rule 62(a) of the Federal Rules of Civil Procedure, this Interim Order shall be immediately effective and enforceable upon its entry and there shall be no stay of execution or effectiveness of this Interim Order.

60. Headings. The headings in this Interim Order are for purposes of reference only and shall not limit or otherwise affect the meaning of this Interim Order.

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

Exhibit 1

DIP Credit Agreement

Execution Version

DEBTOR-IN-POSSESSION CREDIT AGREEMENT

Dated as of June 6, 2025,

among

SOLAR MOSAIC LLC,

as the Borrower,

FORBRIGHT BANK
as Administrative Agent and a Lender,

and

the other Lenders from time to time party hereto

TABLE OF CONTENTS

	<u>Page</u>
ARTICLE I DEFINITIONS AND ACCOUNTING TERMS	2
1.01 Defined Terms	2
1.02 Other Interpretive Provisions	33
1.03 Accounting Terms	34
1.04 Rounding	35
1.05 Times of Day; Rates	35
1.06 [Reserved]	35
1.07 Currency Equivalents Generally	35
1.08 Divisions	36
ARTICLE II THE COMMITMENTS AND CREDIT EXTENSIONS	36
2.01 The Loans	36
2.02 Borrowings, Conversions and Continuations of Loans	37
2.03 [Reserved]	39
2.04 [Reserved]	39
2.05 Prepayments	39
2.06 Termination or Reduction of Commitments	40
2.07 Repayment of Loans	40
2.08 Interest	40
2.09 Fees	41
2.10 Computation of Interest and Fees	42
2.11 Evidence of Debt	42
2.12 Payments Generally; Administrative Agent’s Clawback	42
2.13 Sharing of Payments by Lenders	44
2.14 Application of Payments	45
2.15 Defaulting Lenders	46
ARTICLE III TAXES, YIELD PROTECTION AND ILLEGALITY	47
3.01 Taxes	47
3.02 Illegality	51
3.03 Inability to Determine Rates	52
3.04 Increased Costs: Reserves on Adjusted Term SOFR Loans	53
3.05 Compensation for Losses	54
3.06 Mitigation Obligations; Replacement of Lenders	55
3.07 Survival	55
3.08 Benchmark Replacement Setting	55
ARTICLE IV CONDITIONS PRECEDENT TO EFFECTIVENESS AND CREDIT EXTENSIONS	57
4.01 Conditions to Effectiveness	57
4.02 Conditions to All Credit Extensions	58

ARTICLE V REPRESENTATIONS AND WARRANTIES	59
5.01 Existence, Qualification and Power	59
5.02 Authorization; No Contravention	59
5.03 Governmental Authorization; Other Consents.....	59
5.04 Binding Effect	60
5.05 Financial Statements; No Material Adverse Effect	60
5.06 Litigation.....	61
5.07 No Default.....	61
5.08 Ownership of Property; Liens; Investments	61
5.09 Environmental Compliance	61
5.10 Insurance	62
5.11 Taxes	62
5.12 ERISA Compliance.....	63
5.13 Subsidiaries; Equity Interests; Loan Parties	64
5.14 Margin Regulations; Investment Company Act	64
5.15 Disclosure	64
5.16 Compliance with Laws	65
5.17 Intellectual Property; Licenses, Etc	65
5.18 [Reserved]	65
5.19 Labor Matters.....	65
5.20 Anti-Money Laundering Laws.....	65
5.21 Sanctions	65
5.22 Anti-Corruption Laws	66
5.23 EEA Financial Institutions.....	66
5.24 Collateral Access	66
5.25 Approved Budget.....	66
ARTICLE VI AFFIRMATIVE COVENANTS	66
6.01 Financial Statements	66
6.02 Certificates; Other Information.....	67
6.03 Notices	68
6.04 Payment of Obligations.....	69
6.05 Preservation of Existence, Etc	69
6.06 Maintenance of Properties	69
6.07 Maintenance of Insurance	70
6.08 Compliance with Laws	70
6.09 Books and Records	71
6.10 Inspection Rights	71
6.11 Compliance with OFAC Sanctions Programs.....	71
6.12 Covenant to Guarantee Obligations and Provide Collateral	72
6.13 Compliance with Environmental Laws.....	73
6.14 Further Assurances.....	73
6.15 Designation as Senior Debt.....	74
6.16 Anti-Corruption Laws	74
6.17 Approved Budget and Variance Reports	74
6.18 Professional Fee Reserve	75

6.19	Milestones	75
6.20	Bankruptcy Schedules and Covenants	76
6.21	Payroll Reserve	76
6.22	Bankruptcy Documents	76
6.23	Cooperation With Administrative Agent's Advisors	77
6.24	Conditions Subsequent to Closing	77
ARTICLE VII NEGATIVE COVENANTS		77
7.01	Liens	77
7.02	Indebtedness	79
7.03	Investments	81
7.04	Fundamental Changes	82
7.05	Dispositions	83
7.06	Restricted Payments	84
7.07	Change in Nature of Business	84
7.08	Transactions with Affiliates	84
7.09	Burdensome Agreements	84
7.10	Use of Proceeds	85
7.11	Amendments of Organization Documents	86
7.12	Amendment, Etc	86
7.13	Solar Loans	86
7.14	Formation of New Subsidiaries	86
7.15	Budget Variance Covenant	86
7.16	Immaterial Subsidiaries	86
7.17	MFX and MFXI	87
ARTICLE VIII EVENTS OF DEFAULT AND REMEDIES		87
8.01	Events of Default	87
8.02	Remedies upon Event of Default	90
8.03	Application of Funds	94
ARTICLE IX ADMINISTRATIVE AGENT		95
9.01	Appointment and Authority	95
9.02	Rights as a Lender	95
9.03	Exculpatory Provisions	95
9.04	Reliance by Administrative Agent	96
9.05	Delegation of Duties	97
9.06	Resignation of Administrative Agent	97
9.07	Non-Reliance on Administrative Agent and Other Lenders	98
9.08	Administrative Agent May File Proofs of Claim; Credit Bidding	98
9.09	Guaranty Matters	99
9.10	Withholding Tax	99
9.11	No Other Duties, etc	100
9.12	Certain ERISA Matters	100
9.13	Recovery of Erroneous Payments	101
9.14	Protective Advances	102

ARTICLE X MISCELLANEOUS	102
10.01 Amendments, Etc	102
10.02 Notices; Effectiveness; Electronic Communications	104
10.03 No Waiver; Cumulative Remedies; Enforcement	105
10.04 Expenses; Indemnity; Damage Waiver	106
10.05 Payments Set Aside	108
10.06 Successors and Assigns	109
10.07 Treatment of Certain Information; Confidentiality	112
10.08 Right of Setoff	113
10.09 Interest Rate Limitation	114
10.10 Counterparts; Integration; Effectiveness	114
10.11 Survival of Representations and Warranties	115
10.12 Severability	115
10.13 Replacement of Lenders	115
10.14 Governing Law; Jurisdiction; Etc	116
10.15 WAIVER OF JURY TRIAL	118
10.16 No Advisory or Fiduciary Responsibility	118
10.17 Electronic Execution of Assignments and Certain Other Documents	119
10.18 USA PATRIOT Act	119
10.19 Acknowledgement and Consent to Bail-In of Affected Financial Institutions	119
10.20 Acknowledgement Regarding Any Supported QFCs	120
10.21 Personal Identifiable Information; Security Requirements	121
10.22 Exclusive Remedy For Any Alleged Post-Petition Claim	123
10.23 [Reserved]	123
10.24 [Reserved]	123
10.25 [Reserved]	123
10.26 Disavowal and Waiver of Any Subsequent Relief Based on Changed Circumstances	123
10.27 Adequate Protection	124
10.28 Interim Order and Final Order Control	124

SIGNATURES.....S-1

SCHEDULES

2.01	Commitments and Applicable Percentages
5.06	Litigation
5.13	Subsidiaries and Other Equity Investments; Loan Parties
7.01	Existing Liens
7.02	Existing Indebtedness
7.03	Existing Investments
7.05	Certain Asset Sales
7.09	Burdensome Agreements
10.02	Administrative Agent's Office, Certain Addresses for Notices
10.06	Disqualified Lenders

EXHIBITS

Form of

A-1	Approved Budget
A-2	Interim Order
B	Committed Loan Notice
C	Note
E-1	Assignment and Assumption
E-2	Administrative Questionnaire
F	Guaranty
G	United States Tax Compliance Certificates

DEBTOR-IN-POSSESSION CREDIT AGREEMENT

This DEBTOR-IN-POSSESSION CREDIT AGREEMENT (“Agreement”) dated as of June 6, 2025, is among SOLAR MOSAIC LLC, a Delaware limited liability company (the “Borrower”), each lender from time to time party hereto (collectively, the “Lenders” and individually, a “Lender”), FORBRIGHT BANK, as Administrative Agent and Lender.

PRELIMINARY STATEMENTS:

A. On June 6, 2025 (the “Petition Date”), the Borrower, Mosaic Sustainable Finance Corporation, Modern Home LLC, Mosaic Funding Holdings LLC and SMTX LLC (collectively, and together with any other Subsidiaries and Affiliates that become debtors-in-possession in the Cases, the “Debtors”) filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code, which bankruptcy cases are jointly administered under the lead bankruptcy case of Mosaic Sustainable Finance Corporation Case No. 25- 90154 (collectively, the “Cases”) before the United States Bankruptcy Court for the Southern District of Texas (together any other court having jurisdiction over the Cases, the “Bankruptcy Court”). The Debtors remain in possession of their assets and are operating their businesses as debtors-in-possession under Sections 1107 and 1108 of the Bankruptcy Code.

B. Pursuant to that certain Credit Agreement dated as of June 22, 2021 (as has been amended, supplemented and modified through the date hereof, the “Prepetition Credit Agreement”), by and among the Borrower, the financial institutions party thereto as lenders as of the Petition Date (collectively, in such capacity, the “Prepetition Lenders”), Forbright Bank, as agent for Prepetition Lenders (in such capacity, “Prepetition Agent”), Prepetition Agent and Prepetition Lenders made certain credit facilities and advances of credit available to certain of the Loan Parties prior to the Petition Date on the terms and conditions set forth therein, which credit facilities and advances of credit and all other Prepetition Obligations thereunder are unconditionally guaranteed by the Guarantors and secured by Liens on substantially all the assets of the Borrower and the Guarantors.

C. The Borrower has requested that during the Cases, Administrative Agent and the Lenders make advances and other financial accommodations available to the Borrower of up to the New Money DIP Commitments and the Roll-Up Commitment, each as specified herein on a senior secured, superpriority basis, pursuant to, inter alia, Sections 364(c) and (d) of the Bankruptcy Code.

D. Administrative Agent and the Lenders are willing to provide advances and other financial accommodations to the Borrower on a senior secured, superpriority basis on the terms and subject to the conditions of this Agreement, so long as, among other things, such post-petition credit obligations are (i) secured by Liens on all of the assets, property and interests, real and personal, tangible and intangible, of the Debtors, whether now owned or hereafter acquired, which Liens are superior to all other Liens pursuant to Sections 364(c) and (d) of the Bankruptcy Code (subject to the priority of Liens set forth in the Interim Order); (ii) given priority over any administrative expenses of the kind specified in the Bankruptcy Code, including without limitation, under Sections 105, 326, 328, 330, 331, 364(c)(1), 365, 503, 506(c) (upon entry of the Final Order), 507, 546(c), 726, 1113 or 1114 of the Bankruptcy Code, as provided in the Interim

Order and the Final Order; and (iii) guaranteed by the Guarantors pursuant to the terms set forth in the Guaranties.

In consideration of the foregoing recitals, which are incorporated herein by this reference and mutual covenants and agreements herein contained, the parties hereto covenant and agree as follows:

ARTICLE I
DEFINITIONS AND ACCOUNTING TERMS

1.01 Defined Terms.

As used in this Agreement, the following terms shall have the meanings set forth below:

“Acceptable Bid Procedures Motion” has the meaning specified in Section 6.19.

“Acceptable Bid Procedures Order” has the meaning specified in Section 6.19.

“Acceptable Sale Order” has the meaning specified in Section 6.19.

“Acceptable Sale Transaction” means a sale of assets pursuant to section 363 of the Bankruptcy Code approved by the Administrative Agent that is utilized to implement a sale of the Debtors’ assets or business and includes bid procedures that, without limitation, permit credit bidding of the Obligations up to the full face amount thereof.

“Adjusted Term SOFR” means the rate per annum equal to Term SOFR plus the Related Adjustment; provided that if Adjusted Term SOFR as so determined shall ever be less than the Floor, then Adjusted Term SOFR shall be deemed to be the Floor.

“Adjusted Term SOFR Loan” means a Term Loan that bears interest at a rate based on the definition of Adjusted Term SOFR.

“Administrative Agent” means Forbright Bank in its capacity as administrative agent under any of the Loan Documents, or any successor administrative agent.

“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 to the Borrower and the Lenders.

“Administrative Questionnaire” means an Administrative Questionnaire in substantially the form of Exhibit E-2 or any other form approved by the Administrative Agent.

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

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

“Agreement” means this Debtor-In-Possession Credit Agreement.

“Anti-Corruption Laws” has the meaning specified in Section 5.22.

“Applicable Percentage” means, with respect to any Lender at any time, the percentage (carried out to the ninth decimal place) of the Term Loan Facility represented by such Lender’s Commitment at such time, subject to adjustment as provided in Section 2.15. If the commitment of each Lender to make Loans have been terminated pursuant to Section 8.02, or if the Commitments have expired, then the Applicable Percentage of each Lender shall be determined based on the Applicable Percentage of such Lender most recently in effect, giving effect to any subsequent assignments. The initial Applicable Percentage of each Lender is set forth opposite the name of such Lender on Schedule 2.01 or in the Assignment and Assumption pursuant to which such Lender becomes a party hereto, as applicable.

“Applicable Rate” means thirteen percent (13.00%).

“Approved Budget” means the 13-week consolidated weekly operating budget of the Debtors setting forth the sources and uses of cash and providing for Liquidity at all times of not less than \$1,500,000 for the periods described therein prepared by the Debtors’ management, in consultation with Huron Consulting Group Inc., a copy of the initial budget (which such initial budget may be an 8-week budget) is attached as Exhibit A, as such budget shall be updated from time to time in accordance with Section 6.17 hereof.

“Approved Fund” means any Fund that is administered or managed by (a) a Lender, (b) an Affiliate of a Lender, (c) an entity or an Affiliate of an entity that administers or manages a Lender, or (d) BancAlliance Inc.

“Assignment and Assumption” means an assignment and assumption entered into by a Lender and an Eligible Assignee (with the consent of any party whose consent is required by Section 10.06(b)), and accepted by the Administrative Agent, in substantially the form of Exhibit E-1 or any other form (including electronic documentation generated by use of an electronic platform) approved by the Administrative Agent.

“Attributable Indebtedness” means, on any date, (a) in respect of any Capitalized Lease of any Person, the capitalized amount thereof that would appear on a balance sheet of such Person prepared as of such date in accordance with GAAP, (b) in respect of any Synthetic Lease Obligation, the capitalized amount of the remaining lease or similar payments under the relevant lease or other applicable agreement or instrument that would appear on a balance sheet of such Person prepared as of such date in accordance with GAAP if such lease or other agreement or instrument were accounted for as a Capitalized Lease and (c) all Synthetic Debt of such Person.

“Auction” has the meaning specified in Section 6.19.

“Audited Financial Statements” means the audited consolidated balance sheet of the Borrower and its Subsidiaries for the fiscal year ended December 31, 2023, and the related consolidated statements of operations, comprehensive income (or loss), stockholders’ equity and cash flows for such fiscal year of the Borrower and its Subsidiaries, including the notes thereto.

“Available Tenor” means, 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 pursuant to this Agreement, 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 3.08(d).

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

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

“Bankruptcy Code” means the United States Bankruptcy Code (11 U.S.C. §§ 101, *et seq.*).

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

“Base Rate” means, for any day, a fluctuating rate per annum equal to the highest of (a) the Federal Funds Rate plus 1/2 of 1%, (b) the rate of interest in effect for such day as publicly announced from time to time by Forbright Bank as its “prime rate”, (c) the Adjusted Term SOFR plus 1.00% and (d) 1.50%. The “prime rate” is a rate set by Forbright Bank based upon various factors including Forbright Bank’s costs and desired return, general economic conditions and other factors, and is used as a reference point for pricing some loans, which may be priced at, above, or below such announced rate. Any change in such prime rate announced by Forbright Bank shall take effect at the opening of business on the day specified in the public announcement of such change. If the Base Rate is being used as an alternate rate of interest pursuant to Section 3.03 hereof, then the Base Rate shall be the greater of clauses (a) and (b) above and shall be determined without reference to clause (c) above.

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

“Benchmark” means, initially, the Term SOFR Reference Rate; provided that if a Benchmark Transition Event has occurred with respect to the Term SOFR Reference Rate or the then-current Benchmark, then “Benchmark” means the applicable Benchmark Replacement to the extent that such Benchmark Replacement has replaced such prior benchmark rate pursuant to Section 3.08(a).

“Benchmark Replacement” means, with respect to any Benchmark Transition Event, the sum of: (a) the alternate benchmark rate that has been selected by the Administrative Agent and

the Borrower giving due consideration to (i) any selection or recommendation of a replacement benchmark 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 benchmark rate as a replacement to the then-current Benchmark for Dollar-denominated syndicated credit facilities at such time and (b) the related Benchmark Replacement Adjustment; provided that, if such Benchmark Replacement as so determined would be less than the Floor, such Benchmark Replacement will be deemed to be the Floor for the purposes of this Agreement and the other Loan Documents.

“Benchmark Replacement Adjustment” means, with respect to any replacement of the then-current Benchmark with an Unadjusted Benchmark Replacement, 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 Administrative Agent and the Borrower giving due consideration to (a) any selection or recommendation of a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement by the Relevant Governmental Body or (b) 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 such Benchmark with the applicable Unadjusted Benchmark Replacement for Dollar-denominated syndicated credit facilities at such time.

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

(a) in the case of clause (a) or (b) of the definition of “Benchmark Transition Event,” the later of (i) the date of the public statement or publication of information referenced therein and (ii) the date on which the administrator of such Benchmark (or the published component used in the calculation thereof) permanently or indefinitely ceases to provide all Available Tenors of such Benchmark (or such component thereof); or

(b) in the case of clause (c) of the definition of “Benchmark Transition Event,” the first date on which such Benchmark (or the published component used in the calculation thereof) has been determined and announced by the regulatory supervisor for the administrator of such Benchmark (or such component thereof) to be non-representative; provided that such non-representativeness will be determined by reference to the most recent statement or publication referenced in such clause (c) and even if any Available Tenor of such Benchmark (or such component thereof) continues to be provided on such date.

For the avoidance of doubt, the “Benchmark Replacement Date” will be deemed to have occurred in the case of clause (a) or (b) with respect to any Benchmark upon the occurrence of the applicable event or events set forth therein with respect to all then-current Available Tenors of such Benchmark (or the published component used in the calculation thereof).

“Benchmark Transition Event” means the occurrence of one or more of the following events with respect to the then-current Benchmark:

(a) a public statement or publication of information by or on behalf of the administrator of such Benchmark (or the published component used in the calculation thereof) announcing that such administrator has ceased or will cease to provide all Available Tenors of such Benchmark (or such component thereof), permanently or indefinitely; provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide any Available Tenor of such Benchmark (or such component thereof);

(b) a public statement or publication of information by the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof), the Federal Reserve Board, the Federal Reserve Bank of New York, an insolvency official with jurisdiction over the administrator for such Benchmark (or such component), a resolution authority with jurisdiction over the administrator for such Benchmark (or such component) or a court or an entity with similar insolvency or resolution authority over the administrator for such Benchmark (or such component), which states that the administrator of such Benchmark (or such component) has ceased or will cease to provide all Available Tenors of such Benchmark (or such component thereof) permanently or indefinitely; provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide any Available Tenor of such Benchmark (or such component thereof); or

(c) a public statement or publication of information by the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof) announcing that all Available Tenors of such Benchmark (or such component thereof) are not, or as of a specified future date will not be, representative.

“Benchmark Transition Start Date” means, in the case of a Benchmark Transition Event, the earlier of (a) the applicable Benchmark Replacement Date and (b) if such Benchmark Transition Event is a public statement or publication of information of a prospective event, the 90th day prior to the expected date of such event as of such public statement or publication of information (or if the expected date of such prospective event is fewer than 90 days after such statement or publication, the date of such statement or publication).

“Benchmark Unavailability Period” means, the period (if any) (a) beginning at the time that a Benchmark Replacement Date has occurred if, at such time, no Benchmark Replacement has replaced the then-current Benchmark for all purposes hereunder and under any Loan Document in accordance with Section 3.08 and (b) ending at the time that a Benchmark Replacement has replaced the then-current Benchmark for all purposes hereunder and under any Loan Document in accordance with Section 3.08.

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

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

“Benefit Plan” means any of (a) an “employee benefit plan” (as defined in ERISA) that is subject to Title I of ERISA, (b) a “plan” as defined in and subject to Section 4975 of the Code or (c) any Person whose assets include (for purposes of ERISA Section 3(42) or otherwise for

purposes of Title I of ERISA or Section 4975 of the Code) the assets of any such “employee benefit plan” or “plan”.

“Borrower” has the meaning specified in the introductory paragraph hereto.

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

“Borrowing” means a borrowing consisting of simultaneous Term Loans of the same Type and, in the case of Adjusted Term SOFR Loans, having the same Interest Period made by each of the Lenders pursuant to Section 2.01.

“Budget Variances” has the meaning specified in Section 7.15.

“Business Day” means any day other than a Saturday, Sunday or other day on which commercial banks are authorized to close under the Laws of, or are in fact closed in, Oakland California, the state where the Administrative Agent’s Office is located and, if such day relates to any Adjusted Term SOFR Loan, means any such day that is also a London Banking Day.

“Calculation Date” means the first Business Day after the actual delivery date by which the Borrower provides the consolidated financial information required by Section 6.01(a) or (b), as applicable, and the Compliance Certificate required by Section 6.02(a) for the month or year of the Borrower most recently ended prior to such date.

“Capitalized Leases” means all leases that have been or should be, in accordance with GAAP, recorded as capitalized leases; provided that any lease or other arrangement that, under GAAP as in effect on the Closing Date, would not be required to be accounted for as a capital lease shall not constitute a “Capital Lease” hereunder.

“Carve-Out” shall have the meaning assigned to such term in the DIP Orders.

“Carve-Out Trigger Notice” shall have the meaning assigned to such term in the DIP Orders.

“Cases” has the meaning specified in the recitals hereto.

“Cash Collateral” shall have the meaning assigned to such term in the DIP Orders.

“Cash Equivalents” means any of the following types of Investments, to the extent owned by the Borrower or any of its Subsidiaries free and clear of all Liens (other than Liens permitted hereunder):

(a) readily marketable obligations issued or directly and fully guaranteed or insured by the United States of America or any agency or instrumentality thereof having maturities of not more than 2 years from the date of acquisition thereof; provided that the full faith and credit of the United States of America is pledged in support thereof;

(b) time deposits with, or insured certificates of deposit or bankers’ acceptances of, any commercial bank that (i) (A) is a Lender or (B) is organized under the laws of the

United States of America, any state thereof or the District of Columbia or is the principal banking subsidiary of a bank holding company organized under the laws of the United States of America, any state thereof or the District of Columbia, and is a member of the Federal Reserve System, (ii) issues (or the parent of which issues) commercial paper rated as described in clause (c) of this definition and (iii) has combined capital and surplus of at least \$500,000,000, in each case with maturities of not more than two year from the date of acquisition thereof;

(c) commercial paper issued by any Person organized under the laws of any state of the United States of America and rated at least “Prime-1” (or the then equivalent grade) by Moody’s or at least “A-1” (or the then equivalent grade) by S&P, in each case with maturities of not more than two years from the date of acquisition thereof;

(d) Investments, classified in accordance with GAAP as current assets of the Borrower or any of its Subsidiaries, in money market investment programs registered under the Investment Company Act of 1940, which are administered by financial institutions that have the highest rating obtainable from either Moody’s or S&P, and the portfolios of which are limited solely to Investments of the character, quality and maturity described in clauses (a), (b) and (c) of this definition;

(e) securities issued or fully guaranteed by any state, district or commonwealth of the United States of America or by any political subdivision (including any municipality) or taxing authority of any such state, district or commonwealth the securities of which state, district or commonwealth political subdivision or taxing authority (as the case may be) are rated at least “A” (or A-1, SP1 or other then equivalent grade) by S&P or at least “A1” (or “Prime-1” or MIG-1 or other then equivalent grade) by Moody’s as of the date of acquisition and, in each case, with a maturity of not more than two years from the date of acquisition thereof;

(f) securities of United States government sponsored entities having ratings of at least Aaa by Moody’s (or the then equivalent grade) or AAA by S&P (or the then equivalent grade) as of the date of acquisition and having maturities not more than two years from the date of acquisition thereof; and

(g) repurchase obligations of any commercial bank (or any Affiliate thereof) satisfying the requirements of clause (b) above, having a term of not more than two years.

“Cash Management Order” has the meaning specified in Section 4.01(h) hereof.

“CERCLA” means the Comprehensive Environmental Response, Compensation and Liability Act of 1980.

“CERCLIS” means the Comprehensive Environmental Response, Compensation and Liability Information System maintained by the U.S. Environmental Protection Agency.

“CFC” means a Person that is a controlled foreign corporation as such term is defined in Section 957 of the Code.

“Challenge Period” shall have the meaning assigned to such term in the DIP Orders.

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

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

(a) the Permitted Holders cease to own and control at least 50.1% of the voting stock of the Parent;

(b) the Parent ceases to own 100% of the membership interests in the Borrower;
or

(c) a “change of control” or any comparable term under, and as defined in any Indebtedness of the Borrower or any of its Subsidiaries (other than Indebtedness arising under this Agreement) in an aggregate principal amount exceeding the Threshold Amount shall have occurred with respect to the Borrower and, in any event, such occurrence triggers a default, mandatory prepayment or mandatory offer of prepayment, which default, mandatory prepayment or mandatory offer of prepayment has not been waived in writing.

“Charged Off Assets” means any doubtful, defaulted or past-due loans, receivables and similar obligations.

“Charged Off Assets Separation Transaction” means (a) any actual sale, transfer, or other Disposition (or the approval, facilitation, or execution of any actual sale, transfer or other Disposition) by any Loan Party or its Subsidiaries of Charged Off Assets to any non-Loan Party and/or (b) any actual Investment (or the approval, facilitation, or execution of any actual Investment) by any Loan Party or its Subsidiaries in the form of a contribution of Charged Off Assets to, or Equity Interests of any Loan Party or its Subsidiaries holding such Charged Off Assets to, any Affiliate of a Loan Party that is not a Loan Party.

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

“Code” means the United States Internal Revenue Code of 1986, as amended.

“Collateral” means any and all assets, whether real or personal, tangible or intangible, on which Liens are purported to be granted pursuant to the Collateral Documents or any DIP Order

and all of the other property that is or is intended under the terms of the Collateral Documents or any DIP Order to be subject to Liens in favor of the Administrative Agent for the benefit of the Post-Petition Secured Parties (including, for the avoidance of doubt, the “DIP Collateral” as defined under and in accordance with the DIP Orders); provided, that in no event shall the Collateral include, and there shall be no Liens upon, any Excluded Property (as defined in the Security Agreement).

“Collateral Access Agreement” means a collateral access agreement in form and substance reasonably satisfactory to Administrative Agent.

“Collateral Documents” means the Security Agreement, any Collateral Access Agreement, any Control Agreement, and all other instruments, documents and agreements delivered by any Loan Party pursuant to this Agreement or any of the other Loan Documents in order to grant to Administrative Agent, for the benefit of Post-Petition Secured Parties, a Lien on any real, personal or mixed property of that Loan Party as security for the Obligations.

“Commitment” means as to each Lender, its obligation to make Term Loans to the Borrower pursuant to Section 2.01, in an aggregate principal amount at any one time outstanding not to exceed the amount set forth opposite such Lender’s name on Schedule 2.01 under the caption (x) “Interim Commitment” for the period commencing as of Closing Date and ending on the date that the Bankruptcy Court approves the Final Order, (y) “Final Commitment” on and after the date that the Bankruptcy Court approves the Final Order, and (z) solely with respect to the “Roll-Up Loans”, “Roll-Up Commitment”, or in each case, opposite such caption in the Assignment and Assumption pursuant to which such Lender becomes a party hereto, as applicable, as such amount may be adjusted from time to time in accordance with this Agreement.

“Committed Loan Notice” means a notice of (a) a Borrowing, (b) a conversion of Loans from one Type to the other, or (c) a continuation of Adjusted Term SOFR Loans, pursuant to Section 2.02(a), which shall be substantially in the form of Exhibit B or such other form as may be approved by the Administrative Agent (including any form on an electronic platform or electronic transmission system as shall be approved by the Administrative Agent), appropriately completed and signed by a Responsible Officer of the Borrower.

“Committee” shall have the meaning assigned to such term in the DIP Orders.

“Communication” has the meaning specified in Section 10.17.

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

“Conforming Changes” means, with respect to either the use or administration of Term SOFR or the use, administration, adoption or implementation of any Benchmark Replacement, any technical, administrative or operational changes (including changes to the definition of “Base Rate,” the definition of “Business Day,” the definition of “U.S. Government Securities Business Day,” the definition of “Interest Period” or any similar or analogous definition (or the addition of a concept of “interest period”), timing and frequency of determining rates and making payments of interest, timing of borrowing requests or prepayment, conversion or continuation notices, the applicability and length of lookback periods, the applicability of Section 3.03 and other technical, administrative or operational matters) that the Administrative Agent decides may be appropriate

to reflect the adoption and implementation of any such rate or to permit the use and administration thereof by the Administrative Agent in a manner substantially consistent with market practice (or, if the Administrative Agent decides that adoption of any portion of such market practice is not administratively feasible or if the Administrative Agent determines that no market practice for the administration of any such rate exists, in such other manner of administration as the Administrative Agent decides is reasonably necessary in connection with the administration of this Agreement and the other Loan Documents).

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

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

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

“Control Agreement” means a control agreement, in form and substance reasonably satisfactory to Administrative Agent, executed and delivered by Borrower or one of its Subsidiaries, Administrative Agent, and the applicable securities intermediary (with respect to a Securities Account) or bank (with respect to a Deposit Account).

“Covered Entity” has the meaning specified in Section 10.20.

“Credit Extension” means each Borrowing.

“Credit Party” has the meaning specified in Section 9.13.

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

“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.

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

“Default Rate” means an interest rate equal to (i) the Base Rate plus (ii) the Applicable Rate, if any, applicable to Base Rate Loans plus (iii) 2% per annum; provided that with respect to an Adjusted Term SOFR Loan, the Default Rate shall be an interest rate equal to the interest rate (including any Applicable Rate) otherwise applicable to such Loan plus 2% per annum.

“Defaulting Lender” means, subject to Section 2.15(b), any Lender that (a) has failed to (i) fund all or any portion of its Loans within two Business Days of the date such Loans were required to be funded hereunder unless such Lender notifies the Administrative Agent and the Borrower in writing that such failure is the result of such Lender’s determination that one or more conditions precedent to funding (each of which conditions precedent, together with any applicable default, shall be specifically identified in such writing) has not been satisfied, or (ii) pay to the Administrative Agent or any other Lender any other amount required to be paid by it hereunder within two Business Days of the date when due, (b) has notified the Borrower or the Administrative Agent in writing that it does not intend to comply with its funding obligations hereunder, or has made a public statement to that effect (unless such writing or public statement relates to such lender’s obligation to fund a Loan hereunder and states that such position is based on such Lender’s determination that a condition precedent to funding (which condition precedent, together with any applicable default, shall be specifically identified in such writing or public statement) cannot be satisfied), (c) has failed, within three Business Days after written request by the Administrative Agent or the Borrower, to confirm in writing to the Administrative Agent and the Borrower that it will comply with its prospective funding obligations hereunder (provided that such Lender shall cease to be a Defaulting Lender pursuant to this clause (c) upon receipt of such written confirmation by the Administrative Agent and the Borrower), or (d) has, or has a direct or indirect parent company that has, (i) become the subject of a proceeding under any Debtor Relief Law, (ii) had appointed for it a receiver, custodian, conservator, trustee, administrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or assets, including the Federal Deposit Insurance Corporation or any other state or federal regulatory authority acting in such a capacity or (iii) 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) 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 any one or more of clauses (a) through (d) above, and of the effective date of such status, shall be conclusive and binding absent manifest error, and such Lender shall be deemed to be a Defaulting Lender (subject to Section 2.15(b)) as of the date established therefor by the Administrative Agent in a written notice of such determination, which shall be delivered by the Administrative Agent to the Borrower and each other Lender promptly following such determination.

“Deposit Account” means a demand, time, savings, passbook or like account with a bank, savings and loan association, credit union or like organization, other than an account evidenced by a negotiable certificate of deposit.

“Designated Jurisdiction” means any country or territory that is subject to comprehensive OFAC Sanctions Programs.

“Disposition” or “Dispose” means the sale, transfer, license, lease or other disposition (including any sale and leaseback transaction) of any property by any Person (or the granting of any option or other right to do any of the foregoing), including any sale, assignment, transfer or

other disposal, with or without recourse, of any notes or accounts receivable or any rights and claims associated therewith and including any disposition of property to a Divided LLC pursuant to an LLC Division or any comparable transaction under any similar law.

“Disqualified Stock” means any Equity Interest which, by its terms (or by the terms of any security or other Equity Interests into which it is convertible or for which it is exchangeable), or upon the happening of any event or condition (a) matures or is mandatorily redeemable (other than solely for Qualified Equity Interests), pursuant to a sinking fund obligation or otherwise (except as a result of a change of control or asset sale so long as any rights of the holders thereof upon the occurrence of a change of control or asset sale event shall be subject to the prior repayment in full of the Loans and all other Obligations that are accrued and payable and the termination of the Commitments), (b) is redeemable at the option of the holder thereof (other than solely for Qualified Equity Interests), in whole or in part, (c) provides for the scheduled payments of dividends in cash, or (d) is or becomes convertible into or exchangeable for Indebtedness or any other Equity Interests that would constitute Disqualified Stock, in each case, prior to the date that is ninety-one (91) days after the Maturity Date; provided that if such Equity Interests are issued pursuant to a plan for the benefit of current or former employees, directors, independent contractors or other service providers of the Borrower or the Subsidiaries or by any such plan to such current or former employees, directors, independent contractors or other service providers, such Equity Interests shall 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, including tax withholding, or as a result of such current or former employee’s, director’s, independent contractor’s or other service provider’s termination, death or disability.

“DIP Orders” means the Interim Order and/or the Final Order, as applicable and as the context requires.

“DIP Superpriority Claim” shall have the meaning assigned to such term in the DIP Orders.

“Divided LLC” means any LLC which has been formed upon the consummation of an LLC Division.

“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 or commonwealth 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 delegatee) having responsibility for the resolution of any EEA Financial Institution.

“Electronic Signature” has the meaning specified in Section 10.21.

“Eligible Assignee” means any Person that meets the requirements to be an assignee under Section 10.06(b)(iii) and (iv) (subject to such consents, if any, as may be required under Section 10.06(b)(iii)).

“Environment” means ambient air, indoor air, surface water, groundwater, drinking water, soil, surface and subsurface strata, and natural resources such as wetland, flora and fauna.

“Environmental Laws” means any and all Federal, state, local, and foreign statutes, laws, regulations, ordinances, rules, judgments, orders, decrees, permits, agreements or governmental restrictions relating to pollution or the protection of the Environment or human health (to the extent related to exposure to Hazardous Materials), including those relating to the manufacture, generation, handling, transport, storage, treatment, Release threat of Release of Hazardous Materials.

“Environmental Liability” means any liability, contingent or otherwise (including any liability for damages, costs of environmental remediation, fines, penalties or indemnities), of the Borrower, any other Loan Party or any of their respective Subsidiaries directly or indirectly resulting from or based upon (a) violation of any Environmental Law, (b) the generation, use, handling, transportation, storage, treatment or disposal of any Hazardous Materials, (c) exposure to any Hazardous Materials, (d) 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, all of the shares of capital stock of (or other ownership or profit interests in) such Person, all of the warrants, options or other rights for the purchase or acquisition from such Person of shares of capital stock of (or other ownership or profit interests in) such Person, all of the securities convertible into or exchangeable for shares of capital stock of (or other ownership or profit interests in) such Person or warrants, rights or options for the purchase or acquisition from such Person of such shares (or such other interests), and all of the other ownership or profit interests in such Person (including partnership, member or trust interests therein), whether voting or nonvoting, and whether or not such shares, warrants, options, rights or other interests are outstanding on any date of determination, provided that Equity Interests shall exclude debt securities and other Indebtedness convertible into or exchangeable for any of the foregoing.

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

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

“ERISA Event” means (a) a Reportable Event with respect to a Pension Plan; (b) the withdrawal of the Borrower or any ERISA Affiliate from a Pension Plan subject to Section 4063 of ERISA during a plan year in which such entity was a “substantial employer” as defined in Section 4001(a)(2) of ERISA or a cessation of operations that is treated as such a withdrawal under Section 4062(e) of ERISA; (c) a complete or partial withdrawal by the Borrower or any ERISA Affiliate from a Multiemployer Plan or notification that a Multiemployer Plan is insolvent; (d) the filing of a notice of intent to terminate, the treatment of a Pension Plan amendment as a termination under Section 4041 or 4041A of ERISA; (e) the institution by the PBGC of proceedings to terminate a Pension Plan; (f) any event or condition which constitutes grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Pension Plan; (g) the determination that any Pension Plan is considered an at-risk plan or a plan in endangered or critical status within the meaning of Sections 430 or 432 of the Code or Sections 303 or 305 of ERISA; (h) the imposition of any liability under Title IV of ERISA, other than for PBGC premiums due but not delinquent under Section 4007 of ERISA, upon the Borrower or any ERISA Affiliate; or (i) a failure by the Borrower or any ERISA Affiliate to meet all applicable requirements under the Pension Funding Rules in respect of a Pension Plan, whether or not waived, or the failure by the Borrower or any ERISA Affiliate to make any required contribution to a Multiemployer Plan.

“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.

“Excluded Subsidiary” means (a) any Domestic Subsidiary that owns no assets (directly or through one or more disregarded entities) other than Equity Interests (including any debt instrument treated as equity for U.S. federal income tax purposes) of one or more Foreign Subsidiaries that are CFCs, (b) any Subsidiary that is prohibited by applicable Law, rule or regulation, its Organization Documents (if compliance with limitations therein is also required by its contractual obligations related to Indebtedness that is permitted under Section 7.02(g)) or by any contractual obligation (with respect to any such contractual obligation, only to the extent existing on the Closing Date or at the time such Subsidiary is acquired, as applicable (and not entered into in contemplation of such acquisition) or in the case of any Subsidiary formed for the purpose of incurring Indebtedness permitted by Section 7.02(g), at the time of incurrence of such Indebtedness), from guaranteeing or providing security for the Obligations or which would require governmental (including regulatory) consent, approval, license or authorization to provide a guarantee unless such consent, approval, license or authorization has been received, or (c) any Foreign Subsidiary.

“Excluded Taxes” means any of the following Taxes imposed on or with respect to any Recipient or required to be withheld or deducted from a payment to a Recipient, (a) Taxes imposed on or measured by net income (however denominated), franchise Taxes, and branch profits Taxes, in each case, (i) imposed as a result of such Recipient being organized under the laws of, or having

its principal office or, in the case of any Lender, its Lending Office located in, the jurisdiction imposing such Tax (or any political subdivision thereof) or (ii) that are Other Connection Taxes, (b) in the case of a Lender, U.S. federal withholding Taxes imposed on amounts payable to or for the account of such Lender with respect to an applicable interest in a Loan or Commitment pursuant to a law in effect on the date on which (i) such Lender acquires such interest in the applicable Commitment (or, to the extent such Lender did not fund an applicable Loan pursuant to a prior commitment, on the date on which such Lender acquires its interest in such Loan); provided that this clause (i) shall not apply to a Lender that became a Lender pursuant to an assignment request by the Borrower under Section 10.13 or (ii) such Lender changes its Lending Office, except in each case to the extent that, pursuant to Section 3.01, amounts with respect to such Taxes were payable either to such Lender's assignor immediately before such Lender acquired the applicable interest in the applicable Loan or Commitment or to such Lender immediately before it changed its Lending Office, (c) Taxes attributable to such Recipient's failure to comply with Section 3.01(e) and (d) any U.S. federal withholding Taxes imposed pursuant to FATCA. For purposes of clause (b)(i) of this definition, a participation acquired pursuant to Section 2.13 shall be treated as having been acquired on the earlier date(s) on which the applicable Lender acquired the applicable interests in the Commitments or Loans to which such participation relates.

"Exit Fee" has the meaning specified in Section 2.09(a).

"Fair Market Value" means the price that would be paid in an arm's length transaction between an informed and willing seller under no compulsion to sell and an informed and willing buyer under no compulsion to buy, as determined in good faith by a Responsible Officer of the Borrower or by the board of directors (or a committee thereof) of the Borrower, evidenced by an officers' certificate or board resolution, as applicable.

"FASB ASC" means the Accounting Standards Codification of the Financial Accounting Standards Board.

"FATCA" means Sections 1471 through 1474 of the Code, as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with) and any current or future regulations or official interpretations thereof and any agreements entered into pursuant to Section 1471(b)(1) of the Code, as of the date of this Agreement (or any amended or successor version described above), and any intergovernmental agreements (or related Laws, treaties, regulations or other official administrative guidance) implementing the foregoing.

"Federal Funds Rate" means, for any day, the rate per annum calculated by the Federal Reserve Bank of New York based on such day's federal funds transactions by depository institutions (as determined in such manner as the Federal Reserve Bank of New York shall set forth on its public website from time to time) and published on the next succeeding Business Day by the Federal Reserve Bank of New York as the federal funds effective rate; provided that if the Federal Funds Rate as so determined would be less than zero, such rate shall be deemed to be zero for purposes of this Agreement.

“Final Commitments” means, collectively, the Commitments indicated on Schedule 2.01 opposite each Lender’s name under the heading “Final Commitments” which, in the aggregate, are equal to \$9,000,000.

“Final Order” means a final order of the Bankruptcy Court in the Cases authorizing and approving this Agreement and the other Loan Documents under, *inter alia*, Sections 364(c) and (d) of the Bankruptcy Code on a final basis and entered at or after a final hearing, which order is consistent with the Interim Order in all material respects or otherwise in form and substance satisfactory to Administrative Agent and the Borrower, each in its reasonable discretion and shall in any event contain a waiver of surcharge under Section 5.06(c) of the Bankruptcy Code. The Final Order shall, *inter alia*, provide that the Lenders and the Prepetition Lenders shall be permitted to credit bid (pursuant to section 363(k) of the Bankruptcy Code or applicable Law) the Term Loans and any Prepetition Obligations, respectively, in whole or in part, in connection with any sale or disposition of assets in the Cases (including any deposit in connection with such sale) and shall not be prohibited from making such credit bid “for cause” under section 363(k) of the Bankruptcy Code.

“Floor” means a rate of interest equal to 0.50%.

“Forbright Bank” means Forbright Bank, a Maryland banking institution.

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

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

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

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

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

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

“Guarantee” means, as to any Person, (a) any obligation, contingent or otherwise, of such Person guaranteeing or having the economic effect of guaranteeing any Indebtedness or other

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

“Guaranteed Parties” means, collectively, the Administrative Agent, the Lenders, each co-agent or sub-agent appointed by the Administrative Agent from time to time pursuant to Section 9.05, and the other Persons the Obligations owing to which are or are purported to be guaranteed under the terms of the Guaranty.

“Guarantors” means, collectively, Parent and each Subsidiary of the Borrower (other than any Excluded Subsidiary) that shall be required to execute and deliver a guaranty or guaranty supplement pursuant to Section 6.12.

“Guaranty” means, collectively, the Subsidiary Guaranty, the Parent Guaranty and each other guaranty and guaranty supplement delivered pursuant to Section 6.12.

“Hazardous Materials” means all explosive or radioactive substances or wastes and all hazardous or toxic substances, wastes or other pollutants including petroleum or petroleum distillates, pharmaceutical or medical waste, natural gas, natural gas liquids, asbestos or asbestos-containing materials, polychlorinated biphenyls, radon gas, toxic mold, infectious or medical wastes and all other substances, wastes, chemicals, pollutants, contaminants or compounds of any nature in any form regulated pursuant to any Environmental Law.

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

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

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

(c) net obligations of such Person under any Swap Contract;

(d) all obligations of such Person to pay the deferred purchase price of property or services (other than (i) accounts payable and accrued expenses incurred in the ordinary course of business and not past due more than 60 days, and (ii) payroll liabilities and deferred compensation);

(e) indebtedness (excluding prepaid interest thereon) secured by a Lien on property owned or being purchased by such Person (including indebtedness arising under conditional sales or other title retention agreements), whether or not such indebtedness shall have been assumed by such Person or is limited in recourse;

(f) all Attributable Indebtedness in respect of Capitalized Leases and Synthetic Lease Obligations of such Person and all Synthetic Debt of such Person;

(g) all obligations of such Person to purchase, redeem, retire, defease or otherwise make any payment in respect of any Equity Interest in such Person or any other Person or any warrant, right or option to acquire such Equity Interest, valued, in the case of a redeemable preferred interest, at the greater of its voluntary or involuntary liquidation preference plus accrued and unpaid dividends; and

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

For all purposes hereof, the Indebtedness of any Person shall include the Indebtedness of any partnership or joint venture (other than a joint venture that is itself a corporation or limited liability company) in which such Person is a general partner or a joint venturer, unless such Indebtedness is expressly made non-recourse to such Person. The amount of any net obligation under any Swap Contract on any date shall be deemed to be the Swap Termination Value thereof as of such date.

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

“Indemnitee” has the meaning specified in Section 10.04(b).

“Information” has the meaning specified in Section 10.07.

“Interest Payment Date” means, (a) as to any Adjusted Term SOFR Loan, the last day of each Interest Period applicable to such Loan and the Maturity Date; and (b) as to any Base Rate Loan, the last Business Day of each March, June, September and December and the Maturity Date.

“Interest Period” means, as to each Adjusted Term SOFR Loan, the period commencing on the date such Adjusted Term SOFR Loan is disbursed or converted to or continued as an

Adjusted Term SOFR Loan and ending on the date one month thereafter, as selected by the Borrower in its Committed Loan Notice; provided that:

(i) any Interest Period that would otherwise end on a day that is not a Business Day shall be extended to the next succeeding Business Day unless, in the case of an Adjusted Term SOFR Loan, such Business Day falls in another calendar month, in which case such Interest Period shall end on the next preceding Business Day;

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

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

“Interim Commitments” means, collectively, the Commitments indicated on Schedule 2.01 opposite each Lender’s name under the heading “Interim Commitments” which, in the aggregate, are equal to \$6,000,000.

“Interim Order” means an order of the Bankruptcy Court in the Cases authorizing and approving, among other things, the entry by the Debtors into this Agreement and the other Loan Documents, for an interim period, under, *inter alia*, Sections 364(c) and (d) of the Bankruptcy Code and entered at or after a hearing, in form and substance satisfactory to Administrative Agent and the Borrower, each in its reasonable discretion.

“Investment” means, as to any Person, any direct or indirect acquisition or investment by such Person by means of (a) the purchase or other acquisition of Equity Interests of another Person, (b) a loan, advance or capital contribution to, Guarantee or assumption of debt of, or purchase or other acquisition of any other debt or interest in, another Person, or (c) the purchase or other acquisition (in one transaction or a series of transactions) of assets of another Person that constitute a business unit or all or substantially all of the assets of, such Person. For purposes of covenant compliance, the amount of any Investment shall be the amount actually invested, without adjustment for subsequent increases or decreases in the value of such Investment.

“IP Rights” has the meaning specified in Section 5.17.

“IRS” means the United States Internal Revenue Service.

“ISDA Definitions” means the 2006 ISDA Definitions published by the International Swaps and Derivatives Association, Inc. or any successor thereto, as amended or supplemented from time to time, or any successor definitional booklet for interest rate derivatives published from time to time by the International Swaps and Derivatives Association, Inc. or such successor thereto.

“Laws” means, collectively, all international, foreign, Federal, state and local statutes, treaties, rules, guidelines, regulations, ordinances, codes and administrative or judicial precedents or authorities, including the interpretation or administration thereof by any Governmental Authority charged with the enforcement, interpretation or administration thereof, and all applicable administrative orders, directed duties, requests, licenses, authorizations and permits of, and

agreements with, any Governmental Authority, in each case whether or not having the force of law.

“Lender” has the meaning specified in the introductory paragraph hereto and, as the context requires.

“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, which office may include any Affiliate of such Lender or any domestic or foreign branch of such Lender or such Affiliate. Unless the context otherwise requires each reference to a Lender shall include its applicable Lending Office.

“Lien” means any mortgage, pledge, hypothecation, assignment, deposit arrangement, encumbrance, easement, right-of-way or other encumbrance on title to real property, lien (statutory or other), charge, or preference, priority or other security interest or preferential arrangement in the nature of a security interest of any kind or nature whatsoever (including any conditional sale or other title retention agreement, and any financing lease having substantially the same economic effect as any of the foregoing); provided that any operating lease or license, and any filing of a UCC financing statement that is a protective lease filing in respect of an operating lease and any filings with the Governmental Authority in respect of any license do not constitute Liens.

“Liquidity” means total unrestricted cash of the Borrower subject to a Control Agreement in favor of the Prepetition Agent (excluding cash in an amount equal to the reasonably expected amount of remittances due to the Loan Parties’ payroll and fringe benefits providers upon the start of the next two pay periods based on the then current employment levels, including all corresponding payroll, payroll taxes, healthcare costs and retirement fringe benefit amounts, plus all expected statutorily required severance payments, if any).

“LLC” means any limited liability company organized or formed under the laws of the State of Delaware or any other jurisdiction.

“LLC Division” means the statutory division of any LLC into two or more LLCs pursuant to Section 18-217 of the Delaware Limited Liability Company Act or any comparable transaction pursuant to a different jurisdiction’s laws.

“Loans” means, individually or collectively as the context requires, the Term Loans and Roll-Up Loans.

“Loan Documents” means, collectively, (a) this Agreement, (b) the Notes, (c) the Guaranty, (d) the Schedules, (e) the Collateral Documents, and (f) and any other documents or certificate entered into or delivered in connection herewith.

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

“London Banking Day” means any day on which dealings in Dollar deposits are conducted by and between banks in the London interbank eurodollar market.

“Material Adverse Effect” means (a) a material adverse change in, or a material adverse effect upon, the operations, business, properties or financial condition or prospects of the Borrower and its Subsidiaries, taken as a whole; (b) a material impairment of the rights and remedies of the Administrative Agent or any Lender under any Loan Document, or of the ability of any Loan Party to perform its obligations under any Loan Document to which it is a party; or (c) a material adverse effect upon the legality, validity, binding effect or enforceability against any Loan Party of any Loan Document to which it is a party (in each case, other than (i) the commencement and filing of the Cases, (ii) the events and conditions related to or that led to the commencement of the Cases, (iii) events that customarily and reasonably result from the commencement of the Cases and any action required to be taken under the Loan Documents or under an order of the Bankruptcy Court, and (iv) the consummation of the transactions contemplated or actions required to be taken pursuant to by the Milestones).

“Maturity Date” means the earliest to occur of (a) the 120th day following the Petition Date, subject to two (2) 30-day extensions, upon the written approval of the Administrative Agent and the Required Lenders, (b) the 30th day following the Petition Date if the Final Order has not been entered by the Bankruptcy Court on or prior to such date, (c) the date a sale of all or substantially all of the assets of the Debtors is consummated, (d) the effective date of a plan of reorganization or liquidation, (e) entry of an order by the Bankruptcy Court approving (i) a motion seeking conversion or dismissal of the Cases or (ii) a motion seeking the appointment or election of a trustee, a responsible officer or examiner with enlarged powers relating to the operation of the Debtors’ business, and (f) the date any or all of the Obligations are accelerated in accordance with the DIP Orders.

“MFX” means Mosaic Funding X LLC, a Delaware limited liability company.

“MFXI” means Mosaic Funding XI, LLC, a Delaware limited liability company.

“Milestones” has the meaning specified in Section 6.19.

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

“Multiemployer Plan” means any employee benefit plan of the type described in Section 4001(a)(3) of ERISA, to which the Borrower or any ERISA Affiliate makes or is obligated to make contributions, or during the preceding five plan years, has made or been obligated to make contributions.

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

“Net Cash Proceeds” means with respect to any Disposition, the aggregate cash proceeds received (including cash proceeds received pursuant to policies of insurance or by way of deferred payment of principal pursuant to a note, installment receivable or otherwise, but only as and when received) by any Loan Party pursuant to such Disposition net of (i) the direct costs relating to such sale, transfer or other disposition (including sales commissions and legal, accounting and investment banking fees), (ii) taxes paid or reasonably estimated by the Loan Party to be payable as a result thereof (after taking into account any available tax credits or

deductions and any tax sharing arrangements) and (iii) amounts required to be applied to the repayment of any Indebtedness secured by a Lien on the asset subject to such Disposition (other than the Loan) or to the extent Dispositions are paid for on a non-cash basis in kind via capital contributions, issuance of shares or other non-cash means, a cash amount equivalent to the face value of shares or capital contributions received in exchange for such Disposition (for the avoidance of doubt, the cash value paid under this definition shall not be less than the greater of (i) Borrower's original cost basis in such Disposition and (ii) the remaining GAAP asset value of such Disposition as of the most recently prepared financial statements that have been delivered or were required to have been delivered pursuant to Section 6.01(b)). Net Cash Proceed may be net of any third-party costs set forth in clauses (i) through (iii) hereof approved of by Administrative Agent in its sole discretion prior to the consummation of such Disposition.

"New Money DIP Commitments" means the sum of the Interim Commitments and Final Commitments of all the Lenders as shown on Schedule 2.01 hereof.

"Non-Consenting Lender" means any Lender that does not approve any consent, waiver or amendment that (i) requires the approval of all Lenders or all affected Lenders in accordance with the terms of Section 10.01 and (ii) has been approved by the Required Lenders.

"Non-Defaulting Lender" means, at any time, each Lender that is not a Defaulting Lender at such time.

"Note" means a promissory note made by the Borrower in favor of a Lender evidencing Term Loans made by such Lender, substantially in the form of Exhibit C.

"NPL" means the National Priorities List under CERCLA.

"Obligations" means all 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, in each case 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 and fees that accrue after the commencement by or against any Loan Party or any Affiliate thereof 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.

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

"OFAC Event" means the event specified in Section 6.11(c).

"OFAC Sanctions Programs" means all Laws, regulations, and Executive Orders administered by OFAC, including the Bank Secrecy Act, anti-money laundering Laws (including the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Pub. L. 107-56 (a/k/a the USA Patriot Act)), and all economic and trade sanction programs administered by OFAC, any and all similar United States federal Laws, regulations or Executive Orders, and any similar Laws, regulations or orders adopted by any State or branch or agency within the United States, including, without limitation, the U.S.

Department of State, or the United Nations Security Council, the European Union, Her Majesty's Treasury, or other relevant sanctions authority.

"OFAC SDN List" means the list of the Specially Designated Nationals and Blocked Persons maintained by OFAC.

"OID Fee" has the meaning specified in Section 2.09(b).

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

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

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

"Outstanding Amount" means with respect to Term Loans on any date, the aggregate outstanding principal amount thereof after giving effect to any borrowings and prepayments or repayments of Term Loans occurring on such date;

"Parent" means Mosaic Sustainable Finance Corporation, a Delaware corporation.

"Parent Guaranty" means that certain Guaranty made by the Parent in favor of the Guaranteed Parties and delivered on the Closing Date.

"Participant" has the meaning specified in Section 10.06(d).

"Participant Register" has the meaning specified in Section 10.06(d).

"Payment in Full" means (a) the repayment in full in cash of all Term Loans and all other Obligations (other than indemnity and cost reimbursement obligations for which claims are not yet made), and (b) the termination of the Commitments.

“PBGC” means the Pension Benefit Guaranty Corporation.

“Pension Funding Rules” means the rules of the Code and ERISA regarding minimum required contributions (including any installment payment thereof) to Pension Plans and set forth in Section 412 and 430 of the Code and Sections 302 and 303 of ERISA.

“Pension Plan” means any employee pension benefit plan (including a Multiple Employer Plan or a Multiemployer Plan) that is maintained or is contributed to by the Borrower or any ERISA Affiliate and is either covered by Title IV of ERISA or is subject to the Pension Funding Rules.

“Permitted Holders” means (i) each of the following: Warburg Pincus Private Equity XII, L.P., Warburg Pincus Private Equity XII-B, L.P., Warburg Pincus Private Equity XII-D, L.P., Warburg Pincus Private Equity XII-E, L.P., WP XII Partners, L.P., Warburg Pincus XII Partners, L.P., Warburg Pincus Energy, L.P., Warburg Pincus Energy-B, L.P., WP Energy Partners, L.P., Warburg Pincus Energy Partners, L.P. and any other fund managed or controlled by Warburg Pincus and (ii) any officer or director of Borrower.

“Permitted Tax Distribution” means, so long as Borrower is a pass-through entity for U.S. federal income tax purposes, distributions by Borrower to any direct or indirect owner(s) of Borrower for any taxable year (or portion thereof) ending after the date hereof to fund the income tax liabilities of the direct or indirect (as applicable) owner(s) of Borrower that are attributable to the taxable income of Borrower, in an amount assumed to equal the product of (x) the taxable income of Borrower for such taxable year and (y) the highest combined marginal federal and applicable state and/or local income tax rate applicable to any direct or indirect owner of Borrower.

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

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

“PIK Interest” has the meaning specified in Section 2.08(c).

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

“Plan of Reorganization” has the meaning specified in Section 6.19.

“Platform” has the meaning specified in Section 6.02.

“Post-Petition Obligations” means all Obligations other than the Prepetition Obligations.

“Post-Petition Secured Parties” means, collectively, the Administrative Agent and the Lenders.

“Prepetition Agent” has the meaning specified in the recitals hereto.

“Prepetition Collateral” means all “Collateral” as defined in the Prepetition Credit Agreement in existence as of the Petition Date.

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

“Prepetition Lender” has the meaning specified in the recitals hereto.

“Prepetition Loan Documents” means the Prepetition Credit Agreement, the other “Loan Documents” as defined in the Prepetition Credit Agreement and each document, agreement and instrument (and all schedules and exhibits thereto) executed in connection therewith, in each case, as in effect immediately prior to the Petition Date.

“Prepetition Obligations” means the Obligations (as defined in the Prepetition Credit Agreement) outstanding under the Prepetition Loan Documents immediately prior to the Petition Date.

“Prepetition Permitted Lien” or “Prepetition Permitted Liens” has the meaning specified in Section 6.12(b).

“Prepetition Released Claim” or “Prepetition Released Claims” has the meaning specified in Section 1.09 hereof.

“Prepetition Secured Parties” means, collectively, the Prepetition Agent and the Prepetition Lenders.

“Protective Advance” has the meaning specified in Section 9.14.

“PTE” means a prohibited transaction class exemption issued by the U.S. Department of Labor, as any such exemption may be amended from time to time.

“Qualified Equity Interests” means any Equity Interest other than Disqualified Stock.

“Recipient” means the Administrative Agent, any Lender or any other recipient of any payment to be made by or on account of any obligation of any Loan Party hereunder.

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

“Regulation U” means Regulation U, of the Board of Governors of the Federal Reserve System as amended, or any successor regulation.

“Related Adjustment” means, for any calculation with respect to an Adjusted Term SOFR Loan, a percentage per annum as set forth below for the Interest Period therefor:

Interest Period	Percentage
One month	0.10%
Three months	0.15%

Six months	0.25%
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“Related Parties” means, with respect to any Person, such Person’s Affiliates and the partners, directors, officers, employees, agents, trustees and advisors of such Person and of such Person’s Affiliates.

“Release” means any release, spill, emission, discharge, deposit, disposal, leaking, pumping, pouring, dumping, emptying, injection or leaching into the Environment, or into, from or through any building, structure or facility.

“Relevant Governmental Body” means the Federal Reserve Board and/or the Federal Reserve Bank of New York, or a committee officially endorsed or convened by the Federal Reserve Board and/or the Federal Reserve Bank of New York.

“Reorganization Plan” means a plan or plans of reorganization in the Cases, acceptable to Administrative Agent.

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

“Request for Credit Extension” means with respect to a Borrowing, conversion or continuation of Term Loans, a Committed Loan Notice.

“Required Lenders” means, at any time, Lenders holding more than 50% of the sum of the (a) Total Outstandings and (b) aggregate unused Commitments; provided that the unused Commitment of, and the portion of the Total Outstandings held or deemed held by, any Defaulting Lender shall be excluded for purposes of making a determination of Required Lenders.

“Rescindable Amount” has the meaning specified in Section 2.12(b)(ii).

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

“Responsible Officer” means the chief executive officer, president, chief financial officer, vice president, treasurer, assistant treasurer or controller of a Loan Party, solely for purposes of the delivery of incumbency certificates pursuant to Section 4.01, the secretary or any assistant secretary of a Loan Party and, solely for purposes of notices given pursuant to Article II, any other officer or employee of the applicable Loan Party so designated by any of the foregoing officers in a notice to the Administrative Agent or any other officer or employee of the applicable Loan Party designated in or pursuant to an agreement between the applicable Loan Party and the Administrative Agent. Any document delivered hereunder that is signed by a Responsible Officer of a Loan Party shall be conclusively presumed to have been authorized by all necessary corporate, partnership and/or other action on the part of such Loan Party and such Responsible Officer shall be conclusively presumed to have acted on behalf of such Loan Party.

“Restricted Payment” means any dividend or other distribution (whether in cash, securities or other property) with respect to any capital stock or other Equity Interest of the Borrower or any of its Subsidiaries, or any payment of the Borrower or any of its Subsidiaries to any of its Affiliates whatsoever (whether in cash, securities or other property), including, but not limited to, any payment of interest or principal, any sinking fund or similar deposit, on account of the purchase, redemption, retirement, defeasance, acquisition, cancellation or termination of any such capital stock or other Equity Interest of the Borrower or any of its Subsidiaries, or on account of any return of capital to the stockholders, partners or members (or the equivalent of any thereof) of the Borrower or any of its Subsidiaries, or for any other reason; provided, that, for avoidance of doubt, no Warehouse Settlement Payment shall be constitute a Restricted Payment hereunder.

“Roll-Up Amount” has the meaning specified in Section 2.01.

“Roll-Up Commitments” means, collectively, the Commitments indicated on Schedule 2.01 opposite each Lender’s name under the heading “Roll-Up Commitments” which, in the aggregate, are equal to \$30,000,000.

“Roll-Up Loans” has the meaning specified in Section 2.01.

“S&P” means Standard & Poor’s Financial Services LLC, a subsidiary of The McGraw-Hill Companies, Inc., and any successor thereto.

“Schedule” means each of the schedules to this Agreement.

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

“Securities Account” means a securities account (as defined in the UCC).

“Securities Act” means the Securities Act of 1933 (15 U.S.C. §77a et seq.), as amended.

“Securities Exchange Act” means the Securities Exchange Act of 1934 (15 U.S.C. §78a et seq.), as amended.

“Securitization Subsidiary” means a special purpose Subsidiary of Borrower (currently existing and actively utilized as a Securitization Subsidiary as of the Petition Date or otherwise approved by the Administrative Agent in its sole discretion prior to its formation, Disposition to, or Investment in) used exclusively for an asset-backed warehouse or term securitization transaction provided by a non-Affiliate of the Loan Parties or other type of financing transaction that is secured primarily by a pool of loans or other contractual debt obligations originated or serviced by Borrower but for which Borrower has no recourse or only limited recourse as is customary for transactions that are otherwise considered bankruptcy remote.

“Security Agreement” means the Security and Pledge Agreement dated as of the Closing Date, executed in favor of the Administrative Agent by each of the Loan Parties.

“SOFR” means a rate equal to the secured overnight financing rate as administered by the Federal Reserve Bank of New York (or a successor administrator of the secured overnight financing rate).

“Statutory Fees” shall have the meaning assigned to such term in the DIP Orders.

“Subordinated Indebtedness” means any Indebtedness incurred by the Borrower or any of its Subsidiaries that is contractually subordinated in right of payment to the Obligations.

“Subsidiary” of a Person means a corporation, partnership, joint venture, limited liability company or other business entity of which a majority of the shares of securities or other interests having ordinary voting power for the election of directors or other governing body (other than securities or interests having such power only by reason of the happening of a contingency) are at the time beneficially owned, or the management of which is otherwise controlled, directly, or indirectly through one or more intermediaries, or both, by such Person. Unless otherwise specified, all references herein to a “Subsidiary” or to “Subsidiaries” shall refer to a Subsidiary or Subsidiaries of the Borrower.

“Subsidiary Guaranty” means the Guaranty, substantially in the form of Exhibit F, made by Modern Home LLC in favor of the Guaranteed Parties and delivered on the Closing Date.

“Swap Contract” 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.

“Swap Termination Value” means, in respect of any one or more Swap Contracts, after taking into account the effect of any legally enforceable netting agreement relating to such Swap Contracts, (a) for any date on or after the date such Swap Contracts have been closed out and termination value(s) determined in accordance therewith, such termination value(s), and (b) for any date prior to the date referenced in clause (a), the amount(s) determined as the mark-to-market value(s) for such Swap Contracts, as determined based upon one or more mid-market or other readily available quotations provided by any recognized dealer in such Swap Contracts (which may include a Lender or any Affiliate of a Lender).

“Synthetic Debt” means, with respect to any Person as of any date of determination thereof, all obligations of such Person in respect of transactions entered into by such Person that are

intended to function primarily as a borrowing of funds (including any minority interest transactions that function primarily as a borrowing) and that create obligations that do not appear on the balance sheet of such Person but which, upon the application of any Debtor Relief Laws to such Person or for other creditor rights purposes, would be characterized as the indebtedness of such Person (without regard to accounting treatment). For the avoidance of any doubt, agreements related to forward flow sale transactions shall not constitute Synthetic Debt.

“Synthetic Lease Obligation” means the monetary obligation of a Person under (a) a so-called synthetic, off-balance sheet or tax retention lease, or (b) an agreement for the use or possession of property (including sale and leaseback transactions), in each case, creating obligations that do not appear on the balance sheet of such Person but which, upon the application of any Debtor Relief Laws to such Person, would be characterized as the indebtedness of such Person (without regard to accounting treatment).

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

“Term Loan” has the meaning specified in Section 2.01.

“Term Loan Exposure” means, for a Lender, as of the applicable date of measurement, such Lender’s Applicable Percentage of the Term Loans outstanding as of the date thereof.

“Term Loan Facility” means, at any time, the aggregate amount of the Lenders’ Commitments at such time.

“Term SOFR” means,

(a) for any calculation with respect to an Adjusted Term SOFR Loan, 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) U.S. Government Securities 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 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) U.S. Government Securities Business Days prior to such Periodic Term SOFR Determination Day, and

(b) for any calculation with respect to an 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) U.S. Government Securities 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) U.S. Government Securities Business Days prior to such Base Rate SOFR Determination Day.

“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.

“Threshold Amount” means \$500,000.

“Total Credit Exposure” means, as to any Lender at any time, the sum of such Lender’s Applicable Percentage of the unused Commitments plus Term Loan Exposure at such time.

“Total Outstandings” means the aggregate Outstanding Amount of all Loans.

“Transaction” means, collectively, (a) the entering into by the Loan Parties of the Loan Documents, to which they are or are intended to be a party and (b) the payment of the fees and expenses incurred in connection with the consummation of the foregoing.

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

“UCC” means the Uniform Commercial Code as in effect in the State of New York provided that, if perfection or the effect of perfection or non-perfection or the priority of any security interest is governed by the Uniform Commercial Code as in effect in a jurisdiction other than the State of New York, “UCC” means the Uniform Commercial Code as in effect from time to time in such other jurisdiction for purposes of the provisions hereof relating to such perfection, effect of perfection or non-perfection or priority.

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

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

“Unadjusted Benchmark Replacement” means the applicable Benchmark Replacement excluding the related Benchmark Replacement Adjustment.

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

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

“U.S. Tax Compliance Certificate” has the meaning specified in Section 3.01(e)(ii)(B)(3).

“U.S. Trustee” shall have the meaning assigned to such term in the DIP Orders.

“Variance Report” means a variance report prepared by the Borrower and its financial advisor, and approved by a Responsible Officer of the Borrower, comparing the actual results for each applicable Variance Testing Period against forecasted results under the applicable Approved Budget then in effect, on a line item basis for each of the actual cumulative operating disbursements, capital expenditures, and non-operating disbursements, including reasonably detailed calculations Liquidity evidencing compliance or non-compliance, as applicable, with the minimum Liquidity requirement set forth in the Approved Budget, in form acceptable to the Administrative Agent.

“Variance Testing Period” means (i) for the first Variance Report, the two-week calendar period ending on the Sunday immediately preceding the delivery of the first Variance Report, (ii) for the second Variance Report, the three (3) week calendar period ending on the Sunday immediately preceding the delivery of the second Variance Report and (iii) for the third Variance Report and each Variance Report thereafter, the four (4) week calendar period ending on the Sunday immediately preceding the delivery of the applicable Variance Report.

“Warehouse Settlement Payments” means the (i) release of cash by a Warehouse Lender back to the Debtors as the result of moving loan receivables between warehouse facilities for the purpose of maximizing the advance rates thereunder if the Debtors are required to on-lend the released cash to approved contractors, (ii) principal amount of cash advances by a Warehouse Lender to the Debtors as disbursement agent for the applicable Warehouse Lender to disburse such funds to approved contractors in connection with new originations and/or funding the balance of partially funded loans to approved contractors in each case in the ordinary course of business, and (iii) solar loans originated by the Debtors and sold to Warehouse Lender special purpose vehicles in exchange for the cash advances, in the case of clauses (i) though (iii), in the ordinary course of Debtors’ business in arm’s length transactions.

“Warehouse Lender” means the lenders under each of those certain (i) Revolving Credit and Security Agreement, dated as of July 14, 2023, among ING Capital LLC as Administrative Agent and as Green Loan Structuring Agent, Mosaic Funding IX LLC, as borrower, and Solar Mosaic, LLC, as servicer (ii) Revolving Credit and Security Agreement, dated as of November 29, 2022, among MF Funding IX LLC, as borrower, Solar Mosaic, LLC, as servicer and Wells Fargo Bank, National Association, as Administrative Agent, (iii) Fifth Amended and Restated Revolving Credit and Security Agreement, dated as of November 10, 2023, among Mosaic Funding I LLC,

as borrower, Solar Mosaic, LLC, as servicer and BNP PARIBAS, as Administrative Agent, each as amended, amended and restated or otherwise supplemented from time to time, and (vi) each other Warehouse Lender agreed to in writing by Administrative Agent in its sole and absolute discretion, provided in no event shall any affiliate of any Debtor be a Warehouse Lender unless acknowledged explicitly and agreed to in writing by Administrative Agent in its sole and absolute discretion.

“Weighted Average Life to Maturity” means, when applied to any Indebtedness at any date, the number of years obtained by dividing: (a) the sum of the products obtained by multiplying (i) the amount of each then remaining installment, sinking fund, serial maturity or other required payments of principal, including payment at final maturity, in respect thereof, by (ii) the number of years (calculated to the nearest one-twelfth) that will elapse between such date and the making of such payment; by (b) the then outstanding principal amount of such Indebtedness.

“Wholly Owned” means, with respect to any Subsidiary of any Person at any date, that all of the shares of capital stock or other ownership interests of such Subsidiary (except nominal shares) are at the time directly or indirectly owned by such Person.

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

1.02 Other Interpretive Provisions.

With reference to this Agreement and each other Loan Document, unless otherwise specified herein or in such other Loan Document:

(a) The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words “include,” “includes” and “including” shall be deemed to be followed by the phrase “without limitation.” The word “will” shall be construed to have the same meaning and effect as the word “shall.” Unless the context requires otherwise, (i) any definition of or reference to any agreement, instrument or other document (including any Organization Document) shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein or in any other Loan Document), (ii) any reference herein to any Person shall be construed to include such Person’s successors and assigns, (iii) the words “hereto,” “herein,” “hereof” and “hereunder,” and words of similar import when used in any

Loan Document, shall be construed to refer to such Loan Document in its entirety and not to any particular provision thereof, (iv) all references in a Loan Document to Articles, Sections, Preliminary Statements, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Preliminary Statements, Exhibits and Schedules to, the Loan Document in which such references appear, (v) any reference to any law shall include all statutory and regulatory provisions consolidating, amending, replacing or interpreting such law and any reference to any law or regulation shall, unless otherwise specified, refer to such law or regulation as amended, modified or supplemented from time to time, and (vi) the words “asset” and “property” shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights.

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

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

(d) All references to the “knowledge” of the Borrower (and words or phrases of similar import) shall mean to the actual knowledge, after commercially reasonable inquiry, of a Responsible Officer of the Borrower.

1.03 Accounting Terms.

(a) Generally. All accounting terms not specifically or completely defined herein shall be construed in conformity with, and all financial data (including financial ratios and other financial calculations) required to be submitted pursuant to this Agreement shall be prepared in conformity with, GAAP applied on a consistent basis, as in effect from time to time, applied in a manner consistent with that used in preparing the Audited Financial Statements, except as otherwise specifically prescribed herein. Notwithstanding the foregoing, for purposes of determining compliance with any covenant (including the computation of any financial covenant) contained herein, Indebtedness of the Borrower and its Subsidiaries shall be deemed to be carried at 100% of the outstanding principal amount thereof, and the effects of FASB ASC 825 and FASB ASC 470-20 on financial liabilities shall be disregarded.

(b) Changes in GAAP. If at any time any change in GAAP would affect the computation of any financial ratio or requirement set forth in any Loan Document, and either the Borrower or the Required Lenders shall so request, the Administrative Agent, the Lenders and the Borrower shall negotiate in good faith to amend such ratio or requirement to preserve the original intent thereof in light of such change in GAAP (subject to the approval of the Required Lenders); provided that, until so amended, (A) such ratio or requirement shall continue to be computed in accordance with GAAP prior to such change therein and (B) the Borrower shall provide to the Administrative Agent and the Lenders financial statements and other documents required under this Agreement or as reasonably requested hereunder setting forth a reconciliation between calculations of such ratio or requirement made before and after giving effect to such change in GAAP. Without limiting the foregoing, leases shall continue to be classified and

accounted for on a basis consistent with that reflected in the Audited Financial Statements for all purposes of this Agreement, notwithstanding any change in GAAP relating thereto, unless the parties hereto shall enter into a mutually acceptable amendment addressing such changes, as provided for above.

(c) Pro forma Calculations. All pro forma computations required to be made hereunder giving effect to any Investment, Disposition, or issuance, incurrence or assumption of Indebtedness shall be calculated after giving effect to such acquisition, Disposition, designation or issuance, incurrence or assumption of Indebtedness (and to any other such transaction consummated since the first day of the period for which such pro forma computation is being made and on or prior to the date of such computation) as if such transaction (and any other such transactions) had occurred on the first day of the applicable period, and, to the extent applicable, the historical earnings and cash flows associated with the assets acquired or disposed of, any related incurrence or reduction of Indebtedness. If any Indebtedness bears a floating rate of interest and is being given pro forma effect, the interest on such Indebtedness shall be calculated as if the rate in effect on the date of determination had been the applicable rate for the entire period (taking into account any Swap Contract applicable to such Indebtedness).

1.04 Rounding

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

1.05 Times of Day; Rates.

Unless otherwise specified, all references herein to times of day shall be references to New York City time (daylight or standard, as applicable).

The Administrative Agent does not warrant, nor accept responsibility, nor shall the Administrative Agent have any liability with respect to the administration, submission or any other matter related to the rates in the definition of “Adjusted Term SOFR” or with respect to any comparable or successor rate thereto.

1.06 [Reserved].

1.07 Currency Equivalents Generally.

Any amount specified in this Agreement (other than in Articles II, IX and X) or any of the other Loan Documents to be in Dollars shall also include the equivalent of such amount in any currency other than Dollars, such equivalent amount thereof in the applicable currency to be determined by the Administrative Agent at such time on the basis of the Spot Rate (as defined below) for the purchase of such currency with Dollars. For purposes of this Section 1.07, the “Spot Rate” for a currency means the rate determined by the Administrative Agent to be the rate quoted by the Person acting in such capacity as the spot rate for the purchase by such Person of such currency with another currency through its principal foreign exchange trading office at

approximately 11:00 a.m. on the date two Business Days prior to the date of such determination; provided that the Administrative Agent may obtain such spot rate from another financial institution designated by the Administrative Agent if the Person acting in such capacity does not have as of the date of determination a spot buying rate for any such currency.

1.08 Divisions.

For all purposes under the Loan Documents, in connection with any LLC Division or any comparable transaction under any similar law: (a) if any asset, right, obligation or liability of any Person becomes the asset, right, obligation or liability of a different Person, then it shall be deemed to have been transferred from the original Person to the subsequent Person, and (b) if any new Person comes into existence, such new Person shall be deemed to have been organized on the first date of its existence by the holders of its Equity Interests at such time.

ARTICLE II THE COMMITMENTS AND CREDIT EXTENSIONS

2.01 The Loans.

(a) New Money Term Loans. Subject to the terms and conditions set forth herein, each Lender severally agrees to make loans (each such loan, a “Term Loan”) to the Borrower in Dollars from time to time, on any Business Day in accordance with the terms hereof. Upon entry of the Interim Order, subject to the conditions set forth in Article IV and Administrative Agent’s approval in its sole discretion, Lenders severally agree to make Term Loans to the Borrower in a single draw in the amount equal to such Lender’s Applicable Percentage multiplied by the Interim Commitments. On and after the date of Bankruptcy Court enters the Final Order, subject to the conditions set forth in Article IV, Lenders severally agree to make Term Loans to the Borrower, in a single draw, in the amount equal to such Lender’s Applicable Percentage multiplied by the available Final Commitments.

(b) Roll-Up Loans.

(i) Immediately upon entry of the Final Order and funding of Term Loans with respect to the Final Commitments (and, for the avoidance of doubt, the Initial Commitment previously funded) hereunder, a portion of the outstanding Prepetition Obligations (the “Roll-Up Amount”) held by the Non-Defaulting Lenders shall be automatically “rolled up” and converted into the Term Loan Facility, on a cashless basis of two dollars (\$2.00) of Roll-Up Amount for each dollar of funded Term Loans up to \$30,000,000, based on the *pro rata* allocation of the Commitments held by such Lender, and constitute Obligations of the Loan Parties hereunder all purposes hereunder as if originally funded on the Closing Date (the “Roll-Up Loans”), without any further action by the Debtors or any other party (which conversion shall not, for the avoidance of doubt, constitute a novation); provided, that, the OID Fee and Exit Fee shall not count towards the calculation of the amount of the Roll-Up Loans; provided further that if any such Lender’s *pro rata* share of the Roll-Up Loans would exceed the total amount of the Prepetition Obligations held by such Lender as of the Closing Date, such Lender’s share of Roll-Up Loans shall be reduced in an amount, and to such an extent, to ensure that the

maximum amount of Roll-Up Loans of such Lender shall be no greater than such Lender's Prepetition Obligations as of the Closing Date, and the total amount of Roll-Up Loans shall be reduced accordingly. The conversion (or "roll-up") shall be authorized as compensation for, in consideration for, and solely on account of, the agreement of the Prepetition Secured Parties, in each case as Lenders hereunder, to fund the Term Loans hereunder and not as payments under, adequate protection for, or otherwise on account of, any Prepetition Obligations. Notwithstanding any other provision of the Interim Order, the Final Order, or the Loan Documents, all rights of the Prepetition Secured Parties shall be fully preserved, including with respect to the Roll-Up Loans.

(ii) Subject to the terms and conditions set forth herein and in the Final Order, and without any further action by any party to this Agreement, each Lender's Roll-Up Loans shall be deemed to be Loans, administered hereunder and secured by perfected Liens on, and security interests in, all of the Collateral of the Loan Parties to the same extent as all other Obligations of the Loan Parties hereunder. For the avoidance of doubt, until any Prepetition Obligations are deemed to be Roll-Up Loans as provided herein, such Prepetition Obligations shall remain Prepetition Obligations under the Prepetition Credit Agreement and guaranteed by the guarantors of and secured by and entitled to the benefits of all liens created and arising under the Prepetition Loan Documents, which liens shall remain in full force and effect on a continuous basis, unimpaired, uninterrupted and undischarged, and having the same perfected status and priority. The Roll-Up Loans and the other Term Loans shall jointly constitute a single facility hereunder.

Within the limits of each Lender's Commitments, and subject to the terms and conditions hereof, the Borrower may borrow Term Loans under this Section 2.01 and prepay Term Loans under Section 2.05. To the extent all or any portion of the Term Loans are repaid or prepaid, it shall not be reborrowed.

2.02 Borrowings, Conversions and Continuations of Loans.

(a) Each Borrowing (subject to the conditions set forth in Article IV), each conversion of Term Loans from one Type to the other, and each continuation of Adjusted Term SOFR Loans shall be made upon the Borrower's irrevocable notice to the Administrative Agent, which may be given by (A) telephone, or (B) a Committed Loan Notice; provided that any telephone notice must be confirmed immediately by delivery to the Administrative Agent of a Committed Loan Notice. Each such Committed Loan Notice must be received by the Administrative Agent not later than 1:00 p.m. (i) one Business Day prior to (or in the case of the initial Borrowing, the same day of) the requested date of any Borrowing of, conversion to or continuation of Adjusted Term SOFR Loans or of any conversion of Adjusted Term SOFR Loans to Base Rate Loans, and (ii) not later than 1:00 p.m. (i) one Business Day prior to the requested date of any Borrowing of Base Rate Loans. Each Borrowing of, conversion to or continuation of Adjusted Term SOFR Loans shall be in a principal amount of \$1,000,000 (or, if less, the entire remaining portion of undrawn New Money DIP Commitments) or a whole multiple of \$500,000 in excess thereof. Each Borrowing of or conversion to Base Rate Loans shall be in a principal amount of \$500,000 or a whole multiple of \$100,000 in excess thereof. Each Committed Loan Notice shall specify (i) whether the Borrower is requesting a Borrowing, a conversion of Term Loans from one Type to the other, or a continuation of Adjusted Term 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) the Type of Loans to be borrowed or to which existing Term Loans are to be converted, (v) if applicable, the duration of the Interest Period with respect thereto and (vi) if applicable, any Borrower conditions on completing such Borrowing. If the Borrower fails to specify a Type of Loan in a Committed Loan Notice or if the Borrower fails to give a timely notice requesting a conversion or continuation, then the applicable or Term Loans shall be made as, or converted to, Base Rate Loans. Any such automatic conversion to Base Rate Loans shall be effective as of the last day of the Interest Period then in effect with respect to the applicable Adjusted Term SOFR Loans. If the Borrower requests a Borrowing of, conversion to, or continuation of Adjusted Term SOFR Loans in any such Committed Loan Notice, but fails to specify an Interest Period, it will be deemed to have specified an Interest Period of one month.

(b) Following receipt of a Committed Loan Notice, the Administrative Agent shall promptly notify each Lender of the amount of its Applicable Percentage of Term 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 conversion to Base Rate Loans described in Section 2.02(a). Each Lender shall make the amount of its Loan available to the Administrative Agent in immediately available funds at the Administrative Agent's Office not later than 1:00 p.m. on the next Business Day. Upon satisfaction of the applicable conditions set forth in Section 4.02 (and, if such Borrowing is the initial Credit Extension, Section 4.01), the Administrative Agent shall make all funds so received available to the Borrower in like funds as received by the Administrative Agent either by wire transfer of such funds (in each case in accordance with instructions provided to (and reasonably acceptable to) the Administrative Agent by the Borrower) into a Deposit Account of the Borrower subject to a Lien in favor of the Administrative Agent, which shall be perfected pursuant to the Interim Order or Final Order, as applicable, and, if required by Administrative Agent, subject to a Control Agreement.

(c) Except as otherwise provided herein, an Adjusted Term SOFR Loan may be continued or converted only on the last day of an Interest Period for such Adjusted Term SOFR Loan. Upon the occurrence of an Event of Default, all Adjusted Term SOFR Loans may be converted to Base Rate Loans in the Administrative Agent's sole discretion, and during the existence of an Event of Default, no Loans may be requested as, converted to or continued as Adjusted Term SOFR Loans without the consent of the Required Lenders.

(d) The Administrative Agent shall promptly notify the Borrower and the Lenders of the interest rate applicable to any Interest Period for Adjusted Term SOFR Loans upon determination of such interest rate.

(e) After giving effect to all 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 three Interest Periods in effect in respect of the Term Loan Facility.

(f) Notwithstanding anything to the contrary in this Agreement, any Lender may exchange, continue or rollover all of the portion of its Loans in connection with any refinancing, extension, loan modification or similar transaction permitted by the terms of this

Agreement, pursuant to a cashless settlement mechanism approved by the Borrower, the Administrative Agent, and such Lender.

2.03 [Reserved].

2.04 [Reserved].

2.05 Prepayments.

(a) Optional. Subject to the last sentence of this Section 2.05(a)(i), the Borrower may, upon notice to the Administrative Agent, at any time or from time to time voluntarily prepay Term Loans in whole or in part without premium or penalty; provided that (A) such notice must be in a form acceptable to the Administrative Agent and be received by the Administrative Agent not later than 11:00 a.m. (1) three Business Days prior to any date of prepayment of Adjusted Term SOFR Loans and (2) on the date of prepayment of Base Rate Loans; (B) any prepayment of Adjusted Term SOFR Loans shall be in a principal amount of \$1,000,000 or a whole multiple of \$500,000 in excess thereof; and (C) any prepayment of Base Rate Loans shall be in a principal amount of \$500,000 or a whole multiple of \$100,000 in excess thereof or, in each case, if less, the entire principal amount thereof then outstanding. Each such notice shall specify the date and amount of such prepayment and the Type(s) of Loans to be prepaid and, if Adjusted Term SOFR Loans are to be prepaid, the Interest Period(s) of such Loans. The Administrative Agent will promptly notify each Lender of its receipt of each such notice, and of the amount of such Lender's ratable portion of such prepayment (based on such Lender's Applicable Percentage). If such notice is given by the Borrower, the Borrower shall make such prepayment and the payment amount specified in such notice shall be due and payable on the date specified therein; provided that such notice may be conditioned upon the occurrence of certain events specified therein. Any prepayment of an Adjusted Term SOFR Loan shall be accompanied by all accrued interest on the amount prepaid, together with any additional amounts required pursuant to Section 3.05.

(b) Mandatory.

(i) If for any reason the Total Outstandings at any time exceed the Commitments in effect at such time, the Borrower shall immediately prepay Term Loans in an aggregate amount equal to such excess.

(ii) Upon the occurrence of a Change of Control, Borrower shall immediately prepay the aggregate outstanding principal balance of the Term Loans.

(iii) The Debtors shall immediately pay or prepay the Term Loans and all other Obligations (together with a cash reserve established by the Administrative Agent to cover asserted contingent and indemnity obligations) with 100% of the Net Cash Proceeds of the following, until such Obligations are paid in full:

(A) any Disposition or other sale of any, all or substantially all of Debtors' assets pursuant to Section 363 of the Bankruptcy Code simultaneous with the consummation thereof;

(B) any other Disposition or other sale by any Debtor of any assets, in a single transaction or series of related transactions; and

(C) any extraordinary receipts (including tax refunds, indemnity payments and insurance proceeds not included as proceeds of asset dispositions but excluding sales tax receipts contemplated to be received by the Debtors as set forth in the Approved Budget) by the Debtors.

(iv) Prepayments of the Term Loan Facility made pursuant to this Section 2.05(b), shall be applied to the Obligations in accordance with Section 8.03.

2.06 Termination or Reduction of Commitments.

(a) Optional. The Borrower may, upon notice to the Administrative Agent, terminate the Term Loan Facility or from time to time permanently reduce the Term Loan Facility; provided that (i) any such notice shall be received by the Administrative Agent not later than 11:00 a.m. five Business Days prior to the date of termination or reduction, (ii) any such partial reduction shall be in an aggregate amount of \$1,000,000 or any whole multiple of \$1,000,000 in excess thereof, and (iii) the Borrower shall not terminate or reduce the Term Loan Facility if, after giving effect thereto and to any concurrent prepayments hereunder, the Total Outstandings would exceed the Commitments.

(b) Application of Commitment Reductions; Payment of Fees. The Administrative Agent will promptly notify the Lenders of any termination or reduction of the Commitment under this Section 2.06. Upon any reduction of the Commitments, the Commitment of each Lender shall be reduced by such Lender's Applicable Percentage of such reduction amount. All fees in respect of the Term Loan Facility accrued until the effective date of any termination of the Term Loan Facility shall be paid on the effective date of such termination.

2.07 Repayment of Loans.

The Borrower shall repay to the Lenders on the Maturity Date for the Term Loan Facility an amount equal to the aggregate principal amount of all Term Loans outstanding on such date.

2.08 Interest.

(a) Subject to the provisions of Section 2.08(b), (i) each Adjusted Term SOFR Loan shall bear interest on the outstanding principal amount thereof for each Interest Period at a rate per annum equal to the Adjusted Term SOFR for such Interest Period plus the Applicable Rate; and (ii) each Base Rate Loan shall bear interest on the outstanding principal amount thereof from the applicable borrowing date at a rate per annum equal to the Base Rate plus the Applicable Rate.

(b) (i) If any amount of principal of any Loan is not paid when due (without regard to any applicable grace periods), whether at stated maturity, by acceleration or otherwise, such amount shall thereafter bear interest at a fluctuating interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by applicable Laws.

(ii) If any amount (other than principal of any Loan, but including overdue interest) payable by the Borrower under any Loan Document is not paid when due (without regard to any applicable grace periods), whether at stated maturity, by acceleration or otherwise, then upon the request of the Required Lenders such amount shall thereafter bear interest at a fluctuating interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by applicable Laws.

(iii) Accrued and unpaid interest on past due amounts (including interest on past due interest) shall be due and payable upon demand.

(c) Interest on each Loan shall be due and payable in cash in arrears on each Interest Payment Date applicable thereto, *provided* that an amount of such Interest equal to the amount of such Interest accrued at a rate equal to ten percent (10.00%) per annum, shall be paid in kind (the aggregate amount of such payments in kind of interest, “PIK Interest”). Such accrued amount of PIK Interest shall: (i) be added to the principal balance of the Term Loans on the applicable Interest Payment Date; (ii) be due and payable, together with all interest accrued thereon, in cash, on the Maturity Date (if not earlier repaid); (iii) once added to the principal balance of the Term Loans as set forth in the preceding clause (i), bear interest in accordance with Section 2.08(a); and (iv) be paid in cash on the Maturity Date or upon any prepayment of the Term Loans, whether voluntary or mandatory, to the extent accrued but unpaid. 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.

2.09 Fees.

In addition to the fees set forth in Section 2.06(a):

(a) Exit Fee. The Borrower agrees to pay to the Administrative Agent for the ratable account of each Lender party to this Agreement on the Closing Date, a fee in an aggregate amount equal to five percent (5.00%) multiplied by the New Money DIP Commitments (“Exit Fee”). The Exit Fee will be in all respects fully earned upon the entry of the Interim Order and due and payable on the earlier of (x) the repayment in full of the Obligations and (y) the Maturity Date, and shall be non-refundable and non-creditable thereafter.

(b) OID Fee. The Borrower agrees to pay to the Administrative Agent for the ratable account of each Lender party to this Agreement on the Closing Date, a fee in an aggregate amount equal to five percent (5.00%) multiplied by the New Money DIP Commitments (“OID Fee”). The OID Fee will be in all respects fully earned upon the entry of the Interim Order and due and payable in kind on the earlier of (x) the repayment in full of the Obligations and (y) the Maturity Date, and shall be non-refundable and non-creditable thereafter. Once earned, the OID Fee shall be capitalized into the outstanding principal amount of the Term Loans on the date of payment and shall thereafter accrue interest in accordance with the terms of Section 2.08 hereof.

(c) Other Fees. The Borrower shall pay to the Administrative Agent and the Lenders such fees as shall have been mutually 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.

2.10 Computation of Interest and Fees.

All computations of interest for Base Rate Loans (including Base Rate Loans determined by reference to the Adjusted Term SOFR) shall be made on the basis of a year of 365 or 366 days, as the case may be, and actual days elapsed. All other computations of fees and interest shall be made on the basis of a 360-day year and actual days elapsed (which results in more fees or interest, as applicable, being paid than if computed on the basis of a 365-day year). 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(a), 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.

2.11 Evidence of Debt.

The Credit Extensions made by each Lender shall be evidenced by one or more accounts or records maintained by such Lender and by the Administrative Agent in the ordinary course of business. The accounts or records maintained by the Administrative Agent and each Lender shall be conclusive absent manifest error of the amount of the Credit Extensions 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 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 Note, which shall evidence such Lender's Loans in addition to such accounts or records. Each Lender may attach schedules to its Note and endorse thereon the date, Type (if applicable), amount and maturity of its Loans and payments with respect thereto.

2.12 Payments Generally; Administrative Agent's Clawback.

(a) General. All payments to be made by the Borrower shall be made free and clear of and 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 Administrative Agent's Office in Dollars and in immediately available funds not later than 2:00 p.m. on the date specified herein. The Administrative Agent will promptly distribute to each Lender its Applicable Percentage (or other applicable share as provided herein) of such payment in like funds as received by wire transfer to such Lender's Lending Office. All payments received by the Administrative Agent after 2:00 p.m. shall be deemed received on the next succeeding Business Day and any applicable interest or fee shall continue to accrue. If any payment to be made by the Borrower shall come due on a day other

than a Business Day, payment shall be made on the next following Business Day, and such extension of time shall be reflected on computing interest or fees, as the case may be.

(b) (i) Funding by Lenders; Presumption by Administrative Agent. Unless the Administrative Agent shall have received notice from a Lender prior to the proposed date of any Borrowing of Adjusted Term SOFR Loans (or, in the case of any Borrowing of Base Rate Loans, prior to 12:00 noon on the date of such Borrowing) that such Lender will not make available to the Administrative Agent such Lender's share of such Borrowing, the Administrative Agent may assume that such Lender has made such share available on such date in accordance with Section 2.02 (or, in the case of a Borrowing of Base Rate Loans, that such Lender has made such share available in accordance with and at the time required by Section 2.02) and may, in reliance upon such assumption, make available to the Borrower a corresponding amount. In such event, if a Lender has not in fact made its share of the applicable Borrowing available to the Administrative Agent, then the applicable Lender and the Borrower severally agree to pay to the Administrative Agent forthwith on demand such corresponding amount in immediately available funds with interest thereon, for each day from and including the date such amount is made available to the Borrower to but excluding the date of payment to the Administrative Agent, at (A) in the case of a payment to be made by such Lender, the greater of the Federal Funds Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation, plus any administrative, processing or similar fees customarily charged by the Administrative Agent in connection with the foregoing, and (B) in the case of a payment to be made by the Borrower, the interest rate applicable to Base Rate Loans. If the Borrower and such Lender shall pay such 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 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.

(ii) Payments by Borrower; Presumptions by Administrative Agent. Unless the Administrative Agent shall have received notice from the Borrower prior to the time at which any payment is due to the Administrative Agent for the account of the Lenders hereunder that the Borrower will not make such payment, the Administrative Agent may assume that the Borrower has made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to the Lenders the amount due. With respect to any payment that the Administrative Agent makes for the account of the Lenders hereunder as to which the Administrative Agent determines (which determination shall be conclusive absent manifest error) that any of the following applies (such payment referred to as the "Rescindable Amount"): (1) the Borrower has not in fact made such payment; (2) the Administrative Agent has made a payment in excess of the amount so paid by the Borrower (whether or not then owed); or (3) the Administrative Agent has for any reason otherwise erroneously made such payment; then each of the Lenders severally agrees to repay to the Administrative Agent forthwith on demand the Rescindable Amount so distributed to such Lender, in immediately available funds with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to the Administrative Agent, 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.

A notice of the Administrative Agent to any Lender or the Borrower with respect to any amount owing under this subsection (b) shall be conclusive, absent manifest error.

(c) Failure to Satisfy Conditions Precedent. If any Lender makes available to the Administrative Agent funds for any Loan to be made by such Lender as provided in the foregoing provisions of this Article II, and such funds are not made available to the Borrower by the Administrative Agent because the conditions to the applicable Credit Extension set forth in Article IV 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) Obligations of Lenders Several. The obligations of the Lenders hereunder to make Term Loans and to make payments pursuant to Section 10.04(c) are several and not joint. The failure of any Lender to make any Loan, to fund any such participation or to make any payment under Section 10.04(c) on any date required hereunder shall not relieve any other Lender of its corresponding obligation to do so on such date, and no Lender shall be responsible for the failure of any other Lender to so make its Loan, to purchase its participation or to make its payment under Section 10.04(c).

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

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

2.13 Sharing of Payments by Lenders.

If any Lender shall, by exercising any right of setoff or counterclaim or otherwise, obtain payment in respect of (a) Obligations due and payable to such Lender hereunder and under the other Loan Documents at such time in excess of its ratable share (according to the proportion of (i) the amount of such Obligations due and payable to such Lender at such time to (ii) the aggregate amount of the Obligations due and payable to all Lenders hereunder and under the other Loan Documents at such time) of payments on account of the Obligations due and payable to all Lenders hereunder and under the other Loan Documents at such time obtained by all the Lenders at such time or (b) Obligations owing (but not due and payable) to such Lender hereunder and under the other Loan Documents at such time in excess of its ratable share (according to the proportion of (i) the amount of such Obligations owing (but not due and payable) to such Lender at such time to

(ii) the aggregate amount of the Obligations owing (but not due and payable) to all Lenders hereunder and under the other Loan Parties at such time) of payment on account of the Obligations owing (but not due and payable) to all Lenders hereunder and under the other Loan Documents at such time obtained by all of the Lenders at such time then the Lender receiving such greater proportion shall (a) notify the Administrative Agent of such fact, and (b) purchase (for cash at face value) participations in the Loans of the other Lenders, or make such other adjustments as shall be equitable, so that the benefit of all such payments shall be shared by the Lenders ratably in accordance with the aggregate amount of Obligations then due and payable to the Lenders or owing (but not due and payable) to the Lenders, as the case may be, provided that:

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

(ii) the provisions of this Section shall not be construed to apply to (x) any payment made by or on behalf of the Borrower pursuant to and in accordance with the express terms of this Agreement (including the application of funds arising from the existence of a Defaulting Lender), or (y) any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans to any assignee or participant, other than an assignment to the Borrower or any Affiliate thereof (as to which the provisions of this Section shall apply).

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

2.14 Application of Payments. Prior to the occurrence of an Event of Default, any payments received hereunder will be applied in the following order: first, an amount determined by Administrative Agent in its reasonable discretion, shall be held by Administrative Agent as cash reserves to pay for anticipated expense reimbursements or indemnification obligations due and payable hereunder, or fund Protective Advances; second, to pay Administrative Agent and Lenders for any expense reimbursements or indemnification obligations due and payable hereunder; third, to pay for Protective Advances made by the Administrative Agent and the Lenders; fourth, to pay any accrued and unpaid interest owed hereunder or under any of the Loan Documents with respect to Term Loans (other than the Roll-Up Loans) and the Exit Fee; fifth, to reduce the outstanding principal balance of Term Loans (other than the Roll-Up Loans); sixth, to pay any accrued and unpaid interest owed hereunder or under any of the Loan Documents with respect to the Roll-Up Loans; seventh, to reduce the outstanding principal balance of the Roll-Up Loans; eighth, to payment of that portion of all other Obligations (other than Prepetition Obligations), ratably among the Lenders in proportion to the respective amounts described in this clause Eighth held by them, ninth, to the Prepetition Agent for the payment of the Prepetition Obligations, and tenth, any remaining amount shall be released to the Borrower or its designee. Notwithstanding the foregoing, any proceeds from Warehouse Settlement Payments shall not be subject to this Section 2.14.

2.15 Defaulting Lenders.

(a) 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:

(i) Waivers and Amendments. Such Defaulting Lender's right to approve or disapprove any amendment, waiver or consent with respect to this Agreement shall be restricted as set forth in Section 10.01 and in the definition of "Required Lenders".

(ii) Defaulting Lender Waterfall. Any payment of principal, interest, fees or other amounts received by the Administrative Agent for the account of such Defaulting Lender (whether voluntary or mandatory, at maturity, pursuant to Article VIII or otherwise) or received by the Administrative Agent from a Defaulting Lender pursuant to Section 10.08 shall be applied at such time or times as may be determined by the Administrative Agent as follows: *first*, to the payment of any amounts owing by such Defaulting Lender to the Administrative Agent hereunder; *second*, as the Borrower may request (so long as no Default or Event of Default exists), to the funding of any Loan in respect of which such Defaulting Lender has failed to fund its portion thereof as required by this Agreement, as determined by the Administrative Agent; *third*, if so determined by the Administrative Agent and the Borrower, to be held in a deposit account and released pro rata in order to satisfy such Defaulting Lender's potential future funding obligations with respect to 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 such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; *fifth*, so long as no Default or Event of Default exists, 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 such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; and *sixth*, to such Defaulting Lender or as otherwise directed by a court of competent jurisdiction; provided that if (x) such payment is a payment of the principal amount of any Loans in respect of which such Defaulting Lender has not fully funded its appropriate share, and (y) such Loans were made at a time when the conditions set forth in Section 4.02 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 such Defaulting Lender until such time as all Loans are held by the Lenders pro rata in accordance with the Commitments hereunder. 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 shall be deemed paid to and redirected by such Defaulting Lender, and each Lender irrevocably consents hereto.

(b) Defaulting Lender Cure. If the Borrower and the Administrative Agent agree in writing that a Lender is no longer 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 at par that portion of outstanding Loans of the other Lenders or take such other actions as the Administrative Agent may determine to be necessary to cause the Term Loans to be held on a

pro rata basis by the Lenders in accordance with their Applicable Percentages, whereupon such 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; and 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.

ARTICLE III TAXES, YIELD PROTECTION AND ILLEGALITY

3.01 Taxes.

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

(i) Any and all payments by or on account of any obligation of any Loan Party under any Loan Document shall be made without deduction or withholding for any Taxes, except as required by applicable Laws.

(ii) If any applicable withholding agent shall be required by any applicable Laws to withhold or deduct any Taxes from any such payment, then (A) the applicable withholding agent, as required by such Laws, shall withhold or make such deductions as are determined by it to be required, (B) such withholding agent, to the extent required by such Laws, shall timely pay the full amount withheld or deducted to the relevant Governmental Authority in accordance with such Laws, and (C) to the extent that the withholding or deduction is made on account of Indemnified Taxes, the sum payable by the applicable Loan Party shall be increased as necessary so that after any required withholding or the making of all required deductions (including deductions applicable to additional sums payable under this Section 3.01) the applicable Lender (or, in the case of a payment received by the Administrative Agent for its own account, the Administrative Agent) receives an amount equal to the sum it would have received had no such withholding or deduction been made.

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

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

to the Administrative Agent), or by the Administrative Agent on its own behalf or on behalf of a Lender, shall be conclusive absent manifest error.

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

(e) Status of Lenders; Tax Documentation.

(i) Any Lender that is entitled to an exemption from or reduction of withholding Tax with respect to payments made under any Loan Document shall deliver to the Borrower and the Administrative Agent, at the time or times reasonably requested by the Borrower or the Administrative Agent, such properly completed and executed documentation reasonably requested by the Borrower or the Administrative Agent as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender, if reasonably requested by the Borrower or the Administrative Agent, shall deliver such other documentation prescribed by applicable law or reasonably requested by the Borrower or the Administrative Agent as will enable the Borrower or the Administrative Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution and submission of such documentation (other than such documentation set forth in Section 3.01(e)(ii)(A), (ii)(B) and (ii)(D) below) shall not be required if in the Lender's reasonable judgment such completion, execution or submission would subject such Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender.

(ii) Without limiting the generality of the foregoing,

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

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

(1) in the case of a Foreign Lender claiming the benefits of an income tax treaty to which the United States is a party, two executed copies of IRS Form W-8BEN-E (or W-8BEN, as applicable) establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to such tax treaty;

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

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

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

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

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

prescribed by applicable 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 to determine whether such Lender has complied with such Lender's obligations under FATCA or to determine the amount, if any, to deduct and withhold from such payment. Solely for purposes of this clause (D), "FATCA" shall include any amendments made to FATCA after the date of this Agreement.

(iii) On or prior to the date the Administrative Agent becomes a party to this Agreement, the Administrative Agent shall, in the event that the Administrative Agent is a U.S. Person, deliver an IRS Form W-9 to the Borrower, and in the event the Administrative Agent is not a U.S. Person, deliver (a) with respect to amounts payable by the Administrative Agent for its own account, an IRS Form W-8ECI, (b) with respect to amounts payable to the Administrative Agent on behalf of a Lender, an IRS Form W-8IMY certifying that the Administrative Agent agrees to be treated as a "U.S. person" for purposes of U.S. federal withholding taxes and (c) if a payment made to the Administrative Agent under any Loan Document would be subject to U.S. federal withholding Tax imposed by FATCA if the Administrative Agent were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), the Administrative Agent shall deliver to the Borrower 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 as may be necessary for the Borrower to comply with its obligations under FATCA, to determine whether the Administrative Agent has complied with the Administrative Agent's obligations under FATCA or to determine the amount, if any, to deduct and withhold from such payment (solely for purposes of this clause (iii) "FATCA" shall include any amendments made to FATCA after the date of this Agreement); provided that no Administrative Agent shall be required to provide any documentation pursuant to this clause (iii) that such Administrative Agent is not legally eligible to deliver as a result of a Change in Law after the Closing Date.

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

(v) Notwithstanding anything to the contrary in this Section 3.01(e), no Lender shall be required to deliver any documentation that it is not legally eligible to deliver.

(vi) Each Lender hereby authorizes the Administrative Agent to deliver to the Loan Parties and to any successor Administrative Agent any documentation provided by such Lender to the Administrative Agent pursuant to this Section 3.01(e).

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

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

3.02 Illegality.

If any Lender determines that any Law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for any Lender or its applicable Lending Office to perform any of its obligations hereunder or make, maintain or fund or charge interest with respect to any Credit Extension or to determine or charge interest rates based upon the Adjusted Term SOFR, or any Governmental Authority has imposed material restrictions on the authority of such Lender to purchase or sell, or to take deposits of, Dollars in the London interbank market, then, on notice thereof by such Lender to the Borrower through the Administrative Agent, (i) any obligation of such Lender to issue, make, maintain, fund or charge interest with respect to any such Credit Extension or continue Adjusted Term SOFR Loans or to convert Base Rate Loans to Adjusted Term 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 Adjusted Term 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 Adjusted 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, (x) the Borrower

shall, upon demand from such Lender (with a copy to the Administrative Agent), prepay or, if applicable, convert all Adjusted Term SOFR Loans of such Lender to Base Rate Loans (the interest rate on which Base Rate Loans of such Lender shall, if necessary to avoid such illegality, be determined by the Administrative Agent without reference to the Adjusted 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 Adjusted Term SOFR Loans to such day, or immediately, if such Lender may not lawfully continue to maintain such Adjusted Term SOFR Loans and (y) if such notice asserts the illegality of such Lender determining or charging interest rates based upon the Adjusted Term SOFR, the Administrative Agent shall during the period of such suspension compute the Base Rate applicable to such Lender without reference to the Adjusted Term SOFR component thereof until the Administrative Agent is advised in writing by such Lender that it is no longer illegal for such Lender to determine or charge interest rates based upon the Adjusted Term SOFR. Upon any such prepayment or conversion, the Borrower shall also pay accrued interest on the amount so prepaid or converted.

3.03 Inability to Determine Rates. Subject to Section 3.08, if on or prior to the first day of any Interest Period for any Adjusted Term SOFR Loan:

(a) the Administrative Agent determines (which determination shall be conclusive and binding absent manifest error) that “Adjusted Term SOFR” cannot be determined pursuant to the definition thereof, or

(b) the Required Lenders determine that for any reason in connection with any request for an Adjusted Term SOFR Loan or a conversion thereto or a continuation thereof that Adjusted 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, the Administrative Agent will promptly so notify the Borrower and each Lender.

Upon notice thereof by the Administrative Agent to the Borrower, any obligation of the Lenders to make Adjusted Term SOFR Loans, and any right of the Borrower to continue Adjusted Term SOFR Loans or to convert Base Rate Loans to Adjusted Term SOFR Loans, shall be suspended (to the extent of the affected Adjusted Term SOFR Loans or affected Interest Periods) until the Administrative Agent (with respect to clause (b), at the instruction of the Required Lenders) revokes such notice. Upon receipt of such notice, (i) the Borrower may revoke any pending request for a borrowing of, conversion to or continuation of Adjusted Term SOFR Loans (to the extent of the affected Adjusted Term SOFR Loans or affected Interest Periods) or, 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 in the amount specified therein and (ii) any outstanding affected Adjusted Term SOFR Loans will be deemed to have been converted into Base Rate Loans at the end of the applicable Interest Period. Upon any such conversion, the Borrower shall also pay accrued interest on the amount so converted. Subject to Section 3.08, if the Administrative Agent determines (which determination shall be conclusive and binding absent manifest error) that “Adjusted Term SOFR” cannot be determined pursuant to the definition thereof on any given day, the interest rate on Base Rate Loans shall be determined by the Administrative Agent without reference to clause

(c) of the definition of “Base Rate Loans” until the Administrative Agent revokes such determination.

3.04 Increased Costs: Reserves on Adjusted Term SOFR Loans.

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

(i) impose, modify or deem applicable any reserve, special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of, or credit extended or participated in by, any Lender (except any reserve requirement contemplated by Section 3.04(e));

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

(iii) impose on any Lender or the London interbank market any other condition, cost or expense affecting this Agreement or Adjusted Term SOFR Loans made by such Lender;

and the result of any of the foregoing shall be to increase the cost to such Lender of making, converting to, continuing or maintaining any Loan (or, in the case of clause (ii) above, any Loan), or of maintaining its obligation to make any such Loan, or to reduce the amount of any sum received or receivable by such Lender hereunder (whether of principal, interest or any other amount) then, upon request of such Lender, 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.

(b) Capital Requirements. If any Lender determines that any Change in Law affecting such Lender or any Lending Office of such Lender or such Lender’s holding company, if any, regarding capital or liquidity 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 such Lender to a level below that which such Lender or such Lender’s holding company could have achieved but for such Change in Law (taking into consideration such Lender’s policies and the policies of such Lender’s holding company with respect to capital adequacy), then from time to time the Borrower will pay to such Lender such additional amount or amounts as will compensate such Lender or such Lender’s holding company for any such reduction suffered.

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

(d) Delay in Requests. Failure or delay on the part of any Lender to demand compensation pursuant to the foregoing provisions of this Section 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 this Section for any increased costs incurred or reductions suffered more than 180 days prior to the date that such Lender notifies the Borrower of the Change in Law giving rise to such increased costs or reductions and of such Lender's intention to claim compensation therefor (except that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the nine-month period referred to above shall be extended to include the period of retroactive effect thereof).

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

3.05 Compensation for Losses.

Upon demand of any Lender (with a copy to the Administrative Agent) from time to time, the Borrower shall promptly compensate such Lender for and hold such Lender harmless from any loss, cost or expense incurred by it as a result of:

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

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

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

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

For purposes of calculating amounts payable by the Borrower to the Lenders under this Section 3.05, each Lender shall be deemed to have funded each Adjusted Term SOFR Loan made

by it at the Adjusted Term SOFR for such Loan by a matching deposit or other borrowing in the London interbank eurodollar market for a comparable amount and for a comparable period, whether or not such Adjusted Term SOFR Loan was in fact so funded.

3.06 Mitigation Obligations; Replacement of Lenders.

(a) Designation of a Different Lending Office. Each Lender may make any Credit Extension to the Borrower through any Lending Office, provided that the exercise of this option shall not affect the obligation of the Borrower to repay the Credit Extension in accordance with the terms of this Agreement. If any Lender requests compensation under Section 3.04, or requires the Borrower to pay any Indemnified Taxes or additional amounts 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 at the request of the Borrower such Lender shall, as applicable, 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 judgment of such Lender, such designation or assignment (i) 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 (ii) in each case, would not subject such Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender. The Borrower hereby agrees to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment.

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

3.07 Survival.

All of the Borrower's obligations under this Article III shall survive termination of the Commitments, repayment of all other Obligations hereunder, and resignation of the Administrative Agent.

3.08 Benchmark Replacement Setting.

(a) Benchmark Replacement. Notwithstanding anything to the contrary herein or in any other Loan Document, upon the occurrence of a Benchmark Transition Event, the Administrative Agent and the Borrower may amend this Agreement to replace the then-current Benchmark with a Benchmark Replacement. Any such amendment with respect to a Benchmark Transition Event will become effective at 5:00 p.m. (New York City time) on the fifth (5th) Business Day after the Administrative Agent has posted such proposed amendment to all affected Lenders and the Borrower so long as the Administrative Agent has not received, by such time, written notice of objection to such amendment from Lenders comprising the Required

Lenders. No replacement of a Benchmark with a Benchmark Replacement pursuant to this Section 3.08(a)(i) will occur prior to the applicable Benchmark Transition Start Date.

(b) Benchmark Replacement Conforming Changes. In connection with the use, administration, adoption or implementation of a Benchmark Replacement, the Administrative Agent will have the right to make Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Loan Document, any amendments implementing such Conforming Changes will become effective without any further action or consent of any other party to this Agreement or any other Loan Document.

(c) 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 and (ii) the effectiveness of any Conforming Changes in connection with the use, administration, adoption or implementation of a Benchmark Replacement. The Administrative Agent will notify the Borrower of (x) the removal or reinstatement of any tenor of a Benchmark pursuant to Section 3.08(d) 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 3.08, 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 3.08.

(d) 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), (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 Administrative Agent in its reasonable discretion or (B) 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) 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), 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.

(e) Benchmark Unavailability Period. Upon the Borrower’s receipt of notice of the commencement of a Benchmark Unavailability Period, the Borrower may revoke any pending request for a SOFR Borrowing 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 a Benchmark Unavailability Period or at any time that a tenor for the then-current Benchmark is not an Available Tenor, the component of the Base Rate based upon the then-current Benchmark or such tenor for such Benchmark, as applicable, will not be used in any determination of the Base Rate.

ARTICLE IV
CONDITIONS PRECEDENT TO EFFECTIVENESS AND CREDIT EXTENSIONS

4.01 Conditions to Effectiveness.

The effectiveness of this Agreement and the obligations of each Lender hereunder are subject to satisfaction of the following conditions precedent (except to the extent the Administrative Agent waives one or more of such conditions precedent in writing):

(a) Administrative Agent shall have confirmed the receipt of all other required court approvals for the Debtors' execution of and performance under the other Loan Documents;

(b) Administrative Agent shall have received the Interim Order;

(c) Agent shall have received the executed counterparts of this Agreement and the other Loan Documents required by Administrative Agent to be delivered in connection herewith, in each case, in form and substance acceptable to Administrative Agent and the Lenders;

(d) Administrative Agent shall have received reimbursement in full in cash of the professional fees, costs and expenses of Administrative Agent and the Lenders in accordance with the terms of the Interim Order;

(e) Administrative Agent shall have received the initial budget which, upon approval by the Required Lenders, shall become the Approved Budget, setting forth projected cash flows, together with detailed information as to projected disbursements and receipts, including all updates and supplements thereto, to be in form and substance reasonably acceptable to Administrative Agent;

(f) the Bankruptcy Court shall have entered a customary "cash management order" adopting and implementing cash management arrangements for the Debtors, which shall be in form and substance and on terms and conditions satisfactory to the Administrative Agent in its sole and absolute discretion (any such order, the "Cash Management Order");

(g) Administrative Agent shall have received such certificates of resolutions or other action, incumbency certificates and/or other certificates of Responsible Officers of each Loan Party as the Administrative Agent may require evidencing the identity, authority and capacity of each Responsible Officer thereof authorized to act as a Responsible Officer in connection with this Agreement and the other Loan Documents to which such Loan Party is a party or is to be a party;

(h) Administrative Agent shall have received such documents and certifications as the Administrative Agent may reasonably require to evidence that each Loan Party is duly organized or formed, and that each Loan Party is validly existing and in good standing in their respective jurisdictions of organization;

(i) [reserved];

(j) (i) The Borrower and each of the Guarantors shall have provided to the Administrative Agent and the Lenders the documentation and other information requested by the Administrative Agent in order to comply with requirements of the Act and any applicable “know your customer” and anti-money-laundering rules and regulations at least 3 Business Days prior to the Closing Date to the extent requested in writing at least 3 Business Days prior to the Closing Date; and

(k) At least 3 Business Days prior to the Closing Date, the Borrower shall deliver, to each Lender that so requests to the extent requested in writing at least 7 days prior to the Closing Date, a Beneficial Ownership Certification.

4.02 Conditions to All Credit Extensions.

The obligations of each Lender to honor any Request for Credit Extension (other than a Committed Loan Notice requesting only a conversion of Loans to the other Type, or a continuation of Adjusted Term SOFR Loans) are subject to Administrative Agent’s approval in its sole discretion and the following conditions precedent (except to the extent the Administrative Agent waives one or more of such conditions precedent in writing):

(a) The representations and warranties of the Borrower and each other Loan Party contained in Article V or any other Loan Document shall be true and correct in all material respects, except for any representation and warranty that is qualified by materiality or reference to Material Adverse Effect, which such representation and warranty shall be true and correct in all respects, on and as of the date of such Credit Extension, 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 except for any representation and warranty that is qualified by materiality or reference to Material Adverse Effect, which such representation and warranty shall be true and correct in all respects as of such earlier date, and except that for purposes of this Section 4.02, the representations and warranties contained in Sections 5.05(a) and (b) shall be deemed to refer to the most recent statements furnished pursuant to Sections 6.01(a) and (b), respectively.

(b) No Default or Event of Default shall exist, or would result from such proposed Credit Extension or from the application of the proceeds thereof.

(c) The Administrative Agent shall have received a Request for Credit Extension in accordance with the requirements hereof.

(d) The Administrative Agent shall have received and approved the Approved Budget and the Variance Report, as applicable, required to be delivered pursuant to Section 6.17.

(e) The Interim Order, or, after the entry of the Final Order, the Final Order, shall be in full force and effect and shall not be the subject of any appeal, motion for reconsideration, stay, order of reversal, amendment or modification.

Each Request for Credit Extension (other than a Committed Loan Notice requesting only a conversion of Loans to the other Type or a continuation of Adjusted Term SOFR Loans) submitted by the Borrower shall be deemed to be a representation and warranty that the conditions specified in Sections 4.02(a) and (b) have been satisfied on and as of the date of the applicable Credit Extension.

ARTICLE V REPRESENTATIONS AND WARRANTIES

The Borrower represents and warrants to the Administrative Agent and the Lenders that:

5.01 Existence, Qualification and Power.

Each Loan Party and each of its Subsidiaries (a) is duly organized or formed, validly existing and, as applicable, in good standing under the Laws of the jurisdiction of its incorporation or organization, (b) subject to entry by the Bankruptcy Court of the Interim Order and the Final Order, as applicable, has all requisite power and authority and all requisite governmental licenses, authorizations, consents and approvals to (i) own or lease its assets and carry on its business and (ii) execute, deliver and perform its obligations under the Loan Documents to which it is a party and consummate the Transaction, and (c) is duly qualified and is licensed and, as applicable, in good standing under the Laws of each jurisdiction where its ownership, lease or operation of properties or the conduct of its business requires such qualification or license; except in each case referred to in clause (b)(i) or (c), to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect.

5.02 Authorization; No Contravention.

The execution, delivery and performance by each Loan Party of each Loan Document to which such Person is or is to be a party have been duly authorized by all necessary corporate or other organizational action, and do not and will not (a) contravene the terms of any of such Person's Organization Documents; (b) subject to the entry of the DIP Orders, conflict with or result in any breach or contravention of, or the creation of any Lien under, or require any payment to be made under (i) any Contractual Obligation to which such Person is a party or affecting such Person or the properties of such Person or any of its Subsidiaries or (ii) any order, injunction, writ or decree of any Governmental Authority or any arbitral award to which such Person or its property is subject; or (c) subject to the entry of the DIP Orders, violate any Law, except in each case referred to in the foregoing clauses (b) and (c), to the extent that such conflict, breach, contravention or violation could not reasonably be expected to have a Material Adverse Effect.

5.03 Governmental Authorization; Other Consents.

Subject to the entry of the DIP Orders, no approval, consent, exemption, authorization, or other action by, or notice to, or filing with, any Governmental Authority or any other Person is necessary or required in connection with (a) the execution, delivery or performance by, or

enforcement against, any Loan Party of this Agreement or any other Loan Document, or for the consummation of the Transaction, or (b) the exercise by the Administrative Agent or any Lender of its rights under the Loan Documents, except for (1) the authorizations, approvals, actions, notices and filings that have been duly obtained, taken, given or made and are in full force effect, or (2) subject to the entry of the DIP Orders, other approvals, consents, exemptions, authorizations, actions, notices or filing where the failure to obtain the same could not individually or aggregately, reasonably be expected to have a Material Adverse Effect.

5.04 Binding Effect.

This Agreement has been, and each other Loan Document, when delivered hereunder, will have been, duly executed and delivered by each Loan Party that is party thereto. Subject to entry by the Bankruptcy Court of the Interim Order and the Final Order, as applicable, this Agreement constitutes, and each other Loan Document when so delivered will constitute, a legal, valid and binding obligation of such Loan Party, enforceable against each Loan Party that is party thereto in accordance with its terms, except as enforceability may be limited by applicable Debtor Relief Laws and by equitable principles regardless of whether considered in a proceeding in equity or at law.

5.05 Financial Statements; No Material Adverse Effect.

(a) The Audited Financial Statements (i) were prepared in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein; (ii) fairly present in all material respects the financial condition of the Borrower and its Subsidiaries as of the date thereof and their results of operations, cash flows and changes in shareholders' equity for the period covered thereby in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein; and (iii) show all material indebtedness and other liabilities, direct or contingent, of the Borrower and its Subsidiaries as of the date thereof, including liabilities for Taxes, material commitments and Indebtedness.

(b) The unaudited consolidated balance sheet of the Borrower and its Subsidiaries dated January 31, 2025, and the related consolidated statements of operations, comprehensive income (or loss), stockholders' equity for the three month period ended on that date (i) were prepared in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein, and (ii) fairly present in all material respects the financial condition of the Borrower and its Subsidiaries as of the date thereof and their results of operations and changes in shareholders' equity for the period covered thereby, subject, in the case of clauses (i) and (ii), to normal year-end audit adjustments.

(c) Since the Petition Date, there has been no event or circumstance, either individually or in the aggregate, that has had or could reasonably be expected to have a Material Adverse Effect.

(d) The consolidated forecasted balance sheet, statements of operations and income of the Borrower and its Subsidiaries delivered pursuant to Section 6.01(c) were prepared in good faith on the basis of the assumptions stated therein, which assumptions were believed by

management to be reasonable in light of the conditions existing at the time of delivery of such forecasts.

5.06 Litigation.

There are no actions, suits, proceedings, claims or disputes pending or, to the knowledge of the Borrower, threatened in writing, at law, in equity, in arbitration or before any Governmental Authority, by or against the Parent or any of its Subsidiaries or against any of their properties or revenues, other than those specifically disclosed in Schedule 5.06, that (a) purport to affect or pertain to this Agreement, any other Loan Document or the consummation of the Transaction, or (b) either individually or in the aggregate, that could reasonably be expected to have a Material Adverse Effect.

5.07 No Default.

Except as a result of the commencement of the Cases, neither any Loan Party nor any Subsidiary thereof is in default under or with respect to, or a party to, any Contractual Obligation that could, either individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. Upon entry of the DIP Orders, no Default has occurred and is continuing or would result from the consummation of the transactions contemplated by this Agreement or any other Loan Document.

5.08 Ownership of Property; Liens; Investments.

(a) Each Loan Party and each of its Subsidiaries has good record and marketable title in fee simple to, or valid leasehold interests in, all real and personal property necessary or used in the ordinary conduct of its business, except for such defects in title as could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(b) The property of each Loan Party and each of its Subsidiaries is subject to no Liens, other than Liens permitted by Section 7.01.

5.09 Environmental Compliance.

(a) The Loan Parties and their respective Subsidiaries conduct in the ordinary course of business a review of the effect of existing Environmental Laws and claims alleging potential liability or responsibility for violation of any Environmental Law on their respective businesses, operations and properties, and as a result thereof the Borrower has reasonably concluded that such Environmental Laws and claims could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect,

(b) none of the properties currently or formerly owned or operated by any Loan Party or any of its Subsidiaries is listed or formally proposed for listing on the NPL or on the CERCLIS or any analogous foreign, state or local list or is adjacent to any such property; there are no and to the knowledge of the Loan Parties and their Subsidiaries never have been any underground or above-ground storage tanks or any surface impoundments, septic tanks, pits, sumps or lagoons in which Hazardous Materials are being or have been treated, stored or disposed on any property currently owned or operated by any Loan Party or any of its

Subsidiaries or, to the best of the knowledge of the Loan Parties, on any property formerly owned or operated by any Loan Party or any of its Subsidiaries, in each case except in compliance with all applicable Environmental laws; there is no asbestos or asbestos-containing material on, at or in any property currently owned or operated by any Loan Party or any of its Subsidiaries, in each case except in compliance with all applicable Environmental laws; and there has been no Release of Hazardous Materials on, at, under or from any property currently or formerly owned or operated by any Loan Party or any of its Subsidiaries in a manner, form or amount which could reasonably be expected to result in liability of any Loan Party or any Subsidiary,

(c) neither any Loan Party nor any of its Subsidiaries is undertaking, and has not completed, either individually or together with other potentially responsible parties, any investigation or assessment or remedial or response action relating to any actual or threatened Release of Hazardous Materials at, on, under, or from any site, location or operation, either voluntarily or pursuant to the order of any Governmental Authority or the requirements of any Environmental Law; and all Hazardous Materials generated, used, treated, handled or stored at, or transported to or from, any property currently or formerly owned or operated by any Loan Party or any of its Subsidiaries have been disposed of in a manner which could not reasonably be expected to result in liability to any Loan Party or any of its Subsidiaries, and

(d) the Loan Parties and their respective Subsidiaries: (i) are, and within the period of all applicable statutes of limitation have been, in compliance with all applicable Environmental Laws; (ii) hold all Environmental Permits (each of which is in full force and effect) required for any of their current or intended operations or for any property owned, leased, or otherwise operated by any of them; (iii) are, and within the period of all applicable statutes of limitation have been, in compliance with all of their Environmental Permits; and (iv) to the extent within the control of the Loan Parties and their respective Subsidiaries, each of their Environmental Permits will be timely renewed and complied with, any additional Environmental permits that may be required of any of them will be timely obtained and complied with, without material expense, and compliance with any Environmental Law that is or is expected to become applicable to any of them will be timely attained and maintained, without material expense,

except in each case referred to in the foregoing clauses (b) through (d), to the extent that such action, investigation, violation or conduct could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

5.10 Insurance.

The properties of the Parent and its Subsidiaries are insured with financially sound and reputable insurance companies not Affiliates of the Parent, in such amounts, with such deductibles and covering such risks as are customarily carried by companies engaged in similar businesses and owning similar properties in localities where the Parent or the applicable Subsidiary operates.

5.11 Taxes.

The Parent and each of its Subsidiaries have filed all federal, state and other material tax returns and reports required to be filed, and have paid all federal, state and other material Taxes (whether or not shown on a tax return), including in its capacity as a withholding agent, levied or

imposed upon it or its properties, income or assets otherwise due and payable, except those which are being contested in good faith by appropriate proceedings diligently conducted and for which adequate reserves have been provided in accordance with GAAP or the nonpayment of which is permitted or required by the Bankruptcy Code. To the knowledge of the Borrower there is no proposed material tax assessment or other tax claim against, and no material tax audit with respect to, the Parent or any Subsidiary. Neither any Loan Party nor any Subsidiary thereof is party to any tax sharing agreement other than an agreement (such as a lease) the principal purpose of which is not the sharing of Tax.

5.12 ERISA Compliance.

(a) Each Plan is in compliance in all material respects with the applicable provisions of ERISA, the Code and other Federal or state laws. Each Pension Plan that is intended to be a qualified plan under Section 401(a) of the Code has received a favorable determination letter from the Internal Revenue Service to the effect that the form of such Plan is qualified under Section 401(a) of the Code and the trust related thereto has been determined by the Internal Revenue Service to be exempt from federal income tax under Section 501(a) of the Code, or an application for such a letter is currently being processed by the Internal Revenue Service. To the knowledge of the Borrower, nothing has occurred that would prevent or cause the loss of such tax-qualified status.

(b) There are no pending or, to the knowledge of the Borrower, threatened claims, actions or lawsuits, or action by any Governmental Authority, with respect to any Plan that could reasonably be expected to have a Material Adverse Effect. There has been no prohibited transaction or violation of the fiduciary responsibility rules with respect to any Plan that has resulted or could reasonably be expected to result in a Material Adverse Effect.

(c) (i) No ERISA Event has occurred, and neither the Borrower nor any ERISA Affiliate is aware of any fact, event or circumstance that could reasonably be expected to constitute or result in an ERISA Event with respect to any Pension Plan or Multiemployer Plan; (ii) as of the most recent valuation date for any Pension Plan, the funding target attainment percentage (as defined in Section 430(d)(2) of the Code) is 60% or higher and neither the Borrower nor any ERISA Affiliate knows of any facts or circumstances that could reasonably be expected to cause the funding target attainment percentage for any such plan to drop below 60% as of the most recent valuation date; (iii) neither the Borrower nor any ERISA Affiliate has incurred any liability to the PBGC other than for the payment of premiums, and there are no premium payments which have become due that are unpaid; (iv) neither the Borrower nor any ERISA Affiliate has engaged in a transaction that could be subject to Section 4069 or Section 4212(c) of ERISA; and (v) no Pension Plan has been terminated by the plan administrator thereof nor by the PBGC, and no event or circumstance has occurred or exists that could reasonably be expected to cause the PBGC to institute proceedings under Title IV of ERISA to terminate any Pension Plan.

(d) The Borrower represents and warrants as of the Closing Date that the Borrower is not and will not be using “plan assets” (within the meaning of 29 CFR § 2510.3-101, as modified by Section 3(42) of ERISA) of one or more Benefit Plans in connection with the Loans, the Letters of Credit or the Commitments.

5.13 Subsidiaries; Equity Interests; Loan Parties.

As of the Closing Date, no Loan Party has any Subsidiaries other than those specifically disclosed in Part (a) of Schedule 5.13, and all of the outstanding Equity Interests in such Subsidiaries have been validly issued, are fully paid and non-assessable and are owned by a Loan Party in the amounts specified on Part (a) of Schedule 5.13 free and clear of all Liens except those permitted by Section 7.01. As of the Closing Date, no Loan Party has any equity investments in any other corporation or entity other than those specifically disclosed in Part (b) of Schedule 5.13. All of the outstanding Equity Interests in the Borrower have been validly issued, are fully paid and non-assessable. Set forth on Part (d) of Schedule 5.13 is a complete and accurate list of all Loan Parties, showing as of the Closing Date (as to each Loan Party) the jurisdiction of its incorporation, the address of its principal place of business and its U.S. taxpayer identification number or, in the case of any non-U.S. Loan Party that does not have a U.S. taxpayer identification number, its unique identification number issued to it by the jurisdiction of its incorporation. As of the Closing Date, the copy of the charter of each Loan Party and each amendment thereto provided pursuant to Section 4.01(a)(iii) is a true and correct copy of each such document, each of which is valid and in full force and effect as of the Closing Date.

5.14 Margin Regulations; Investment Company Act.

(a) The Borrower is not engaged and will not 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 FRB), or extending credit for the purpose of purchasing or carrying margin stock. No proceeds of any Credit Extension will be used, whether directly or indirectly, and whether immediately, incidentally or ultimately, to purchase or carry margin stock (within the meaning of Regulation U issued by the FRB) or to extend credit to others for the purpose of purchasing or carrying margin stock or to refund Indebtedness originally incurred for such purpose, in each case in violation of Regulation U.

(b) None of the Borrower, any Person Controlling the Borrower, or any Subsidiary is or is required to be registered as an “investment company” under the Investment Company Act of 1940.

5.15 Disclosure.

(a) No written report, financial statement, certificate or other information furnished by or on behalf of any Loan Party to the Administrative Agent or any Lender in connection with the transactions contemplated hereby and the negotiation of this Agreement or delivered hereunder or under any other Loan Document, at the Closing Date or at the time furnished (in the case of all other reports, financial statements, certificates or other information), contains any material misstatement of fact or omitted to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading; provided that, with respect to projected or forward-looking information, the Borrower represents only that such information was prepared in good faith based upon assumptions believed by management to be reasonable at the time of preparation; it being understood that such projections may vary from actual results and that such variances may be material.

(b) As of the Closing Date the information included in the Beneficial Ownership Certification delivered hereunder is true and correct in all respects.

5.16 Compliance with Laws.

Each Loan Party and each Subsidiary thereof is in compliance in all material respects with the requirements of all Laws and all orders, writs, injunctions and decrees applicable to it or to its properties, except in such instances in which (a) such requirement of Law or order, writ, injunction or decree is being contested in good faith by appropriate proceedings diligently conducted or (b) the failure to comply therewith, either individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect.

5.17 Intellectual Property; Licenses, Etc.

Each Loan Party and each of its Subsidiaries own, or possess the right to use, all of the trademarks, service marks, trade names, copyrights, patents, patent rights, franchises, licenses and other intellectual property rights (collectively, “IP Rights”) that are reasonably necessary for the operation of their respective businesses, without conflict with the rights of any other Person. To the knowledge of the Borrower, no slogan or other advertising device, product, process, method, substance, part or other material now employed, or now contemplated to be employed, by any Loan Party or any of its Subsidiaries infringes upon any rights held by any other Person, except for such infringements, individually or in the aggregate, which could not reasonably be expected to have a Material Adverse Effect. No claim or litigation regarding any of the foregoing is pending or, to the knowledge of the Borrower, threatened, which, either individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

5.18 [Reserved].

5.19 Labor Matters.

There are no collective bargaining agreements or Multiemployer Plans covering the employees of the Borrower or any of its Subsidiaries as of the Closing Date and neither the Borrower nor any Subsidiary has suffered any strikes, walkouts, work stoppages or other labor difficulty within the last five years except, in each case, as would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

5.20 Anti-Money Laundering Laws.

Each of the Borrower, its Subsidiaries and, to the knowledge of the Borrower and its Subsidiaries, each director, officer, employee, agent, affiliate or representative thereof, has not violated any applicable anti-money laundering law any other applicable law, regulation or other binding measure implementing the “Forty Recommendations” and “Nine Special Recommendations” published by the Organisation for Economic Co-operation and Development’s Financial Action Task Force on Money Laundering.

5.21 Sanctions.

Neither the Borrower, nor any of its Subsidiaries, nor, to the knowledge of the Borrower and its Subsidiaries, any director, officer, employee, agent, affiliate or representative thereof, is an individual or entity that is, or is owned or controlled by any individual or entity that is (i) currently the subject or target of any OFAC Sanctions Program, (ii) included on the OFAC SDN List, Her Majesty's Treasury's Consolidated List of Financial Sanctions Targets and the Investment Ban List, or any similar list enforced by any other relevant sanctions authority or (iii) located, organized or resident in a Designated Jurisdiction.

5.22 Anti-Corruption Laws.

The Borrower and its Subsidiaries have conducted their businesses in compliance with the United States Foreign Corrupt Practices Act of 1977, the UK Bribery Act 2010, and other similar anti-corruption legislation in other jurisdictions and have instituted and maintained policies and procedures designed to promote and achieve compliance with such laws ("Anti-Corruption Laws").

5.23 EEA Financial Institutions.

No Loan Party is an EEA Financial Institution.

5.24 Collateral Access.

Except as otherwise notified to Administrative Agent pursuant to Section 6.12(e), substantially all of the Borrower's books and records are stored by electronic means and can be accessed remotely.

5.25 Approved Budget.

The initial Approved Budget, each Updated Budget thereafter and each Variance Report delivered to the Administrative Agent hereunder was prepared in good faith and based upon assumptions which were reasonable in light of the conditions existing at the time of delivery thereof and reflect the Debtors' reasonable estimate of its future financial performance for such period (it being understood that projections by their nature are inherently uncertain and the results reflected therein may not actually be achieved and actual results may differ and differences may be material).

ARTICLE VI AFFIRMATIVE COVENANTS

So long as any Lender shall have any Commitment hereunder or any Loan or other Obligation hereunder shall remain unpaid or unsatisfied, each Loan Party shall, and shall (except in the case of the covenants set forth in Sections 6.01, 6.02, and 6.03) cause each Subsidiary to:

6.01 Financial Statements.

Deliver to the Administrative Agent (which shall promptly make such information available to the Lenders in accordance with its customary practice) within 60 days after the end of each calendar month, (i) a consolidating balance sheet of the Borrower and its Subsidiaries as at

the end of such month; and (ii) the related consolidating statements of operations and comprehensive income (or loss) for such calendar month and for the portion of the Borrower's fiscal year then ended, setting forth in comparative form the figures for the corresponding calendar month of the previous fiscal year and the corresponding portion of the previous fiscal year, as applicable, all in reasonable detail (which shall contain at least the same level of detail as provided to agent prior to the Closing Date) and certified by a Responsible Officer of the Borrower as fairly presenting in all material respects the financial condition and results of operations in accordance with GAAP, subject only to normal year-end audit adjustments.

6.02 Certificates; Other Information.

Deliver to the Administrative Agent (which shall promptly make such information available to the Lenders in accordance with its customary practice):

(a) [Reserved];

(b) on or before Friday, June 13, 2024, Borrower shall deliver a customary 13-week cash flow forecast, in form and substance acceptable to the Administrative Agent in its reasonable discretion (it being agreed that any 13-Week Cash Flow delivered in substantially the form delivered by the Borrower in the period immediately preceding the Closing Date shall be acceptable in form and substance to the Administrative Agent), which shall reflect Borrower's good faith projections of all weekly cash receipts and disbursements in connection with the operation of its business for the following 13-week period and shall include all underlying detailed assumptions customary to 13-week cash flow forecast models, including a calculation of Liquidity and any corresponding accounts payable analysis or forecast. Thereafter, on a weekly basis, no later than Friday of each week, Borrower shall deliver to the Administrative Agent an updated customary 13-week cash flow forecasts, in form and substance reasonably acceptable to the Administrative Agent in its reasonable discretion (it being agreed that any 13-Week Cash Flow delivered in substantially the form delivered by the Borrower in the period immediately preceding the Closing Date shall be acceptable in form and substance to the Administrative Agent), which shall reflect Borrower's good faith projections of all weekly cash receipts and disbursements in connection with the operation of its business for the following 13-week period and shall include all underlying detailed assumptions customary to 13-week cash flow forecast models and any corresponding accounts payable analysis or forecast;

(c) promptly after the furnishing thereof, copies of any material statement or report furnished to any holder of debt securities of any Loan Party or of any of its Subsidiaries pursuant to the terms of any indenture, loan or credit or similar agreement evidencing Indebtedness having an aggregate principal amount in excess of the Threshold Amount and not otherwise required to be furnished to the Lenders pursuant to Section 6.01 or any other clause of this Section 6.02 and copies of each regular, periodic or special report, registration statement or prospectus filed by the Borrower or any Subsidiary with any securities exchange or the SEC or any successor agency;

(d) promptly, and in any event within five Business Days after receipt thereof by any Loan Party or any Subsidiary thereof, copies of each notice or other correspondence received from the SEC (or comparable agency in any applicable non-U.S. jurisdiction)

concerning any investigation or possible investigation or other inquiry by such agency regarding financial or other operational results of any Loan Party or any Subsidiary thereof;

(e) within five Business Days after receipt thereof by any Loan Party or any Subsidiary thereof, copies of all material notices, requests and other documents (including amendments, waivers and other modifications) so received under or pursuant to any instrument, indenture, loan or credit or similar agreement evidencing Indebtedness having an aggregate principal amount in excess of the Threshold Amount;

(f) promptly after the assertion or occurrence thereof, notice of any action or proceeding against or of any noncompliance by any Loan Party or any of its Subsidiaries with any Environmental Law or Environmental Permit that could reasonably be expected to have a Material Adverse Effect;

(g) promptly, such additional information regarding the business, financial, legal or corporate affairs of any Loan Party or any Subsidiary thereof, or compliance with the terms of the Loan Documents, as the Administrative Agent or any Lender may from time to time reasonably request;

(h) promptly after any request by the Administrative Agent or any Lender, copies of any detailed audit reports, management letters or recommendations submitted to the board of directors (or the audit committee of the board of directors) of any Loan Party by independent accountants in connection with the accounts or books of any Loan Party or any of its Subsidiaries, or any audit of any of them; and

(i) promptly upon the request of the Administrative Agent, but in any event within five Business Days after a Responsible Officer of the Borrower obtains knowledge (for which the Borrower shall have an ongoing, affirmative obligation to cause its Responsible Officers to conduct due inquiry) thereof, a complete and accurate accounting of any unencumbered asset-backed securities retained or owned by the Borrower or the Borrower's Affiliates;

The Borrower hereby acknowledges that the Administrative Agent may, but shall not be obligated to, make available to the Lenders materials and/or information provided by or on behalf of the Borrower hereunder (collectively, "Borrower Materials") by posting the Borrower Materials using an electronic transmission system acceptable to Administrative Agent (the "Platform").

6.03 Notices.

Promptly, and in any event within five Business Days after notice or knowledge thereof by a Responsible Officer, notify the Administrative Agent (which shall promptly notify the Lenders in accordance with its customary practice):

(a) of the occurrence of any Default;

(b) of any matter that has resulted or could reasonably be expected to result in a Material Adverse Effect, including (i) breach or non-performance of, or any default under, a Contractual Obligation of the Borrower or any Subsidiary; (ii) any dispute, litigation,

investigation, proceeding or suspension between the Borrower or any Subsidiary and any Governmental Authority; or (iii) the commencement of, or any material development in, any litigation or proceeding affecting the Borrower or any Subsidiary, including pursuant to any applicable Environmental Laws;

(c) of the occurrence of any ERISA Event; or

(d) of any claim, litigation, suit or administrative proceeding affecting any Loan Party and of any litigation, suit or administrative proceeding, which in any such case affects the Collateral, and furnish to Administrative Agent any notice, filing, order, judgement, or similar document related to any claim, litigation, suit or administrative proceeding affecting any Loan Party (in each case, other than claims, litigation, suits or administrative proceedings involving Borrower as the creditor on single, individual solar loans).

Each notice pursuant to this Section 6.03 shall be accompanied by a statement of a Responsible Officer of the Borrower setting forth details of the occurrence referred to therein and stating what action the Borrower has taken and proposes to take with respect thereto. Each notice pursuant to Section 6.03(a) shall describe with particularity any and all provisions of this Agreement and any other Loan Document that have been breached.

6.04 Payment of Obligations.

(a) Pay and discharge as the same shall become due and payable, all its obligations and liabilities, including (i) all Tax liabilities, assessments and governmental charges or levies upon it or its properties or assets, unless the same are being contested in good faith by appropriate proceedings diligently conducted and adequate reserves in accordance with GAAP are being maintained by the Borrower or such Subsidiary or the nonpayment of the same is permitted or required by the Bankruptcy Code; (ii) all lawful claims which, if unpaid, would by law become a Lien upon its property (subject to the resolution of any stay, appeal or dismissal proceedings relating to any such claim); and (iii) all Indebtedness, as and when due and payable, but subject to any subordination provisions contained in any instrument or agreement evidencing such Indebtedness; and (b) timely file all federal, state and other material tax returns required to be filed by the required due date, subject to any extension permitted by the applicable taxing authority.

6.05 Preservation of Existence, Etc.

(a) Preserve, renew and maintain in full force and effect its legal existence and good standing under the Laws of the jurisdiction of its organization except in a transaction permitted by Section 7.04 or 7.05; (b) take all reasonable action to maintain all rights, privileges, permits, licenses and franchises necessary or desirable in the normal conduct of its business, except to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect; and (c) preserve or renew all of its registered patents, trademarks, trade names and service marks, the non-preservation of which could reasonably be expected to have a Material Adverse Effect.

6.06 Maintenance of Properties.

(a) Maintain, preserve and protect all of its material properties and equipment necessary in the operation of its business in good working order and condition, ordinary wear and tear excepted; and (b) make all necessary repairs thereto and renewals and replacements thereof except where the failure to do so could not reasonably be expected to have a Material Adverse Effect.

6.07 Maintenance of Insurance.

Maintain with financially sound and reputable insurance companies not Affiliates of the Borrower, insurance with respect to its properties and business against loss or damage of the kinds customarily insured against by Persons engaged in the same or similar business, of such types and in such amounts (after giving effect to any self-insurance compatible with the following standards) as are customarily carried under similar circumstances by such other Persons. The Borrower shall also maintain, and shall cause each Subsidiary to maintain, insurance with respect to the business of the Borrower and its Subsidiaries, covering commercial general liability, statutory worker's compensation and occupational disease, statutory structural work act liability, business interruption, directors and officers, and errors and omissions, and such other risks with good and responsible insurance companies, in such amounts and on such terms as Administrative Agent or Required Lenders shall reasonably request, but in any event as and to the extent usually insured by Persons similarly situated and conducting similar businesses. The Borrower shall in any event maintain insurance on the Collateral to the extent required by the Collateral Documents. All such policies of insurance shall contain satisfactory lender's loss payable endorsements, naming Administrative Agent for the benefit of the Lenders as a loss payee, assignee or additional insured, as appropriate, as its interest may appear, and showing only such other loss payees, assignees and additional insureds as are satisfactory to Administrative Agent. Each policy of insurance or endorsement shall contain a clause requiring the insurer to give not less than 30 days' (or 10 days' in the case of non-payment of premium) prior written notice to Administrative Agent in the event of cancellation of the policy for any reason whatsoever and a clause specifying that the interest of Administrative Agent shall not be impaired or invalidated by any act or neglect of the Borrower, any of its Subsidiaries, or the owner of the premises or Property or by the occupation of the premises for purposes more hazardous than are permitted by said policy. The Borrower shall deliver to Administrative Agent (a) upon the request of the Administrative Agent, Acord Certificates evidencing the maintenance of insurance required hereunder, (b) [reserved], (c) prior to the termination of any such policies, certificates evidencing the renewal thereof, and (d) promptly following request by Administrative Agent, copies of all insurance policies of the Borrower and its Subsidiaries. The Borrower also agrees to deliver to Administrative Agent, promptly as rendered, true copies of all reports made in any reporting forms to insurance companies.

6.08 Compliance with Laws.

Comply in all material respects with the requirements of all Laws and all orders, writs, injunctions and decrees applicable to it or to its business or property, except in such instances in which (a) such requirement of Law or order, writ, injunction or decree is being contested in good faith by appropriate proceedings diligently conducted; or (b) the failure to comply therewith could not reasonably be expected to have a Material Adverse Effect.

6.09 Books and Records.

Maintain proper books of record and account, in which full, true and correct entries in conformity with GAAP consistently applied shall be made of all financial transactions and matters involving the assets and business of the Borrower or its Subsidiary, as the case may be.

6.10 Inspection Rights.

Permit representatives and independent contractors of the Administrative Agent and each Lender to visit and inspect in the presence of a representative of the Borrower (unless an Event of Default has occurred and is continuing) any of its properties, to examine its corporate, financial and operating records (exclusive of any proprietary information, trade secrets, and privileged information, unless an Event of Default has occurred and is continuing) and make copies thereof or abstracts therefrom, and to discuss its business, operations, prospects, assets, liabilities, finances and/or accounts with its directors, officers, and independent public accountants, all at the expense of the Borrower and at such reasonable times during normal business hours, upon reasonable advance notice to the Borrower; provided, however, that when an Event of Default has occurred and is continuing the Administrative Agent or any Lender (or any of their respective representatives or independent contractors) may do any of the foregoing at the expense of the Borrower at any time during normal business hours and without advance notice. Notwithstanding anything to the contrary in this Section 6.10, none of the Borrower or any of the Subsidiaries will be required to disclose, permit the inspection, examination or making copies or abstracts of, or discussion of, any document, information or other matter that (a) constitutes non-financial trade secrets or non-financial proprietary information (provided that such materials may be provided to the Lenders' counsel on a professional eyes only basis), (b) in respect of which disclosure to the Administrative Agent or any Lender (or their respective representatives or contractors) is prohibited by Law or court order or (c) is subject to attorney-client or similar privilege or constitutes attorney work product.

6.11 Compliance with OFAC Sanctions Programs.

(a) OFAC Sanctions Programs. The Borrower shall at all times comply with the requirements of all OFAC Sanctions Programs applicable to the Borrower and shall cause each of its Subsidiaries to comply with the requirements of all OFAC Sanctions Programs applicable to such Subsidiary.

(b) Information for Compliance. The Borrower shall provide Administrative Agent and Lenders any information regarding the Borrower, its Affiliates, and its Subsidiaries necessary for Administrative Agent or any Lender to comply with all applicable OFAC Sanctions Programs; subject however, in the case of Affiliates, to the Borrower's ability to provide information applicable to them.

(c) Notice of OFAC Event. If the Borrower obtains actual knowledge or receives any written notice that the Borrower, any Affiliate or any Subsidiary is named on the then current OFAC SDN List (such occurrence, an "OFAC Event"), the Borrower shall promptly (i) give written notice to Administrative Agent of such OFAC Event, and (ii) comply with all applicable Laws with respect to such OFAC Event (regardless of whether the party included on

the OFAC SDN List is located within the jurisdiction of the United States), including the OFAC Sanctions Programs, and the Borrower hereby authorizes and consents to Administrative Agent and any Lender taking any and all steps Administrative Agent or such Lender deems necessary, in its sole discretion, to avoid violation of all applicable Laws with respect to any such OFAC Event, including the requirements of the OFAC Sanctions Programs (including the freezing and/or blocking of assets and reporting such action to OFAC).

(d) Use of Proceeds. The Borrower shall not, nor shall it permit any Subsidiary to, directly or, to the Borrower or any Subsidiary's knowledge, indirectly, use the proceeds of the Facilities, or lend, contribute or otherwise make available such proceeds to any other Person, (i) to fund any activities or business of or with any Person or in any country or territory, that, at the time of such funding, is, or whose government is, the subject of any OFAC Sanctions Programs, or (ii) in any other manner that would result in a violation of OFAC Sanctions Programs or Anti-Corruption Laws by any Person (including any Person participating in the Facilities, whether as underwriter, Lender, advisor, investor, or otherwise).

6.12 Covenant to Guarantee Obligations and Provide Collateral.

(a) Additional Material Domestic Subsidiaries. Subject to Section 7.14, upon the formation or acquisition of any new direct or indirect Subsidiary (other than any Excluded Subsidiary) by any Loan Party (including, without limitation, upon the formation of any Subsidiary that is a Divided LLC or any Subsidiary that is formed by means of a comparable transaction under any similar law) (provided that any Excluded Subsidiary ceasing to be an Excluded Subsidiary shall, at the time of any determination thereof, be deemed to constitute the acquisition of a Subsidiary for all purposes of this Section 6.12), then the Borrower shall, at the Borrower's expense: within 1 day after such formation or acquisition (provided that the date may be extended at the request of the Borrower and with the consent of the Administrative Agent, in its reasonable discretion), cause such Subsidiary, and cause each direct and indirect parent of such Subsidiary (if it has not already done so), to duly execute and deliver to the Administrative Agent a guaranty or guaranty supplement, in form and substance reasonably satisfactory to the Administrative Agent, guaranteeing the other Loan Parties' obligations under the Loan Documents.

(b) Collateral. The Obligations shall be secured by valid, perfected, and enforceable Liens on all right, title, and interest of the Borrower and each Loan Party in all of their accounts, chattel paper, instruments, documents, general intangibles, letter of credit rights, supporting obligations, deposit accounts, investment property, inventory, equipment, commercial tort claims and certain other Property (other than Excluded Property as defined in the Security Agreement), whether now owned or hereafter acquired or arising, and all proceeds thereof. The Borrower acknowledges and agrees that the Liens on the Collateral shall be valid and perfected first priority Liens (subject to the Carve-Out and validly perfected, enforceable and non-avoidable liens otherwise existing as of the Petition Date or validly perfected subsequent to the Petition Date as permitted by section 546(c) of the Bankruptcy Code (collectively, "Prepetition Permitted Liens" and each a "Prepetition Permitted Lien")), in each case pursuant to one or more Collateral Documents from such Persons, each in form and substance satisfactory to Administrative Agent.

(c) Depository Bank. All Deposit Accounts, securities accounts and commodity accounts of the Borrower or any Loan Party (other than (i) Excluded Property as defined in the Security Agreement or (ii) other accounts for which the Administrative Agent has agreed, in its sole discretion, to waive such requirement) shall be subject to Control Agreements in favor of the Administrative Agent on terms reasonably satisfactory to the Administrative Agent. Within five (5) days after the acquisition of any Deposit Accounts, securities accounts or commodity accounts as a result of an Investment permitted hereunder (as such date may be extended by the Administrative Agent in its sole discretion) and at all times thereafter, the Borrower shall, and shall cause each other Loan Party to, enter into such Control Agreements with respect to each such Deposit Account, securities account and commodity account maintained or acquired by the Borrower or such Loan Party. Notwithstanding the forgoing, each Loan Party shall obtain Administrative Agent's prior written consent before opening any Deposit Account (such consent not to be unreasonably withheld or delayed).

(d) Further Assurances. The Borrower agrees that it shall, and shall cause each Subsidiary (other than an Excluded Subsidiary) to, from time to time at the request of Administrative Agent, execute and deliver such documents and do such acts and things as Administrative Agent may reasonably request in order to provide for or perfect or protect Administrative Agent's Liens on the Collateral.

(e) Collateral Access Agreements. In the event the Borrower commences storing its books and records in physical form that are not otherwise accessible remotely by electronic means, the Borrower shall provide notice to the Administrative Agent regarding the location and type of records so stored and, if requested by the Administrative Agent, within ninety (90) days (as such date may be extended by the Administrative Agent in its sole discretion), the Borrower and each other Loan Party, as applicable, shall use commercially reasonable efforts to obtain Collateral Access Agreements, if applicable, from landlords, bailees and mortgagees of such locations.

6.13 Compliance with Environmental Laws.

Comply, and cause all lessees and other Persons operating or occupying its properties to comply, in all material respects, with all applicable Environmental Laws and Environmental Permits; obtain and renew all Environmental Permits necessary for its operations and properties; and conduct any investigation, study, sampling and testing, and undertake any cleanup, response or other corrective action necessary to address all Hazardous Materials at, on, under or emanating from any of properties owned, leased or operated by it in accordance with the requirements of all Environmental Laws; provided, however, that neither the Borrower nor any of its Subsidiaries shall be required to undertake any such cleanup, removal, remedial or other action to the extent that its obligation to do so is being contested in good faith and by proper proceedings and appropriate reserves are being maintained with respect to such circumstances in accordance with GAAP.

6.14 Further Assurances.

Promptly upon request by the Administrative Agent, or any Lender through the Administrative Agent, (a) correct any material defect or error that may be discovered in any Loan

Document or in the execution, acknowledgment, filing or recordation thereof, 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 any Lender through the Administrative Agent, may reasonably require from time to time in order to carry out more effectively the purposes of the Loan Documents.

6.15 Designation as Senior Debt.

Designate all Obligations as “Senior Debt” under, and defined in, any documentation relating to any Subordinated Indebtedness.

6.16 Anti-Corruption Laws.

Conduct its businesses in compliance with the United States Foreign Corrupt Practices Act of 1977, the UK Bribery Act 2010, and other similar anti-corruption legislation in other jurisdictions, and maintain policies and procedures designed to promote and achieve compliance with such laws.

6.17 Approved Budget and Variance Reports.

(a) On or before the Closing Date, and on the fourth Monday following the Closing Date and on the Monday of every fourth week thereafter, by no later than 5:00 P.M. (Pacific Time), the Borrower shall deliver to the Administrative Agent a budget (the “Updated Budget”, and upon approval by the Administrative Agent as provided in Section 6.17(b) hereof, the Updated Budget shall constitute an Approved Budget), which shall be in substantially the same form and detail of the initial Approved Budget and such supporting documentation as reasonably requested by the Administrative Agent. Delivery by Borrower of each Updated Budget shall constitute a representation under Section 5.25 hereof as to the good faith representation of the projections therein upon which the Lenders are entitled to rely.

(b) Each such Updated Budget delivered pursuant to this Section 6.17 or any proposed amendment or supplement to the Approved Budget delivered by the Borrower to the Administrative Agent shall replace, amend or supplement, as the case may be, the prior Approved Budget hereunder only to the extent that the Administrative Agent consents (which consent may be documented pursuant to email) to such replacement, amendment or supplement, it being acknowledged and agreed that if the Administrative Agent does not object to any such Approved Budget within five (5) Business Days of delivery thereof, it shall be deemed to be approved by the Administrative Agent as the Approved Budget; provided, that, if the proposed Approved Budget is objected to by the Administrative Agent, the Approved Budget that was last approved by the Administrative Agent shall continue to be in effect until such objection is resolved in the Administrative Agent’s sole discretion.

(c) Beginning on Thursday, June 19, 2025 and each Thursday thereafter, the Borrower shall deliver to the Administrative Agent a Variance Report by no later than 5:00 P.M. (Pacific Time). Delivery by Borrower of each Variance Report shall constitute a representation under Section 5.25 hereof as to the good faith representation of the projections therein upon which the Lenders are entitled to rely.

(d) Along with the Variance Report, (x) every two weeks, beginning with the second full week ended after the Petition Date, the Borrower shall provide a report to the Administrative Agent of the professional fees incurred in the trailing two week period and (y) every week, beginning with the second full week ended after the Petition Date, the Borrower shall provide a rolling budget forecast that assumes the actuals for prior week, each in form and substance satisfactory to the Administrative Agent.

6.18 Professional Fee Reserve. After the Petition Date, the Loan Parties shall comply with their obligations under the DIP Orders with respect to the “Professional Fee Reserve” under and as defined therein.

6.19 Milestones. Within the time periods set forth below (or such later times as Administrative Agent may agree in its sole and absolute discretion), the Debtors shall perform each action with respect to the Cases as set forth below (the “Milestones”):

(a) the entry by the Bankruptcy Court of the Interim Order within two (2) days of the Petition Date;

(b) the filing with the Bankruptcy Court of a motion to approve bid procedures in respect of an Acceptable Sale Transaction in form and substance satisfactory to the Debtors and Administrative Agent in its sole discretion (as the same may be amended, supplemented, or modified from time to time after entry thereof with the consent of the Administrative Agent, the “Acceptable Bid Procedures Motion”) within two (2) days of the Petition Date;

(c) the entry by the Bankruptcy Court of an order approving such Acceptable Bid Procedures Motion (as the same may be amended, supplemented, or modified from time to time after entry thereof with the consent of the Debtors and Administrative Agent in its sole discretion, the “Acceptable Bid Procedures Order”) within thirty-one (31) days of the Petition Date;

(d) obtain Bankruptcy Court approval of the Final Order within thirty-one (31) days of the Petition Date;

(e) the commencement of an auction in connection with such Acceptable Sale Transaction (the “Auction”), unless, in accordance with the Acceptable Bid Procedures Order, no Auction is required, within sixty-five (65) days of the Petition Date;

(f) the entry by the Bankruptcy Court of an order approving such Acceptable Sale Transaction (as the same may be amended, supplemented, or modified from time to time after entry thereof with the consent of the Debtors and Administrative Agent in its sole discretion, the “Acceptable Sale Order”) within seventy (70) days of the Petition Date;

(g) the consummation of the Acceptable Sale Transaction within eighty (80) days of the Petition Date;

(h) the entry by the Bankruptcy Court of an order approving a Plan of Reorganization (“Plan of Reorganization”) in form and substance satisfactory to the Administrative Agent in its sole discretion, within ninety (90) days of the Petition Date; and

(i) the consummation of the Plan of Reorganization within one hundred five (105) days of the Petition Date.

6.20 Bankruptcy Schedules and Covenants.

(a) File with the Bankruptcy Court and deliver to Administrative Agent, all Schedules of each Debtor within the time periods required by the Bankruptcy Court.

(b) Serve all:

(i) secured creditors, all judgment creditors (if any) actually known to the Debtors, the twenty (20) largest unsecured creditors, the federal and state taxing authorities, any and all Governmental Authorities holding a claim, each of the Debtors' unions, and any other party claiming an interest in the Collateral in accordance with the Federal Rules of Bankruptcy Procedure a copy of the motion and Interim Order as approved by the Bankruptcy Court in accordance with the Federal Rules of Bankruptcy Procedure; and

(ii) all parties from whom the Debtors have received or that the Debtors believe they may have received goods from within twenty (20) days of the filing of the Cases, a copy of the Interim Order and notice of the hearing on entry of the proposed Final Order in accordance with the Federal Rules of Bankruptcy Procedure.

6.21 Payroll Reserve. Maintain at all times a segregated cash reserve account with a current cash balance greater than or equal to the reasonably expected amount of remittances due to the Loan Parties' payroll and fringe benefits providers upon the start of the next pay period based on the then current employment levels, including all corresponding payroll, payroll taxes, healthcare costs and retirement fringe benefit amounts, plus all expected statutorily required severance payments, if any. Each Loan Party shall deliver to the Administrative Agent promptly, support of the calculation of the required reserve amount plus evidence of the existence of such reserve as the Administrative Agent may request at any time in its sole discretion

6.22 Bankruptcy Documents. Deliver to Administrative Agent: (a) copies of all pleadings, motions, applications, financial information and other papers and documents filed by the Debtors in the Cases, with copies of such papers and documents also provided to or served on Administrative Agent's counsel; (b) substantially contemporaneous with the receipt and/or execution thereof, and subject to any confidentiality restrictions binding on the Debtors, copies of all letters of intent, expressions of interest, and offers to purchase with respect to any of the Collateral; (c) substantially contemporaneously with delivery thereof to the Committee or any other official or unofficial committee in the Cases, and subject to any attorney-client privilege or work product of the Debtors, copies of all material written reports and all term sheets for a Reorganization Plan or any sale under Section 363 of the Bankruptcy Code given by the Debtors to the Committee or any other official or unofficial committee in the Cases, with copies of such reports and term sheets also provided to or served on Administrative Agent's counsel; (d) copies of all marketing materials related to the sale of the Debtors' assets or business; and (e) projections, operating plans and other financial information and information, reports or statements regarding

the Debtors, its business and the Collateral as Administrative Agent may from time to time reasonably request.

6.23 Cooperation With Administrative Agent's Advisors. The Borrower acknowledges and agrees that (i) its agents and advisors shall promptly and fulsomely respond to reasonable inquiries from the Administrative Agent and/or its agents and advisors, including, but not limited to, Huron Consulting Group, regarding the Borrower and its financial condition, assets and liabilities, and the repayment of the Obligations and (ii) it shall timely pay all reasonable fees and out-of-pocket costs incurred by the Administrative Agent in connection with its retention of Huron Consulting and any other advisors retained by the Administrative Agent.

6.24 Conditions Subsequent to Closing. Not later than ten (10) Business Days after the Closing Date (or such later date as the Administrative Agent may designate in writing), the Borrower shall deliver to the Administrative Agent, in form and substance satisfactory to the Administrative Agent:

- (a) executed counterparts of the Security Agreement;
- (b) as each Lender may request, a Note evidencing the Loans hereunder;
- (c) for each Guarantor, executed counterparts of its applicable Guaranty; and
- (d) such other Collateral Documents as are necessary to perfect the Liens granted to the Administrative Agent hereunder.

ARTICLE VII NEGATIVE COVENANTS

So long as any Lender shall have any Commitment hereunder or any Loan or other Obligation hereunder shall remain unpaid or unsatisfied, no Loan Party shall, nor shall it permit any Subsidiary to, directly or indirectly:

7.01 Liens.

Create, incur, assume or suffer to exist any Lien upon any of its property, assets or revenues, whether now owned or hereafter acquired, other than the following:

- (a) Liens pursuant to any Loan Document;
- (b) Liens existing on the Closing Date and listed on Schedule 7.01 of the Prepetition Credit Agreement (as exists on the Closing Date) and any renewals, modifications or extensions thereof and any Lien granted as a replacement or substitute therefor; provided that (i) such Lien shall not apply to any other property or asset of the Borrower or any Subsidiary, (ii) the amount secured or benefited thereby is not increased, and (iii) any renewal, modification or extension of the obligations secured or benefited thereby is permitted by Section 7.02(e);
- (c) Liens for *ad valorem* property taxes not yet due or Liens for taxes which are being contested in good faith and by appropriate proceedings diligently conducted, if adequate

reserves with respect thereto are maintained on the books of the applicable Person in accordance with GAAP or for a tax claim for any pre-filing or straddle tax period, the nonpayment of which is permitted or required by the Bankruptcy Code;

(d) carriers', warehousemen's, mechanics', materialmen's, repairmen's or other like Liens arising in the ordinary course of business which are not overdue for a period of more than 60 days or which are being contested in good faith and by appropriate proceedings diligently conducted (which proceedings have the effect of preventing the forfeiture or sale of the property or assets subject to any such Lien), if adequate reserves with respect thereto are maintained on the books of the applicable Person in accordance with GAAP;

(e) pledges or deposits in the ordinary course of business in connection with workers' compensation, unemployment insurance and other social security legislation, other than any Lien imposed by ERISA;

(f) deposits to secure the performance of bids, trade contracts and leases (other than Indebtedness), statutory obligations, surety and appeal bonds, performance bonds and other obligations of a like nature incurred in the ordinary course of business;

(g) easements, rights-of-way, restrictions and other similar encumbrances affecting real property which, in the aggregate, are not substantial in amount, and which do not in any case materially detract from the value of the property subject thereto or materially interfere with the ordinary conduct of the business of the applicable Person;

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

(i) Prepetition Permitted Liens;

(j) Liens granted on Warehouse Settlement Payments for purposes of facilitating funding of partially funded solar loans to installers in the ordinary course of business;

(k) Liens on assets or property of, or Equity Interests issued by, Subsidiaries securing Indebtedness of such Subsidiaries permitted to be incurred pursuant to Section 7.02(g);

(l) (i) Dispositions of assets not prohibited by Section 7.05 and in connection therewith, customary rights and restrictions contained in agreements relating to such Dispositions pending the completion thereof, or in the case of a license, during the term thereof and (ii) any option or other agreement to Dispose any asset not prohibited by Section 7.05;

(m) in the case of (A) any Subsidiary that is not a Wholly Owned Subsidiary or (B) the Equity Interests in any Person that is not a Subsidiary, any encumbrance or restriction, including any put and call arrangements, related to Equity Interests in such Subsidiary or such other Person set forth in the Organization Documents of such Subsidiary or such other Person or any related joint venture, shareholders' or similar agreement;

(n) licenses, sublicenses, leases or subleases granted to other Persons permitted under Section 7.05;

(o) Liens on earnest money deposits of cash or cash equivalents made, or escrow or similar arrangements entered into, in connection with any Investment permitted pursuant to Section 7.03 or other acquisitions not prohibited hereunder;

(p) any interest or title of a lessor or sublessor under leases or subleases entered into by the Borrower or any of its Subsidiaries in the ordinary course of business;

(q) [reserved];

(r) Liens that are contractual rights of set-off (i) relating to the establishment of depository relations with banks or other financial institutions not given in connection with the incurrence of Indebtedness, (ii) relating to pooled deposit or sweep accounts of the Borrower or any Subsidiary to permit satisfaction of overdraft or similar obligations incurred in the ordinary course of business of the Borrower or its Subsidiaries or (iii) relating to purchase orders and other agreements entered into with customers of the Borrower or any Subsidiary in the ordinary course of business;

(s) Liens arising from precautionary Uniform Commercial Code financing statement filings;

(t) any zoning or similar law or right reserved to or vested in any Governmental Authority to control or regulate the use of any real property that does not materially interfere with the ordinary conduct of the business of the Borrower or any Subsidiary; and

(u) Liens on specific items of inventory or other goods and the proceeds thereof securing such Person's obligations in respect of documentary letters of credit issued for the account of such Person to facilitate the purchase, shipment or storage of such inventory or goods;

(v) Liens on deposit accounts and electronic vaults opened in the name of Borrower in its capacity as servicer, the contents of which are held for the benefit of other Parties;

(w) Liens securing Indebtedness permitted under Section 7.02(h); provided that (i) such Liens do not at any time encumber any property other than the property financed by such Indebtedness and (ii) the Indebtedness secured thereby does not exceed the cost or fair market value, whichever is lower, of the property being acquired on the date of acquisition;

(x) Liens securing obligations under Swap Contracts permitted by Section 7.02(a);

(y) other Liens securing Indebtedness in an aggregate amount not to exceed, at anytime outstanding, \$100,000; and

(z) such other Liens with the prior written consent of the Administrative Agent (in its sole discretion).

7.02 Indebtedness.

Create, incur, assume or suffer to exist any Indebtedness, except:

(a) obligations (contingent or otherwise) existing or arising under any Swap Contract, provided that such obligations are (or were) entered into by such Person in the ordinary course of business and not for speculative purposes;

(b) the Prepetition Obligations;

(c) Indebtedness of a Subsidiary of the Borrower owed to the Borrower, which Indebtedness shall be otherwise permitted under the provisions of Section 7.03 (other than Section 7.03(e));

(d) Indebtedness under the Loan Documents;

(e) Indebtedness outstanding on the Closing Date and listed on Schedule 7.02 of the Prepetition Credit Agreement (as exists on the Closing Date);

(f) [reserved];

(g) Indebtedness (i) arising under repurchase agreements in connection with asset backed securitizations including Warehouse Settlement Payments, (ii) of a Securitization Subsidiary or other Subsidiary consisting of asset based warehouse lines of credit or term facilities, or (iii) arising under customary forward flow/loan sale transactions and/or bank origination partnership program transactions, in the case of each of clause (i), (ii), and (iii) entered into by Borrower in the ordinary course of business in arm's length transactions with Persons other than Borrower's Affiliates and agreed to in writing by Administrative Agent in its sole and absolute discretion;

(h) Indebtedness in respect of Capital Leases, Synthetic Lease Obligations and purchase money obligations for fixed or capital assets within the limitations set forth in Section 7.01(w); provided, however, that the aggregate amount of all such Indebtedness at any one time outstanding shall not exceed \$50,000;

(i) Indebtedness (i) under warranty or contractual service obligations, letters of credit provided for operating purposes or to secure office leases, payment (other than for payment of Indebtedness) and completion guarantees, indemnity, bid and performance bonds, surety bonds, release, appeal and similar bonds, or (ii) with respect to workers' compensation claims, payment obligations in connection with health or other types of social security benefits, unemployment or other insurance obligations, reclamation and statutory obligations in each case incurred in the ordinary course of business and, in each case, any letter of credit obtained to satisfy or secure such Indebtedness;

(j) reimbursement obligations incurred, and customer advances or deposits received, in the ordinary course of business;

(k) Indebtedness in respect of treasury or cash management services, including deposit accounts, overnight draft, credit cards, debit cards, pcards (including purchasing cards and commercial cards), funds transfer, automated clearinghouse, zero balance accounts, returned check concentration, controlled disbursement, lockbox, account reconciliation and reporting and trade finance services and other cash management services in the ordinary course of business;

(l) [reserved]; and

(m) such other Indebtedness with the prior written consent of the Administrative Agent (in its sole discretion).

Notwithstanding anything contained in this Section 7.02, in no event shall this Section 7.02 permit any Charged Off Assets Separation Transaction, unless approved by the Administrative Agent in its sole discretion.

7.03 Investments.

Make or hold any Investments, except:

(a) Investments held by the Loan Parties in the form of Cash Equivalents in the ordinary course of the Loan Parties' business; provided, that any such Investment held by a Subsidiary of the Loan Parties that is not a Loan Party, shall not exceed the amount necessary to maintain compliance with the covenants of a Securitization Subsidiary or other Subsidiary or joint venture formed for the purpose of obtaining asset based warehouse lines of credit and term facilities permitted by Section 7.02(g), or arising under customary forward flow/loan sale transactions and/or bank origination partnership programs entered into by Loan Parties in the ordinary course of business;

(b) Investments, approved by Administrative Agent in its sole and absolute discretion, consisting of (i) capital contributions to a Securitization Subsidiary or other Subsidiary or joint venture formed for the purpose of obtaining asset based warehouse lines of credit and term facilities permitted by Section 7.02(g), or (ii) arising under customary forward flow/loan sale transactions and/or bank origination partnership programs entered into by Borrower in the ordinary course of business; provided, that any such Investment into a Subsidiary of the Borrower that is not a Loan Party, shall not exceed the amount necessary to maintain compliance with the covenants of a Securitization Subsidiary or other Subsidiary or joint venture formed for the purpose of obtaining asset based warehouse lines of credit and term facilities permitted by Section 7.02(g), or arising under customary forward flow/loan sale transactions and/or bank origination partnership programs entered into by Borrower in the ordinary course of business;

(c) (i) Investments by the Borrower and its Subsidiaries in their respective Subsidiaries outstanding on the Closing Date and (ii) additional Investments by the Borrower and its Subsidiaries in Loan Parties;

(d) Investments consisting of extensions of credit in the nature of accounts receivable or notes receivable arising from the grant of trade credit in the ordinary course of business, including advances made to channel partners, and Investments received in satisfaction or partial satisfaction thereof;

(e) [reserved];

(f) Investments existing on the Closing Date (other than those referred to in Section 7.03(c)(i)) and set forth on Schedule 7.03;

(g) [reserved]

(h) [reserved]

(i) Investments consisting of extensions of credit to the customers of the Borrower or of any of its Subsidiaries in the nature of accounts receivable, prepaid royalties, or notes receivable, arising from the grant of trade credit or licensing activities of the Borrower or such Subsidiary, in each case in the ordinary course of business;

(j) [reserved];

(k) non-exclusive licenses of IP Rights;

(l) Investments consisting of repurchase obligations existing on the Closing Date and set forth on Schedule 7.03;

(m) Investments consisting of UCC Article 3 endorsements of negotiable instruments for deposit or collection or similar transactions in the ordinary course of business;

(n) Investments by the Borrower in Swap Contracts permitted under Section 7.02(a);

(o) Investments consisting of advances to employees of Borrower not exceeding \$25,000 in the aggregate in any fiscal year of the Borrower;

(p) [reserved]; and

(q) such other Investments with the prior written consent of the Administrative Agent (in its sole discretion).

Notwithstanding anything contained in this Section 7.03, in no event shall this Section 7.03 permit any Charged Off Assets Separation Transaction and/or any Investment by the Borrower and/or its Subsidiaries in their respective Subsidiaries which could reasonably be expected to be financed by an Affiliate of the Borrower, in each case, unless approved by the Administrative Agent in its sole discretion.

7.04 Fundamental Changes.

Merge, dissolve, liquidate, consolidate with or into another Person, or 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 (including, in each case, pursuant to an LLC Division or any comparable transaction under any similar law), except that:

(a) [reserved];

(b) any Subsidiary may Dispose of all or substantially all of its assets (upon voluntary liquidation or otherwise) to the Borrower or to another Loan Party (excluding any

Dispositions that could reasonably be expected to be adverse to the interests of Borrower and/or any Lender);

(c) any Subsidiary that is not a Loan Party may dispose of all or substantially all its assets (including any Disposition that is in the nature of a liquidation) to a Loan Party (excluding any Dispositions that could reasonably be expected to be adverse to the interests of Borrower and/or any Lender);

(d) [reserved];

(e) [reserved]; and

(f) the Borrower and any of its Subsidiaries may make Dispositions permitted by Section 7.05.

7.05 Dispositions.

Make any Disposition, except, to the extent constituting a “Disposition”, the making of a Warehouse Settlement Payment for purposes of facilitating funding of partially funded solar loans to installers in the ordinary course of business and the following Dispositions approved by Administrative Agent in its sole and absolute discretion:

(a) Dispositions of cash, cash equivalents, and inventory in the ordinary course of business, so long as 100% of the consideration received in respect of such Disposition is cash or cash equivalents;

(b) Dispositions of property to any Loan Party;

(c) non-exclusive licenses of IP Rights, so long as 100% of the consideration received in respect of such Disposition is cash or cash equivalents;

(d) (i) Dispositions made in connection with forward flow/loan sale and/or bank program agreements in the ordinary course and (ii) Dispositions made in connection with repurchase facilities on customary terms, in the case of clause (i) so long as 100% of the consideration received in respect of such Disposition is cash or cash equivalents;

(e) the Disposition or termination of any Swap Contract, so long as 100% of the consideration received in respect of such Disposition is cash or cash equivalents; and

(f) such other Disposition with the prior written consent of the Administrative Agent (in its sole discretion).

provided, however, that any Disposition pursuant to Section 7.05(e) shall be for not less than Fair Market Value.

Notwithstanding anything contained in this Section 7.05, in no event shall this Section 7.05 permit any Charged Off Assets Separation Transaction, unless approved by the Administrative Agent in its sole discretion.

7.06 Restricted Payments.

Declare or make, directly or indirectly, any Restricted Payment, except that:

- (a) each Subsidiary may make Restricted Payments to the Borrower and any Subsidiaries of the Borrower that are Guarantors;
- (b) [reserved]; and
- (c) the Borrower may make Permitted Tax Distributions.

7.07 Change in Nature of Business.

Engage in any material line of business substantially different from those lines of business conducted by the Borrower and its Subsidiaries on the Closing Date or any business substantially related or incidental thereto, not including lines of business which are a reasonable extension of Borrower's existing business, in each case, except as contemplated by the Orders.

7.08 Transactions with Affiliates.

Enter into any transaction of any kind with any Affiliate of the Borrower unless approved by Administrative Agent in its sole and absolute discretion.

7.09 Burdensome Agreements.

Enter into or permit to exist any Contractual Obligation (other than this Agreement or any other Loan Document) that limits the ability (i) of any Subsidiary to make Restricted Payments to the Borrower or any Guarantor or to otherwise transfer property to or invest in the Borrower or any Guarantor, (ii) of any Subsidiary to Guarantee the Indebtedness of the Borrower or (iii) of the Borrower or any Subsidiary to create, incur, assume or suffer to exist Liens on property of such Person; provided, however, that the foregoing shall not apply to:

- (a) restrictions and conditions imposed by Law or by any Loan Document;
- (b) restrictions and conditions existing on the Closing Date identified on Schedule 7.09 and any amendments or modifications thereof that do not materially expand the scope of any such restriction or condition taken as a whole;
- (c) restrictions and conditions imposed by agreements of any Subsidiary in existence at the time such Subsidiary became a Subsidiary (and not entered into in contemplation thereof) and any amendments or modifications thereof that do not materially expand the scope of any such restriction or condition taken as a whole, provided that such restrictions and conditions apply only to such Subsidiary;
- (d) customary restrictions and conditions contained in agreements relating to the sale of a Subsidiary pending such sale, provided such restrictions and conditions apply only to the Subsidiary (or the Equity Interests thereof) that is to be sold and such sale is permitted hereunder;

(e) restrictions imposed by any amendment or refinancings that are otherwise permitted by the Loan Documents; provided that such amendments or refinancings do not expand the scope of any such restriction or condition;

(f) any restriction arising under or in connection with any agreement or instrument governing Equity Interests of any joint venture or Person that is not a Subsidiary;

(g) customary restrictions and conditions contained in any agreement (including leases, subleases, licenses, sublicenses) relating to the Disposition of any property permitted by Section 7.05;

(h) customary provisions restricting the transfer or encumbrance of the specific property subject to a Lien permitted by Section 7.01;

(i) [reserved]; and

(j) restrictions on cash or other deposits (including escrowed funds) or net worth imposed under contracts entered into in the ordinary course of business.

Notwithstanding anything contained in this Section 7.08, in no event shall this Section 7.08 permit any Charged Off Assets Separation Transaction, unless approved by the Administrative Agent in its sole discretion.

7.10 Use of Proceeds.

(a) Use the proceeds of any Credit Extension, whether directly or indirectly, and whether immediately, incidentally or ultimately, to purchase or carry margin stock (within the meaning of Regulation U of the FRB) or to extend credit to others for the purpose of purchasing or carrying margin stock or to refund Indebtedness originally incurred for such purpose, in each case in contravention of Regulation U.

(b) Directly or indirectly, use the proceeds of any Credit Extension, or lend, contribute or otherwise make available such proceeds to any Subsidiary, joint venture partner or other individual or entity, to fund any activities of or business with any individual or entity, or in any Designated Jurisdiction, that, at the time of such funding, is the subject of OFAC Sanctions Programs, or in any other manner that will result in a violation by an individual or entity (including any individual or entity participating in the transaction, whether as Lender, Administrative Agent or otherwise) of OFAC Sanctions Programs.

(c) Directly or indirectly use the proceeds of any Credit Extension for any purpose which would breach the United States Foreign Corrupt Practices Act of 1977, the UK Bribery Act 2010, and other similar anti-corruption legislation in other jurisdictions.

(d) Use the proceeds of the Credit Extensions other than (i) to pay fees and expenses payable under this Agreement or any of the other Loan Documents to the Post-Petition Secured Parties and counsel to the Administrative Agent and the Lenders, (ii) for their working capital needs and for other general corporate purposes not in contravention of any Law or of any Loan Document, (iii) to pay for costs and expenses during the Cases, (iv) for the payment of

other obligations during the Cases, and (v) for the payment of other obligations of the Debtors prior to the Petition Date as the Administrative Agent and the Lenders shall reasonable agree and the Bankruptcy Court shall approve, in each case, to the extent such use of proceeds is not otherwise prohibited under the terms of this Agreement or inconsistent with the Approved Budget (subject to the Budget Variance) and the terms of the Interim Order and the Final Order, as applicable.

7.11 Amendments of Organization Documents.

Amend any of its Organization Documents in a manner materially adverse to the interests of the Lenders.

7.12 Amendment, Etc. of Indebtedness.

Amend, modify or change in any manner any term or condition of any Subordinated Indebtedness, subject to the prior written consent of the Administrative Agent.

7.13 Solar Loans. Permit Borrower from originating and/or selling solar loans.

7.14 Formation of New Subsidiaries. Form any new Subsidiary without the prior written consent of the Administrative Agent in its sole and absolute discretion.

7.15 Budget Variance Covenant With respect to any Variance Testing Period, permit (in each case tested on the date on which the Borrower delivers a Variance Report pursuant to Section 6.17):

(a) the negative variance (as compared to the Approved Budget) of the aggregate cash receipts of the Borrower and its consolidated Restricted Subsidiaries for such Variance Testing Period to exceed 15.0%; and

(b) the positive variance (as compared to the Approved Budget) of aggregate operating disbursements made by the Borrower and its Subsidiaries for such Variance Testing Period to exceed 15.0%.

The permitted variances set forth above shall be referred to herein as the “Budget Variances”. Notwithstanding anything to the contrary contained herein, (i) no Budget Variance is permitted with respect to the minimum Liquidity set forth in the Approved Budget and (ii) (A) Warehouse Settlement Payments from Warehouse Lenders and (B) the professional fees paid by the Debtors shall not be subject to the budget variance covenants set forth in this Section 7.15.

7.16 Immaterial Subsidiaries. Notwithstanding anything to the contrary herein, Disposing into, Investing into, utilizing, capitalizing, contributing, funding, transferring, or entering into, amending or modifying any other transaction or agreement (other than the dissolution of any existing financing and security agreements of non-Loan Parties where assets are immediately transferred to the Borrower) with MFX, MFXI, Modern Homes LLC, and/or Modern Home Funding II LLC without the prior written consent of Administrative Agent in its sole discretion.

7.17 MFX and MFXI. Notwithstanding anything to the contrary herein, make any Disposition or Investments into MFX and/or MFXI, or permit MFX and/or MFXI to Dispose of any of their assets without the approval of Administrative Agent in its sole discretion.

ARTICLE VIII EVENTS OF DEFAULT AND REMEDIES

8.01 Events of Default.

Any of the following shall constitute an event of default (each, an “Event of Default”):

(a) Non-Payment. The Borrower or any other Loan Party fails to (i) pay when and as required to be paid herein, any amount of principal of any Loan, or (ii) pay within 3 Business Days after the same becomes due, any interest on any Loan, any fee due hereunder, or any other amount payable hereunder or under any other Loan Document; or

(b) Specific Covenants. (i) The Borrower fails to perform or observe any term, covenant or agreement contained in any of Section 6.01, 6.02, 6.03, 6.05, 6.07, 6.10, 6.12, 6.14, 6.17, 6.19, 6.20, 6.21, 6.22, and 6.23 or Article VII or (ii) any of the Guarantors fails to perform or observe any term, covenant or agreement contained in the Guaranty and such failure continues for 5 Business Days after the Borrower has knowledge thereof or has received notice thereof from the Administrative Agent;

(c) Other Defaults. Any Loan Party fails to perform or observe any other covenant or agreement (not specified in Section 8.01(a) or (b) above) contained in any Loan Document on its part to be performed or observed and such failure continues for 10 days after the Borrower has received notice thereof from the Administrative Agent or Borrower otherwise obtains actual knowledge of such failure; or

(d) Representations and Warranties. Any representation, warranty, certification or statement of fact made or deemed made by or on behalf of the Borrower or any other Loan Party herein, in any other Loan Document, or in any document delivered in connection herewith or therewith that is subject to materiality or Material Adverse Effect qualifications, shall be incorrect or misleading in any respect when made or deemed made or any representation, warranty, certification or statement of fact made or deemed made by or on behalf of any Loan Party in this Agreement, any other Loan Document, or in any document delivered in connection herewith or therewith that is not subject to materiality or Material Adverse Effect qualifications, shall be incorrect or misleading in any material respect when made or deemed made; or

(e) Cross-Default. (i) Any Loan Party or any Subsidiary (other than a Securitization Subsidiary) thereof (A) fails to make any payment when due (whether by scheduled maturity, required prepayment, acceleration, demand, or otherwise, but subject to any applicable cure period) in respect of any Indebtedness or Guarantee (other than Indebtedness hereunder and Indebtedness under Swap Contracts) having an aggregate principal amount (including undrawn committed or available amounts and including amounts owing to all creditors under any combined or syndicated credit arrangement) of more than the Threshold Amount, or (B) fails to observe or perform any other agreement or condition relating to any such

Indebtedness or Guarantee or contained in any instrument or agreement evidencing, securing or relating thereto, or any other event occurs, the effect of which default or other event is to cause, or to permit the holder or holders of such Indebtedness or the beneficiary or beneficiaries of such Guarantee (or a trustee or agent on behalf of such holder or holders or beneficiary or beneficiaries) to cause, with or without the giving of notice but without further passage of time, such Indebtedness to be demanded or to become due or to be repurchased, prepaid, defeased or redeemed (automatically or otherwise), or an offer to repurchase, prepay, defease or redeem such Indebtedness to be made, prior to its stated maturity, or such Guarantee to become payable or cash collateral in respect thereof to be demanded, and such default or failure is not cured prior to the acceleration of such Indebtedness; *provided, however*, that such cure period may be extended by the Administrative Agent in its sole discretion if such default is being legitimately disputed by the Borrower and it has established adequate reserves therefor; or (ii) there occurs under any Swap Contract an Early Termination Date (as defined in such Swap Contract) resulting from (A) any event of default under such Swap Contract as to which a Loan Party or any Subsidiary thereof is the Defaulting Party (as defined in such Swap Contract) or (B) any Termination Event (as so defined) under such Swap Contract as to which a Loan Party or any Subsidiary thereof is an Affected Party (as so defined) and, in either event, the Swap Termination Value owed by such Loan Party or such Subsidiary as a result thereof is greater than the Threshold Amount; or

(f) Bankruptcy Defaults.

(i) Entry of the Interim Order or Final Order in form and substance that is not acceptable to the Administrative Agent;

(ii) The failure by any Debtor to be in compliance in all respects with provisions of the Interim Order and Final Order;

(iii) Any request is made by the Debtors for, or the reversal, modification, amendment, stay, reconsideration or vacatur of the Interim Order and Final Order, as entered by the Bankruptcy Court, without the prior written consent of the Administrative Agent;

(iv) The failure of the Debtors to satisfy any of the Milestones;

(v) The filing of any application by the Debtors (other than the application for financing provided by a third party which seeks authority to repay the Obligations in full in cash upon entry of the order approving such financing) for the approval of (or an order is entered by the Bankruptcy Court approving) any claim arising under Section 507(b) of the Bankruptcy Code or any other provision of the Bankruptcy Code or any security, mortgage, collateral interest or other lien in the Cases which is *pari passu* with or senior to the Liens, excluding liens arising under the Interim Order and Final Order or pursuant to any other financing agreement made with the prior written consent of the Administrative Agent and each Lender;

(vi) The commencement of any action by the Debtors (other than an action permitted by the Interim Order and Final Order) against any of the Administrative Agent or any Lender or any of their agents and employees to subordinate or avoid any liens made in connection with the Interim Order and Final Order;

(vii) (1) The Debtors file a pleading in any court seeking or supporting an order to revoke, reverse, stay, vacate, amend, supplement or otherwise modify Interim Order and Final Order or the Loan Documents, or to disallow the Obligations, in whole or in part, or (2) any material provision of the Interim Order and Final Order or the Loan Documents, or any other order of the Bankruptcy Court approving the Debtors' use of Cash Collateral, shall for any reason cease to be valid and binding (without the prior written consent of the Administrative Agent and each Lender);

(viii) Any Debtor files with the Bankruptcy Court a motion seeking approval of a sale under Section 363 or a plan of reorganization or liquidation in the Cases that, in any such case, does not provide for indefeasible payment in full in cash to the Administrative Agent and the Lenders of the Loans and all other amounts outstanding under the Loan Documents and the Interim Order and Final Order on closing of such sale or the effective date of such plan, without the prior written consent of the Administrative Agent and each Lender;

(ix) The appointment in the Cases of a trustee, receiver, examiner, or responsible officer with enlarged powers relating to the operation of the business of the Debtors (powers beyond those set forth in sections 1106(a)(3) and (a)(4) of the Bankruptcy Code);

(x) The granting of relief from the automatic stay by the Bankruptcy Court to any other creditor or party in interest in the Cases with respect to any portion of the Collateral exceeding \$1,000,000 in value in the aggregate;

(xi) The payment of, or application by the Debtors for authority to pay, any prepetition claim without prior written consent of the Administrative Agent other than amounts set forth in the Approved Budget (subject to any Budget Variances);

(xii) The failure to comply with the Approved Budget, including but not limited to the minimum Liquidity requirement at all times as set forth therein (subject to any Budget Variances); and

(xiii) The Roll-Up Loans are not effectuated within thirty (30) days of the Petition Date; or

(g) [Reserved].

(h) Judgments. There is entered against any Loan Party or any Subsidiary thereof one or more final judgments or orders for the payment of money in an aggregate amount (as to all such judgments and orders) exceeding the Threshold Amount (to the extent not covered by independent third-party insurance as to which the insurer is rated at least "A" by A.M. Best Company, has been notified of the potential claim and does not dispute coverage) and there is a period of 30 consecutive days during which a stay of enforcement of such judgment, by reason of a pending appeal or otherwise, is not in effect; or

(i) ERISA. (i) An ERISA Event occurs with respect to a Pension Plan or Multiemployer Plan which has resulted or could reasonably be expected to result in liability of the Borrower to the Pension Plan, Multiemployer Plan or the PBGC in an aggregate amount in excess of the Threshold Amount, or (ii) the Borrower or any ERISA Affiliate fails to pay when

due, after the expiration of any applicable grace period, any installment payment with respect to its withdrawal liability under Section 4201 of ERISA under a Multiemployer Plan which has resulted or could reasonably be expected to result in liability of the Borrower in an aggregate amount in excess of the Threshold Amount; or

(j) Invalidity of Loan Documents. Any material provision of any Loan Document, at any time after its execution and delivery and for any reason other than as expressly permitted hereunder or thereunder or satisfaction in full of all the Obligations, ceases to be in full force and effect other than in accordance with its terms; or any Loan Party or any other Person contests in writing in any manner the validity or enforceability of any provision of any Loan Document (other than as a result of the satisfaction in full of the Obligations and exclusive of questions of interpretation of any provision thereof); or any Loan Party denies in writing that it has any or further liability or obligation under any provision of any Loan Document, or purports in writing to revoke, terminate or rescind any provision of any Loan Document (other than as a result the satisfaction in full of the Obligations); or

(k) Change of Control. There occurs any Change of Control.

8.02 Remedies upon Event of Default

(a)

(i) Upon the occurrence of and during the continuance of an Event of Default, subject to (x) the delivery by Administrative Agent to any Loan Party of a notice of Administrative Agent's intent to exercise rights and remedies on at least five (5) Business Days' notice (such notice not to be required in the case of exigent circumstances) and (y) the terms of the DIP Orders (that, for avoidance of doubt, shall control in the event of any conflict between the terms of this Section 8.02 and the DIP Orders), (i) without further order of or application to the Bankruptcy Court, and notwithstanding the automatic stay, the Administrative Agent and Lenders shall no longer have any obligation to make any Advances (or otherwise extend credit, except as provided in the DIP Orders in respect of the Carve-Out); (ii) without further order of or application to the Bankruptcy Court, and notwithstanding the automatic stay, all amounts outstanding under this Agreement and the other Loan Documents shall, at the option of the Administrative Agent, be accelerated and become immediately due and payable; (iii) the Administrative Agent and the Prepetition Agent shall, subject to the terms of the DIP Orders, be entitled to immediately terminate each Debtor's right to use Cash Collateral, without further application or order of the Bankruptcy Court, provided, however, that, subject to the terms of the DIP Orders, such Debtor shall have the right to use Cash Collateral to pay their weekly ordinary course payroll included in the Approved Budget through and including the date immediately following the date on which such Event of Default occurs, (iv) each Debtor shall be bound by all post-default restrictions, prohibitions, and other terms as provided in the Interim Order, this Agreement, the other Loan Documents, the Prepetition Credit Agreement and the Prepetition Loan Documents, (v) the Administrative Agent shall be entitled to charge the Default Rate of interest under the Credit Agreement and (vi) subject only to (x) the notice requirement set forth in Section 8.02(b) below and (y) the Interim Order or Final Order, as applicable, both the Administrative Agent and the Prepetition Agent shall be entitled to take any other act or exercise any other right or remedy as provided in this Agreement, the other Loan Documents, the Prepetition Credit Agreement, the Prepetition Loan Documents, or

applicable law, including, without limitation, setting off any Obligations or the outstanding Prepetition Obligations (if any) with Collateral, Prepetition Collateral or proceeds in the possession of any Prepetition Secured Party or Lender, and enforcing any and all rights and remedies with respect to the Collateral or Prepetition Collateral, as applicable.

(ii) During the continuance of any Event of Default, and subject in all respects to the terms of the DIP Orders, the Administrative Agent shall have the right to exercise any and all rights and remedies provided for herein, under the other Loan Documents, under the UCC, under the terms of the Collateral Documents and at law or equity generally, including the right to foreclose the security interests granted under the Loan Documents and to realize upon any Collateral by any available judicial procedure and/or to take possession of and sell any or all of the Collateral with or without judicial process. Administrative Agent may enter any of any Loan Party's premises or other premises without legal process and without incurring liability to any Loan Party therefor, and Administrative Agent may thereupon, or at any time thereafter, in its discretion without notice or demand, take the Collateral and remove the same to such place as Administrative Agent may deem advisable and Administrative Agent may require any or each of Loan Parties to make the Collateral available to Administrative Agent at a convenient place. During the continuance of an Event of Default, and subject in all respects to the terms of the DIP Orders, with or without having the Collateral at the time or place of sale, Administrative Agent may sell the Collateral, or any part thereof, at public or private sale, at any time or place, in one or more sales, at such price or prices, and upon such terms, either for cash, credit or future delivery, as Administrative Agent may elect. Except as to that part of the Collateral which is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market, Administrative Agent shall give any or each of the Loan Parties reasonable notification of such sale or sales, it being agreed that in all events written notice mailed to Borrower at least ten (10) days prior to such sale or sales is reasonable notification. At any public sale Administrative Agent or any Lender may bid (including credit bid) for and become the purchaser, and Administrative Agent, any Lender or any other purchaser at any such sale thereafter shall hold the Collateral sold absolutely free from any claim or right of whatsoever kind, including any equity of redemption and all such claims, rights and equities are hereby expressly waived and released by each Loan Party (notwithstanding the last sentence of this paragraph). Notwithstanding the last sentence of this paragraph, in connection with the exercise of the foregoing remedies, including the sale of inventory, Administrative Agent is granted a perpetual nonrevocable, royalty free, nonexclusive license and Administrative Agent is granted permission to use all of each Loan Party's (a) intellectual property which is used or useful in connection with inventory for the purpose of marketing, advertising for sale and selling or otherwise disposing of such Inventory and (b) equipment for the purpose of completing the manufacture of unfinished goods. The cash proceeds realized from the sale of any Collateral shall be applied to the Obligations in the order set forth in Section 8.03 hereof. Noncash proceeds will only be applied to the Obligations as they are converted into cash. Notwithstanding the last sentence of this paragraph, if any deficiency shall arise, Loan Parties shall remain liable to Administrative Agent and Lenders therefor. Except as expressly provided herein, this clause (ii) shall not apply to a Loan Party that is a Debtor.

(b) Subject to (x) the delivery by Administrative Agent to any Loan Party of a notice of Administrative Agent's intent to exercise rights and remedies, (y) the filing by Administrative Agent of a motion seeking emergency relief from the automatic stay on at least three (3) Business Days' notice (such notice not to be required in the case of exigent

circumstances) and (z) the Interim Order and, upon entry, the Final Order, upon the occurrence and during the continuance of an Event of Default, subject to any notice period set forth in the Interim Order or the Final Order (which notice period only applies to the Collateral enforcement remedies described below) to counsel for the Debtors, counsel for any Committee, the U.S. Trustee, the Administrative Agent for the benefit of itself and the Lenders, and the Prepetition Agent, for the benefit of itself and the other Prepetition Secured Parties, as applicable, shall be entitled to take any action and exercise all rights and remedies provided to them by the Interim Order, this Agreement, the other Loan Documents or the Prepetition Loan Documents, or applicable law, unless otherwise ordered by the Bankruptcy Court, as the Administrative Agent or the Prepetition Agent, as applicable, may deem appropriate in their sole discretion to, among other things, proceed against and realize upon the Collateral (including the Prepetition Collateral) or any other assets or properties of the Loan Parties or the Debtors' estate upon which the Administrative Agent, for the benefit of itself and the Lenders, and the Prepetition Agent, for the benefit of itself and the other Prepetition Secured Parties, has been or may hereafter be granted liens or security interests to obtain the full and indefeasible payment of all the Prepetition Obligations and Post-Petition Obligations. Notwithstanding the foregoing or anything in Section 8.02(a) above, Administrative Agent may continue to apply proceeds received into the lockbox or collection account to reduce the Post-Petition Obligations (and after the payment in full of the Post-Petition Obligations, the Prepetition Obligations) in any order at the sole discretion of the Administrative Agent during any notice period set forth in the Interim Order or the Final Order. During such notice period set forth in the Interim Order or the Final Order, either or both the Debtors and the Committee shall be entitled to seek an emergency hearing with the Bankruptcy Court (at which hearing the sole issue shall be whether or not an Event of Default has occurred or is continuing).

(c) Additionally, upon the occurrence and during the continuance of an Event of Default and the exercise by Administrative Agent or the Prepetition Agent of their respective rights and remedies under the Interim Order, the Credit Agreement, the other Loan Documents, the Prepetition Credit Agreement or the Prepetition Loan Documents, provided that the Debtors and the Administrative Agent agree upon a mutually acceptable wind down budget, each Loan Party shall cooperate with the Administrative Agent in the exercise of rights and remedies and assist the Administrative Agent in effecting any sale or other disposition of the Collateral required by the Administrative Agent, including any sale of Collateral pursuant to Bankruptcy Code section 363 or assumption and assignment of Collateral consisting of contracts and leases pursuant to Bankruptcy Code section 365, in each case, upon such terms that are acceptable to the Administrative Agent.

(d) Subject to (x) the delivery by Administrative Agent to any Loan Party of a notice of Administrative Agent's intent to exercise rights and remedies, (y) the filing by Administrative Agent of a motion seeking emergency relief from the automatic stay on at least three (3) Business Days' notice (such notice not to be required in the case of exigent circumstances) and (z) the Interim Order and, upon entry, the Final Order, in connection with a liquidation of any of the Collateral, the Administrative Agent (or any of its employees, agents, consultants, contractors, or other professionals) shall have the right, at the sole cost and expense of the Loan Parties, to: (i) enter upon, occupy, and use any real or personal property, fixtures, equipment, leasehold interests, or warehouse arrangements owned or leased by any Loan Party; provided, however, the Administrative Agent may only be permitted to do so in accordance with

(a) existing rights under applicable non-bankruptcy law, including, without limitation, applicable leases, (b) any Prepetition (and, if applicable, post-petition) landlord waivers or consents, or (c) further order of the Bankruptcy Court on motion and notice appropriate under the circumstances; and (ii) use any and all trademarks, tradenames, copyrights, licenses, patents, equipment or any other similar assets of any Loan Party, or assets which are owned by or subject to a lien of any third party and which are used by any Loan Party in its business. The Administrative Agent and Lenders will be responsible for the payment of any applicable fees, rentals, royalties, or other amounts owing to such lessor, licensor or owner of such property (other than a Loan Party) for the period of time that the Administrative Agent actually occupies any real property or uses the equipment or the intellectual property (but in no event for any accrued and unpaid fees, rentals, or other amounts owing for any period prior to the date that the Administrative Agent actually occupies or uses such assets or properties).

(e) To the extent that Applicable Law imposes duties on the Administrative Agent to exercise remedies in a commercially reasonable manner, each Loan Party acknowledges and agrees that it is not commercially unreasonable for the Administrative Agent: (i) to fail to incur expenses reasonably deemed significant by the Administrative Agent to prepare Collateral for disposition or otherwise to complete raw material or work in process into finished goods or other finished products for disposition; (ii) to fail to obtain third party consents for access to Collateral to be disposed of, or to obtain or, if not required by other law, to fail to obtain governmental or third party consents for the collection or disposition of Collateral to be collected or disposed of; (iii) to fail to exercise collection remedies against Customers or other Persons obligated on Collateral or to remove Liens on or any adverse claims against Collateral; (iv) to exercise collection remedies against Customers and other Persons obligated on Collateral directly or through the use of collection agencies and other collection specialists; (v) to advertise dispositions of Collateral through publications or media of general circulation, whether or not the Collateral is of a specialized nature; (vi) to contact other Persons, whether or not in the same business as any Loan Party, for expressions of interest in acquiring all or any portion of such Collateral; (vii) to hire one or more professional auctioneers to assist in the disposition of Collateral, whether or not the Collateral is of a specialized nature; (viii) to dispose of Collateral by utilizing internet sites that provide for the auction of assets of the types included in the Collateral or that have the reasonable capacity of doing so, or that match buyers and sellers of assets; (ix) to dispose of assets in wholesale rather than retail markets; (x) to disclaim disposition warranties, such as title, possession or quiet enjoyment, (xi) to purchase insurance or credit enhancements to insure the Administrative Agent against risks of loss, collection or disposition of Collateral or to provide to the Administrative Agent a guaranteed return from the collection or disposition of Collateral; or (xii) to the extent deemed appropriate by the Administrative Agent, to obtain the services of other brokers, investment bankers, consultants and other professionals to assist the Administrative Agent in the collection or disposition of any of the Collateral. Each Loan Party acknowledges that the purpose of this Section 8.02 is to provide non-exhaustive indications of what actions or omissions by Administrative Agent would not be commercially unreasonable in Administrative Agent's exercise of remedies against the Collateral and that other actions or omissions by Administrative Agent shall not be deemed commercially unreasonable solely on account of not being indicated in this Section 8.02. Without limitation upon the foregoing, nothing contained in this Section 8.02 shall be construed to grant any rights to any Loan Party or to impose any duties on the Administrative Agent that would not

have been granted or imposed by this Agreement or by Applicable Law in the absence of this Section 8.02.

(f) Notwithstanding the foregoing, following an Event of Default, the Warehouse Settlement Payments shall not be subject to the exercise of remedies by the Lenders or Administrative Agent without the consent of the applicable Warehouse Lender.

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, as provided in Section 2.05(b), or any proceeds of Collateral received by the Debtors outside the ordinary course of business), any amounts received on account of the Obligations shall (subject to the provisions of Section 2.15 and the Carve-Out), be applied by the Administrative Agent, subject to the Interim Order and the Final Order (once entered) in the following order:

First, to the payment of a cash reserve in an amount determined by Administrative Agent in its reasonable discretion, to be held by Administrative Agent as a reserve to pay for anticipated expense reimbursements or indemnification obligations due and payable hereunder, or fund Protective Advances;

Second, to payment of that portion of the Obligations constituting fees, indemnities, expenses and other amounts (including fees, charges and disbursements of counsel to the Administrative Agent and amounts payable under Article III) payable to the Administrative Agent in its capacity as such;

Third, to the payment of any Protective Advances made by the Administrative Agent and the Lenders;

Fourth, to payment of that portion of the Obligations constituting fees, indemnities and other amounts (other than principal and interest) payable to the Lenders (including fees, charges and disbursements of counsel to the respective Lenders) arising under the Loan Documents and amounts payable under Article III, ratably among them in proportion to the respective amounts described in this clause Fourth payable to them;

Fifth, to payment of that portion of the Obligations constituting accrued and unpaid interest on the Term Loans and other Obligations arising under the Loan Documents (other than the Roll-Up Loans and Prepetition Obligations) and the Exit Fee, ratably among the Lenders in proportion to the respective amounts described in this clause Fifth payable to them;

Sixth, to payment of that portion of the Obligations constituting unpaid principal of the Term Loans (other than the Roll-Up Loans and Prepetition Obligations) and the Exit Fee, ratably among the Lenders in proportion to the respective amounts described in this clause Sixth held by them;

Seventh, to payment of that portion of the Obligations constituting accrued and unpaid interest on the Roll-Up Loans, ratably among the Lenders in proportion to the respective amounts described in this clause Seventh payable to them;

Eighth, to payment of that portion of the Obligations constituting unpaid principal of the Roll-Up Loans, ratably among the Lenders in proportion to the respective amounts described in this clause Eighth held by them;

Ninth, to payment of that portion of all other Obligations (other than Prepetition Obligations), ratably among the Lenders in proportion to the respective amounts described in this clause Ninth held by them;

Tenth, to the Prepetition Agent for the payment of the Prepetition Obligations; and

Eleventh, 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

9.01 Appointment and Authority.

Each of the Lenders hereby irrevocably appoints Forbright Bank 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 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 of such provisions. It is understood and agreed that the use of the term “agent” herein or in any other Loan Documents (or any other similar term) with reference to the Administrative Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable Law. Instead such term is used as a matter of market custom, and is intended to create or reflect only an administrative relationship between contracting parties.

9.02 Rights as a Lender.

The Person serving as the 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 the Administrative Agent and the term “Lender” or “Lenders” shall, unless otherwise expressly indicated or unless the context otherwise requires, include the Person serving as the Administrative Agent hereunder in its individual capacity. Such Person and its Affiliates may accept deposits from, lend money to, own securities of, act as the financial advisor or in any other advisory capacity for and generally engage in any kind of business with the Borrower or any Subsidiary or other Affiliate thereof as if such Person were not the Administrative Agent hereunder and without any duty to account therefor to the Lenders.

9.03 Exculpatory Provisions.

The Administrative Agent shall not have any duties or obligations except those expressly set forth herein and in the other Loan Documents, and its duties hereunder shall be administrative in nature. Without limiting the generality of the foregoing, the Administrative Agent:

(a) shall not be subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing;

(b) shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by the other Loan Documents that the Administrative 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 the Administrative Agent shall not be required to take any action that, in its opinion or the opinion of its counsel, may expose the Administrative Agent to liability or that is contrary to any Loan Document or applicable law, including for the avoidance of doubt any action that may be in violation of the automatic stay under any Debtor Relief Law or that may effect a forfeiture, modification or termination of property of a Defaulting Lender in violation of any Debtor Relief Law; and

(c) shall not, except as expressly set forth herein and in the other Loan Documents, have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to the Borrower or any of its Affiliates that is communicated to or obtained by the Person serving as the Administrative Agent or any of its Affiliates in any capacity.

(d) The Administrative Agent shall not 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 a court of competent jurisdiction by a final and nonappealable judgment. 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.

(e) The Administrative Agent shall not be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with this Agreement or any other Loan Document, (ii) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or therein or the occurrence of any Default, (iv) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Loan Document or any other agreement, instrument or document or (v) the satisfaction of any condition set forth in Article IV or elsewhere herein, other than to confirm receipt of items expressly required to be delivered to the Administrative Agent.

9.04 Reliance by Administrative Agent.

The Administrative Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing (including any electronic message, Internet or intranet website posting or other distribution) believed by it to be genuine and to have been signed, sent or otherwise authenticated by the proper Person. The Administrative Agent also may rely upon any statement made to it

orally or by telephone and believed by it to have been made by the proper Person, and shall not incur any liability for relying thereon. 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.

9.05 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 Document 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 Related Parties. The exculpatory provisions of this Article shall apply to any such sub-agent and to the Related Parties 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. The Administrative Agent shall not be responsible for the negligence or misconduct of any sub-agents except to the extent that a court of competent jurisdiction determines in a final and nonappealable judgment that the Administrative Agent acted with gross negligence or willful misconduct in the selection of such sub-agents.

9.06 Resignation of Administrative Agent.

(a) The Administrative Agent may at any time give 60 days advance written notice of its resignation to the Lenders and the Borrower. Upon receipt of any such notice of resignation, the Required Lenders shall have the right, in consultation with the Borrower, to appoint a successor, which shall be a commercial bank that is organized under (i) the laws of the United States, or any State thereof and (ii) has a combined capital and surplus of at least \$150,000,000. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within 60 days after the retiring Administrative Agent gives notice of its resignation, (or such earlier day as shall be agreed by the Required Lenders) (the “Resignation Effective Date”), then the retiring Administrative Agent may (but shall not be obligated to) on behalf of the Lenders, appoint a successor Administrative Agent meeting the qualifications set forth above, provided that in no event shall any such successor Administrative Agent be a Defaulting Lender. Whether or not a successor has been appointed, such resignation shall become effective in accordance with such notice on the Resignation Effective Date.

(b) If the Person serving as Administrative Agent is a Defaulting Lender pursuant to clause (d) of the definition thereof, the Required Lenders may, to the extent permitted by applicable law, by notice in writing to the Borrower and such Person remove such Person as Administrative Agent and, in consultation with the Borrower, appoint a successor. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within 30 days (or such earlier day as shall be agreed by the Required Lenders) (the

“Removal Effective Date”), then such removal shall nonetheless become effective in accordance with such notice on the Removal Effective Date.

(c) With effect from the Resignation Effective Date or the Removal Effective Date (as applicable) (1) the retiring or removed Administrative Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents and (2) except for any indemnity payments or other amounts then owed to the retiring or removed Administrative Agent, 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, if any, as the Required Lenders appoint a successor Administrative Agent as provided for above. Upon the acceptance of a successor’s appointment as Administrative Agent hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring (or removed) Administrative Agent (other than as provided in Section 3.01(g) and other than any rights to indemnity payments or other amounts owed to the retiring or removed Administrative Agent as of the Resignation Effective Date or the Removal Effective Date, as applicable), and the retiring or removed 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). 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 retiring or removed Administrative Agent’s resignation or removal hereunder and under the other Loan Documents, the provisions of this Article and Section 10.04 shall continue in effect for the benefit of such retiring or removed Administrative Agent, its sub-agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them (i) while the retiring or removed Administrative Agent was acting as Administrative Agent and (ii) after such resignation or removal for as long as any of them continues to act in any capacity hereunder or under the other Loan Documents, including in respect of any actions taken in connection with transferring the agency to any successor Administrative Agent.

9.07 Non-Reliance on Administrative Agent and Other Lenders.

Each Lender acknowledges that it has, independently and without reliance upon the Administrative Agent or any other Lender or any of their Related Parties and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Lender also acknowledges that it will, independently and without reliance upon the Administrative Agent or any other Lender or any of their Related Parties and based on such documents and information as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Agreement, any other Loan Document or any related agreement or any document furnished hereunder or thereunder.

9.08 Administrative Agent May File Proofs of Claim; Credit Bidding.

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 or L/C Obligation 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, if 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 Administrative Agent and its 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 to authorize the Administrative Agent to vote in respect of the claim of any Lender or in any such proceeding.

9.09 Guaranty Matters.

Without limiting the provision of Section 9.08, the Lenders irrevocably authorize the Administrative Agent, at its option and in its discretion, to release any Guarantor from its obligations under the Guaranty if such Person ceases to be a Subsidiary as a result of a transaction permitted under the Loan Documents.

Upon request by the Administrative Agent at any time, the Required Lenders will confirm in writing the Administrative Agent's authority to release any Guarantor from its obligations under the Guaranty pursuant to this Section 9.09. Each Loan Party agrees that its obligations hereunder shall continue to be effective or be reinstated, as applicable, if at any time payment, or any part thereof, of all or any part of the Obligations is rescinded or must otherwise be restored by the Guaranteed Party upon the bankruptcy or reorganization of the Loan Party or otherwise.

9.10 Withholding Tax.

To the extent required by any applicable Laws (as determined in good faith by the Administrative Agent), the Administrative Agent may withhold from any payment to any Lender under any Loan Document an amount equal to any applicable withholding Tax. If the IRS or any other Governmental Authority asserts a claim that the Administrative Agent did not properly

withhold Tax from any amount paid to or for the account of any Lender for any reason (including because the appropriate form was not delivered or was not properly executed, or because such Lender failed to notify the Administrative Agent of a change in circumstances that rendered the exemption from, or reduction of, withholding Tax ineffective), such Lender shall indemnify and hold harmless the Administrative Agent for all amounts paid, directly or indirectly, by the Administrative Agent as Tax or otherwise, including any penalties, additions to tax or interest thereto, together with all expenses incurred, including legal expenses and any out-of-pocket expenses, whether or not such Tax was correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Lender by the Administrative Agent shall be conclusive absent manifest error.

Each Lender hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Lender under this Agreement or any other Loan Document against any amount due to the Administrative Agent under this Section 9.10. The agreements in this Section 9.10 shall survive the resignation and/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 Obligations.

9.11 No Other Duties, etc.

(a) Anything herein to the contrary notwithstanding, none of the Administrative Agent or Lenders listed on the cover page hereof shall have any powers, duties or responsibilities under this Agreement or any of the other Loan Documents, except in its capacity, as applicable, as the Administrative Agent or a Lender hereunder.

(b) The Administrative Agent hereby informs the Lenders that each such Person is not undertaking to provide impartial investment advice, or to give advice in a fiduciary capacity, in connection with the transactions contemplated hereby, and that such Person has a financial interest in the transactions contemplated hereby in that such Person or an Affiliate thereof (i) may receive interest or other payments with respect to the Loans, the Commitments and this Agreement, (ii) may recognize a gain if it extended the Loans or the Commitments for an amount less than the amount being paid for an interest in the Loans or the Commitments by such Lender or (iii) may receive fees or other payments in connection with the transactions contemplated hereby, the Loan Documents or otherwise, including structuring fees, unused line fees, arrangement fees, facility fees, upfront fees, underwriting fees, ticking fees, agency fees, administrative agent or collateral agent fees, utilization fees, minimum usage fees, letter of credit fees, fronting fees, deal-away or alternate transaction fees, amendment fees, processing fees, term out premiums, banker's acceptance fees, breakage or other early termination fees or fees similar to the foregoing.

9.12 Certain ERISA Matters.

(a) Each Lender (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, the Administrative Agent and not, for the avoidance of doubt, to or for the benefit of the Borrower or any other Loan Party, that at least one of the following is and will be true:

(i) such Lender is not using “plan assets” (within the meaning of Section 3(42) of ERISA or otherwise) of one or more Benefit Plans with respect to such Lender’s entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments or this Agreement,

(ii) the transaction exemption set forth in one or more PTEs, such as PTE 84-14 (a class exemption for certain transactions determined by independent qualified professional asset managers), PTE 95-60 (a class exemption for certain transactions involving insurance company general accounts), PTE 90-1 (a class exemption for certain transactions involving insurance company pooled separate accounts), PTE 91-38 (a class exemption for certain transactions involving bank collective investment funds) or PTE 96-23 (a class exemption for certain transactions determined by in-house asset managers), is applicable with respect to such Lender’s entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement,

(iii) (A) such Lender is an investment fund managed by a “Qualified Professional Asset Manager” (within the meaning of Part VI of PTE 84-14), (B) such Qualified Professional Asset Manager made the investment decision on behalf of such Lender to enter into, participate in, administer and perform the Loans, the Letters of Credit, the Commitments and this Agreement, (C) the entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement satisfies the requirements of sub-sections (b) through (g) of Part I of PTE 84-14 and (D) to the best knowledge of such Lender, the requirements of subsection (a) of Part I of PTE 84-14 are satisfied with respect to such Lender’s entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement, or

(iv) such other representation, warranty and covenant as may be agreed in writing between the Administrative Agent, in its sole discretion, and such Lender.

(b) In addition, unless either (1) sub-clause (i) in the immediately preceding clause (a) is true with respect to a Lender or (2) a Lender has provided another representation, warranty and covenant in accordance with sub-clause (iv) in the immediately preceding clause (a), such Lender further (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, the Administrative Agent and not, for the avoidance of doubt, to or for the benefit of the Borrower or any other Loan Party, that the Administrative Agent is not a fiduciary with respect to the assets of such Lender involved in such Lender’s entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement (including in connection with the reservation or exercise of any rights by the Administrative Agent under this Agreement, any Loan Document or any documents related hereto or thereto).

9.13 Recovery of Erroneous Payments

Without limitation of any other provision in this Agreement, if at any time the Administrative Agent makes a payment hereunder in error to any Lender (the “Credit Party”),

whether or not in respect of an Obligation due and owing by the Borrower at such time, where such payment is a Rescindable Amount, then in any such event, each Credit Party receiving a Rescindable Amount severally agrees to repay to the Administrative Agent forthwith on demand the Rescindable Amount received by such Credit Party in immediately available funds in the currency so received, with interest thereon, for each day from and including the date such Rescindable Amount is received by it to but excluding the date of payment to the Administrative Agent, 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. Each Credit Party irrevocably waives any and all defenses, including any “discharge for value” (under which a creditor might otherwise claim a right to retain funds mistakenly paid by a third party in respect of a debt owed by another) or similar defense to its obligation to return any Rescindable Amount. The Administrative Agent shall inform each Credit Party promptly upon determining that any payment made to such Credit Party comprised, in whole or in part, a Rescindable Amount.

9.14 Protective Advances. Notwithstanding anything to the contrary contained herein, the Administrative Agent may from time to time, make such disbursements and advances (“Protective Advances”) which the Administrative Agent deems reasonably necessary or desirable to preserve, protect, prepare for sale or lease or Dispose of the Collateral or any portion thereof, or to enhance the likelihood or maximize the amount of repayment by the Loan Parties of the Obligations (including, without limitation, to the extent deemed necessary or desirable by the Administrative Agent, the funding of payroll obligations, the payment of lease obligations or to pay the other obligations of the Loan). The Protective Advances shall be repayable on demand, shall be Obligations hereunder, shall be secured by the Collateral and shall bear interest at a rate per annum equal to the rate then applicable to Base Rate Loans. The Administrative Agent shall notify each Lender and the Borrower in writing of each such Protective Advance, which notice shall include a description of the purpose of such Protective Advance. Each Lender severally (and not jointly) shall have the option to make available to the Administrative Agent, upon the Administrative Agent’s request, in immediately available funds, the amount equal to such Lender’s pro rata share of each such Protective Advance.

ARTICLE X MISCELLANEOUS

10.01 Amendments, Etc.

Subject to Section 3.03(c), 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 and the Borrower or the applicable Loan Party, as the case may be, and acknowledged by the Administrative Agent, and each such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given; provided, however, that no such amendment, waiver or consent shall:

- (a) waive any condition set forth in Section 4.01 (other than Section 4.01(b)(i) or (c)), or, in the case of the initial Credit Extension, Section 4.02, without the written consent of each Lender;

(b) without limiting the generality of clause (a) above, waive any condition set forth in Section 4.02 as to any Credit Extension without the written consent of the Required Lenders;

(c) extend or increase the Commitment of any Lender (or reinstate any Commitment terminated pursuant to Section 8.02) without the written consent of such Lender;

(d) postpone any date fixed by this Agreement or any other Loan Document for any payment of principal, interest, fees or other amounts due to the Lenders (or any of them) hereunder or under such other Loan Document without the written consent of each Lender entitled to such payment;

(e) reduce the principal of, or the rate of interest specified herein on any Loan (provided that the adoption of any Adjusted Term SOFR shall not constitute a reduction of the rate of interest), or (subject to clause (iv) of the second proviso to this Section 10.01) any fees or other amounts payable hereunder or under any other Loan Document without the written consent of each Lender entitled to such amount; provided, however, that only the consent of the Required Lenders shall be necessary to amend the definition of "Default Rate" or to waive any obligation of the Borrower to pay interest at the Default Rate;

(f) change any provision of this Section 10.01 or the definition of "Required Lenders" or any other provision hereof specifying the number or percentage of Lenders required to amend, waive or otherwise modify any rights hereunder or make any determination or grant any consent hereunder without the written consent of each Lender;

(g) change any provision of Section 8.03 in a manner that would alter the pro rata sharing of payments or the order of payment required thereby, without the written consent of each Lender directly affected thereby; or

(h) release all or substantially all of the value of the Guaranty, without the written consent of each Lender, except to the extent the release of any Subsidiary from the Guaranty is permitted pursuant to Section 9.09 (in which case such release may be made by the Administrative Agent acting alone);

and provided, further, that 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 the Administrative Agent under this Agreement or any other Loan Document. Notwithstanding anything to the contrary herein, no Defaulting Lender shall have any right to approve or disapprove any amendment, waiver or consent hereunder (and any amendment, waiver or consent which by its terms requires the consent of all Lenders or each affected Lender may be effected with the consent of the applicable Lenders other than Defaulting Lenders), except that (x) the Commitment of any Defaulting Lender may not be increased or extended without the consent of such Lender and (y) any waiver, amendment or modification requiring the consent of all Lenders or each affected Lender that by its terms affects any Defaulting Lender disproportionately adversely relative to other affected Lenders shall require the consent of such Defaulting Lender.

If any Lender does not consent to a proposed amendment, waiver, consent or release with respect to any Loan Document that requires the consent of each Lender and that has been approved

by the Required Lenders, the Borrower may replace such non-consenting Lender in accordance with Section 10.13; provided that such amendment, waiver, consent or release can be effected as a result of the assignment contemplated by such Section (together with all other such assignments required by the Borrower to be made pursuant to this paragraph).

10.02 Notices; Effectiveness; Electronic Communications.

(a) Notices Generally. Except in the case of notices and other communications expressly permitted to be given by telephone (and except as provided in subsection (b) below), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by facsimile or electronic mail as follows, and all notices and other communications expressly permitted hereunder to be given by telephone shall be made to the applicable telephone number, as follows:

(i) if to the 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

(ii) 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 Business Day for the recipient). Notices and other communications delivered through electronic communications to the extent provided in subsection (b) below shall be effective as provided in such subsection (b).

(b) Electronic Communications. Notices and other communications to the Lenders hereunder may be delivered or furnished by electronic communication (including e-mail, FpML messaging, 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 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 each, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it, provided that approval of such procedures may be limited to particular notices or communications.

Unless the 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), and (ii) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing clause (i) of notification that such notice or communication is available and identifying the website

address therefor; provided that, for both clauses (i) and (ii), if such notice, email or other communication is not sent during the normal business hours of the recipient, such notice, email or communication shall be deemed to have been sent at the opening of business on the next business day for the recipient.

(c) 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 Related Parties (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, any Loan Party’s or the Administrative Agent’s transmission of Borrower Materials or notices through the Platform, any other electronic messaging service, or through the Internet.

(d) Change of Address, Etc. Each of the Borrower and the Administrative Agent may change its address, facsimile or telephone number for notices and other communications hereunder by notice to the other parties hereto. Each other Lender may change its address, facsimile or telephone number for notices and other communications hereunder by 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.

(e) Reliance by Administrative Agent and Lenders. The Administrative Agent and the Lenders shall be entitled to rely and act upon any notices (including telephonic notices and Committed Loan 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 Loan Parties shall indemnify the Administrative Agent, each Lender and the Related Parties of each of them from all losses, costs, expenses and liabilities resulting from the reliance by such Person on each notice purportedly given by or on behalf of the 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.

10.03 No Waiver; Cumulative Remedies; Enforcement.

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. The fourteen-day stay provisions of Bankruptcy Rules 6004(h) and 4001(a)(3) are hereby waived.

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) hereunder and under the other Loan Documents, (b) any Lender from exercising setoff rights in accordance with Section 10.08 (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.

10.04 Expenses; Indemnity; Damage Waiver

(a) Costs and Expenses. The Borrower shall pay (i) all reasonable out-of-pocket expenses incurred by the Administrative Agent and its Affiliates (including diligence costs and the reasonable and documented legal fees, charges, disbursements of and other charges of one primary counsel to the Administrative Agent and the Lenders and of a single local counsel to the Administrative Agent and the Lenders in each appropriate jurisdiction (which may include a single local counsel to the Administrative Agent and the Lenders acting in multiple jurisdictions) or otherwise retained with the Borrower's consent (such consent not to be unreasonably withheld or delayed)), in connection with the syndication of the credit facilities provided for herein, the preparation, negotiation, execution, delivery and administration of this Agreement and the other Loan Documents or any amendments, modifications or waivers of the provisions hereof or thereof (whether or not the transactions contemplated hereby or thereby shall be consummated) and (ii) all out-of-pocket expenses incurred by the Administrative Agent or any Lender (including the fees, charges and disbursements of any counsel for the Administrative Agent or any Lender), in connection with the enforcement or protection of its rights (A) in connection with this Agreement and the other Loan Documents, including its rights under this Section, or (B) in connection with Loans made hereunder, including all such out-of-pocket expenses incurred during any workout, restructuring or negotiations in respect of such Loans. The Borrower shall pay all costs and expenses incurred by Administrative Agent in connection with the Cases, including without limitation, (A) costs and expenses incurred in connection with review of pleadings and other filings made with the Bankruptcy Court, (B)

attendance at all hearings in respect of the Cases, and (C) defending and prosecuting any actions or proceedings arising out of or relating to the Prepetition Obligations, the Obligations, the Liens securing the Prepetition Obligations and the Obligations or any transactions related to arising in connection with the Prepetition Loan Documents or the Loan Documents. Each Loan Party agrees that in the event that any actions or proceedings are in effect or are threatened by or Administrative Agent reasonably believes any actions or proceedings may be brought by the Committee or any other party in interest attacking the legality, validity, enforceability of the Prepetition Obligations, the Liens arising under the Prepetition Credit Agreement or any other matters relating to the Prepetition Loan Documents at the time of the consummation of any sale of the assets of any Loan Party or at the time that any Loan Party proposes to pay and satisfy the Obligations in full, Administrative Agent may hold a reserve following the date of payment in full of the Obligations as cash collateral for the expenses (including the fees, charges and disbursements of counsel and other professionals for Administrative Agent and Lenders) reasonably expected in Administrative Agent's Permitted Discretion to be incurred in connection with such actions or proceedings until the earliest of (x) Administrative Agent's receipt of a general release satisfactory in form and substance to Administrative Agent, (y) the entry of a final non-appealable order determining the outcome of such litigation, and (z) the expiration of the Challenge Period so long as no Challenge (as defined in the Interim Order or, if entered, the Final Order) has been asserted by that date.

(b) Indemnification by the Borrower. The Borrower shall indemnify the Administrative Agent (and any sub-agent thereof), each Lender, and each Related Party of any of the foregoing Persons (each such Person being called an "Indemnatee") against, and hold each Indemnatee harmless from, any and all losses, claims, damages, liabilities and related expenses (including the fees, charges and disbursements of any counsel for any Indemnatee), incurred by any Indemnatee or asserted against any Indemnatee by any Person (including the Borrower or any other Loan Party) other than such Indemnatee and its Related Parties arising out of, in connection with, or as a result of (i) the execution or delivery of this Agreement, any other Loan Document or any agreement or instrument contemplated hereby or thereby, the performance by the parties hereto of their respective obligations hereunder or thereunder or the consummation of the transactions contemplated hereby or thereby, or, in the case of the Administrative Agent (and any sub-agent thereof) and its Related Parties only, the administration of this Agreement and the other Loan Documents (including in respect of any matters addressed in Section 3.01), (ii) any Loan or the use or proposed use of the proceeds therefrom, (iii) any actual or alleged presence or Release of Hazardous Materials at, on, under or emanating from any property owned, leased or operated by the Borrower or any of its Subsidiaries, or any Environmental Liability related in any way to the Borrower or any of its Subsidiaries, or (iv) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory, whether brought by a third party or by the Borrower or any other Loan Party or any of the Borrower's or such Loan Party's directors, shareholders or creditors, and regardless of whether any Indemnatee is a party thereto; provided that such indemnity shall not, as to any Indemnatee, be available to the extent that such losses, claims, damages, liabilities or related expenses are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence, bad faith or willful misconduct of such Indemnatee. Without limiting the provisions of Section 3.01(c), this Section 10.04(b) shall not apply with respect to Taxes other than any Taxes that represent losses, claims, damages, etc. arising from any non-Tax claim.

(c) Reimbursement by Lenders. To the extent that the Borrower for any reason fails to pay any amount required under subsection (a) or (b) of this Section to be paid by it to the Administrative Agent (or any sub-agent thereof) or any Related Party of any of the foregoing, each Lender severally agrees to pay to the Administrative Agent (or any such sub-agent) or such Related Party, as the case may be, such Lender's pro rata share (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought based on each Lender's share of the Total Credit Exposure at such time) of such unpaid amount (including any such unpaid amount in respect of a claim asserted by such Lender), such payment to be made severally among them based on such Lenders' Applicable Percentage (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought), provided, further that, the unreimbursed expense or indemnified loss, claim, damage, liability or related expense, as the case may be, was incurred by or asserted against the Administrative Agent (or any such sub-agent) in its capacity as such, or against any Related Party of any of the foregoing acting for the Administrative Agent (or any such sub-agent) in connection with such capacity. The obligations of the Lenders under this subsection (c) are subject to the provisions of Section 2.12(d).

(d) Waiver of Consequential Damages, Etc. To the fullest extent permitted by applicable law, the Borrower shall not assert, and hereby waives, and acknowledges that no other Person shall have, any claim against any Indemnitee, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any other Loan Document or any agreement or instrument contemplated hereby, the transactions contemplated hereby or thereby, any Loan or the use of the proceeds thereof. No Indemnitee referred to in subsection (b) above shall be liable for any damages arising from the use by others of any information or other materials distributed to such party by such Indemnitee through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Loan Documents or the transactions contemplated hereby or thereby.

(e) Payments. All amounts due under this Section shall be payable not later than ten Business Days after demand therefor without the requirement of Bankruptcy Court approval. Administrative Agent shall provide a copy of the summary invoice for amounts due under this Section to counsel to the Debtors and the U.S. Trustee.

(f) Survival. The agreements in this Section and the indemnity provision of Section 10.02(e) shall survive the resignation of the Administrative Agent, the replacement of any Lender, the termination of the Commitments and the repayment, satisfaction or discharge of all the other Obligations.

10.05 Payments Set Aside

To the extent that any payment by or on behalf of the Borrower is made to the Administrative Agent or any Lender, or the Administrative 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 the Administrative 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 (without duplication) of any amount so recovered from or repaid by the Administrative Agent, plus interest thereon from the date of such demand to the date such payment is made at a rate per annum equal to the Federal Funds Rate from time to time in effect. The obligations of the Lenders under clause (b) of the preceding sentence shall survive the payment in full of the Obligations and the termination of this Agreement.

10.06 Successors and Assigns

(a) Successors and Assigns Generally. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that the Borrower may not 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 except (i) to an assignee in accordance with the provisions of Section 10.06(b), (ii) by way of participation in accordance with the provisions of Section 10.06(d), or (iii) by way of pledge or assignment of a security interest subject to the restrictions of Section 10.06(f) (and any other attempted assignment or transfer by any party hereto shall be null and void). Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants to the extent provided in subsection (d) of this Section and, to the extent expressly contemplated hereby, the Related Parties 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 (other than any Person set forth on Schedule 10.06(b) unless an Event of Default has occurred, in which case such limitation shall not apply) all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitment(s) and the Loans (including for purposes of this Section 10.06(b)) 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/or the Loans at the time owing to it or contemporaneous assignments to related Approved Funds (determined after giving effect to such assignments) that equal at least the amount specified in clause (b)(i)(B) of this Section in the aggregate 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 clause (b)(i)(A) of this Section, the aggregate amount of the Commitment (which for this purpose includes Loans outstanding thereunder) or, if the Commitment is not then in effect, 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 or, if “Trade Date” is specified in the Assignment and Assumption, as of the Trade Date, shall not be less than \$1,000,000 unless the Administrative Agent otherwise consents (such consent not to be unreasonably withheld or delayed).

(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 subsection (b)(i)(B) of this Section and the consent of the Administrative Agent in its sole discretion.

(iv) Assignment and Assumption. The parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Assumption, together with a processing and recordation fee in the amount of \$3,500; provided, however, that the Administrative Agent may, in its sole discretion, elect to waive such processing and recordation fee in the case of any assignment. The assignee, if it is not a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire.

(v) No Assignment to Certain Persons. No such assignment shall be made (A) to the Borrower or any of the Borrower’s Affiliates or Subsidiaries, (B) to any Defaulting Lender or any of its Subsidiaries, or any Person who, upon becoming a Lender hereunder, would constitute any of the foregoing Persons described in this clause (B), or (C) to a natural Person (or a holding company, investment vehicle or trust for, or owned and operated for the primary benefit of a natural Person).

(vi) Certain Additional Payments. 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 subparticipations, 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 Applicable Percentage. 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.

(vii) Subject to acceptance and recording thereof by the Administrative Agent pursuant to subsection (c) of this Section, from and after the effective date specified in each Assignment and Assumption, 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 the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto) but shall continue to be entitled to the benefits of Sections 3.01, 3.04, 3.05 and 10.04 with respect to facts and circumstances occurring prior to the effective date of such assignment; provided, that except to the extent otherwise expressly agreed by the affected parties, no assignment by a Defaulting Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender. Upon request, the Borrower (at its expense) shall execute and deliver a Note to the assignee Lender. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this subsection shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with subsection (d) of this Section.

(c) Register. The Administrative Agent, acting solely for this purpose as a non-fiduciary agent of the Borrower (and such agency being solely for tax purposes), shall maintain at the Administrative Agent's Office a copy of each Assignment and Assumption delivered to it (or the equivalent thereof in electronic form) and a register for the recordation of the names and addresses of the Lenders, and the Commitments of, and principal amounts (and stated interest) of the Loans owing to, each Lender pursuant to the terms hereof from time to time (the "Register"). The entries in the Register shall be conclusive absent manifest error, and the Borrower, the Administrative Agent and the Lenders shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. The Register shall be available for inspection by the Borrower and any Lender (with respect to its own interests), at any reasonable time and from time to time upon reasonable prior notice.

(d) Participations. 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, or a holding company, investment vehicle or trust for, or owned and operated for the primary benefit of a natural Person, a Defaulting Lender or the Borrower or any of the Borrower's Affiliates or Subsidiaries) (each, a "Participant") in all or a portion of such Lender's rights and/or obligations under this Agreement (including all or a portion of its Commitment and/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 Administrative Agent 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. For the avoidance of doubt, each Lender shall be responsible for the indemnity under Section 10.04(c) without regard to the existence of any participation.

Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; provided that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, waiver or other modification described in the first proviso to Section 10.01 that affects such Participant. The Borrower agrees that each Participant shall be entitled to the benefits of Sections 3.01, 3.04 and 3.05 to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to subsection (b) of this Section (subject to the requirements and limitations therein, including the requirements of Section 3.01(e) (it being understood that the documentation required under Section 3.01(e) shall be delivered solely to the Lender who sells the participation)); provided that such Participant (A) shall be subject to the provisions of Sections 3.06 and 10.13 as if it were an assignee under paragraph (b) of this Section and (B) shall not be entitled to receive any greater payment under Section 3.01 or 3.04, with respect to any participation, than the Lender from whom it acquired the applicable participation would have been entitled to receive, except to the extent such entitlement to receive a greater payment results from a Change in Law that occurs after the Participant acquired the applicable participation. Each Lender that sells a participation agrees, at the Borrower's request and expense, to use reasonable efforts to cooperate with the Borrower to effectuate the provisions of Section 3.06 with respect to any Participant. To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 10.08 as though it were a Lender; provided that such Participant agrees to be subject to Section 2.13 as though it were a Lender. Each Lender that sells a participation shall, acting solely for this purpose as a non-fiduciary agent of the Borrower, maintain a register on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each Participant's interest in the Loans or other obligations under the Loan Documents (the "Participant Register"); provided that no Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any information relating to a Participant's interest in any commitments, loans, letters of credit or its other obligations under any Loan Document) to any Person except to the extent that such disclosure is necessary to establish that such commitment, loan or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, the Administrative Agent (in its capacity as Administrative Agent) shall have no responsibility for maintaining a Participant Register.

(e) Certain Pledges. Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement (including under its Note, if any) to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank; provided that no such pledge or assignment shall release such Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

10.07 Treatment of Certain Information; Confidentiality

Each of the Administrative Agent and the Lenders agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (a) to its Affiliates,

its auditors and its Related Parties (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential), (b) to the extent required or requested by any regulatory authority purporting to have jurisdiction over such Person or its Related Parties (including any self-regulatory authority, such as the National Association of Insurance Commissioners), (c) to the extent required by applicable laws or regulations or by any subpoena or similar legal process, (d) to any other party hereto, (e) in connection with the exercise of any remedies hereunder or under any other Loan Document or any action or proceeding relating to this Agreement or any other Loan Document or the enforcement of rights hereunder or thereunder, (f) subject to an agreement containing provisions substantially the same as those of this Section, to (i) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights and obligations under this Agreement or (ii) any actual or prospective party (or its Related Parties) to any swap, derivative or other transaction under which payments are to be made by reference to the Borrower and its obligations, this Agreement or payments hereunder, in reliance on this clause (f)), (g) on a confidential basis to (i) any rating agency in connection with rating the Borrower or its Subsidiaries or the credit facilities provided hereunder or (ii) the CUSIP Service Bureau or any similar agency in connection with the issuance and monitoring of CUSIP numbers of other market identifiers with respect to the credit facilities provided hereunder, (h) with the consent of the Borrower or (i) to the extent such Information (i) becomes publicly available other than as a result of a breach of this Section or (ii) becomes available to the Administrative Agent, any Lender or any of their respective Affiliates on a nonconfidential basis from a source other than the Borrower. In addition, the Administrative Agent and the Lenders may disclose the existence of this Agreement and information about this Agreement to market data collectors, similar service providers to the lending industry and service providers to the Administrative Agent and the Lenders in connection with the administration of this Agreement, the other Loan Documents, and the Commitments. The Loan Parties consent to the publication by the Administrative Agent or any Lender of customary advertising material relating to the transactions contemplated hereby using the name, product photographs, logo or trademark of the Loan Parties.

For purposes of this Section, “Information” means all information received from the Borrower or any Subsidiary relating to the Borrower or any Subsidiary or any of their respective businesses, other than any such information that is available to the Administrative Agent or any Lender on a nonconfidential basis prior to disclosure by the Borrower or any Subsidiary, provided that, in the case of information received from the Borrower or any Subsidiary after the Closing Date, such information is clearly identified at the time of delivery as confidential. Any Person required to maintain the confidentiality of Information as provided in this Section shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information.

Each of the Administrative Agent and the Lenders acknowledges that (a) the Information may include 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 material non-public information and (c) it will handle such material non-public information in accordance with applicable Law, including United States Federal and state securities Laws.

10.08 Right of Setoff

If an Event of Default shall have occurred and be continuing, each Lender and each of their respective Affiliates is hereby authorized at any time and from time to time, 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 or any such Affiliate to or for the credit or the account of the Borrower against any and all of the obligations of the Borrower now or hereafter existing 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 and although such obligations of the Borrower may be contingent or unmatured or are owed to a branch or office or Affiliate of such Lender different from the branch, office or Affiliate holding such deposit or obligated on such indebtedness; 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 2.15 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 and their respective Affiliates under this Section are in addition to other rights and remedies (including other rights of setoff) that such Lender or its respective Affiliates 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.

10.09 Interest Rate Limitation

Notwithstanding anything to the contrary contained in any Loan Document, the interest paid or agreed to be paid under the Loan Documents shall not exceed the maximum rate of non-usurious interest permitted by applicable Law (the "Maximum Rate"). If the Administrative 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 the Administrative 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.

10.10 Counterparts; Integration; Effectiveness

This Agreement may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement and the other Loan Documents and any separate letter agreements with respect to fees payable to the Administrative Agent 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 means (e.g. “pdf” or “tif”) shall be effective as delivery of a manually executed counterpart of this Agreement.

The parties hereto shall be permitted to amend this Agreement and the other Loan Documents without further approval or order of the Bankruptcy Court; provided, however, that any material modification or amendment to this Agreement or any other Loan Documents shall be subject to providing notice of such material modification or amendment to counsel to any Committee and the U.S. Trustee each of whom shall have three (3) Business Days from the date of such notice within which to object in writing to such modification or amendment unless the Committee and the U.S. Trustee agree in writing to a shorter period. Unless the Committee or the U.S. Trustee timely objects to any material modification or amendment to this Agreement or any other Loan Document, then such modification or amendment shall become effective upon the expiration of the aforementioned notice period. If a timely objection is interposed, the Bankruptcy Court shall resolve such objection prior to such modification or amendment becoming effective. Each Loan Party acknowledges that it has been advised by counsel in connection with the execution of this Agreement and other Loan Documents and is not relying upon oral representations or statements inconsistent with the terms and provisions of this Agreement.

10.11 Survival of Representations and Warranties

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 Credit Extension, and shall continue in full force and effect as long as any Loan or any other Obligation hereunder shall remain unpaid or unsatisfied.

10.12 Severability

If any provision of this Agreement or the other Loan Documents is held to be illegal, invalid or unenforceable, (a) the legality, validity and enforceability of the remaining provisions of this Agreement and the other Loan Documents shall not be affected or impaired thereby and (b) the parties shall endeavor in good faith negotiations to replace the illegal, invalid or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the illegal, invalid or unenforceable provisions. The invalidity of a provision in a particular jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. Without limiting the foregoing provisions of this Section 10.12, if and to the extent that the enforceability of any provisions in this Agreement relating to Defaulting Lenders shall be limited by Debtor Relief Laws, as determined in good faith by the Administrative Agent, then such provisions shall be deemed to be in effect only to the extent not so limited.

10.13 Replacement of Lenders

If the Borrower is entitled to replace a Lender pursuant to the provisions of Section 3.06, or if any Lender is a Defaulting Lender or a Non-Consenting Lender, then the Borrower may, at its sole expense and effort, upon notice to such Lender and the Administrative Agent, require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in, and consents required by, Section 10.06), all of its interests, rights (other than its existing rights to payments pursuant to Sections 3.01 and 3.04) and obligations under this Agreement and the related Loan Documents to an Eligible Assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment), provided that:

- (a) the Borrower shall have paid to the Administrative Agent the assignment fee (if any) specified in Section 10.06(b);
- (b) such Lender shall have received payment of an amount equal to the outstanding principal of its Loans, accrued interest thereon, accrued fees and all other amounts payable to it hereunder and under the other Loan Documents (including any amounts under Section 3.05) from, or on behalf of, the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrower (in the case of all other amounts);
- (c) in the case of any such assignment resulting from a claim for compensation under Section 3.04 or payments required to be made pursuant to Section 3.01, such assignment will result in a reduction in such compensation or payments thereafter;
- (d) such assignment does not conflict with applicable Laws; and
- (e) in the case of an assignment resulting from a Lender becoming a Non-Consenting Lender, the applicable assignee shall have consented to the applicable amendment, waiver or consent.

A Lender shall not be required to make any such assignment or delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling the Borrower to require such assignment and delegation cease to apply. Each party hereto agrees that an assignment required pursuant to this paragraph may be effected pursuant to an Assignment and Assumption executed by the Borrower, the Administrative Agent and the assignee and that the Lender required to make such assignment need not be a party thereto.

10.14 Governing Law; Jurisdiction; Etc

THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS AND ANY CLAIMS, CONTROVERSY, DISPUTE OR CAUSE OF ACTION (WHETHER IN CONTRACT OR TORT OR OTHERWISE) BASED UPON, ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT (EXCEPT, AS TO ANY OTHER LOAN DOCUMENT, AS EXPRESSLY SET FORTH THEREIN) AND THE TRANSACTIONS CONTEMPLATED HEREBY AND THEREBY SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.

- (a) SUBMISSION TO JURISDICTION.

EACH LOAN PARTY HEREBY CONSENTS TO AND ACKNOWLEDGES THE JURISDICTION OF THE BANKRUPTCY COURT OVER ANY ACTIONS OR PROCEEDINGS ARISING IN CONNECTION WITH THE CASES, THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS (OR IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF THE PARTIES HERETO IN RESPECT OF THE CASES, THIS AGREEMENT OR ANY OF THE OTHER LOAN DOCUMENTS. IF (I) THE CASES ARE DISMISSED, (II) THE BANKRUPTCY COURT ABSTAINS FROM HEARING ANY ACTIONS OR PROCEEDINGS ARISING IN CONNECTION WITH THIS AGREEMENT OR ANY OF THE OTHER LOAN DOCUMENTS (OR IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF THE PARTIES HERETO IN RESPECT OF THIS AGREEMENT OR ANY OF THE OTHER LOAN DOCUMENTS OR THE TRANSACTIONS RELATED HERETO OR THERETO) OR (III) THE BANKRUPTCY COURT REFUSES TO EXERCISE JURISDICTION OVER ANY ACTIONS OR PROCEEDINGS ARISING IN CONNECTION WITH THIS AGREEMENT OR ANY OF THE OTHER LOAN DOCUMENTS (OR IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF THE PARTIES HERETO IN RESPECT OF THIS AGREEMENT OR ANY OF THE OTHER LOAN DOCUMENTS OR THE TRANSACTIONS RELATED HERETO OR THERETO), THEN THE BORROWER IRREVOCABLY AND UNCONDITIONALLY AGREES THAT IT WILL NOT COMMENCE ANY ACTION, LITIGATION OR PROCEEDING OF ANY KIND OR DESCRIPTION, WHETHER IN LAW OR EQUITY, WHETHER IN CONTRACT OR IN TORT OR OTHERWISE, AGAINST THE ADMINISTRATIVE AGENT, ANY LENDER, OR ANY RELATED PARTY OF THE FOREGOING IN ANY WAY RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS RELATING HERETO OR THERETO, IN ANY FORUM OTHER THAN THE COURTS OF THE STATE OF NEW YORK SITTING IN NEW YORK COUNTY AND OF THE UNITED STATES DISTRICT COURT OF THE SOUTHERN DISTRICT OF NEW YORK, AND ANY APPELLATE COURT FROM ANY THEREOF, AND EACH OF THE PARTIES HERETO IRREVOCABLY AND UNCONDITIONALLY SUBMITS TO THE JURISDICTION OF SUCH COURTS AND AGREES THAT ALL CLAIMS IN RESPECT OF ANY SUCH ACTION, LITIGATION OR PROCEEDING MAY BE HEARD AND DETERMINED IN SUCH NEW YORK STATE COURT OR, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN SUCH FEDERAL COURT. EACH OF THE PARTIES HERETO AGREES THAT A FINAL JUDGMENT IN ANY SUCH ACTION, LITIGATION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. NOTHING IN THIS AGREEMENT OR IN ANY OTHER LOAN DOCUMENT SHALL AFFECT ANY RIGHT THAT THE ADMINISTRATIVE AGENT OR ANY LENDER MAY OTHERWISE HAVE TO BRING ANY ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT AGAINST THE BORROWER OR ITS PROPERTIES IN THE COURTS OF ANY JURISDICTION WHERE ANY COLLATERAL IS LOCATED.

(b) WAIVER OF VENUE. EACH OF THE PARTIES HERETO 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 (a) OF THIS SECTION. 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.

(c) 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.

10.15 WAIVER OF JURY TRIAL

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.

10.16 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, and acknowledges its Affiliates' understanding, that: (i) (A) the arranging and other services regarding this Agreement provided by the Administrative Agent and the Lenders are arm's-length commercial transactions between the Borrower and its Affiliates, on the one hand, and the Administrative Agent 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) the Administrative Agent and the Lenders each 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) neither the Administrative Agent 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 Administrative Agent, 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 neither the Administrative Agent nor any Lender has any obligation to disclose any of such interests to the Borrower or its Affiliates. To the fullest extent permitted by law, the Borrower hereby waives and releases any claims that it may have against the Administrative Agent and the Lenders with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transaction contemplated hereby.

10.17 Electronic Execution of Assignments and Certain Other Documents

The words “execution,” “execute,” “signed,” “signature,” and words of like import in or related to any document to be signed in connection with this Agreement and the transactions contemplated hereby (including without limitation Assignment and Assumptions, amendments or other Committed Loan Notices, waivers and consents) shall be deemed to include electronic signatures, the electronic matching of assignment terms and contract formations on electronic platforms approved by the Administrative Agent, or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act; provided that notwithstanding anything contained herein to the contrary the Administrative Agent is under no obligation to agree to accept electronic signatures in any form or in any format unless expressly agreed to by the Administrative Agent pursuant to procedures approved by it; provided, further, without limiting the foregoing, upon the request of the Administrative Agent or any Lender, any electronic signature shall be promptly followed by such manually executed counterpart. For the avoidance of doubt, the authorization under this paragraph may include, without limitation, use or acceptance by the Administrative Agent and each Lender of a manually signed paper document, amendment, approval, consent, information, notice, certificate, request, statement, disclosure or authorization related to this Agreement (each a “Communication”) which has been converted into electronic form (such as scanned into PDF format), or an electronically signed Communication converted into another format, for transmission, delivery and/or retention.

10.18 USA PATRIOT Act

Each Lender that is subject to the Act (as hereinafter defined) 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 (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the “Act”), it is required to obtain, verify and record information that identifies each Loan Party, which information includes the name and address of each Loan Party and other information that will allow such Lender or the Administrative Agent, as applicable, to identify each Loan Party in accordance with the 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 requests in order to comply with its ongoing obligations under applicable “know your customer” and anti-money laundering rules and regulations, including the Act and the Beneficial Ownership Regulation.

10.19 Acknowledgement and Consent to Bail-In of Affected Financial Institutions

Solely to the extent any Lender that is an Affected Financial Institution is a party to this Agreement and 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 Lender that is an Affected Financial Institution arising under any Loan Document, to the extent such liability is unsecured, may be subject to the write-down and conversion powers of the applicable Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

(a) the application of any Write-Down and Conversion Powers by the applicable Resolution Authority to any such liabilities arising hereunder which may be payable to it by any Lender that is an Affected Financial Institution; and

(b) the effects of any Bail-In Action on any such liability, including, if applicable:

(i) a reduction in full or in part or cancellation of any such liability;

(ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such Affected Financial Institution, its parent undertaking, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Loan Document; or

(iii) the variation of the terms of such liability in connection with the exercise of the write-down and conversion powers of the applicable Resolution Authority.

10.20 Acknowledgement Regarding Any Supported QFCs

To the extent that the Loan Documents provide support, through a guarantee or otherwise, for any Swap Contract or any other agreement or instrument that is a QFC (such support, “QFC Credit Support”, and each such QFC, a “Supported QFC”), the parties acknowledge and agree as follows with respect to the resolution power of the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act and Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (together with the regulations promulgated thereunder, the “U.S. Special Resolution Regimes”) in respect of such Supported QFC and QFC Credit Support (with the provisions below applicable notwithstanding that the Loan Documents and any Supported QFC may in fact be stated to be governed by the laws of the State of New York and/or of the United States or any other state of the United States):

(a) In the event a Covered Entity that is party to a Supported QFC (each, a “Covered Party”) becomes subject to a proceeding under a U.S. Special Resolution Regime, the transfer of such Supported QFC and the benefit of such QFC Credit Support (and any interest and obligation in or under such Supported QFC and such QFC Credit Support, and any rights in property securing such Supported QFC or such QFC Credit Support) from such Covered Party will be effective to the same extent as the transfer would be effective under the U.S. Special Resolution Regime if the Supported QFC and such QFC Credit Support (and any such interest, obligation and rights in property) were governed by the laws of the United States or a state of the United States. In the event a Covered Party or a BHC Act Affiliate of a Covered Party

becomes subject to a proceeding under a U.S. Special Resolution Regime, Default Rights under the Loan Documents that might otherwise apply to such Supported QFC or any QFC Credit Support that may be exercised against such Covered Party are permitted to be exercised to no greater extent than such Default Rights could be exercised under the U.S. Special Resolution Regime if the Supported QFC and the Loan Documents were governed by the laws of the United States or a state of the United States. Without limitation of the foregoing, it is understood and agreed that rights and remedies of the parties with respect to a Defaulting Lender shall in no event affect the rights of any Covered Party with respect to a Supported QFC or any QFC Credit Support.

(b) As used in this Section 10.20, the following terms have the following meanings:

“BHC Act Affiliate” of a party means an “affiliate” (as such term is defined under, and interpreted in accordance with, 12 U.S.C. 1841(k)) of such party.

“Covered Entity” means any of the following: (i) a “covered entity” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 252.82(b); (ii) a “covered bank” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 47.3(b); or (iii) a “covered FSI” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 382.2(b).

“Default Right” has the meaning assigned to that term in, and shall be interpreted in accordance with, 12 C.F.R. §§ 252.81, 47.2 or 382.1, as applicable.

“QFC” has the meaning assigned to the term “qualified financial contract” in, and shall be interpreted in accordance with, 12 U.S.C. 5390(c)(8)(D).

10.21 Personal Identifiable Information; Security Requirements.

(a) Each of Administrative Agent and Lender agrees that they shall use all commercially reasonable efforts to protect any and all PII against intrusion, theft, alteration, unauthorized access, loss, damage, or any means by which a Person without authorization from the Parties may obtain access to PII and/or may erase, alter, or modify all or any portion of PII. Each of Administrative Agent and Lender specifically acknowledges and agrees that they have developed, implemented and will maintain effective information security policies and procedures, specifically including administrative, technical and physical safeguards and any and all computer or information systems on which any portion of PII may be processed or stored at any time, designed to (i) ensure the security and confidentiality of PII, (ii) protect against anticipated threats or hazards to the security or integrity of PII, (iii) protect against unauthorized access to or use of PII that could result in substantial harm or inconvenience to any Obligor, (iv) ensure the proper disposal of PII, and (v) honor requests to delete or not share PII if required to do so by applicable Law. Each of Administrative Agent and Lender specifically acknowledges and agrees that they will provide appropriate security to protect against unauthorized access by “insiders” (*i.e.*, Persons who have been given access to PII or systems containing PII in order to perform computer related services for such Parties, but who may intentionally or inadvertently cause damage to data or to the computer system). “Insiders” shall be deemed to include but shall

not be limited to employees, former employees and independent contractors of the Administrative Agent and Lender, as applicable.

(b) In the event that either Administrative Agent or Lender learns or has reason to believe that, with respect to any PII relating to Obligors maintained by such Party, (i) such PII has been disclosed or accessed by an unauthorized party, (ii) such Party's facilities associated with such PII has been accessed by an unauthorized party or (iii) such PII has otherwise been lost or misplaced, such Party shall as soon as reasonably practicable (A) provide notice of the security incident to the appropriate law enforcement or state agency in conformity with the notification requirements found in applicable Privacy Laws and (B) provide written notice thereof to the Borrower and shall specify the corrective action that was or will be taken unless government official instruct such Party to refrain from doing so in compliance with Section 10.21(a).

(c) The notices required under Section 10.21(b) shall specifically identify the data that has or may have been improperly accessed, released or misused and contain material details of the security issue that are known at the time of notification, subject to a request by law enforcement or other government agency to withhold such notice. Further, the Administrative Agent or Lender, as applicable, shall (i) promptly take appropriate steps to contain and control the security issue to prevent unauthorized access or further unauthorized access (as applicable) to or misuse of PII; and (ii) continue to provide information in a timely manner to the Borrower relating to the investigation and resolution of the security issue until it has been resolved. The Administrative Agent and Lender shall maintain appropriate processes for evidence collection, analysis and remediation of any security-related incident as well as postmortems and resulting actions taken or proposed with timelines for completion and will make such information available to the Borrower at its request. The Administrative Agent and Lender will also cooperate fully with the Borrower or its investigator in investigating and responding to each successful or attempted security breach including allowing reasonable access to the Administrative Agent's or Lender's facility and systems by the Borrower or its investigator to investigate.

(d) The Administrative Agent and Lender shall comply with all Privacy Laws that pertain to the PII.

(e) As used in this Section 10.21, the following terms have the following meanings:

“*Obligor*” means the obligor(s) under a loan originated and/or serviced by Borrower.

“*PII*” means (a) any information that identifies or can be used to identify an Obligor either alone or in combination with other readily available data; (b) any other sensitive or personally identifiable information or records in any form (oral, written, graphic, electronic, machine-readable, or otherwise) relating to an Obligor, including: a Obligor's name, address, telephone number, social security number, driver's license or other government identifier, and biometric information; the fact that the Obligor has a

relationship with Borrower, the Administrative Agent or Lender; and (c) any other data of or regarding a Obligor, the use, access or protection of which is regulated under any applicable Privacy Laws.

“*Privacy Laws*” means all applicable privacy and data security laws in all relevant jurisdictions and the regulations promulgated thereunder, including the following, in each case, as amended or supplemented: GLBA/Regulation P; Fair Credit Reporting Act/Regulation V; California Financial Information Privacy Act; California Consumer Privacy Act and related regulations; Federal Trade Commission Act; the Telephone Consumer Protection Act; the CAN-SPAM Act of 2003; state data breach and data security Laws (including the New York State Department of Financial Services Cybersecurity Requirements for Financial Services Companies, 23 NYCRR 500); international data protection and security Laws, including Directive 95/46/EC of the European Parliament and of the Council and, when effective, the General Data Protection Regulation; and analogous local, state, federal, and international Laws relating to the Processing, privacy, usage, protection and security of PII.

10.22 Exclusive Remedy For Any Alleged Post-Petition Claim. Notwithstanding anything to the contrary provided for herein, if any Loan Party asserts that it has any adverse claims against any Post-Petition Secured Party with respect to this Agreement and the transactions contemplated hereby, each Loan Party agrees that its sole and exclusive remedy for any and all such adverse claims will be an action for monetary damages (a “Damage Lawsuit”). Any such Damage Lawsuit, regardless of the procedural form in which it is alleged (e.g., by complaint, counterclaim, cross-claim, third-party claim, or otherwise) will be severed from any enforcement by Post-Petition Secured Parties of their legal, equitable, and contractual rights (including collection of the Obligations and foreclosure or other enforcement against the Collateral) pursuant to the Loan Documents, and the Damage Lawsuit (including any and all adverse claims alleged against the Post-Petition Secured Parties) cannot be asserted by any Loan Party as a defense, setoff, recoupment, or grounds for delay, stay, or injunction against any enforcement by any Post-Petition Secured Party of their legal, equitable, and contractual rights under the Final Order, the Loan Documents, and otherwise.

10.23 [Reserved].

10.24 [Reserved].

10.25 [Reserved].

10.26 Disavowal and Waiver of Any Subsequent Relief Based on Changed Circumstances. The Debtors and the Post-Petition Secured Parties know and understand that there are rights and remedies provided under the Bankruptcy Code, the Federal Rules of Civil Procedure, and the Bankruptcy Rules, pursuant to which parties otherwise bound by a previously entered order can attempt to obtain relief from such an order by alleging circumstances that may warrant a change or modification in the order, or circumstances such as fraud, mistake, inadvertence, excusable neglect, newly discovered evidence, or similar matters that may justify vacating the

order entirely, or otherwise changing or modifying it (collectively, “Changed Circumstances”). Rights and remedies based on Changed Circumstances include, but are not limited to, modification of a plan of reorganization after confirmation of the plan and before its substantial consummation, pursuant to Section 1127(b) of the Bankruptcy Code, relief from a final order or judgment pursuant to Rule 60(b) of the Federal Rules of Civil Procedure and Bankruptcy Rule 9024, and the commencement and prosecution of a serial Chapter 11 case by a debtor which is in default of obligations under a stipulation or plan of reorganization confirmed in an earlier case. With full knowledge and understanding of what are, or may be, its present or future rights and remedies based on allegations of Changed Circumstances, the Debtors: (i) expressly disavow that there are any matters which constitute any kind of Changed Circumstances as of the date of entry of the Interim Order and (ii) expressly disavow that it is aware of any matters whatsoever that it is assuming, contemplating, or expecting in proceeding with the Final Order and the transactions contemplated by this Agreement and having the Final Order entered that would serve as a basis to allege such Changed Circumstances. Each Debtor understands and agrees that the Post-Petition Secured Parties are not willing to bear any of the risks involved in such Debtor’s business enterprises and the Post-Petition Secured Parties are not willing to modify any of the rights if such risks cause actual or alleged Changed Circumstances; and each Debtor expressly assumes all risks of any and all such matters, and the consequences that the Post-Petition Secured Parties will enforce their legal, equitable, and contractual rights if the Post-Petition Secured Parties are not paid and dealt with strictly in accordance with the terms and conditions of the Interim Order, the Final Order, this Agreement and the other Loan Documents. Without limiting the foregoing in any way, the Debtors’ use of any cash collateral that is included in the Collateral will be governed exclusively by the terms and conditions of this Agreement, the Interim Order and the Final Order, and, until Payment in Full either before or after a termination of this Agreement, no Debtor will seek authority from the Bankruptcy Court to otherwise use any cash collateral that is included in the Collateral for any purpose whatsoever.

10.27 Adequate Protection. The Prepetition Secured Parties are entitled to adequate protection as set forth in the Interim Order and, once entered, the Final Order.

10.28 Interim Order and Final Order Control. In the event of any conflict between the terms of the Interim Order and/or the Final Order and this Agreement or any other Loan Document, the terms of the Interim Order and/or the Final Order, as applicable, shall control to the extent the Interim Order and/or Final Order, as applicable, were approved and acceptable to Administrative Agent.

[signature pages follow]

Exhibit 2

Initial 8-Week Budget

	TWCF Week #		W1	W2	W3	W4	W5	W6	W7	W8	W1 to W8
	Fiscal Period Starting		6/8/2025	6/15/2025	6/22/2025	6/29/2025	7/6/2025	7/13/2025	7/20/2025	7/27/2025	6/14/2025
	Fiscal Period Ending		6/14/2025	6/21/2025	6/28/2025	7/5/2025	7/12/2025	7/19/2025	7/26/2025	8/2/2025	8/2/2025
I. Weekly Cash Flows											
1.) Cash Receipts			-	2.9	-	-	-	-	2.9	-	5.7
2.) Disbursements			(1.8)	(1.2)	(1.9)	(0.3)	(1.9)	(0.6)	(1.5)	(0.9)	(10.1)
3.) Operating Cash Flow			(1.8)	1.7	(1.9)	(0.3)	(1.9)	(0.6)	1.4	(0.9)	(4.4)
4.) Non-Operating / Restructuring Related Disbursements			(0.9)	(0.9)	(3.3)	(0.8)	(0.9)	(0.8)	(2.4)	(0.8)	(10.8)
5.) Net Cash Flow			(2.7)	0.8	(5.2)	(1.2)	(2.8)	(1.4)	(1.1)	(1.7)	(15.2)
6.) Beginning Cash			9.1	12.4	13.2	8.0	6.8	13.1	11.7	10.6	9.1
7.) Net Cash Flow (+/-)			(2.7)	0.8	(5.2)	(1.2)	(2.8)	(1.4)	(1.1)	(1.7)	(15.2)
8.) DIP Borrowings / (Pay Down)			6.0	-	-	-	9.0	-	-	-	15.0
9.) Ending Cash			12.4	13.2	8.0	6.8	13.1	11.7	10.6	8.9	8.9
II. DIP Facility											
10.) Beginning Balance			-	6.0	6.0	6.0	6.0	15.0	15.0	15.0	-
11.) + New Draws			6.0	-	-	-	9.0	-	-	-	15.0
12.) – Repayments			-	-	-	-	-	-	-	-	-
13.) Ending Balance			6.0	6.0	6.0	6.0	15.0	15.0	15.0	15.0	15.0
14.) Approved DIP Funding			6.0	6.0	6.0	6.0	15.0	15.0	15.0	15.0	15.0
15.) Undrawn DIP Portion			-	-	-	-	-	-	-	-	-
16.) Liquidity			12.4	13.2	8.0	6.8	13.1	11.7	10.6	8.9	8.9