

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE**

In re:

Exactech, Inc., *et al.*,¹

Debtors.

Chapter 11

Case No. 24-12441 (LSS)

(Joint Administration Requested)

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

Exactech, Inc. ("Exactech") and its affiliated debtors and debtors in possession (each, a "Debtor" and collectively, the "Debtors")² in the above-captioned chapter 11 cases (these "Chapter 11 Cases"), by and through their undersigned proposed counsel, hereby submit this motion (this "Motion") pursuant to sections 105, 361, 362, 363, 364(c)(1), 364(c)(2), 364(c)(3), 364(d)(1), 364(e), 503, and 507 of title 11 of the United States Code (the "Bankruptcy Code"), Rules 2002, 4001, 6003, and 9014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), and Rule 4001-2 of the Local Rules of Bankruptcy Practice and Procedure for the District of Delaware (the "Local Rules") for entry of interim and final orders granting the relief requested below. In support hereof, the Debtors rely on the *Declaration of*

¹ The Debtors in these Chapter 11 Cases, along with the last four digits of each Debtor's federal tax identification number are: Osteon Holdings, Inc. (7042); Osteon Intermediate Holdings I, Inc. (7778); Osteon Intermediate Holdings II, Inc. (1292); Exactech, Inc. (3930); and XpandOrtho, Inc. (4250). The Debtors' service address is 2320 NW 66th Court, Gainesville, Florida 32653.

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them either later in this Motion, in the First Day Declaration, or in the Interim Order, as applicable.

Jesse York, Chief Restructuring Officer of Exactech, Inc., in Support of Debtors' Chapter 11 Petitions and First Day Motions (the "First Day Declaration") and the *Declaration of Karn S. Chopra in Support of the Debtors' Motion to Obtain Postpetition Debtor in Possession Financing* (the "Chopra Declaration") filed contemporaneously herewith and incorporated herein for reference, and further represent as follows:

PRELIMINARY STATEMENT

1. By this Motion, the Debtors seek authorization to obtain postpetition financing and approval of a superpriority senior secured debtor-in-possession credit facility in an aggregate principal amount of up to \$85 million, provided by certain of the Debtors' prepetition secured lenders (solely in such capacity, the "DIP Lenders") with an interim draw of \$35 million under the proposed DIP Financing, subject to entry of the Interim Order (as defined herein).

2. As described herein, the DIP Financing provides the Debtors with necessary liquidity, on reasonable terms and customary budget covenants. The relief sought in this Motion is critical for the Debtors to pay their ordinary-course operating expenses, finance these Chapter 11 Cases, pursue and effectuate an orderly sale process (the "Sale Process"), and, ultimately, to consummate the transactions contemplated in the restructuring support agreement (the "RSA"). The Debtors' initial budget (the "Initial Budget") reflecting the anticipated cash receipts and anticipated disbursements for each calendar week through and including the end of the twenty-sixth week following the Petition Date is annexed to the DIP Credit Agreement as **Schedule 1**.

3. As set forth in the First Day Declaration, the Debtors commenced these Chapter 11 Cases with the RSA broadly supported by an ad hoc group of lenders (collectively, the "Ad Hoc Group") holding substantially all of the Company's Prepetition Pari 1L Lenders. Following months of diligence, discussions, and negotiations, on October 29, 2024, the Debtors

executed the RSA with members of the Ad Hoc Group pursuant to which these parties agreed to support a chapter 11 plan, as well as the Debtors' value-maximizing marketing and sale process for a sale of all or substantially all of their assets as a going-concern (the "Sale"). As of the Petition Date, the Debtors have approximately \$4 million in cash on hand and therefore require immediate access to the DIP Financing and authority to use Cash Collateral (as defined herein) to ensure that they have sufficient liquidity to operate their business and pursue the Sale Process contemplated in the RSA.

4. Several reasons justify the relief requested herein:

- The Debtors are entering chapter 11 with limited cash on hand. Immediate access to DIP Financing is therefore necessary; in fact, it is critical to the Debtors' smooth transition into chapter 11 and their ability to prudently operate their business during the pendency of these Chapter 11 Cases.
- Negotiations with the DIP Lenders were rigorous and conducted at arm's length at all times. Indeed, the robust nature of this negotiation process is reflected in the economic terms of the DIP Facility, which the Debtors believe provides sufficient liquidity with customary budget restrictions at reasonable rates and market fees.
- The Debtors propose a limited initial draw of \$35 million on the terms set forth herein.
- The Debtors expect that vendors, customers, and their employees will be highly focused on whether these Chapter 11 Cases are appropriately funded to ensure the greatest possibility of success.

5. For these reasons, and for the reasons set forth herein, the Debtors respectfully request that the Court grant the relief requested herein.

JURISDICTION AND VENUE

6. This Court has jurisdiction to consider this Motion under 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware dated February 29, 2012. Pursuant to Local Rule 9013-1(f), the Debtors confirm their consent to the entry of a Final Order by the Court in connection with this Motion to

the extent that it is later determined that the Court, absent consent of the parties, cannot enter Final Orders or judgments in connection herewith consistent with Article III of the United States Constitution.

7. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue of these Chapter 11 Cases and this Motion is proper in this district under 28 U.S.C. §§ 1408 and 1409.

8. The statutory bases for the relief requested herein are sections 105, 361, 362, 363, 364(c)(1), 364(c)(2), 364(c)(3), 364(d)(1), 364(e), 503, and 507 of the Bankruptcy Code, Bankruptcy Rules 2002, 4001, 6003, 6004 and 9014, and Local Rule 4001-2.

RELIEF REQUESTED

9. The Debtors respectfully request entry of the Interim Order substantially in the form attached hereto as **Exhibit A** and the Final Order:

- (i) authorizing Exactech (the “Borrower”) to obtain postpetition financing (“DIP Financing”) pursuant to a secured, superpriority, priming debtor in possession financing facility (the “DIP Facility”) subject to the terms and conditions set forth in the credit agreement attached as **Exhibit 1** to the Interim Order (as amended, restated, amended and restated, supplemented, or otherwise modified from time to time in accordance with the terms therein, the “DIP Credit Agreement”) by and among the Borrower, the DIP Guarantors (as defined below), the financial institutions or other entities from time to time party thereto as “DIP Lenders” (the “DIP Lenders”), and GLAS USA LLC, as administrative agent and collateral agent (in such capacities, together with its successors and permitted assigns, the “DIP Agent” and, together with the DIP Lenders, the “DIP Secured Parties”), consisting of a superpriority multi-draw term loan in an aggregate principal amount of up to \$85 million, of which up to \$35 million will be available in one interim draw immediately upon entry of the Interim Order (subject to certain conditions) (the “Interim Loans”) and the remainder will be available in one final draw upon entry of the Final Order (subject to certain conditions) (the “Final Loans”, together with the Interim Loans, the “DIP Loans”, and the commitment of the DIP Lenders to make the DIP Loans, the “DIP Commitments”);
- (ii) authorizing the Borrower to incur, and the other Debtors to jointly and severally guarantee (such Debtors, in this capacity, the “DIP Guarantors” and, together with the Borrower, the “Loan Parties”) the DIP Loans, and all extensions of credit, financial accommodations, reimbursement obligations, fees and premiums (including, without limitation, commitment fees or premiums and administrative

agency fees), costs, expenses, and other liabilities and obligations (including indemnities and similar obligations, whether contingent or absolute) due or payable under the DIP Documents (as defined below) (collectively, the “DIP Obligations”);

- (iii) authorizing the Loan Parties to execute, deliver, and perform their respective obligations under the DIP Credit Agreement and all other documents and instruments that may be reasonably requested by the DIP Secured Parties in connection with the DIP Facility (in each case, as amended, restated, supplemented, waived or otherwise modified from time to time in accordance with the terms thereof and hereof, the “DIP Documents”) as may be necessary, appropriate, or desirable in connection therewith;
- (iv) granting to the DIP Agent, for the benefit of itself and the other DIP Secured Parties, allowed superpriority claims pursuant to section 364(c)(1) of the Bankruptcy Code;
- (v) granting to the DIP Agent, for the benefit of itself and the other DIP Secured Parties, valid, enforceable, non-avoidable and automatically perfected security interests and liens pursuant to sections 364(c)(2), 364(c)(3), and 364(d) of the Bankruptcy Code on the DIP Collateral (as defined below), on the terms described herein;
- (vi) authorizing the DIP Agent, acting at the direction of the DIP Lenders having more than 66.67% of the DIP Loans and DIP Commitments (the “Required Lenders”), to implement the terms of the Interim Order;
- (vii) subject to entry of a Final Order granting such relief, waiving (a) the Debtors’ right to surcharge the DIP Collateral pursuant to section 506(c) of the Bankruptcy Code and (b) any “equities of the case” exception under section 552(b) of the Bankruptcy Code;
- (viii) subject to entry of a Final Order granting such relief, waiving the equitable doctrine of “marshaling” and other similar doctrines (a) with respect to the DIP Collateral for the benefit of any party other than the DIP Secured Parties and (b) with respect to the Prepetition Collateral for the benefit of any party other than the Prepetition First Lien Parties (as defined below);
- (ix) authorizing the Debtors to use proceeds of the DIP Facility and Cash Collateral (as defined below) in accordance with the DIP Orders, including the repayment of the Bridge Loan (as defined below);
- (x) authorizing the Debtors to pay the DIP Obligations as they become due and payable in accordance with the DIP Documents;
- (xi) subject to the restrictions and conditions set forth in the DIP Documents and the DIP Orders, authorizing the Debtors to use Prepetition Collateral and provide adequate protection to the Prepetition Secured Parties for diminution in value, if

any, of their respective interests in the Debtors' estates' interests in the applicable Prepetition Collateral (including Cash Collateral) as of the Petition Date to the extent provided by the Bankruptcy Code (such diminution, the "Diminution in Value");

- (xii) vacating and/or modifying the automatic stay solely to the extent necessary to permit the Debtors, the DIP Secured Parties, and the Prepetition Secured Parties to implement and effectuate the terms and provisions of the DIP Orders and the DIP Documents;
- (xiii) waiving any applicable stay (including under Bankruptcy Rule 6004) solely to the extent necessary to implement and effectuate the Interim Order and, upon entry, the Final Order; and
- (xiv) scheduling a final hearing (the "Final Hearing") within thirty-five (35) days of the Petition Date to consider final approval of the DIP Facility and use of Cash Collateral on the terms of the Final Order to be posted to the docket prior to the Final Hearing.

BACKGROUND

I. CHAPTER 11 CASES

10. On the date hereof (the "Petition Date"), each Debtor filed a voluntary petition for relief pursuant to chapter 11 of the Bankruptcy Code. The Debtors are operating their businesses as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. Concurrently with the filing of this Motion, the Debtors filed a motion requesting procedural consolidation and joint administration of these Chapter 11 Cases pursuant to Bankruptcy Rule 1015(b). No request for the appointment of a trustee or examiner has been made in these Chapter 11 Cases, and no official committee of unsecured creditors has been appointed.

11. Founded in 1985, the Debtors, together with their non-Debtor subsidiaries (collectively, the "Company") are a global medical device company that designs, manufactures, and markets joint replacement implants and related surgical instruments to help surgeons worldwide make patients more mobile. The Company's broad and innovative products include hip implants, knee implants, extremity implants, and ExactechGPS systems, among others. The

Company directs commercial operations in the United States as well as nine international markets, including Spain, Australia, Japan, the United Kingdom, and Italy. The Company is headquartered in Gainesville, Florida and employs approximately 900 individuals worldwide. Since its founding in 1985, the Company has expanded its distribution to over 30 countries.

12. Additional factual background regarding the Debtors, including their business operations, their corporate and capital structure, and the events leading to the filing of these Chapter 11 Cases, is set forth in detail in the First Day Declaration, filed concurrently herewith and incorporated herein by reference.

II. Summary of Material Terms of the DIP Facility

13. In accordance with Bankruptcy Rules 4001(b)-(d) and Local Rule 4001-2, the chart below summarizes material terms of the DIP Facility:³

Provision	Summary
Borrower Bankruptcy Rule 4001(c)(1)(B)	Exactech, Inc. DIP Credit Agreement, Preamble
Guarantors Bankruptcy Rule 4001(c)(1)(B)	Osteon Intermediate Holdings II, Inc., Osteon Holdings, Inc., Osteon Intermediate Holdings I, Inc., and each Subsidiary of the Borrower that is not an Excluded Subsidiary. DIP Credit Agreement, Preamble
Administrative Agent Bankruptcy Rule 4001(c)(1)(B)	GLAS USA LLC DIP Credit Agreement, Preamble
DIP Lenders Bankruptcy Rule 4001(c)(1)(B)	All Prepetition Holders will be offered the opportunity to participate in the DIP Facility on a <i>pro rata</i> basis on terms to be mutually agreed among the Backstop Parties (as defined below) (all participating Prepetition Holders, including the Backstop Parties, the “ <u>Lenders</u> ”, and each, a “ <u>Lender</u> ”).

³ The following summary of the DIP Facility is qualified in its entirety by reference to the applicable provisions of the relevant DIP Documents or the Interim Order, as applicable. To the extent there are any inconsistencies between this summary and the provisions of the DIP Documents or the Interim Order, the provisions of the Interim Order or the DIP Documents, as applicable, shall control. Any capitalized terms used but not otherwise defined in this summary shall have the respective meanings ascribed to such terms in the DIP Documents or the Interim Order, as applicable. The Debtors reserve the right to supplement the statements made pursuant to Bankruptcy Rule 4001 and Local Rule 4001-2 herein.

Provision	Summary
	Funds, investment vehicles and/or accounts affiliated or under common management with, or managed and/or advised by, certain members of the Ad Hoc Group (the “<u>Backstop Parties</u>”) will, severally and not jointly, backstop the DIP Facility (the “<u>Backstop Commitments</u>”). The total Backstop Commitments will be \$85 million. RSA § 3.03(b)
Commitment Bankruptcy Rule 4001(c)(1)(B) Local Rule 4001-2(a)(ii)	The DIP Credit Facility shall be a senior secured multiple draw term loan facility in an aggregate principal amount of DIP Loans not to exceed \$85 million, of which \$35 million shall be available upon entry of the Interim Order and the remainder of which shall be available upon entry of the Final Order. The draw mechanics of the DIP Loans shall be set forth in the DIP Documents and in accordance with the Interim Order and the Approved Budget. DIP Credit Agreement § 2.01
Provisions for Repayment of Prepetition Debt with Postpetition Debt Proceeds Local Rule 4001- 2(a)(i)(O)	Upon entry of the Interim Order, proceeds of the DIP Loans will be used to repay the Bridge Loan. Interim Order ¶ 2
Maturity Date Bankruptcy Rule 4001(c)(1)(B) Local Rule 4001-2(a)(i)(M)	The DIP Loans shall be repaid in full, and the Commitments shall terminate, on the earliest of (a) 6 months after the closing; <i>provided</i> that if a Sale and Confirmation Order confirming an Approved Sale (or, if applicable, the Approved Alternative Sale) has been entered by the Bankruptcy Court, but the effective date of the Approved Sale (or, if applicable, the Approved Alternative Sale) has not occurred solely due to pending regulatory approvals with respect to such sale closing and, as of each extension date, (x) the Lenders have not otherwise waived such regulatory approvals as a condition to such sale closing, (y) all other conditions to such sale closing have been satisfied and (z) the Loan Parties and their Subsidiaries are in compliance with this Agreement, the Restructuring Support Agreement and the Asset Purchase Agreement), then (i) the date under this clause (a) shall automatically extend to (1) initially, 7 months after the closing date (the “<u>Initial Maturity Date Extension</u>”), (2) then, 8 months after the closing date, and (3) then, 9 months after the closing date and (ii) thereafter, the Required Lenders may, in their sole discretion, agree to further extend the date under this clause (a) to a date no later than 12 months after the closing date; provided, further, that, for the avoidance of doubt, no extension shall be made in connection with any Alternative Restructuring, (b) the date of acceleration of the Loans and termination of the Commitments pursuant to the terms hereof, (c) the date that the Bankruptcy Court orders the conversion of the Chapter 11 Cases of any Loan Party to a chapter 7 liquidation or the dismissal of the Chapter 11 Case of any Loan Party, (d) the appointment of a chapter 11 trustee or an examiner with expanded powers in the Chapter 11 Cases, (e) the date of consummation of a sale of all or substantially all of the Loan Parties’ assets, under section 363 of the Bankruptcy Code or otherwise, (f) the date that is 35 calendar days after the Petition Date if the Final Order Entry Date shall not have occurred

Provision	Summary
	by such date, and (g) the effective date of a Chapter 11 Plan, which has been confirmed by an order entered by the Bankruptcy Court. DIP Credit Agreement § 1.01
Use of Proceeds Bankruptcy Rule 4001(c)(1)(B) Local Rule 4001-2(a)(i)(L)	The proceeds of the DIP Credit Facility shall be used solely for the following purposes: (i) first, to reimburse outstanding expenses of the predecessor administrative agent and collateral agent under the Prepetition First Lien Credit Agreement and, second, to repay the then outstanding amount of the Bridge Loans on the Closing Date, (ii) to pay transaction costs, fees, and expenses that are incurred in connection with the Chapter 11 Cases and the Prepetition Facilities, including without limitation, Allowed Professional Fees, provided that payment of Allowed Professional Fees or funding of the Funded Reserve Account shall not be subject to the Budget, deviation testing, or any Permitted Deviations; (ii) for general working capital and general corporate purposes of the Loan Parties, (iii) to pay fees, interest, and expenses associated with the DIP Facility, and (iv) to make adequate protection payments as set forth in the sections below entitled “Adequate Protection”, if applicable; provided that, with the exception of the payments described in clauses (i) and (ii), the use of any such Loan proceeds at any time shall be in accordance with the Budget (subject to Permitted Deviations). Notwithstanding the foregoing, no portion of the proceeds of the DIP Loans, the Carve-Out, or the Collateral, including Cash Collateral, may be used directly or indirectly, to investigate, challenge, object to or contest the validity, security, perfection, priority, extent or enforceability of any amount due under, or the liens or claims granted under or in connection with the DIP Credit Agreement or the other DIP Documents, other than up to \$50,000 in connection with the investigation by the Official Committee, if any, within the challenge period as set forth in the DIP Order, or in any manner that would violate or is prohibited under the Bankruptcy Code or the DIP Orders. DIP Credit Agreement §§ 6.14 & 7.16; Interim Order ¶ 2(a)-(b), 20
Interest Rate Bankruptcy Rule 4001(c)(1)(B) Local Rule 4001-2(a)(i)(B)	<u>Interest Rate:</u> All amounts outstanding under the DIP Facility will bear interest at SOFR + 8.0% per annum (subject to a 2.0% SOFR floor), of which SOFR + 1.0% will be payable in cash and 7.0% of which will be payable in kind. <u>Default Rate:</u> During the continuance of an Event of Default, the DIP Loans and all other outstanding DIP Obligations will bear interest at an additional 2.0% per annum above the interest rate otherwise applicable. DIP Credit Agreement §§ 1.01 & 2.08

Provision	Summary
Fees Bankruptcy Rule 4001(c)(1)(B) Local Rule 4001-2(a)(i)(B)	<u>Backstop Commitment Fee:</u> Subject to entry of the Interim Order, 10.0% of the aggregate initial amount of the Commitments, payable to the Backstop Parties in the form of reorganized equity in the Stalking Horse Purchaser (which shall be payable in cash if the Approved Sale is not consummated). <u>Upfront / Commitment Fee:</u> Subject to entry of the Interim Order, 5.0% of the aggregate initial amount of the Commitments, payable to the Lenders in kind on the Closing Date. <u>Exit Premium:</u> Subject to entry of the Interim Order, 4.0% of the aggregate outstanding principal amount of the DIP Loans, payable to the Lenders in cash on the Maturity Date (which shall be in the form of principal under the Take-back Facility if the Approved Sale is consummated). <u>Maturity Date Extension Premium:</u> Upon the occurrence of the Initial Maturity Date Extension, 1% of the aggregate outstanding principal amount of the DIP Loans earned on the Initial Maturity Extension Date and payable upon the Maturity Date; provided that if the Approved Sale is consummated, payment of the Maturity Date Extension Premium shall be waived. <u>Agency and Fronting Fees:</u> As agreed with the Agent and the Fronting Lender.⁴ <u>Nature of Interest, Premiums, and Fees:</u> Non-refundable under all circumstances. DIP Credit Agreement §§ 1.01, 2.09 & 2.14
Priority, Collateral Under the DIP Credit Facility Bankruptcy Rule 4001(c)(1)(B)(i), 4001(c)(1)(B)(ii) Local Rule 4001-2(a)(i)(G)	All DIP Obligations shall at all times: (i) subject to and subordinate to the Carve-Out (as defined below), pursuant to section 364(c)(1) of the Bankruptcy Code, all of the DIP Obligations shall constitute allowed superpriority claims (the “<u>DIP Superpriority Claims</u>”) against the Loan Parties on a joint and several basis (without the need to file any proof of claim) with priority over any and all unsecured claims and administrative claims against the Loan Parties, now existing or hereafter arising, of any kind whatsoever, including, without limitation but to the extent provided by the Bankruptcy Code, all administrative expenses of the kind specified in sections 503(b) and 507(b) of the Bankruptcy Code and any and all administrative expenses or other claims arising under sections 105, 326, 327, 328, 330, 331, 365, 503(b), 506(c) (subject to entry of a Final Order granting such relief), 507(a), 507(b), and 726 of the Bankruptcy Code (including the Adequate Protection Obligations), whether or not such expenses or claims may become secured by a judgment lien or other non-consensual lien, levy or attachment; (ii) subject and subordinate only to the Carve-Out, pursuant to section 364(c)(2) of the Bankruptcy Code, a valid, binding, continuing, enforceable, duly perfected first priority lien on and security interest in any and all tangible and intangible prepetition and postpetition property of the Loan Parties, whether existing on the Petition Date or

⁴ In accordance with Local Rule 4001-2(a)(1)(B), contemporaneous with the filing of this Motion the Debtors have filed a letter under seal disclosing the Agency and Fronting Fees.

Provision	Summary
	thereafter acquired, and the proceeds, products, rents, and profits thereof, that, on or as of the Petition Date, is not subject to (i) a valid, perfected, and non-avoidable lien or (ii) a valid and non-avoidable lien in existence as of the Petition Date that is perfected subsequent to the Petition Date as permitted by section 546(b) of the Bankruptcy Code, other than the Avoidance Actions, but, subject to entry of the Final Order granting such relief, including the Avoidance Proceeds (collectively, the “<u>Unencumbered Property</u>”), <i>provided that</i>, the DIP Liens shall encumber membership interests or other equity ownership in non-wholly owned subsidiaries (including joint ventures) that are not encumbered as of the Petition Date by duly perfected lien; (iii) subject and subordinate to the Carve-Out, pursuant to Bankruptcy Code section 364(c)(3), a continuing valid, enforceable, and non-avoidable fully perfected junior liens on and security interests in (excluding the DIP Priming Liens (as defined below)) on or as of the Petition Date, is subject to Prepetition Prior Liens, which shall be immediately junior and subordinate to the Prepetition Prior Liens, but senior to the Prepetition Liens and Prepetition Adequate Protections Liens on all Prepetition Collateral subject to such Prepetition Prior Liens; and (iv) subject and subordinate to the Carve-Out and any applicable Prepetition Prior Liens, pursuant to Bankruptcy Code section 364(d), a valid, binding, continuing, enforceable, duly perfected first priority senior priming lien on and security interest in, to, and under all Collateral (each as defined in the DIP Credit Agreement) secured by Prepetition Liens (the “<u>DIP Priming Liens</u>”). Notwithstanding anything herein to the contrary, but subject and subordinate to the Carve-Out in all respects, the DIP Priming Liens shall (i) be senior in all respects to the Prepetition Liens, other than the Prepetition Prior Liens, on the Prepetition Collateral, (ii) be senior to any Adequate Protection Liens on the Prepetition Collateral, and (iii) not subordinate to any lien, security interest or mortgage that is avoided and preserved for the benefit of the Debtors and their estates under section 551 of the Bankruptcy Code with respect to the DIP Collateral. The Prepetition Liens with respect to the Prepetition Collateral, other than the Prepetition Prior Liens, shall be primed by and made subject and subordinate to the DIP Priming Liens. “<u>DIP Collateral</u>” means, collectively, all property identified in clause (a) through (c) of paragraph 7 of the Interim Order, including, without limitation, any and all tangible and intangible prepetition and postpetition property of the Loan Parties, whether existing on the Petition Date or thereafter acquired, and the proceeds, products, rents, and profits thereof, membership interests or other equity ownership interests in non-wholly owned subsidiaries (including joint ventures), and all Collateral secured by Prepetition Liens. DIP Credit Agreement § 11.01; Interim Order ¶¶ 5, 7(a)-(c)
Carve-Out Bankruptcy Rule 4001(b)(1)(B)(iii)	The “Carve-Out” means the sum of (i) all fees required to be paid to the Clerk of the Court and to the Office of the United States Trustee under section 1930(a) of title 28 of the United States Code plus interest at the statutory rate; (ii) all reasonable fees and expenses up to \$50,000 incurred by a trustee under section

Provision	Summary
Local Rule 4001-2(a)(i)(F)	726(b) of the Bankruptcy Code; (iii) to the extent allowed all unpaid fees and expenses (the “<u>Allowed Professional Fees</u>”) incurred by persons or firms retained by the Debtors pursuant to sections 327, 328, or 363 of the Bankruptcy Code (the “<u>Debtor Professionals</u>”) and, with respect to any professionals retained by a Creditors Committee pursuant to Sections 328 or 1103 of the Bankruptcy Code (the “<u>Committee Professionals</u>” and, together with the Debtor Professionals, the “<u>Professional Persons</u>”), an amount up to \$75,000, at any time before or on the first business day following delivery by the DIP Agent of a Carve-Out Trigger Notice (defined below), whether allowed by this Court prior to or after delivery of a Carve-Out Trigger Notice; and (iv) Allowed Professional Fees of Professional Persons in an aggregate amount not to exceed \$3.0 million incurred after the first business day following delivery by the DIP Agent of the Carve Out Trigger Notice, to the extent allowed at any time, whether by interim order, procedural order, or otherwise (the amounts set forth in this clause (iv) being the “<u>Post-Carve-Out Trigger Notice Cap</u>”). 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, their lead restructuring counsel (Ropes & Gray LLP), counsel to the Prepetition First Lien Lenders, the U.S. Trustee, and counsel to the Committee (to the extent one has been appointed), which notice may be delivered following the occurrence and during the continuation of an Event of Default and acceleration of the DIP Obligations under the DIP Facility, stating that the Post-Carve-Out Trigger Notice Cap has been invoked. Interim Order ¶ 4
Adequate Protection Bankruptcy Rules 4001(b)(1)(B)(iv), 4001(c)(1)(B)(ii) Local Rule 4001-2(a)(i)(G)	<u>Prepetition First Lien Parties’ Adequate Protection Liens:</u> The Prepetition First Lien Agent shall receive, for the benefit of the Prepetition First Lien Parties, and in each case solely to the extent of Diminution in Value, if any, effective and perfected upon the date of this Interim Order and without the necessity of the execution of any mortgages, security agreements, pledge agreements, financing statements or other agreements, a valid, duly perfected replacement security interest in and lien on account of the Prepetition First Lien Parties’ Diminution in Value, if any, upon all of the DIP Collateral (the “<u>First Lien Adequate Protection Liens</u>”), junior, subject, and subordinate solely to the Carve-Out, the DIP Liens, and the Prepetition Prior Liens, but senior to all other liens and <i>pari passu</i> with the Sidecar Adequate Protection Liens (as defined below). <u>Prepetition First Lien Parties’ Section 507(b) Claim:</u> The Prepetition First Lien Agent, for the benefit of the Prepetition First Lien Parties, and in each case solely to the extent of Diminution in Value, if any, shall receive an allowed superpriority administrative expense claim against the Loan Parties on a joint and several basis (without the need to file any proof of claim) on account of the Prepetition First Lien Parties’ Diminution in Value under section 507(b) of the Bankruptcy Code (the “<u>First Lien 507(b) Claim</u>”), which shall be payable from and have recourse to all DIP Collateral and all proceeds thereof (excluding, for the avoidance of doubt, Avoidance Actions but, subject to entry of the Final Order granting such relief, including the Avoidance Proceeds). The First Lien 507(b) Claim shall be senior to all other claims against the Loan Parties, now existing or hereafter arising, of any kind whatsoever, including, without limitation, all administrative expenses of the kind specified in sections 503(b) and 507(b) of the Bankruptcy Code, whether or not such claims may become secured by a judgment lien or other non-consensual lien, levy or attachment, except for the Carve-Out

Provision	Summary
	and the DIP Superpriority Claims, and shall be <i>pari passu</i> with the Sidecar 507(b) Claim (as defined below). <u>Prepetition First Lien Parties’ Fees and Expenses:</u> As further adequate protection, the Loan Parties shall pay, in cash, all reasonable and documented fees and out-of-pocket expenses payable counsel to the Prepetition First Lien Agent and professionals retained by the Ad Hoc Group promptly upon receipt of summary form invoices which may be redacted for privileged information, subject to the review procedures set forth in paragraph 18 of the Interim Order. <u>Prepetition Sidecar Secured Parties’ Adequate Protection Liens:</u> The Prepetition Sidecar Agent shall receive, for the benefit of the Prepetition Sidecar Secured Parties, effective and perfected upon the date of this Interim Order and without the necessity of the execution of any mortgages, security agreements, pledge agreements, financing statements or other agreements, a valid, duly perfected replacement security interest in and lien on account of the Prepetition Sidecar Secured Parties’ Diminution in Value upon all of the DIP Collateral (the “<u>Sidecar Adequate Protection Liens</u>” and, together with the First Lien Adequate Protection Liens, the “<u>Adequate Protection Liens</u>”), junior, subject, and subordinate solely to the Carve-Out, the DIP Liens, and the Prepetition Prior Liens, but senior to all other liens and <i>pari passu</i> with the First Lien Adequate Protection Liens. <u>Prepetition Sidecar Secured Parties’ Section 507(b) Claim:</u> The Prepetition Sidecar Agent, for the benefit of the Prepetition Sidecar Secured Parties, shall receive an allowed superpriority administrative expense claim against the Loan Parties on a joint and several basis (without the need to file any proof of claim) on account of the Prepetition Sidecar Secured Parties’ Diminution in Value under section 507(b) of the Bankruptcy Code (the “<u>Sidecar 507(b) Claim</u>” and, together with the First Lien 507(b) Claim, the “<u>507(b) Claims</u>”), which shall be payable from and have recourse to all DIP Collateral and all proceeds thereof (excluding, for the avoidance of doubt, Avoidance Actions but, subject to entry of the Final Order granting such relief, including Avoidance Proceeds). The Sidecar 507(b) Claim shall be senior to all other claims against the Loan Parties, now existing or hereafter arising, of any kind whatsoever, including, without limitation, all administrative expenses of the kind specified in sections 503(b) and 507(b) of the Bankruptcy Code, whether or not such claims may become secured by a judgment lien or other non-consensual lien, levy or attachment, except for the Carve-Out and the DIP Superpriority Claims, and shall be <i>pari passu</i> with the First Lien 507(b) Claim. <u>Prepetition Sidecar Secured Parties’ Fees and Expenses:</u> As further adequate protection, the Loan Parties shall pay, in cash, reasonable and documented professional fees and out-of-pocket expenses of counsel to the Prepetition Sidecar Agent (the “<u>Sidecar Adequate Protection Fees and Expenses</u>” and, together with the First Lien Adequate Protection Fees and Expenses, the “<u>Adequate Protection Fees and Expenses</u>”), promptly upon receipt of summary form invoices which may be redacted for privileged information, subject to the review procedures set forth in paragraph 18 of the Interim Order; <i>provided</i>, that, the Sidecar Adequate Protection Fees and Expenses payable by the DIP Loan Parties shall not exceed \$1,200,000 in the aggregate. Interim Order ¶ 14

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Milestones Bankruptcy Rule 4001(c)(1)(B)(vi) Local Rule 4001-2(a)(i)(H)	The Debtors shall comply with the following deadlines (each, individually, a “<u>Milestone</u>” and, collectively, the “<u>Milestones</u>”), which may be extended or modified with the written consent of the Required Lenders: • No later than thirty-five (35) days after the Petition Date, the Bankruptcy Court shall have entered the Bid Procedures Order in form and substance consistent with the RSA or otherwise reasonably acceptable to the Ad Hoc Group; • No later than forty-five (45) after the Petition Date the Bankruptcy Court shall have entered the general bar date order in form and substance consistent with the RSA or otherwise reasonably acceptable to the Ad Hoc Group; • No later than the date that is 35 days after the Petition Date, the Borrower and its Subsidiaries will begin discussions with a proposed voluntary administrator(s) of Exactech Australia in relation to the Australian Corporate Restructuring, and will promptly provide to the Ad Hoc Group any oral or written feedback provided by the proposed voluntary administrator(s) in connection with the potential voluntary administration process. • No later than the date that is 75 days after the Petition Date, the Debtors shall have either (1) reached a settlement in respect of Federal Court of Australia proceedings number NSD1224/2024 and any matters the subject of those proceedings, that is acceptable to the Ad Hoc Group, or (2) appointed one or more voluntary administrators to Exactech Australia to pursue the voluntary administration of Exactech Australia in Australia; provided that if at such time, the relevant governing bodies of the Debtors, Exactech International Operation AG, or Exactech Australia determine that such actions are inconsistent with their fiduciary duties based on the advice of external counsel, such Milestone shall be extended through (a) the Bid Deadline (as defined in the Bid Procedures Order) if there are no higher and better bids than the bid of the Stalking Horse Purchaser, or (b) in the event of an Auction (as defined in the Bid Procedures Order), through the date that the Stalking Horse Purchaser is declared the Winning Bidder (as defined in the Bid Procedures Order). • No later than the date that is 60 days after the Petition Date, the Debtors and the Ad Hoc Group shall have agreed on a detailed steps plan to effectuate the corporate restructuring of Exactech UK Limited, including a budget and estimate for fees, costs, taxes, and other expenses resulting from any such steps plan, in form and substance consistent with the Restructuring Support Agreement or otherwise reasonably acceptable to the Ad Hoc Group. • If the Stalking Horse Purchaser is determined to be the Winning Bidder, subject to the Stalking Horse Purchaser providing the UK Restructuring Funding, the Debtors shall begin to effectuate the UK Corporate Restructuring Steps Plan on the date the Winning Bidder is declared. • No later than the date that is 45 days after the Petition Date, the Borrower and the Ad Hoc Group shall jointly commence a proceeding in the Bankruptcy Court to seek a determination that all of the Borrower’s

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	rights and interests (including membership interests and other Equity Interests) in JointMedica can be transferred (and the relevant agreements, including the distribution agreement, can be assumed and assigned) without the consent of JointMedica Investments Holdings, L.P. (or TPG Capital, L.P. or any of its Affiliates asserting that such consent is required), and the Required Lenders shall have the requisite standing and right to raise issues and be heard on all issues in such proceeding, including the right to appeal. • No later than one-hundred days (100) after the Petition Date, the Bankruptcy Court shall have entered the Disclosure Statement Order in form and substance consistent with the RSA or otherwise reasonably acceptable to the Ad Hoc Group; • No later than fifteen (15) days after entry of the Disclosure Statement Order, the Debtors shall have commenced solicitation of the Approved Plan; • No later than one-hundred and fifty (150) days after the Petition Date, the Bankruptcy Court shall have entered the Sale and Confirmation Order in form and substance consistent with the RSA or otherwise reasonably acceptable to the Ad Hoc Group; • The effective date of the Approved Plan shall have occurred as soon as reasonably practicable, but in no event later than the Outside Date (as defined in the RSA). DIP Credit Agreement § 6.19
Loan Covenants Bankruptcy Rule 4001(c)(1)(B) Local Rule 4001-2(a)(i)(B)	The DIP Documents contain affirmative covenants that are customary and appropriate for debtor in possession financings of this type, including, but not limited to: (i) maintenance of insurance; (ii) payment of taxes; (iii) maintenance of properties; (iv) use of proceeds; (v) obligations related to weekly conference calls; (vi) provision of and compliance with the Budget; (vii) reporting of financial information; (viii) prompt notice of all notices of litigation, defaults, and unmatured defaults, any material damage or event related to the DIP Collateral, and certain other information; (ix) satisfaction of the Milestones and (x) conference calls with senior management and advisors once every two calendar weeks and conference calls with only advisors once every calendar week, in each case, with Lenders who choose to attend. The DIP Documents also contain negative covenants that are customary and appropriate for debtor in possession financings of this type, including, but not limited to: (i) limitation on indebtedness; (ii) limitation on liens; (iii) limitation on sale of assets; (iv) limitation on restricted payments; (v) certain other financial covenants; (vi) amendments of prepetition debt documents; (viii) prepayment of other indebtedness; and (ix) repayment of indebtedness (other than the Bridge Loan). DIP Credit Agreement §§ 6.01 & 7.01
Events of Default Bankruptcy Rule 4001(c)(1)(B)	Certain events of default (each a “<u>DIP Event of Default</u>,” and collectively, the “<u>DIP Events of Default</u>”) include, without limitation:

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Local Rule 4001-2(a)(i)(M)	(i) failure to pay (a) when due any principal on the DIP Loans or (b) within five (5) Business Days after the same comes due, any interest or other amounts under the DIP Facility; (ii) failure of any representation or warranty of any Debtor contained in any DIP Document to be true and correct in all material respects when made; (iii) breach of certain covenants, provided that certain covenants may be subject to a fifteen (15) calendar day grace period; (iv) there is a judgment entered against the Borrower or any Subsidiary in a final non-appealable judgment and order for the payment of money in an aggregate amount exceeding the Threshold Amount; (v) any of the Debtors, among other relevant parties in the DIP Credit Agreement, (i) contesting the validity or enforceability of any DIP Document in writing or denying in writing that it has any further liability thereunder or (ii) contesting the validity or perfection of the liens and security interests securing the DIP Loans; (vi) failure to meet any Milestone (unless such Milestone is satisfied prior to receiving notice of such failure from the Required Lenders); (vii) there occurs any Budget Event; (viii) termination of the RSA or the Asset Purchase Agreement (in each case, if due to a Consenting Lender Termination Event); (ix) dismissal, conversion or the appointment of a chapter 11 trustee in these Chapter 11 Cases. DIP Credit Agreement § 8.01; Interim DIP Order ¶ 17(b)
Conditions of Borrowing Bankruptcy Rule 4001(c)(1)(B) Local Rule 4001-2(a)(i)(E)	The effectiveness of the DIP Credit Facility shall be subject to certain customary closing conditions, including, without limitation, the satisfaction of the following conditions precedent (the “<u>Conditions Precedent</u>”): (i) The DIP Order shall be in full force and effect and shall not have been vacated, reversed, modified, amended or stayed without the written consent of the Administrative Agent and the Required Lenders. The Loan Parties shall be in compliance in all material respects with each Chapter 11 Order. (ii) No Default or Event of Default shall exist, or would result from, such proposed Credit Extension or from the application of the proceeds therefrom. (iii) Receipt by the Administrative Agent of all executed Loan Documents, including, without limitation, the DIP Credit Agreement, the Pledge and Security Agreement and customary corporate deliverables.

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	(iv) The Administrative Agent and the Lenders shall have received the Initial Budget which is in form and substance reasonably acceptable to the Required Lenders. (v) All fees and expenses required to be paid hereunder, under the Interim Order and under the Fronting Fee Letter, in each case, on the Closing Date shall have been paid, or shall be paid substantially concurrently with the initial Borrowing on the Closing Date. (vi) The Interim Order shall have been entered by the Bankruptcy Court, and the Administrative Agent shall have received a true and complete copy of such order. (vii) All orders entered by the Bankruptcy Court pertaining to cash management and adequate protection, including the Cash Management Order and the Interim Order, and all other motions and documents filed or to be filed with, and submitted to, the Bankruptcy Court in connection therewith, shall be in form and substance reasonably satisfactory to the Required Lenders. (viii) The Prepetition Holders shall have received adequate protection in respect of the Liens securing the Prepetition Obligations in the form set forth in the Interim Order. (ix) The DIP Funding Account shall have been established by the Borrower for the purposes of receipt of the proceeds of the Final Loans. (x) There shall exist no action, suit, investigation, litigation or proceeding pending or (to the knowledge of the Loan Parties) threatened in any court or before any arbitrator or governmental instrumentality (other than as set forth on <u>Schedule 5.06</u> or the Chapter 11 Cases and any action, suit, investigation or proceeding arising from the commencement and continuation of the Chapter 11 Cases or the consequences that would normally result from the commencement and continuation of the Chapter 11 Cases) that is not stayed and could reasonably be expected to result in a Material Adverse Effect. (xi) All governmental and third party consents and approvals necessary in connection with the DIP Facility and the transactions contemplated hereby shall have been obtained (without the imposition of any materially adverse conditions that are not acceptable to the Required Lenders) and shall remain in effect; and the making of the Loans shall not violate any material applicable requirement of law and shall not be enjoined temporarily, preliminarily or permanently. DIP Credit Agreement §§ 4.01 & 4.02

Provision	Summary
Indemnification Bankruptcy Rule 4001(c)(1)(B)(ix)	<u>Indemnification by the Borrower.</u> The Borrower shall indemnify and hold harmless the Agents and each Lender and their respective Related Persons, in each case, in its capacity as a Lender hereunder (collectively, the “<u>Indemnitees</u>”), from and against any and all losses, claims, damages, liabilities or expenses (including Attorney Costs and Environmental Liabilities) to which any such Indemnatee may become subject arising out of, resulting from or in connection with (but limited, in the case of legal fees and expenses, to the reasonable and documented out-of-pocket fees, disbursements and other charges of one counsel to the Administrative Agent, one counsel to all Lenders taken as a whole and, if reasonably necessary, a single local counsel for all Indemnitees taken as a whole in each relevant material jurisdiction, and solely in the case of a conflict of interest, one additional counsel in each relevant material jurisdiction to each group of affected Indemnitees similarly situated taken as a whole) any actual or threatened claim, litigation, investigation or proceeding relating to the Transactions or to the execution, delivery, enforcement, performance and administration of this Agreement, the other Loan Documents, the Loans, or the use, or proposed use of the proceeds therefrom, whether based on contract, tort or any other theory (including any investigation of, preparation for, or defense of any pending or threatened claim, litigation, investigation or proceeding), and regardless of whether any Indemnatee is a party thereto (all the foregoing, collectively, the “<u>Indemnified Liabilities</u>”); <i>provided</i> that such indemnity shall not, as to any Indemnatee, be available to the extent that such losses, claims, damages, liabilities or expenses resulted from (x) the gross negligence, bad faith or willful misconduct of such Indemnatee or any of its Related Indemnified Persons as determined by a final, non-appealable judgment of a court of competent jurisdiction, (y) a material breach of any obligations under any Loan Document by such Indemnatee or any of its Related Indemnified Persons as determined by a final, non-appealable judgment of a court of competent jurisdiction or (z) any dispute solely among Indemnitees other than any claims against an Indemnatee in its capacity or in fulfilling its role as an administrative agent or arranger or any similar role under any Loan Document and other than any claims arising out of any act or omission of Holdings or any of its Affiliates (as determined by a final, non-appealable judgment of a court of competent jurisdiction). To the extent that the undertakings to indemnify and hold harmless set forth in this Section 10.05 may be unenforceable in whole or in part because they are violative of any applicable Law or public policy, the Borrower shall contribute the maximum portion that they are permitted to pay and satisfy under applicable Law to the payment and satisfaction of all Indemnified Liabilities incurred by the Indemnitees or any of them. No Indemnatee shall be liable for any damages arising from the use by others of any information or other materials obtained through IntraLinks or other similar information transmission systems in connection with this Agreement (except to the extent such damages are found in a final non-appealable judgment of a court of competent jurisdiction to have resulted from the willful misconduct, bad faith or gross negligence of such Indemnatee), nor shall any Indemnatee or any Loan Party have any liability for any special, punitive, indirect or consequential damages relating to this Agreement or any other Loan Document or arising out of its activities in connection herewith or therewith (whether before or after the Closing Date) (other than, in the case of any Loan Party, in respect of any such damages incurred or paid by an Indemnatee to a third party for which such Indemnatee is otherwise entitled to indemnification pursuant to this Section 10.05). In the case of an investigation, litigation or other proceeding to which the indemnity in this Section 10.05 applies, such indemnity shall be effective whether or not such investigation, litigation or proceeding is brought by any Loan Party, its directors, stockholders

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	or creditors or an Indemnitee or any other Person, whether or not any Indemnitee is otherwise a party thereto and whether or not any of the transactions contemplated hereunder or under any of the other Loan Documents is consummated. All amounts due under this Section 10.05 shall be paid within thirty (30) calendar days after written demand therefor. The agreements in this Section 10.05 shall survive the resignation of the Administrative Agent, the replacement of any Lender, the termination of the Aggregate Commitments and the repayment, satisfaction or discharge of all the other Obligations. This Section 10.05 shall not apply to Taxes, except any Taxes that represent losses or damages arising from any non-tax claim. Notwithstanding the foregoing, each Indemnitee shall be obligated to refund and return promptly any and all amounts paid by any Loan Party or any of its Affiliates under this Section 10.05 to such Indemnitee for any such fees, expenses or damages to the extent such Indemnitee is not entitled to payment of such amounts in accordance with the terms hereof. DIP Credit Agreement § 10.05
Approved Budget Bankruptcy Rule 4001(c)(1)(B) Local Rule 4001-2(a)(iii)	“<u>Approved Budget</u>” means (i) initially, the Initial Budget and each (ii) subsequent approved budget in accordance with Section 6.01(d). “<u>Initial Budget</u>” means the 26-week cash flow forecast for the 26-week period beginning on the Petition Date, in the form attached to the Interim Order. On the Friday of every fourth week, commencing with November [29], 2024 (or more frequently at the option of the Loan Parties to accommodate changes in business operating activity), an updated 13-week forecast for the subsequent 13 weeks of the Loan Parties in a form consistent with past practice, broken down by week, which shall include the anticipated uses of the Loans for such period (each, a “<u>Proposed Budget</u>”), which Proposed Budget shall modify and supersede any prior Budget upon the approval of the Required Lenders in their reasonable discretion (which approval may be delivered by the Ad Hoc Group Advisors by e-mail correspondence); <i>provided</i> that (i) the most recently delivered Proposed Budget shall be deemed approved five (5) Business Days following delivery thereof to the Administrative Agent and the Ad Hoc Group Advisors, unless the Required Lenders or any Ad Hoc Group Advisor shall object to the same in writing on or before such date and (ii) if the Required Lenders or any Ad Hoc Group Advisor objects to such Proposed Budget, the Loan Parties and the Ad Hoc Group Advisors will work in good faith to reconcile the Proposed Budget; <i>provided, further</i>, that, for the avoidance of doubt, until the conditions for the most recently delivered Proposed Budget are met, the prior approved Budget shall remain in full force and effect for all purposes. DIP Credit Agreement §§ 1.01, 5.21 & 6.01(d); Interim Order ¶ H(xi)
Variance Covenant Bankruptcy Rule 4001(c)(1)(B) Local Rule 4001-2(a)(i)	Compliance with the Approved Budget (subject to the Permitted Variances) shall be tested on the Wednesday of each week, commencing with November [6], 2024, a written variance report reconciling actual cash receipts and operating disbursements for the most recently ended Budget Testing Period measured against the Budget then in effect, which report shall include a reasonably detained explanation of all material variances (determined on a line-item-by-line-item basis) between actual budgeted receipts and disbursements (each, a “Variance Report”).

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	A “Permitted Variance” means, for purposes of testing whether a Budget Event has occurred or for whether receipts or disbursements are set forth in the Budget, for any given Budget Testing Period, a variance of 15.0%. The “Budget Testing Period” means each of the following, as applicable: (a) the one-week period ending on November [8], 2024, (b) the two-week period ending on November [15], 2024, (c) the three-week period ending on November [22], 2024, (d) the four-week period ending on November [29], 2024, and (e) each four-week period ending on each Friday thereafter. A “Budget Event” means (a) the actual amount of aggregate operating disbursements (excluding professional fees and Commission Amounts) during any Budget Testing Period exceeding the projected operating disbursements in the Budget for such Budget Testing Period by an amount greater than the Permitted Variance, or (b) the actual amount of aggregate cash receipts during any Budget Testing Period being less than the projected amount of cash receipts in the Budget for such Budget Testing Period by an amount greater than the Permitted Variance; provided that amounts not used in any Budget Testing Period may be carried forward and used in the following Budget Testing Period. DIP Credit Agreement §§ 1.01 & 6.01
Use of Cash Collateral; Entities with Interest in Cash Collateral Bankruptcy Rule 4001(b)(1)(B)(i)	The Prepetition Secured Parties have consented to the use of Cash Collateral in a manner consistent with the Approved Budget (including with respect to permitted variances in such budget(s)), it being acknowledged and agreed that any Approved Budget shall not limit nor be deemed to limit the Carve-Out or the Debtors’ obligation to pay or reimburse any obligations otherwise entitled to priority under the Carve-Out. Interim Order ¶ 13
Liens on Avoidance Actions Bankruptcy Rule 4001(c)(1)(b) Local Rule 4001(a)(i)(U)	The DIP Collateral shall not include liens on Avoidance Actions. However, upon entry of the Final Order, the DIP Liens, Adequate Protection Liens and Superpriority Claims shall attach to proceeds on avoidance actions. Interim Order ¶¶ 5, 7, 14
Challenge Period Bankruptcy Rule 4001(c)(1)(B), 4001(c)(1)(B)(viii) Local Rule 4001(a)(i)(Q)	The Debtors’ stipulations, admissions, agreements, and releases contained in the Interim Order are subject to the rights of parties with standing to commence an adversary proceeding or contested matter, by not later than (a)(i) 75 calendar days after the entry of the Interim Order, and (ii) if a chapter 7 or a chapter 11 trustee is appointed or elected prior to the end of the Challenge Period (as defined below), the later of (A) 75 calendar days after entry of this Interim Order, or (B) the date that is 21 calendar days after such trustee’s appointment and (b) any such later date as has been agreed to by the Prepetition First Lien Agent with respect to the Prepetition First Lien Obligations (the time period established by the foregoing clauses (a)-(b) the “<u>Challenge Period</u>”). Interim Order ¶ 19
Waivers/Modification of Automatic Stay	Upon the occurrence and during the continuation of an Event of Default under any of the DIP Documents that has not been waived by the Required Lenders and following delivery of written notice (a “<u>Termination Notice</u>”) on not less than

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Bankruptcy Rule 4001(c)(1)(B)(iv) Local Rule 4001-2(a)(i)(S)	five (5) business days' notice (such five (5) business day period, the "<u>DIP Agent Remedies Notice Period</u>") to lead restructuring counsel to the Debtors, lead restructuring counsel to each of the Prepetition Agents, lead counsel to the Creditors' Committee (if any), and the U.S. Trustee, the DIP Agent may, without further notice to, hearing of, or order from this Court, unless the Court orders otherwise, <i>provided</i> that during the DIP Agent Remedies Notice Period, the Debtors, the Creditors' Committee (if appointed), and/or any party in interest shall be entitled to seek an emergency hearing (with the DIP Agent consenting to such emergency hearing) with the Court: (a) immediately terminate and/or revoke the Debtors' right under this Interim Order and any other DIP Documents to use any Cash Collateral, (b) terminate the DIP Commitments and any DIP Documents as to any future liability or obligation of the DIP Secured Parties but without affecting any of the DIP Obligations or the DIP Liens securing such DIP Obligations; (c) declare all DIP Obligations to be immediately due and payable; (c) invoke the right to charge interest at the default rate under the DIP Documents; (d) freeze monies or balances in the Debtors' accounts other than the Funded Reserve Account; (e) immediately set-off any and all amounts in accounts maintained by the Debtors with the DIP Agent or the DIP Secured Parties against the DIP Obligations; (e) enforce any and all rights against the DIP Collateral, including, without limitation, foreclosure on all or any portion of the DIP Collateral, occupying the Debtors' premises, sale or disposition of the DIP Collateral; and (f) except as otherwise ordered by the Court, take any other actions or exercise any other rights or remedies permitted under this Interim Order, the DIP Documents or applicable law. After delivery of such Termination Notice by the DIP Agent and expiration of the DIP Agent Remedies Notice Period and except as otherwise ordered by the Court, the DIP Secured Parties' and the Prepetition Secured Parties' consent to use their respective Cash Collateral and the Debtors' ability to incur additional DIP Obligations will, unless the Court orders otherwise, automatically terminate; <i>provided</i>, that, notwithstanding anything to the contrary in this Order, the Debtors shall continue to have the right to use Cash Collateral solely to pay necessary expenses to avoid irreparable harm to the Debtors' estates, fund the Carve-Out, and meet payroll obligations, in each case in accordance with the terms of this Interim Order and the Approved Budget during the DIP Agent Remedies Notice Period and pending any final determination from the Court. As soon as reasonably practicable following receipt of a Termination Notice, the Debtors shall file a copy of the same on the docket. The Debtors, the DIP Secured Parties, and the Prepetition Secured Parties shall be authorized to take all reasonable actions as are necessary or appropriate to implement the terms of the Interim Order. The automatic stay shall be modified to permit affiliates of the Debtors who are not debtors in these cases to take all actions as are necessary or appropriate to implement the terms of the Interim Order. Furthermore, for all Adequate Protection and stay relief purposes throughout these cases, the Prepetition Secured Parties shall be deemed to have requested relief from the automatic stay and Adequate Protection as of the Petition Date. For the avoidance of doubt, such request will survive termination of the Interim Order. Interim Order ¶¶ 8(d), 34 & 35

Provision	Summary
Section 506(c), 552(b) “Equities of the Case,” and Marshalling Waivers Bankruptcy Rule 4001(c)(1)(B)(x); Local Rule 4001-2(a)(i)(V)-(X)	The Interim Order provides that subject to entry of a Final Order granting such relief in no event shall the “equities of the case” exception in section 552(b) of the Bankruptcy Code apply to the Prepetition Secured Parties. Furthermore, subject to and upon entry of the Final Order, but effective as of the Petition Date, in no event shall the DIP Secured Parties or the Prepetition Secured Parties be subject to the equitable doctrine of “marshaling” or any similar doctrine with respect to any of the DIP Collateral, the DIP Obligations, the Prepetition First Lien Obligations, or the Prepetition First Lien Collateral, as applicable. Subject to entry of a Final Order granting such relief, and without limiting the scope of the Carve-Out, no costs or expenses of administration of these Chapter 11 Cases or any Successor Case or any future proceeding that may result therefrom, including liquidation in bankruptcy or other proceedings under the Bankruptcy Code, shall be charged against or recovered from the Collateral (including Cash Collateral) pursuant to section 506 of the Bankruptcy Code or any similar principle of law, without the prior written consent of the DIP Agent and the Prepetition First Lien Agent, and no such consent shall be implied from any action, inaction or acquiescence by any of the DIP Secured Parties or Prepetition Secured Parties, and nothing contained in this Interim Order shall be deemed to be a consent by the DIP Secured Parties or Prepetition Secured Parties to any charge, lien, assessment or claims against the Collateral under section 506(e) of the Bankruptcy Code or otherwise. Interim Order ¶¶ 10, 11 & 12

14. Each of the foregoing terms is justified because the Debtors need immediate access to financing and the use of Cash Collateral to continue in these Chapter 11 Cases and facilitate the Sale Process. The DIP Facility is the only viable proposal to provide critical liquidity and was negotiated at arms’ length.

III. PREPETITION INDEBTEDNESS

15. As of the Petition Date, the Debtors have approximately \$352,169,400.47 million of funded principal debt obligations, consisting of obligations under the Prepetition First Lien Credit Agreement (as defined herein) and the Prepetition Sidecar Credit Agreement (as defined herein).

16. The following table details the Company’s prepetition capital structure (as of the Petition Date) with respect to their funded debt:

Instrument	Approx. Balance Outstanding	Rate	Security
Prepetition First Lien Credit Agreement	\$323,644,335.88	S + Term SOFR Adj. + 3.75%	Substantially all assets subject to Excluded Assets as defined in the Prepetition First Lien Credit Agreement
Revolving Loans	\$52,180,116.32		
Prepetition First Lien Term Loan	\$264,917,930.82		
Bridge Loan	\$6,546,288.74	S + 8.00%	
Prepetition Sidecar Credit Agreement	\$28,525,064.59	• 12% per annum on or prior to March 18, 2024 (2% cash, 10% PIK) • 18% per annum after March 18, 2024 (2% cash, 16% PIK)	Substantially all assets subject to Excluded Assets as defined in the Prepetition Sidecar Credit Agreement
Original Sidecar Term Loans	\$17,600,993.96		
First Amendment Sidecar Term Loans	\$10,924,070.63		
Total:	\$352,169,400.47		

A. PREPETITION FIRST LIEN CREDIT FACILITY

17. On February 14, 2018, Debtor Exactech, Inc. entered into that certain credit agreement dated February 14, 2018 (as amended, restated, supplemented, amended and restated or otherwise modified from time to time prior to the Petition Date, the “Prepetition First Lien Credit Agreement”), among the Borrower, Osteon Intermediate Holdings II, Inc., as holdings (“Holdings”), Goldman Sachs Bank USA, as administrative and collateral agent (the “Prepetition First Lien Agent”), the guarantors party thereto, and the lender

parties thereto (the “Prepetition First Lien Lenders”, and the outstanding claims thereto the “Prepetition First Lien Claims”), pursuant to which the Prepetition First Lien Lenders agreed to provide the Borrower with (i) revolving credit facility with commitments in an aggregate amount of \$50,000,000 (the “Revolving Loans” and the holders thereof, the “Revolving Lenders”), and (ii) first lien term loan facility in the aggregate principal amount of \$235,000,000 (the “Original First Lien Term Loans”).

18. Under the Prepetition First Lien Credit Agreement, the Revolving Loans have a maturity date of November 15, 2024 and bear interest at SOFR plus 3.75% with a 0.25% step down depending on the first lien net leverage ratio. The Original First Lien Term Loans have a maturity date of February 14, 2025 and bear interest at SOFR plus 3.75%.

i. First Amendment to the Prepetition First Lien Credit Agreement

19. On December 17, 2019, the Borrower entered into that certain first amendment to the Prepetition First Lien Credit Agreement with the Prepetition First Lien Agent and the Prepetition First Lien Lenders, pursuant to which the Prepetition First Lien Lenders agreed to provide the Borrower with incremental term loans in the aggregate principal amount of \$35,000,000 (the “2019 Incremental Term Loans”, together with the Original First Lien Term Loans, the “Prepetition First Lien Term Loans”). The 2019 Incremental Term Loans have the same maturity date and interest rate as the Original First Lien Term Loans.

ii. Second Amendment to the Prepetition First Lien Credit Agreement

20. On January 19, 2022, the Borrower entered into that certain second amendment to the Prepetition First Lien Credit Agreement with the Prepetition First Lien Agent and the Prepetition First Lien Lenders, pursuant to which the Prepetition First Lien Lenders agreed to extend the maturity date of the Revolving Loans from February 14, 2023, to November 15, 2024.

iii. Third Amendment to the Prepetition First Lien Credit Agreement

21. On March 3, 2023, the Borrower entered into that certain third amendment to the Prepetition First Lien Credit Agreement with the Prepetition First Lien Agent, pursuant to which the LIBOR interest rate on the Prepetition First Lien Term Loans were replaced with SOFR plus Term SOFR Adjustment.

iv. Fourth Amendment to the Prepetition First Lien Credit Agreement

22. On October 9, 2024, the Borrower entered into that certain fourth amendment to the Prepetition First Lien Credit Agreement with the Prepetition First Lien Agent acting at the direction of certain Prepetition First Lien Lenders, pursuant to which certain Prepetition First Lien Lenders agreed to provide incremental term loans in an aggregate principal amount of \$6,500,000 (the “Bridge Loan”). The Bridge Loan have a maturity date of October 10, 2025, bear interest at SOFR + 8.00%, with 7.00% to be paid in kind. The liens and security interests securing the obligations under the Prepetition First Lien Credit Agreement (other than Bridge Loan) and Prepetition Sidecar Credit Agreement are subordinated⁵ to the liens and security interests securing the Bridge Loan.

v. Guaranty and Security Under Prepetition First Lien Credit Agreement

23. Pursuant to that certain Guaranty dated February 14, 2018, as amended, restated, amended and restated, supplemented, or otherwise modified, the obligations of the Borrower under the Prepetition First Lien Credit Agreement are guaranteed by Holdings and Debtor XpandOrtho, Inc. (in such capacities, the “Prepetition First Lien Guarantors”).

24. The obligations of the Borrower under the Prepetition First Lien Credit Agreement are secured by substantially all of the assets (subject to certain exceptions) of the Borrower and

⁵ Pursuant to an ICA Bridge Side Letter Agreement, dated October 9, 2024, the Sponsor agreed to subordinate their Prepetition Sidecar Claims to the 2024 Incremental Term Loans.

the Prepetition First Lien Guarantors pursuant to that certain Pledge and Security Agreement, dated as of February 14, 2018, by and among Holdings, the Borrower, and the Prepetition First Lien Agent.

B. PREPETITION SIDECAR CREDIT FACILITY

25. On September 19, 2023, Debtor Exactech entered into that certain credit agreement dated September 19, 2023 (as amended, restated, supplemented, amended and restated, or otherwise modified from time to time prior to the Petition Date, the “Prepetition Sidecar Credit Agreement”) among the Borrower, TPG VII Osteon Holdings, LP, as administrative and collateral agent (the “Prepetition Sidecar Agent”), and as the sole lender (in such capacity, the “Prepetition Sidecar Lender”), pursuant to which the Prepetition Sidecar Lender agreed to provide the Borrower with \$15,000,000 of term loans (the “Original Sidecar Term Loans”).

26. The Original Sidecar Term Loans have a maturity date of September 18, 2024 and bear interest at (i) 12% per annum for any interest accrued on or prior to March 18, 2024 (of which (x) 2% per annum is paid cash and (y) 10% per annum is paid in kind), and (ii) 18% per annum for any interest accrued after March 18, 2024 (of which (x) 2% per annum is paid in cash and (y) 16% per annum is paid in kind).

i. First Amendment to the Prepetition Sidecar Credit Agreement

27. On April 23, 2024 (the “First Amendment Effective Date”), the Borrower entered into that certain amendment to the Prepetition Sidecar Credit Agreement pursuant to which the Prepetition Sidecar Lender agreed to provide the Borrower multi-draw incremental term loans in the aggregate principal amount of up to \$20,000,000 (the “Incremental Sidecar Term Loans,” together with the Original Sidecar Term Loans, the “Prepetition Sidecar Term Loans,” and outstanding claims thereto “Prepetition Sidecar Claims”). On the First Amendment Effective Date, \$5,000,000 of the Incremental Sidecar Term Loans was funded to the Company and the

remainder of up to \$15,000,000 of the Incremental Sidecar Term Loans were to be advanced at the request of the Company, upon consent of the Prepetition Sidecar Lender. On May 22, 2024, an additional \$5,000,000 under the Incremental Sidecar Term Loans was funded to the Company and \$10,000,000 remains undrawn. The Incremental Sidecar Term Loans have a maturity date of February 14, 2025.

ii. Guaranty and Security Under the Prepetition Sidecar Credit Agreement

28. Pursuant to that certain Guaranty dated September 19, 2023, as amended, restated, amended and restated, supplemented or otherwise modified, the obligations of the Borrower under the Prepetition Sidecar Credit Agreement are guaranteed by Holdings and Debtor XpandOrtho, Inc. (in such capacities, the “Prepetition Sidecar Guarantors”).

29. The obligations of the Borrower under the Prepetition Sidecar Credit Agreement are secured by substantially all of the assets of the Borrower and the equity interests of the Borrower and certain of its affiliates pursuant to that certain Pledge and Security Agreement, dated as of September 19, 2023, by and among Holdings, the Borrower, and the Prepetition Sidecar Agent. The liens and security interests securing the Prepetition Sidecar Credit Agreement are *pari passu* with those securing the Prepetition First Lien Credit Agreement (other than the Bridge Loan).

C. TRADE CLAMS AND OTHER UNSECURED DEBT

30. In the ordinary course of business, the Debtors incur obligations to vendors, suppliers, and trade counterparties. As of the Petition Date, the Debtors estimate they have approximately \$33 million in accounts payable outstanding before application of any setoffs, credits, or deductions that may be available to the Debtors. The Debtors’ largest unsecured debts are unliquidated and disputed claims arising from certain (i) *qui tam claims* originally filed in 2018 in the Northern District of Alabama, which, together with a separate investigation initiated

in 2023, involve allegations that the Company’s sale of certain knee devices violated the federal False Claims Act and similar state statutes (the “Qui Tam Claims”) and (ii) consolidated multidistrict litigation before the United States District Court for the Eastern District of New York (the “Products Liability Claims”, together with the Qui Tam Claims, the “Material Litigation”).

IV. THE DEBTORS’ URGENT AND IMMEDIATE LIQUIDITY NEEDS

31. As set forth in the First Day Declaration, the Debtors need immediate access to the DIP Facility and the use of Cash Collateral to ensure they have: (i) sufficient working capital to operate their business and to administer their estates, (ii) the ability to timely pay administrative expenses to be incurred, and (iii) the ability to send a positive message to the Debtors’ third-party vendors, suppliers, and customers that these Chapter 11 Cases are sufficiently funded.

32. Indeed, prior to the Petition Date, the Debtors with the assistance in consultation with Riveron RTS, LLC (“Riveron”), conducted a detailed review and analysis of their projected cash needs. Based upon that review, the Debtors, in consultation with their advisors, determined that the use of Cash Collateral alone would be insufficient to fund the operation of their businesses for the duration of these Chapter 11 Cases, and that additional funding is necessary. The Debtors are in need of both access to Cash Collateral and an immediate infusion of liquidity to ensure sufficient working capital to operate their businesses, administer their estates during the Chapter 11 Cases and fund the Sale Process. First Day Decl. ¶ 66. Without immediate access to postpetition financing and Cash Collateral, the Debtors will be unable to: (a) continue to serve their customers and generate revenue during these Chapter 11 Cases; (b) access working capital for their business; (c) fund payments to their workforce and critical third-party vendors; (d) fund the payments authorized by the Court pursuant to the First Day Pleadings filed

contemporaneously herewith; (e) operate their Cash Management System;⁶ (f) satisfy administrative costs and expenses of the Debtors incurred in these Chapter 11 Cases. *See* First Day Decl. ¶ 67. Furthermore, as demonstrated by the Initial DIP Budget, the need to access the DIP Facility is further underscored by the fact that it would be imprudent, in fact impossible, to administer these cases without immediate access to additional capital.

33. Immediate access to the DIP Facility and continued access to the Cash Collateral is therefore crucial to the Debtors' efforts to preserve value for their stakeholders during these Chapter 11 Cases and to avoid immediate and irreparable harm to the value of the Debtors' estates. *Id.* The DIP Facility will provide the Debtors with the necessary liquidity to administer these Chapter 11 Cases and conduct the contemplated Sale Process, without which the Debtors' ability to successfully execute these Chapter 11 Cases will be severely jeopardized to the detriment of all stakeholders in these cases.

V. ALTERNATIVE SOURCES OF FINANCING ARE NOT AVAILABLE ON BETTER TERMS

A. THE MARKETING PROCESS

34. The Debtors do not have alternative sources of financing readily available. In July 2023, the Company retained Centerview Partners LLC ("Centerview") to serve as its investment banker to evaluate potential strategic alternatives to address the Company's upcoming debt maturities and other existing liabilities, including potential liabilities arising in connection with

⁶ As discussed in greater detail in the First Day Declaration and the *Debtors' Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to (A) Continue to Operate their Cash Management System, (B) Honor Certain Prepetition Obligations Related Thereto, (C) Maintain Existing Business Forms, and (D) Continue Certain Intercompany Transactions; and (II) Granting Related Relief*, filed contemporaneously herewith, the Debtors operate a cash management system of forty-eight (48) bank accounts (the "Cash Management System"), of which thirteen (13) are maintained by Debtor entities. Without the ability to access cash in their Cash Management System, the Debtors will not be able to continue operations in the ordinary course of business. Such cessation would detrimentally impact the value of the enterprise, including critical relationships with vendors and thousands of the Debtors' customers.

the Litigation Claims. *See* Chopra Decl. ¶ 10. Starting in September 2024, Centerview conducted a marketing process to raise third-party DIP financing in anticipation of a chapter 11 filing. *Id.* ¶ 15. The Debtors’ Prepetition First Lien Lenders assert that a significant majority of the Debtors’ assets are encumbered under the existing capital structure, which, along with the overhang of unliquidated and contingent liabilities resulting from the Material Litigation, restricts the availability of, and options for, postpetition financing. *Id.* Additionally, the Prepetition First Lien Lenders made it clear that they would not consent to “priming” debtor-in-possession financing provided by a third party. *Id.*

35. Notwithstanding these considerations, the Debtors, with the assistance of Centerview, solicited proposals for third-party debtor in possession financing. The Debtors, through the assistance of Centerview, reached out to several potential DIP lenders, including a mix of alternative and opportunistic lenders, hedge funds, and private credit lenders, to gauge their interest in providing postpetition financing to the Debtors. *Id.* ¶ 16. Specifically, Centerview contacted eight (8) potential third-party financing sources that make credit investments in the amount required by the Debtors. *Id.* Due to the Debtors’ financial position, their existing leveraged capital structure, and the overhang of the Material Litigation, the Debtors were unable to find any interested third-party financing parties. *See* Chopra Decl. ¶ 16. Indeed, many of the parties contacted by Centerview reported that they were unwilling to extend financing to the Debtors due to, among other factors, difficulties of having a priming fight with the existing secured lenders, the Debtors’ current financial position, and their capital structure. *Id.*

36. For the foregoing reasons, the Debtors, in consultation with Centerview, determined that reaching out to additional third-party financing sources would be fruitless and unlikely to result in any financing proposals.

B. THE DIP FACILITY HAS BEEN HEAVILY NEGOTIATED

37. In September of 2023, amidst the ongoing settlement discussions with the Plaintiff Representatives in the Products Liability Litigation, the Sponsor agreed to provide the Company with up to \$15 million of incremental term loans under the Prepetition Sidecar Credit Agreement, to support the Company's operational liquidity and provide near-term financial flexibility as settlement negotiations continued. *See* First Day Decl. ¶ 59. In April 2024, the Sponsor agreed to amend the Prepetition Sidecar Credit Agreement to provide up to \$20 million of additional funding thereunder to provide additional runway for settlement discussions to continue. *Id.*

38. As the possibility of an in-court restructuring became more likely, in June 2024, the Sponsor delivered a restructuring proposal to the Company and the Ad Hoc Group that contemplated, among other things, debtor in possession funding provided by the Sponsor and an equitization of certain prepetition secured debt. *Id.* ¶ 60. Ultimately, the negotiations between the Company, the Sponsor, and the Ad Hoc Group failed to produce an actionable alternative, which required the Company to pivot to discussions around a chapter 11 filing supported by the Ad Hoc Group. *Id.*; Chopra Decl. ¶ 12.

39. Simultaneously with the Sponsor negotiations, the Company also actively engaged with the Ad Hoc Group to seek a strategic alternative transaction. First Day Decl. ¶ 61. In mid-July 2024, the Company entered into confidentiality agreements with the Ad Hoc Group, which was represented by Milbank LLP as legal counsel, and Evercore Group L.L.C. as financial advisor. *Id.* On August 16, 2024, the Ad Hoc Group delivered a proposal (the "Ad Hoc Group Proposal") which proposed, among other things, a new money DIP facility to fund these Chapter 11 Cases and Sale Process, backed by a stalking horse credit bid by the Ad Hoc Group to purchase substantially all of the Company's assets pursuant to sections 363 and 1123 of the Bankruptcy Code. *Id.*

40. As the Company and its advisors continued to negotiate with the Ad Hoc Group, the Company was faced with an approximately \$6 million interest payment on the Prepetition First Lien Term Loans due August 31, 2024. First Day Decl. ¶ 62. To continue the positive momentum and provide the necessary runway to finalize the restructuring negotiations, the Company and a requisite majority of Prepetition First Lien Lenders under the Prepetition First Lien Credit Agreement entered into a forbearance agreement of the August 31, 2024 interest payment until October 2, 2024, whereby the Prepetition First Lien Lenders, among other things, agreed to forbear from exercising remedies on account of the default from the missed interest payment. *Id.* Additionally, on October 9, 2024, the Company, the Ad Hoc Group, and the Sponsor agreed to certain amendments to the Debtors' prepetition debt facilities to permit the 2024 Incremental Term Loans and to extend the forbearance period to October 27, 2024. *Id.*

41. Subsequently, after hard fought negotiations and significant back and forth, the Company and the Ad Hoc Group reached an agreement on substantially all of the terms of a comprehensive restructuring deal. First Day Decl. ¶ 63. On October 29, 2024, the Company entered into (i) the RSA with the Ad Hoc Group, and (ii) the Stalking Horse Agreement and filed these Chapter 11 Cases before this Court to implement the restructuring transactions contemplated in the RSA. *See Chopra Decl.* ¶ 13. Importantly, the RSA ensures that the Debtors' business will continue to operate uninterrupted with the Ad Hoc Group's cash commitment through the DIP Facility. *Id.*; First Day Decl. ¶ 64.

42. Management and the Debtors' legal and financial advisors were actively involved throughout the negotiations with the DIP Lenders for debtor in possession financing, which were conducted at arms' length and in good faith. *See Chopra Decl.* ¶¶ 20-21. The terms of the DIP Facility were negotiated for months leading up to the Petition Date, and given the absence of any

alternative third-party financing, the Debtors and their advisors worked hard to negotiate the most favorable terms of the DIP Facility. *Id.* ¶ 20. As a result, the Debtors and their advisors were successful in improving certain of the terms that the DIP Lenders initially demanded. *Id.* For example, the Debtors negotiated for a reduction in the total quantum of fees associated with the DIP Facility from the DIP Lenders initial demand, which included approximately 48% of initial DIP fees. *Id.* While the Debtors were successfully able to negotiate some provision of the DIP Facility downward, ultimately, the DIP Lenders were unwilling to lend on terms other than those specifically set forth in the DIP Documents. *Id.*

C. THE TERMS, RATES, AND FEES OF THE DIP FACILITY ARE REASONABLE

43. The terms and conditions of the DIP Facility are fair and reasonable under the circumstances, particularly in light of the Debtors' urgent need for postpetition financing and lack of any alternative debtor in possession financing proposals. Pursuant to the DIP Documents, the Debtors have agreed, subject to Court approval, to pay certain interest and fees to the DIP Agent and the DIP Lenders. Chopra Decl. ¶ 23. Specifically, the Debtors have agreed to an interest rate of 8.0% (the "Applicable Rate") plus the Term SOFR (as defined in the DIP Credit Agreement) per annum, of which Term SOFR + 1.0% will be payable in cash and 7.0% of which will be payable in kind. *Id.* ¶ 24. Upon the occurrence and during the continuation of an Event of Default (as defined in the DIP Credit Agreement), interest will accrue at Term SOFR plus the Applicable Rate plus a rate equal to 2.0% per annum, payable in cash upon demand. *Id.* In addition, the Debtors have agreed to pay to the DIP Agent a: (i) 10.0% Backstop Commitment Fee⁷ (ii) 5.0%

⁷ The Backstop Commitment Fee is payable in equity of the Stalking Horse Bidder if the Stalking Horse Bid is consummated, and otherwise payable in cash.

Commitment Fee, paid-in-kind, and (iii) 4.0% Exit Fee⁸ (each as defined in the DIP Credit Agreement and, collectively, the “DIP Fees”). *Id.* The DIP Lenders and Debtors have agreed that (i) the DIP Facility will refinance the Bridge Loan upon entry of the Interim Order, and (ii) the DIP Facility automatically converts to take-back indebtedness unless the Stalking Horse Purchaser is not the Winning Bidder. *Id.*

44. The Applicable Rate and the DIP Fees provided for in the DIP Facility are reasonable under the circumstances as compared to similar debtor in possession financings in the market as well as the attendant interest rates and fees in comparable debtor in possession financing facilities. *Id.* at ¶ 25. The Applicable Rate and DIP Fees are customary, usual, and in line with debtor in possession financings of this kind. *Id.* The Debtors and their advisors considered the Applicable Rate and the DIP Fees when determining whether the DIP Facility constituted the best alternative reasonably available to the Debtors. *Id.* As a result, the Debtors’ payment of the Applicable Rate and DIP Fees in order to obtain the DIP Facility is in the best interests of the Debtors’ estates.

45. The Debtors and the DIP Lenders agree that the terms, covenants, interest rates, and fees were subject to negotiation and are an integral component of the overall terms of the DIP Facility, which, in turn, is integral to the broader restructuring’s success through the Sale Process. *Id.* at ¶¶ 13 & 19. Under the Debtors’ circumstances, the interest rates and fees reflected in the DIP Credit Agreement are reasonable because such economics constitute the best terms on which the Debtors could obtain the financing necessary to maintain their ongoing business operations and fund their Chapter 11 Cases and are an integral component of the overall terms of the DIP

⁸ The Exit Fee is paid-in-kind if the DIP Facility converts into take-back indebtedness, or otherwise paid in cash.

Facility. First Day Decl. ¶¶ 8 & 25. The DIP Facility as a whole is crucial to avoid immediate and irreparable harm to the Debtors' estates, employees, and creditors.

D. THE MILESTONES THAT THE DEBTORS MUST MEET UNDER THE TERMS OF THE DIP FACILITY ARE REASONABLE

46. The DIP Facility contemplates, as a product of negotiation with and as required by the DIP Lenders as a condition to providing the DIP Facility, certain milestones that the Debtors must meet throughout their Chapter 11 Cases, the failure of which would constitute an event of default under the DIP Credit Agreement (the "Milestones"). These Milestones were heavily negotiated and required by the DIP Lenders as a condition to providing the DIP Facility and the Stalking Horse Bid.

47. The DIP Facility serves as an important component of these Chapter 11 Cases because it provides the Debtors with the stability and certainty that they can smoothly transition into chapter 11 and continue to operate in the ordinary course of business while facilitating a robust and value-maximizing Sale Process. First Day Decl. ¶ 69. The continued and viable operation of the Debtors' business would not be possible without access to the DIP Facility. *Id.* ¶ 70. The DIP Facility will prevent interruptions to the Debtors' operations, preserve the Debtors' ability to maintain ordinary course relationships with, *inter alia*, customers and vendors, mitigate employee attrition, satisfy working capital needs in the ordinary course and facilitate the Sale Process, which will ultimately enable the Debtors to consummate a value maximizing Sale Transaction for the benefit of all stakeholders in these Chapter 11 Cases. *Id.*

BASIS FOR RELIEF

I. ENTRY INTO THE DIP DOCUMENTS IS AN EXERCISE OF THE DEBTORS' SOUND BUSINESS JUDGEMENT

36. The Court should authorize the Debtors, as an exercise of their sound business judgment, to enter into the DIP Documents, obtain access to the proceeds of the DIP Loans,

and continue using the Cash Collateral. Section 364 of the Bankruptcy Code authorizes a debtor to obtain secured or superpriority financing under certain circumstances discussed in detail below. Courts grant debtors considerable deference in acting in accordance with their business judgment in obtaining postpetition secured credit, so long as the agreement to obtain such credit does not run afoul of the provisions of, and policies underlying, the Bankruptcy Code. *See, e.g., In re Trans World Airlines, Inc.*, 163 B.R. 964, 974 (Bankr. D. Del. 1994) (approving a postpetition loan and receivables facility because such facility “reflect[ed] sound and prudent business judgment”); *In re Ames Dep’t Stores, Inc.*, 115 B.R. 34, 40 (Bankr. S.D.N.Y. 1990) (“[C]ases consistently reflect that the court’s discretion under section 364 [of the Bankruptcy Code] is to be utilized on grounds that permit [a debtor’s] reasonable business judgment to be exercised so long as the financing agreement does not contain terms that leverage the bankruptcy process and powers or its purpose is not so much to benefit the estate as it is to benefit a party-in-interest.”).

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

38. In determining whether the Debtors have exercised sound business judgment in entering into the DIP Documents, the Court should consider the economic terms of the DIP Facility under the totality of circumstances. *See* Hr’g Tr. at 734–35:24, *In re Lyondell Chem. Co.*, No. 09-10023 (Bankr. S.D.N.Y. Feb. 27, 2009) (recognizing that “the terms that are now available for DIP financing in the current economic environment aren’t as desirable” as they once were previously, referring to the period following the 2008 financial markets collapse); *In re Farmland Indus., Inc.*, 294 B.R. 855, 886 (Bankr. W.D. Mo. 2003) (while many of the terms favored the DIP lenders, “taken in context, and considering the relative circumstances of the parties,” the court found them to be reasonable); *In re Elingsen McLean Oil Co., Inc.*, 65 B.R. 358, 365 n.7 (W.D. Mich. 1986) (recognizing a debtor may have to enter into “hard bargains” to acquire funds for its reorganization). Moreover, the Court may appropriately take into consideration non-economic benefits to the Debtors offered under the DIP Facility. *See In re ION Media Networks, Inc.*, No. 09-13125 (JMP), 2009 WL 2902568, at *4 (Bankr. S.D.N.Y. July 6, 2009) (holding that “a business decision to obtain credit from a particular lender is almost never based purely on economic terms. . . . Relevant features of the financing must be evaluated, including non-economic elements such as the timing and certainty of closing, the impact on creditor constituencies and the likelihood of a successful reorganization. . . .”).

48. The Debtors’ decision to enter into the DIP Facility is an exercise of their sound business judgment. Indeed, the DIP Facility was a product of an arms’-length negotiation and a careful evaluation of alternatives, as well as an evaluation of the Debtors’ financial needs. Chopra Decl. ¶¶ 14-20. Specifically, the Debtors, with the advice and counsel of their advisors, determined that the Debtors will require immediate liquidity to fund the administrative cost of these Chapter 11 Cases and the ongoing needs of the Debtors’ business. *See* First Day Decl. ¶

68. Indeed, without immediate additional liquidity, the Debtors would be unable to preserve their business nor maximize value, to the detriment of the Debtors' customers, creditors, employees, and other parties in interest. *Id.* The Debtors ultimately decided that moving forward with the proposed DIP Facility was an appropriate step given that the DIP Facility: (a) allows the Debtors to avoid a value-destructive priming fight; (b) provides a path forward in chapter 11 by allowing the Debtors to facilitate the Sale Process with a Stalking Horse Bid and to consummate the Sale, subject to higher or otherwise better bids; and (c) allows the Debtors to operate in the ordinary course of business postpetition and fund the administration of the Chapter 11 Cases for the benefit of the estates and all of the Debtors' stakeholders. The Debtors and their advisors therefore determined that entry into the DIP Facility was the best path available and they have obtained the best terms currently achievable under the circumstances. *Id.*

II. THE DEBTORS SHOULD BE AUTHORIZED TO GRANT LIENS AND SUPERPRIORITY CLAIMS

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

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

- (1) with priority over any or all administrative expenses of the kind specified in section 503(b) or 507(b) of this title;
- (2) secured by a lien on property of the estate that is not otherwise subject to a lien; or

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

11 U.S.C. § 364(c).

40. To satisfy the requirements of section 364(c) of the Bankruptcy Code, a debtor need only demonstrate by a good faith effort that credit was not available to the debtor on an unsecured or administrative expense basis. *See In re Crouse Grp., Inc.*, 71 B.R. 544, 549 (Bankr. E.D. Pa. 1987) (secured credit under section 364(c) of the Bankruptcy Code is authorized, after notice and hearing, upon showing that unsecured credit cannot be obtained). “[Section 364(c)] imposes no duty to seek credit from every possible lender before concluding that such credit is unavailable.” *Bray v. Shenandoah Fed. Savs. & Loan Ass’n (In re Snowshoe Co.)*, 789 F.2d 1085, 1088 (4th Cir. 1986); *see also Pearl-Phil GMT (Far East) Ltd. v. Caldor Corp.*, 266 B.R. 575, 584 (S.D.N.Y. 2001) (superpriority administrative expenses authorized where debtor could not obtain credit as an administrative expense).

41. When few (or no) lenders are likely to be able or willing to extend the necessary credit to a debtor, “it would be unrealistic and unnecessary to require [the debtor] to conduct such an exhaustive search for financing.” *In re Sky Valley, Inc.*, 100 B.R. 107, 113 (Bankr. N.D. Ga. 1988), *aff’d sub nom., Anchor Savs. Bank FSB v. Sky Valley, Inc.*, 99 B.R. 117, 120 n. 4 (N.D. Ga. 1989); *see also In re Snowshoe Co.*, 789 F.2d 1085, 1088 (4th Cir. 1986) (demonstrating that credit was unavailable absent the senior lien by establishment of unsuccessful contact with other financial institutions in the geographic area); *In re Stanley Hotel, Inc.*, 15 B.R. 660, 663 (D. Colo. 1981) (bankruptcy court’s finding that two (2) national banks refused to grant unsecured loans was sufficient to support conclusion that section 364 requirement was met); *In re Ames Dep’t Stores*, 115 B.R. at 40 (approving financing facility and holding that debtor made reasonable

efforts to satisfy standards of section 364(c) where it approached four (4) lending institutions, was rejected by two (2), and selected most favorable of two (2) offers it received).

42. Courts have articulated a three (3)-part test to determine whether a debtor is entitled to financing under section 364(c) of the Bankruptcy Code. Specifically, courts look to whether:

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

In re L.A. Dodgers LLC, 457 B.R. at 312; *In re Aqua Assocs.*, 123 B.R. 192, 195–96 (Bankr. E.D. Pa. 1991); *In re St. Mary Hosp.*, 86 B.R. 393, 401–02 (Bankr. E.D. Pa. 1988). Furthermore, in the event that a debtor is unable to obtain unsecured credit allowable as an administrative expense under section 503(b)(1) of the Bankruptcy Code, section 364(c) of the Bankruptcy Code provides that a court “may authorize the obtaining of credit or the incurring of debt (1) with priority over any or all administrative expenses of the kind specified in section 503(b) or 507(b) of [the Bankruptcy Code]; (2) secured by a lien on property of the estate that is not otherwise subject to a lien; or (3) secured by a junior lien on property of the estate that is subject to a lien.” 11 U.S.C. § 364(c).

43. As described above, the Debtors are in need of an immediate infusion of liquidity to ensure sufficient working capital to operate their businesses and administer their estates. From the outset, several factors made clear that the required new money infusion in the form of debtor-in-possession financing would be highly likely to originate from existing members of the

Debtors' capital structure. *See* Chopra Decl. ¶ 15. First, substantially all of the Debtors' assets were encumbered under the Prepetition First Lien Term Loans and the Prepetition Sidecar Term Loans, which restricted the availability of, and the Debtors' options for, securing additional financing absent lenders consent or a bankruptcy. *Id.* Second, in addition to needing liquidity for its business, the Debtors needed, among other things, relief from the overhang of the Material Litigation, which have burdened the Debtors with unliquidated, contingent liabilities, and ultimately hampered the Debtors' efforts to refinance their prepetition obligations out of court with their existing lenders. *Id.* Third, the Debtors' lenders had made clear that they were unwilling to provide: (i) debt financing on an unsecured basis or (ii) equity financing subordinated to existing debt claims. Fourth, the Prepetition Secured Parties would not consent to "priming" debtor in possession financing, either provided by a third-party or from an existing member of the Debtors' capital structure (other than themselves), and the absence of a sufficient equity cushion made it unlikely that priming debtor in possession financing could be obtained over the objection of the Prepetition Secured Parties. *Id.* Accordingly, the only available avenue for obtaining workable financing was with the Debtors' existing stakeholders. *See* Chopra Decl. ¶ 18.

49. As discussed above and as set forth in the Chopra Declaration, Centerview solicited potential alternative debtor-in-possession financing from several potential DIP lenders, including a mix of alternative and opportunistic lenders, hedge funds, and private credit lenders, to develop viable alternatives to the financing proposed by the DIP Lenders. Chopra Decl. ¶ 16. However, those efforts resulted in the Debtors receiving no viable or actionable financing alternative, and as a result, no better financing is available. *Id.* Further, section 364(d) of the Bankruptcy Code provides that a debtor may obtain credit secured by a senior or equal lien on

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

44. Here, the priming is consensual. *See* First Day Decl. ¶ 73. The requisite Prepetition Secured Parties have consented to the use of Cash Collateral, the priming of the Prepetition Liens on the Prepetition Collateral by the DIP Liens, and the Adequate Protection provided herein, in each case on the terms set forth in the Interim Order and the DIP Documents. *Id.* Further, the Debtors do not believe any alternative financing is available on equal or better terms from the DIP Lenders, without granting first priority liens in the Prepetition Collateral. *Id.* Therefore, the Debtors submit that the requirement of section 364 of the Bankruptcy Code that alternative credit on more favorable terms be unavailable to the Debtors is satisfied.

45. As evidenced by the First Day Declaration, the incremental liquidity provided under the DIP Credit Agreement is needed to ensure adequate working capital and funding for the other administrative expenses associated with these Chapter 11 Cases. First Day Decl. ¶¶ 67-72. Absent this funding, the Debtors would not be able to continue to operate their businesses at the levels that are necessary to preserve their goodwill, employee morale, vendor confidence in

the Debtors' businesses, and customer loyalty and reputation in the marketplace. *Id.* Accordingly, the enterprise value of the Debtors would be significantly impaired absent the funding under the DIP Credit Agreement.

46. Finally, the Debtors, with the assistance of Riveron, Centerview, and their other professionals, engaged in extensive, good-faith and arm's-length negotiation with the DIP Lenders over the terms of the DIP Credit Agreement. Those negotiations resulted in fair and reasonable terms that are consistent with terms generally available in the market for debtor in possession financing.

III. THE DEBTORS SHOULD BE AUTHORIZED TO USE CASH COLLATERAL

47. Section 363(c) of the Bankruptcy Code governs a debtor's use of a secured creditor's cash collateral. Section 363(c) provides, in pertinent part, that:

The trustee may not use, sell, or lease cash collateral . . . unless—

(A) each entity that has an interest in such cash collateral consents; or

(B) the court, after notice and a hearing, authorizes such use, sale, or lease in accordance with the provisions of this section [363].

11 U.S.C. § 363(c)(2). Here, the Prepetition Secured Parties consent to the Debtors' use of the Cash Collateral.

48. Parties with an interest in cash collateral are entitled to adequate protection under section 363(e) of the Bankruptcy Code. 11 U.S.C. § 363(e). Further, section 362(d)(1) of the Bankruptcy Code provides for adequate protection of interests in property due to the imposition of the automatic stay. *In re Cont'l Airlines*, 91 F.3d 553, 556 (3d Cir. 1996) (en banc). While section 361 of the Bankruptcy Code provides examples of forms of adequate protection, such as granting replacement liens and administrative claims, courts decide what constitutes sufficient adequate protection on a case-by-case basis. *In re Swedeland Dev. Grp., Inc.*, 16 F.3d 552, 564

(3d Cir. 1994); *In re Satcon Tech. Corp.*, No. 12-12869 (KG), 2012 WL 6091160, at *6 (Bankr. D. Del. Dec. 7, 2012); *In re Columbia Gas Sys., Inc.*, Nos. 91-803, 91-804, 1992 WL 79323, at *2 (Bankr. D. Del. Feb. 18, 1992); *see also In re Dynaco Corp.*, 162 B.R. 389, 394 (Bankr. D.N.H. 1993) (citing 2 Collier on Bankruptcy ¶ 361.01[1] at 361–66 (15th ed. 1993) (explaining that adequate protection can take many forms and “must be determined based upon equitable considerations arising from the particular facts of each proceeding”)).

49. As noted above, the Prepetition Secured Parties have consented to the use of Cash Collateral, and the Debtors propose providing the Prepetition Secured Parties with adequate protection that (i) is fair and reasonable and (ii) adequately protects against the Diminution in Value, if any, of their interest in the Prepetition Collateral. Indeed, the adequate protection package provided to the Prepetition Secured Parties, as described above, is consensual and appropriately safeguards the Prepetition Secured Parties from the diminution in the value of their interest.

50. The Debtors submit that the adequate protection obligations above are sufficient to protect the Prepetition Secured Parties from any potential Diminution in Value of their Prepetition Collateral, including the Cash Collateral. In light of the foregoing, the Debtors submit, and the Prepetition Secured Parties agree, that the proposed adequate protection to be provided is appropriate.

IV. THE DEBTORS’ PROPOSED REFINANCING OF THE BRIDGE LOAN SHOULD BE APPROVED

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

Third Circuit, a debtor's use of assets outside the ordinary course of business under section 363(b) of the Bankruptcy Code should be approved if the debtor can demonstrate a sound business justification for the proposed transaction). The business judgment rule shields a debtor's management from judicial second-guessing. *In re Johns-Manville Corp.*, 60 B.R. 612, 615–16 (Bankr. S.D.N.Y. 1986) (“[T]he [Bankruptcy] Code favors the continued operation of a business by a debtor and a presumption of reasonableness attaches to a debtor's management decisions.”).

52. Repayment of prepetition debt (similar to a roll-up exchange) is a common feature in debtor-in-possession financing arrangements. The importance of such 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 Vyair Med., Inc.*, No. 24-11217 (BLS) (Bankr. D. Del. June 10, 2024) (authorizing a \$180 million DIP facility, including a \$135 million roll-up (3:1 roll-up)); *In re Thrasio Holdings, Inc.*, No. 24-11840 (CMG) (Bankr. D.N.J. April 4, 2024) (authorizing a \$270 million DIP facility, including a \$90 million roll-up of the prepetition debt obligations (3:1 roll-up)); *In re Sientra, Inc.*, No. 24-10245 (JTD) (Bankr. D. Del. Mar. 11, 2024) (authorizing a \$90 million DIP facility, including a \$67 million roll-up of the prepetition debt obligations (2.9:1 roll-up)); *In re Yellow Corp.*, No. 23-11069 (CTG) (Bankr. D. Del. Sept. 15, 2023) (authorizing an approximately \$644 million DIP facility, including a \$501 million roll-up of the prepetition debt obligations (approximately 3.5:1 roll-up)); *In re Bed Bath & Beyond Inc.*, No. 23-13359 (VFP) (D.N.J. June 14, 2023) (authorizing an approximately \$240 million DIP facility, including a \$200 million roll-up of prepetition debt obligations (5:1 roll-up)).

53. As set forth above, the DIP Credit Agreement provides that upon entry of the Interim Order, the Debtors shall be authorized to refinance all prepetition amounts outstanding under the Bridge Loan (the “Bridge Refinancing”). The Bridge Refinancing is a material

component of the structure of the DIP Facility and was a condition precedent to the DIP Lenders' commitment to provide the DIP Financing. The Debtors were unable to secure an offer for debtor-in-possession financing on similar terms from the DIP Lenders that did not provide for the refinancing of the Bridge Loan.

54. The Debtors have determined that refinancing these prepetition claims as part of the DIP Facility is necessary to obtain access to the liquidity required to preserve the value of the Debtors' businesses for the benefit of these chapter 11 estates. Refinancing this oversecured obligation benefits the estates by allowing the Debtors to access the liquidity necessary to successfully transition into chapter 11 and pursue a value-maximizing sale strategy. Indeed, the Bridge Refinancing merely affects the timing, not the amount or certainty of the Prepetition First Lien Lenders recovery. Additionally, the Bridge Refinancing does not adversely affect junior creditors because the Bridge Refinancing does not increase the amount of senior secured debt. Indeed, only the Bridge Loan is part of the Bridge Refinancing and the Bridge Loan is the Debtors' senior-most tranche of the Prepetition First Lien Credit Agreement. Accordingly, the Debtors submit that the Bridge Refinancing is reasonable, appropriate, and a sound exercise of their business judgement, and that the Court should therefor approve the Debtors' decision to enter into the DIP Facility, including the Bridge Refinancing.

V. THE DEBTORS SHOULD BE AUTHORIZED TO PAY THE FEES DUE UNDER THE DIP DOCUMENTS

55. The Debtors have agreed, subject to Court approval, to pay certain fees (including the (i) Backstop Commitment Fee, (ii) Commitment Fee, and (iii) Exit Premium) to the DIP Lenders in exchange for their providing the DIP Facility. Chopra Decl. ¶¶ 23-24. As set forth in the First Day Declaration and the Chopra Declaration, the terms of the DIP Documents, including the fees imposed thereunder, constitute the best terms on which the Debtors could obtain the

financing necessary to maintain their ongoing business operations and fund their Chapter 11 Cases and are an integral component of the overall terms of the DIP Facility. *See* First Day Decl. ¶ 73; Chopra Decl. ¶ 25. Moreover, the fees are fair and reasonable under the circumstances and in line with debtor in possession financings of this kind. *See* Chopra Decl. ¶¶ 19 & 25. The Debtors considered the fees when determining in their sound business judgment whether the DIP Facility constituted the best alternative reasonably available to the Debtors. *Id.* The Debtors believe paying these fees to obtain the DIP Facility is in the best interests of the Debtors' estates. *Id.* Accordingly, the Court should authorize the Debtors to pay the fees.

VI. THE DIP LENDERS SHOULD BE DEEMED GOOD FAITH LENDERS

56. 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. 11 U.S.C. § 364(e). 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.

Id.

57. Here, the Debtors believe the DIP Facility embodies the most favorable terms on which the Debtors could obtain postpetition financing. As explained herein and in the Chopra Declaration, negotiations of the terms of the DIP Credit Agreement and the DIP Documents with the DIP Lenders are a 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) arms'-length, good-faith negotiations between the Debtors, the DIP Agent, and the DIP

Lenders. The terms and conditions of the DIP Documents are fair and reasonable, and the proceeds of the DIP Facility will be used only for purposes that are permissible under the Bankruptcy Code, and in accordance with the DIP Orders and the DIP Documents, including, for the avoidance of doubt, the Approved Budget (subject to any Permitted Deviations). Further, no consideration is being provided to any party to the DIP Documents other than as described herein and in the First Day Declaration. Accordingly, the Court should find that the DIP Lenders are “good faith” lenders within the meaning of section 364(e) of the Bankruptcy Code and are entitled to all of the protections afforded by that section.

VII. THE SCOPE OF THE CARVE-OUT IS APPROPRIATE

58. The DIP Liens and the DIP Superpriority Claims are subject to the Carve-Out. 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 paid in these Chapter 11 Cases would be restricted. *See Ames Dep’t Stores*, 115 B.R. at 40 (observing that courts insist on carve-outs for professionals representing parties in interest because “[a]bsent such protection, the collective rights and expectations of all parties-in-interest are sorely prejudiced”). Additionally, the Carve-Out protects against administrative insolvency during the pendency of these Chapter 11 Cases by ensuring that funds are available to pay all the fees of the United States Trustee for the District of Delaware as well as certain professional fees. Accordingly, the Carve-Out is appropriate and should be approved.

VIII. MODIFICATION OF THE AUTOMATIC STAY IS WARRANTED

59. The relief requested herein contemplates a modification of the automatic stay to permit the Debtors and the DIP Secured Parties, as applicable, to, among other things: (i) grant the security interests, liens, and superpriority claims described above and to perform such acts as may be requested to assure the perfection and priority of such security interests and liens; (ii) upon

the occurrence of a DIP Event of Default, subject to any applicable notice periods set forth in the DIP Orders, exercise any remedies available to them; and (iii) implement the terms of the proposed DIP Orders, including payment of all amounts referred to in the DIP Documents.

60. Stay modifications of this kind are ordinary and standard features of debtor in possession financing arrangements and, in the Debtors' business judgment, are reasonable and fair under the circumstances of the Chapter 11 Cases. *See, e.g., In re Never Slip Holdings, Inc.*, No. 24-10663 (LSS) (Bankr. D. Del. Apr. 26, 2024); *In re iMedia Brands, Inc.*, No. 23-10852 (KBO) (Bankr. D. Del. July 6, 2023); *In re FB Debt Fin. Guarantor, LLC*, No. 23-10025 (KBO) (Bankr. D. Del. Jan. 13, 2023); *In re OSG Group Holdings, Inc.*, No. 22-10718 (JTD) (Bankr. D. Del. Aug. 9, 2022); *In re RentPath Holdings, Inc.*, No. 20-10312 (BLS) (Bankr. D. Del. Mar. 10, 2020).⁹

REQUEST FOR A FINAL HEARING

61. Pursuant to Bankruptcy Rules 4001(b)(2) and 4001(c)(2), the Debtors request the Court set a date for the final hearing that is as soon as practicable, and in no event more than thirty-five (35) days after the Petition Date, and fix the time and date prior to the final hearing for parties to file objections to this Motion.

SATISFACTION OF BANKRUPTCY RULE 6003

62. Pursuant to Bankruptcy Rule 6003, the Debtors seek immediate entry of an order granting relief sought herein. The Court may grant the relief requested in this Motion immediately if the "relief is necessary to avoid immediate and irreparable harm." Bankruptcy Rule 6003; *In re First NLC Fin. Servs., LLC*, 382 B.R. 547, 549 (Bankr. S.D. Fla. 2008). The Third Circuit

⁹ Because of the voluminous nature of the orders cited herein, such orders have not been attached to this motion. Copies of these orders are available upon request of the Debtors' proposed counsel.

Court of Appeals has interpreted the language “immediate and irreparable harm” in the context of preliminary injunctions. In that context, the Third Circuit has instructed that irreparable harm is that which “cannot be redressed by a legal or an equitable remedy following a trial.” *Instant Air Freight Co. v. C.F. Air Freight, Inc.*, 882 F.2d 797, 801 (3d Cir. 1989). As explained above and in the First Day Declaration, access to the DIP Facility and the use of Cash Collateral, in the interim amounts proposed, are essential and the relief requested is narrowly tailored to only the relief that is necessary to prevent immediate and irreparable damage to the Debtors’ operations, and therefore, Bankruptcy Rule 6003 is satisfied.

BANKRUPTCY RULE 6004(A) AND (H) WAIVERS ARE APPROPRIATE

63. To implement the foregoing successfully, the Debtors request that the Court find that notice of the Motion is adequate under Bankruptcy Rule 6004(a) under the circumstances, and waive the fourteen (14)-day stay of an order authorizing the use, sale, or lease of property under Bankruptcy Rule 6004(h). As explained above and in the First Day Declaration, the relief requested herein is necessary to avoid immediate and irreparable harm to the Debtors. Accordingly, ample cause exists to justify finding that the notice requirements under Bankruptcy Rule 6004(a) have been satisfied and to grant a waiver of the fourteen (14)-day stay imposed by Bankruptcy Rule 6004(h), to the extent such notice requirements and such stay apply.

RESERVATION OF RIGHTS

64. Nothing contained herein is intended or shall be construed as: (i) an admission as to the validity of any claim against the Debtors; (ii) a waiver of the Debtors’ or any appropriate party in interest’s rights to dispute the amount of, basis for, or validity of any claim against the Debtors; (iii) a waiver of any claims or causes of action that may exist against any creditor or interest holder; or (iv) an approval, assumption, adoption, or rejection of any agreement, contract, lease, program, or policy between the Debtors and any third-party under section 365 of the

Bankruptcy Code. Likewise, if the Court grants the relief sought herein, any payment made pursuant to the Court's order is not intended to be and should not be construed as an admission to the validity of any claim or a waiver of the Debtors' or any party in interest's rights to subsequently dispute such claim.

NOTICE

65. The Debtors will provide notice of this Motion to: (a) the United States Trustee for the District of Delaware; (b) the holders of the thirty (30) largest unsecured claims against the Debtors on a consolidated basis; (c) the United States Attorney's Office for the District of Delaware; (d) the state attorneys general for all states in which the Debtors conduct business; (e) the Internal Revenue Service; (f) the United States Securities and Exchange Commission; (g) the Prepetition First Lien Agent and counsel thereto; (h) the DIP Agent and counsel thereto; (i) the Ad Hoc Group, the DIP Lenders, and the Stalking Horse Purchaser and counsel thereto; (j) the Sponsor and counsel thereto; and (k) any party that has requested notice pursuant to Bankruptcy Rule 2002. Notice of this Motion and any order entered hereon will be served in accordance with Local Rule 9013 1(m). The Debtors respectfully submit that, in light of the nature of the relief requested, no further notice is necessary.

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CONCLUSION

WHEREFORE, the Debtors respectfully request that the Court enter the Interim Order, substantially in the form annexed hereto as **Exhibit A**, and the Final Order, granting the relief requested herein and such other and further relief as the Court deems appropriate under the circumstances.

Dated: October 29, 2024
Wilmington, Delaware

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Proposed Co-Counsel to the Debtors and Debtors in Possession

EXHIBIT A

Interim Order

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE**

In re:

Exactech, Inc., *et al*,¹

Debtors.

Chapter 11

Case No. 24-12441 (LSS)

(Jointly Administered)

Re: Docket No. ____

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

Upon the motion (the “DIP Motion”)² of Exactech, Inc. (“Exactech”) and its affiliated debtors and debtors in possession (each, a “Debtor” and collectively, the “Debtors”) in the above-captioned chapter 11 cases (the “Chapter 11 Cases”), pursuant to sections 105, 361, 362, 363, 364, 503, 506, and 507 of the Bankruptcy Code, Bankruptcy Rules 2002, 4001, 6003, 6004 and 9014, and Local Rules 4001-2(a), seeking entry of this interim order (this “Interim Order”) and the Final Order (as defined herein and, together with this Interim Order, the “DIP Orders”) among other things:

- (i) authorizing Exactech, Inc. (the “Borrower”) to obtain postpetition financing (“DIP Financing”) pursuant to a secured, superpriority, priming debtor in possession financing facility (the “DIP Facility”) subject to the terms and conditions set forth in the credit agreement attached hereto as **Exhibit 1** (as amended, restated, amended and restated, supplemented, or otherwise modified from time to time in accordance with the terms therein, the “DIP Credit Agreement”) by and among the

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number are: Osteon Holdings, Inc. (7042); Osteon Intermediate Holdings I, Inc. (7778); Osteon Intermediate Holdings II, Inc. (1292); Exactech, Inc. (3930); and XpandOrtho, Inc. (4250). The Debtors’ service address is 2320 NW 66th Court, Gainesville, Florida 32653.

² Capitalized terms used but not defined herein are given the meanings ascribed to such terms in the DIP Credit Agreement.

Borrower, the DIP Guarantors (as defined below), the financial institutions or other entities from time to time party thereto as “DIP Lenders” (the “DIP Lenders”), and GLAS Trust Company LLC, as administrative agent and collateral agent (in such capacities, together with its successors and permitted assigns, the “DIP Agent” and, together with the DIP Lenders, the “DIP Secured Parties”), consisting of a superpriority multi-draw term loan in an aggregate principal amount of up to \$85 million, of which up to \$35 million will be available in one interim draw immediately upon entry of this Interim Order (subject to certain conditions) (the “Interim Loans”) and the remainder will be available in one final draw upon entry of the Final Order (subject to certain conditions) (the “Final Loans”, together with the Interim Loans, the “DIP Loans”, and the commitment of the DIP Lenders to make the DIP Loans, the “DIP Commitments”), which Final Loans shall be funded into a blocked cash collateral account and may be drawn on multiple dates subject to the terms and conditions in the DIP Credit Agreement;

- (ii) authorizing the Borrower to incur, and the other Debtors to jointly and severally guarantee (such Debtors, in this capacity, the “DIP Guarantors” and, together with the Borrower, the “Loan Parties”) the DIP Loans, and all extensions of credit, financial accommodations, reimbursement obligations, fees and premiums (including, without limitation, commitment fees or premiums and administrative agency fees), costs, expenses, and other liabilities and obligations (including indemnities and similar obligations, whether contingent or absolute) due or payable under the DIP Documents (as defined below) (collectively, the “DIP Obligations”);
- (iii) authorizing the Loan Parties to execute, deliver, and perform their respective obligations under the DIP Credit Agreement and all other documents and instruments that may be reasonably requested by the DIP Secured Parties in connection with the DIP Facility (in each case, as amended, restated, supplemented, waived or otherwise modified from time to time in accordance with the terms thereof and hereof, the “DIP Documents”) as may be necessary, appropriate, or desirable in connection therewith;
- (iv) granting to the DIP Agent, for the benefit of itself and the other DIP Secured Parties, allowed superpriority claims pursuant to section 364(c)(1) of the Bankruptcy Code;
- (v) granting to the DIP Agent, for the benefit of itself and the other DIP Secured Parties, valid, enforceable, non-avoidable and automatically perfected security interests and liens pursuant to sections 364(c)(2), 364(c)(3), and 364(d) of the Bankruptcy Code on the DIP Collateral (as defined below), on the terms described herein;
- (vi) authorizing the DIP Agent, acting at the direction of the Required Lenders, to implement the terms of this Interim Order;
- (vii) subject to entry of a Final Order granting such relief, waiving (a) the Debtors’ right to surcharge the DIP Collateral and the Prepetition Collateral pursuant to section 506(c) of the Bankruptcy Code and (b) any “equities of the case” exception under section 552(b) of the Bankruptcy Code;

- (viii) subject to entry of a Final Order granting such relief, waiving the equitable doctrine of “marshaling” and other similar doctrines (a) with respect to the DIP Collateral for the benefit of any party other than the DIP Secured Parties and (b) with respect to the Prepetition Collateral for the benefit of any party other than the Prepetition First Lien Parties (as defined below);
- (ix) authorizing the Debtors to use proceeds of the DIP Facility and Cash Collateral (as defined below) in accordance with the DIP Documents, including the repayment of the Bridge Loans (as defined below);
- (x) authorizing the Debtors to pay the DIP Obligations as they become due and payable in accordance with the DIP Documents;
- (xi) subject to the restrictions and conditions set forth in the DIP Documents and the DIP Orders, authorizing the Debtors to use Prepetition Collateral and provide adequate protection to the Prepetition Secured Parties for diminution in value, if any, of their respective interests in the applicable Prepetition Collateral (including Cash Collateral) as of the Petition Date to the extent provided by the Bankruptcy Code (such diminution, the “Diminution in Value”);
- (xii) vacating and/or modifying the automatic stay solely to the extent necessary to permit the Debtors, the DIP Secured Parties, and the Prepetition Secured Parties to implement and effectuate the terms and provisions of the DIP Orders and the DIP Documents;
- (xiii) waiving any applicable stay (including under Bankruptcy Rule 6004) solely to the extent necessary to implement and effectuate this Interim Order and, upon entry, the Final Order; and
- (xiv) scheduling a final hearing (the “Final Hearing”) within thirty-five (35) days of the Petition Date to consider final approval of the DIP Facility and use of Cash Collateral on the terms of a proposed order (the “Final Order”) to be posted to the docket prior to the Final Hearing.

This Court having considered the interim relief requested in the DIP Motion, the exhibits attached thereto, the available DIP Documents, the Chopra Declaration, the First Day Declaration, and the evidence submitted and arguments of counsel made at the interim hearing held on the DIP Motion on October 30, 2024 (the “Interim Hearing”); and notice of the Interim Hearing having been given in accordance with Bankruptcy Rules 2002, 4001(b), (c), and (d), and all applicable Local Rules; and it appearing that no other or further notice is necessary; and the Interim Hearing to consider the relief requested in the DIP Motion having been held and concluded; and all

objections and reservations of rights, if any, to the interim relief requested in the DIP Motion having been withdrawn, resolved or overruled on the merits by this Court; and it appearing that approval of the interim relief requested in the DIP Motion is necessary to avoid immediate and irreparable harm to the Debtors and their estates pending the Final Hearing, otherwise is fair and reasonable, in the best interests of the Debtors and their estates, and essential for the continued operation of the Debtors' businesses and the preservation of the value of the Debtors' estates; and it appearing that the Loan Parties' entry into the DIP Documents is a sound and prudent exercise of the Debtors' business judgment; and after due deliberation and consideration, and good and sufficient cause appearing therefor.

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

A. *Petition Date.* On October 29, 2024 (the "Petition Date"), each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code in this Court.

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

C. *Jurisdiction and Venue.* This Court has jurisdiction over the Chapter 11 Cases, the DIP Motion, and the parties and property affected hereby pursuant to 28 U.S.C. §§ 157(a)-(b) and the *Amended Standing Order of Reference from the United States District Court for the District of Delaware*, dated February 29, 2012. Consideration of the DIP Motion constitutes a core

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

proceeding pursuant to 28 U.S.C. § 157(b)(2). This Court may enter a final order approving the relief sought in the DIP Motion consistent with Article III of the United States Constitution. Venue for the Chapter 11 Cases and proceedings on the DIP Motion is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409. The predicates for the relief sought herein are sections 105, 361, 362, 363(b), 363(c), 363(e), 363(m), 364(c), 364(d)(1), 364(e), 503 and 507 of the Bankruptcy Code, Bankruptcy Rules 2002, 4001, 6003, 6004 and 9014, and Local Rule 4001-2.

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

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

F. *Cash Collateral.* As used herein, the term “Cash Collateral” shall mean all of the Debtors’ cash, to the extent such cash is held in deposit accounts subject to duly executed deposit account control agreements, that constitutes “proceeds” of collateral subject to a perfected lien, or that otherwise constitutes or will constitute “cash collateral” of any of the Prepetition Secured Parties or DIP Secured Parties within the meaning of section 363(a) of the Bankruptcy Code.

G. *Debtors’ Stipulations.* Subject to the provisions and limitations contained in clause (viii) and paragraph 19 hereof, the Debtors admit, stipulate and agree as follows as to each of (i) through (xi) below:

(i) *Prepetition First Lien Credit Agreement.* Pursuant to that certain Credit Agreement, dated as of February 14, 2018 (as amended by that certain Amendment No. 1 to Credit Agreement, dated as of December 17, 2019, that certain Amendment No. 2 to Credit Agreement, dated as of January 19, 2022, that certain Amendment No. 3 to Credit Agreement, dated as of March 3, 2023, and that certain Amendment No. 4 to Credit Agreement, dated as of October 9, 2024 (“Prepetition Amendment No. 4”), and as further amended, restated, amended and restated, supplemented, waived, or otherwise modified prior to the Petition Date, the “Prepetition First Lien Credit Agreement” and, collectively with the other “Loan Documents” (as defined in the Prepetition First Lien Credit Agreement) and any other agreements and documents executed or delivered in connection therewith, including that certain Forbearance Agreement dated as of September 9, 2024 (as amended), that certain Guaranty, dated as of February 14, 2018, and that certain Pledge and Security Agreement, dated as of February 14, 2018 (the “Prepetition First Lien Security Agreement”), each as may be amended, restated, amended and restated, supplemented, waived, or otherwise modified prior to the Petition Date, the “Prepetition First Lien Loan Documents”), by and among (a) Exactech, as borrower, (b) Osteon Intermediate Holdings II, Inc. (“Holdings”) as holdings and guarantor and (c) XpandOrtho, Inc. as subsidiary guarantor (together with Exactech, Holdings, and any other guarantors or grantors under the Prepetition First Lien Loan Documents, the “Prepetition First Lien Loan Parties”), (d) GLAS USA LLC, as successor administrative agent and collateral agent to Goldman Sachs Bank USA (in such capacities, the “Prepetition First Lien Agent”), (e) Goldman Sachs Bank USA, as issuing bank, and swingline lender, and (f) the lenders from time to time party thereto (the “Prepetition First Lien Lenders” and, together with the Prepetition First Lien Agent, the “Prepetition First Lien Parties”), the Prepetition First Lien Loan Parties incurred Obligations (as defined in the Prepetition First Lien

Credit Agreement, and together with all accrued but unpaid interest, fees, expenses, indemnification and other obligations due thereon in accordance with the terms of the Prepetition First Lien Credit Agreement and Prepetition First Lien Loan Documents, the “Prepetition First Lien Obligations”);

(ii) *Prepetition Sidecar Credit Agreement.* Pursuant to that certain Credit Agreement, dated as of September 19, 2023 (as amended by that certain Amendment No. 1 to Credit Agreement, dated as of April 23, 2024, and as further amended, restated, amended and restated, supplemented, waived, or otherwise modified prior to the Petition Date, the “Prepetition Sidecar Credit Agreement” and, collectively with the other “Loan Documents” (as defined in the Prepetition Sidecar Credit Agreement) and any other agreements and documents executed or delivered in connection therewith, including that certain Guaranty dated as of September 19, 2023, and that certain Pledge and Security Agreement, dated as of September 19, 2023, each as may be amended, restated, amended and restated, supplemented, waived, or otherwise modified prior to the Petition Date, the “Prepetition Sidecar Loan Documents” and, together with the Prepetition First Lien Loan Documents, the “Prepetition Loan Documents”), by and among (a) Exactech, as borrower, (b) Holdings, as holdings and guarantor (together with Exactech, XpandOrtho, Inc., and any other guarantors or grantors under the Prepetition Sidecar Loan Documents, the “Prepetition Sidecar Facility Parties” and, together with the Prepetition First Lien Loan Parties, the “Prepetition Loan Parties”), (c) TPG VII Osteon Holdings, LP, as administrative agent and collateral agent (in such capacities, the “Prepetition Sidecar Agent” and, together with the Prepetition First Lien Agent, the “Prepetition Agents”), and (d) the lenders from time to time party thereto (the “Prepetition Sidecar Lenders” and, together with the Prepetition Sidecar Agent, the “Prepetition Sidecar Secured Parties” and, together with the Prepetition First Lien Parties,

the “Prepetition Secured Parties”), the Prepetition Sidecar Facility Parties incurred Obligations (as defined in the Prepetition Sidecar Credit Agreement, and together with all accrued but unpaid interest, fees, expenses, indemnification and other obligations due thereon in accordance with the terms of the Prepetition Sidecar Credit Agreement and Prepetition Sidecar Loan Documents, the “Prepetition Sidecar Secured Obligations” and, together with the Prepetition First Lien Obligations, the “Prepetition Secured Obligations”).

(iii) *Prepetition First Lien Obligations.* As of the Petition Date, the Prepetition First Lien Loan Parties were justly and lawfully indebted and liable to the Prepetition First Lien Parties without defense, challenge, objection, claim, counterclaim, or offset of any kind, for Prepetition First Lien Obligations in the aggregate principal amount of not less than \$309,997,779.19 (including \$6,500,000 incurred pursuant to the Prepetition Amendment No. 4 (the “Bridge Loans”)), plus accrued and unpaid interest thereon and any fees, premium, expenses and disbursements (including attorneys’, accountants’, appraisers’, auditors’, and financial advisors’ fees), costs, charges, indemnities, and other Prepetition First Lien Obligations incurred under the Prepetition First Lien Loan Documents;

(iv) *Validity of Prepetition First Lien Obligations.* The Prepetition First Lien Obligations constitute legal, valid, binding, and non-avoidable obligations of the Prepetition First Lien Loan Parties against each of the Debtors, enforceable in accordance with the respective terms of the relevant documents, and no portion of the Prepetition First Lien Obligations or any payment made to the Prepetition First Lien Parties or applied to or paid on account of the Prepetition First Lien Obligations prior to the Petition Date is subject to any contest, attack, rejection, recovery, reduction, defense, counterclaim, offset, subordination, recharacterization, avoidance or other claim (as such term is defined in the Bankruptcy Code), cause of action (including any avoidance

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

(v) *Validity, Perfection and Priority of Prepetition First Liens.* As of the Petition Date, pursuant to the Prepetition First Lien Loan Documents, the Prepetition First Lien Obligations were secured by a first lien security interest in and continuing lien on (the “Prepetition First Liens” and, together with any liens securing or purporting to secure obligations under the Prepetition Sidecar Loan Documents, the “Prepetition Liens”) the Debtors’ interest in certain collateral to the extent provided by the Prepetition First Lien Loan Documents (the “Prepetition First Lien Collateral” and, together with the Debtors’ interest in any collateral secured or purported to be secured by liens under the Prepetition Sidecar Loan Documents, the “Prepetition Collateral” and together with the DIP Collateral, the “Collateral”), junior, subject and subordinate only to any senior liens to the extent such senior liens are (a) valid, perfected, and non-avoidable on the Petition Date or (b) valid and non-avoidable liens in existence on the Petition Date that are perfected subsequent to the Petition Date in accordance with section 546(b) of the Bankruptcy Code (the “Prepetition First Lien Prior Liens” and, together with similar liens with respect to the Prepetition Sidecar Loan Documents, the “Prepetition Prior Liens”);

(vi) *Equal Priority Intercreditor Agreement.* Pursuant to (and to the extent set forth in) that certain Equal Priority Intercreditor Agreement, dated as of September 19, 2023 (as amended by that certain Amendment No. 1 to Equal Priority Intercreditor Agreement, dated as of October 9, 2024, and as further amended, restated, amended and restated, supplemented, waived, or otherwise modified prior to the Petition Date, the “Equal Priority Intercreditor Agreement”), by and among Exactech, Holdings, the Prepetition First Lien Agent (for itself and on behalf of the Prepetition First Lien Parties), and the Prepetition Sidecar Agent (for itself and on behalf of the

Prepetition Sidecar Secured Parties), the parties thereto agreed, among other things, (a) that the proceeds of any sale, collection, or other liquidation of any Shared Collateral (as defined therein) shall be distributed first to the Bridge Loans and thereafter, ratably in respect of the Prepetition First Lien Obligations (other than the Bridge Loans) and Prepetition Sidecar Secured Obligations, (b) to consent to, or not oppose, certain actions taken, or rights asserted, by the Prepetition First Lien Parties or Prepetition Sidecar Secured Parties, as applicable, including with respect to the Bridge Loans, (c) to refrain from taking certain actions with respect to the Shared Collateral (as defined therein), and (d) that, pursuant to section 510 of the Bankruptcy Code, the Equal Priority Intercreditor Agreement shall remain in full force and effect;

(vii) *Waiver of Challenge with Respect to Prepetition First Liens.* None of the Prepetition First Liens are subject to any contest, attack, rejection, recovery, reduction, defense, counterclaim, subordination, recharacterization, avoidance or other cause of action (including any avoidance actions under Chapter 5 of the Bankruptcy Code), choses in action or other challenge of any nature under the Bankruptcy Code or any applicable non-bankruptcy law; *provided*, that the Debtors make no stipulation, and reserve all rights with respect to the Debtor Reserved Claims (as defined below);

(viii) Notwithstanding anything herein or in the DIP Documents to the contrary, the Debtors' rights are fully preserved with respect to any claims or causes of action relating to (a) with respect to the Prepetition First Lien Collateral, the perfection of liens granted or asserted with respect to (i) intellectual and similar property of every kind and nature now owned by the Debtors, including inventions, designs, patents, copyrights, trademarks, trade secrets, confidential or proprietary technical and business information, knowhow, showhow or other data or information, the intellectual property rights in software and databases and related documentation

and all additions, improvements and accessions to, and books and records describing any of the foregoing, in each case registered or arising under non-U.S. law, except to the extent perfected by filing of a Uniform Commercial Code financing statement, (ii) commercial tort claims that have not been specified in accordance with the Prepetition First Lien Security Agreement, (iii) proceeds of the Debtors' insurance policies, except to the extent that (x) such proceeds would constitute "proceeds" under (and as defined in) the Uniform Commercial Code or (y) such proceeds have been perfected in accordance with state law by delivery of endorsements to such insurance policies, naming the Prepetition First Lien Agent as additional insured or loss payee, as applicable, or otherwise, and (iv) each of the Debtors' deposit accounts, except to the extent the Prepetition First Lien Agent has "control" under (and as defined in) the Uniform Commercial Code of such deposit accounts, (b) unless the special committee of the board of directors of Debtors Osteon Intermediate Holdings II, Inc., Exactech, Inc., and XpandOrtho, Inc. asserts a claim or cause of action prior to the expiration of the Challenge Period (as defined in paragraph 19 herein), any claims or causes of action relating to the Prepetition Sidecar Facility, (c) any determination on the value of the Prepetition Collateral securing the Prepetition First Lien Obligations as of the Petition Date or any other time of determination, and (d) the argument that, to the extent any cash payment of interest, fees, or expenses paid on account of any Prepetition First Lien Obligation is not allowed, such payment should be recharacterized and applied as repayment on account of the secured portion of any Prepetition First Lien Obligation (each of the foregoing clauses (a) through (d), the "Debtor Reserved Claims");

(ix) *No Control*. Subject to entry of the Final Order, none of the Prepetition First Lien Parties control (or have in the past controlled) any of the Debtors or their respective properties or operations, have authority to determine the manner in which any Debtor's operations are

conducted or are control persons or insiders of any Debtor by virtue of any actions taken with respect to, in connection with, related to or arising from any Prepetition First Lien Loan Documents; and

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

(xi) *Release.* Without limiting the Debtors' rights with respect to the Debtor Reserved Claims and subject to the review of the special committee of the board of directors of Debtors Osteon Intermediate Holdings II, Inc., Exactech, Inc., and XpandOrtho, Inc. with respect to the financing of the Prepetition Sidecar Facility, effective as of the date of entry of this Interim Order (subject to the provisions of paragraph 19 hereof), each of the Debtors and each of their estates, on its own behalf and on behalf of its and their respective predecessors, successors, heirs, and past, present and future subsidiaries and assigns (each, solely in their capacities as such) hereby absolutely, unconditionally and irrevocably releases and forever discharges and acquits the Prepetition First Lien Parties and each of their respective Representatives (each in their capacity as such) (collectively, the "Released Parties"), from any and all liability to the Debtors (and their successors and assigns) and from any and all claims, counterclaims, demands, defenses, offsets, debts, accounts, contracts, liabilities, actions and causes of action of any kind, nature and description, whether matured or unmatured, known or unknown, asserted or unasserted, foreseen or unforeseen, accrued or unaccrued, suspected or unsuspected, liquidated or unliquidated, pending or threatened, arising in law or equity, in contract or tort, in each case arising out of or related to the Prepetition First Lien Loan Documents, Prepetition First Liens, Prepetition First Lien Obligations, the negotiation thereof and the transactions and agreements reflected thereby, that the Debtors or their estates at any time had, now have or may have, or that their predecessors, successors or assigns at any time had or hereafter may have against any of the Released Parties for or by reason of any act, omission, matter, or cause arising at any time on or prior to the date of this Interim Order, except as a result of bad faith, willful misconduct, fraud, or gross negligence.

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

(i) Good and sufficient cause has been shown for the entry of this Interim Order and for authorization of the Loan Parties to obtain financing pursuant to the DIP Documents, to use the Cash Collateral of the Prepetition Secured Parties, and to authorize the provisions of adequate protection.

(ii) As set forth in the Chopra Declaration and the First Day Declaration, the Debtors have demonstrated that incurring the DIP Financing and the use of Cash Collateral is necessary to avoid immediate and irreparable harm to the Debtors' estates. The incurrence of the DIP Financing and use of Cash Collateral is necessary to, among other things, fund the Debtors' efforts and activities essential to the viability of these Chapter 11 Cases, permit the orderly continuation of the operation of their businesses, maintain business relationships with vendors, suppliers, and customers, make payroll, satisfy other working capital and operational needs, and fund administrative expenses of these Chapter 11 Cases, and, but for the incurrence of the DIP Financing and the use of Cash Collateral, the Debtors would likely be obliged to liquidate their estates on an accelerated basis. The ability of the Debtors to obtain sufficient working capital and liquidity under the DIP Documents and other financial accommodations provided under the DIP Documents, as well as through the use of Cash Collateral, is therefore necessary for the avoidance of such immediate irreparable harm to the Debtors' estates and to permit the Debtors to preserve and maintain any going concern value. The Debtors' use of Cash Collateral alone would be insufficient to meet the Debtors' cash disbursement needs during the period of effectiveness of this Interim Order. The Debtors and their Estates will, instead, suffer immediate and irreparable harm if immediate financing is not obtained and permission to use Cash Collateral is not granted. The terms of the DIP Facility are fair and reasonable, reflect the Debtors' exercise of prudent

business judgment, and are supported by reasonably equivalent value and fair consideration. The Adequate Protection provided in this Interim Order and the other benefits and privileges contained herein are consistent with, and authorized by, the Bankruptcy Code.

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

(iv) The Debtors continue to collect cash, rents, income, offspring, products, proceeds, and profits generated by the Prepetition Collateral and acquire equipment, inventory and other personal property, which may constitute the Prepetition Secured Parties' Cash Collateral. The Debtors desire and need to use the Prepetition Secured Parties' Cash Collateral for general corporate purposes.

(v) Based on the representations and arguments made by the DIP Motion, and based on the Chopra Declaration, the First Day Declaration and the record and argument presented to the Court at the Interim Hearing, the terms of the DIP Financing, the terms of the adequate protection granted to the Prepetition Secured Parties as provided in paragraph 14 of this Interim Order (collectively, the "Adequate Protection"), and the terms on which the Debtors may continue to use Cash Collateral pursuant to this Interim Order and the DIP Documents are consistent with the Bankruptcy Code, including section 506(b) thereof, are fair and reasonable, and reflect the

Loan Parties' exercise of prudent business judgment consistent with their fiduciary duties under the circumstances.

(vi) The DIP Financing and the Debtors' use of Cash Collateral to fund the administration of the Debtors' estates, the continued operation of their businesses, repayment of the Bridge Loans, and the Sale Process (as defined in the DIP Motion) for the Debtors' assets and the incurrence and payment of any Adequate Protection Obligations, including the granting of the Adequate Protection Liens and the 507(b) Claims, in accordance with the terms hereof, to the Prepetition Secured Parties (and their successors and assigns) pursuant to this Interim Order, the DIP Credit Agreement, and the DIP Facility, have been negotiated in good faith and at arm's length among the Loan Parties, the DIP Secured Parties, and the Prepetition First Lien Parties (each of whom acted in good faith in negotiating such documents), and all of the loans and other financial accommodations extended by the DIP Secured Parties to the Loan Parties under, in respect of, or in connection with, the DIP Financing and the DIP Documents (including the granting of Adequate Protection), shall be deemed to have been extended by the DIP Secured Parties in good faith, as that term is used in section 364(e) of the Bankruptcy Code and in express reliance upon the protections offered by section 364(e) of the Bankruptcy Code, and the DIP Secured Parties (and their respective successors and assigns) shall be entitled to the full protection of section 364(e) of the Bankruptcy Code in the event that this Interim Order or any provision hereof is vacated, reversed or modified on appeal.

(vii) The Prepetition First Lien Parties have acted in good faith regarding the DIP Financing, the Debtors' continued use of Cash Collateral, and the granting of Adequate Protection Liens, and the Prepetition First Lien Parties (and their respective successors and assigns) shall be

entitled to the full protection of section 364(e) of the Bankruptcy Code in the event that this Interim Order or any provision hereof is vacated, reversed, or modified on appeal.

(viii) The Prepetition First Lien Parties and the DIP Secured Parties have acted in good faith in connection with the negotiation, implementation, and documentation, and approvals contemplated by this Interim Order, the DIP Facility, and the use of Cash Collateral, including in respect of the granting of the DIP Liens and the Adequate Protection Liens, any challenges or objections to the DIP Facility or the use of Collateral (including Cash Collateral), the DIP Documents, and all other documents related to and all transactions contemplated by the foregoing. Accordingly, without limitation to any other right to indemnification, the DIP Secured Parties shall be and hereby are indemnified (as applicable) as provided in the DIP Documents, including, without limitation, section 10.05 of the DIP Credit Agreement.

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

(x) The requisite Prepetition Secured Parties have consented to the use of Cash Collateral, the priming of the Prepetition Liens on the Prepetition Collateral by the DIP Liens, and the Adequate Protection provided herein, in each case on the terms set forth in this Interim Order and the DIP Documents; *provided*, that nothing in this Interim Order or the DIP Documents shall (a) be construed as the affirmative consent by any of the Prepetition First Lien Parties for the use of Cash Collateral other than on the terms set forth in this Interim Order and the DIP Documents

and in the context of the DIP Financing authorized by this Interim Order, (b) be construed as a consent by any party to the terms of any other financing or any other lien encumbering Prepetition Collateral (whether senior or junior) other than as contemplated by this Interim Order, or (c) prejudice, limit, or otherwise impair the rights of any Prepetition Secured Party to seek new, different, or additional adequate protection or assert any other right, and the rights of any other party in interest, including the Loan Parties, to object to such relief are hereby preserved, subject to the Intercreditor Agreements (as defined herein).

(xi) The Debtors have prepared and delivered to the advisors to the DIP Secured Parties an initial budget (the “Initial DIP Budget”), attached hereto as **Schedule 1**. The Initial DIP Budget reflects, among other things, the Debtors’ collections, total operating disbursements, operating cash flow, net cash flow and liquidity for each calendar week covered thereby. The Initial DIP Budget may be modified, amended, extended, and updated from time to time in accordance with the DIP Documents. Each subsequent budget shall modify, replace, supplement or supersede, as applicable, the Initial DIP Budget for the periods covered thereby upon approval of the Required Lenders as provided in the DIP Credit Agreement (the Initial DIP Budget and each subsequent approved budget, an “Approved Budget”). The Required Lenders shall be deemed to approve any updated Budget, unless the Required Lenders shall object in writing within five (5) business days after receipt of such proposed budget. The Debtors believe that the Initial DIP Budget is reasonable under the circumstances. In determining to extend postpetition financing under the DIP Documents and this Interim Order, the DIP Secured Parties are relying, in part, upon the Loan Parties’ undertaking to use Cash Collateral and proceeds of the DIP Facility in a manner consistent with the Approved Budget (including with respect to permitted variances in such budget(s)), it being acknowledged and agreed that any Approved Budget shall not limit nor be

deemed to limit the Carve-Out or the Debtors' obligation to pay or reimburse any obligations otherwise entitled to priority under the Carve-Out.

(xii) Each of the Prepetition Secured Parties shall be entitled to all of the rights and benefits of section 552(b) of the Bankruptcy Code and, subject to entry of a Final Order granting such relief, the "equities of the case" exception under section 552(b) of the Bankruptcy Code shall not apply to the Prepetition Secured Parties with respect to proceeds, product, offspring, or profits of any of the Prepetition Collateral.

(xiii) The refinancing of the Bridge Loans with the proceeds of the DIP Facility reflects the Loan Parties' exercise of prudent business judgment consistent with their fiduciary duties. Obtaining the DIP Facility and refinancing the Bridge Loans are necessary steps to implementation of the Transactions (as defined in the Restructuring Support Agreement). The DIP Lenders would not have consented to extend the DIP Loans and other accommodations in the DIP Facility and Restructuring Support Agreement to the Debtors without the refinancing of the Bridge Loans with the proceeds of the DIP Facility. The refinancing of the Bridge Loans with the proceeds of the DIP Facility is consideration for the agreement of the DIP Lenders to extend the DIP Loans.

I. *Prepetition Prior Liens; Continuation of Prepetition Liens.* Nothing herein constitutes a finding or ruling by this Court that any alleged Prepetition Prior Lien is valid, senior, enforceable, prior, perfected, or non-avoidable. Moreover, nothing herein shall prejudice the rights of any party in interest, including, but not limited to, the Debtors, the DIP Secured Parties, or the other Prepetition Secured Parties, to challenge the validity, priority, enforceability, seniority, avoidability, perfection, or extent of any alleged Prepetition Prior Lien. For the avoidance of doubt, the right of a seller of goods to reclaim such goods under section 546(c) of the Bankruptcy

Code does not constitute a Prepetition Prior Lien, and such right is expressly subject to the DIP Liens and Prepetition Liens. The Prepetition Liens and the DIP Liens are continuing liens and the Collateral is and will continue to be encumbered by such liens.

J. *Immediate Entry.* Good and sufficient cause exists for immediate entry of this Interim Order pursuant to Bankruptcy Rules 4001(b)(2), (c)(2), and 6003. Absent the relief granted in this Interim Order, the Debtors' estates will be immediately and irreparably harmed. Consummation of the DIP Financing and continued use of Collateral (including Cash Collateral), in accordance with this Interim Order and the DIP Documents, are therefore in the best interests of the Debtors' estates and consistent with the Debtors' exercise of their fiduciary duties. The DIP Motion and this Interim Order comply with the requirements of Local Rule 4001-2.

K. Based upon the DIP Motion, the foregoing findings and conclusions, and the overall record before this Court, and after due consideration, and good and sufficient cause appearing thereof:

IT IS HEREBY ORDERED THAT:

1. *Motion Granted.* The DIP Motion is granted on an interim basis on the terms and conditions set forth in this Interim Order. The DIP Facility, in an amount up to the Interim Amount, is hereby authorized and approved to the extent set forth herein. Any and all objections to entry of the Interim Order to the extent not withdrawn, waived, settled, or resolved, and all reservations of rights included therein, are hereby overruled on the merits. This Interim Order shall become effective immediately upon its entry.

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

(a) The Loan Parties are hereby authorized to execute, deliver, enter into, and perform all of their obligations under the DIP Documents and perform such other acts as may be

necessary, appropriate, or desirable in connection therewith. The Borrower is hereby authorized to borrow the DIP Loans pursuant to the DIP Documents, and the DIP Guarantors are hereby authorized to guarantee the Borrower's obligations under the DIP Documents, subject to any limitations set forth in the DIP Documents. The proceeds of the DIP Loans shall be used for all purposes permitted under the DIP Documents and this Interim Order, including the repayment of the Bridge Loans, and, subject to and in accordance with the applicable Approved Budget (subject to permitted variances), it being acknowledged and agreed that any Approved Budget shall not limit nor be deemed to limit the Carve-Out or the Debtors' obligations to pay or reimburse any obligations otherwise entitled to priority under the Carve-Out.

(b) Following entry of this Interim Order, the Debtors are authorized to, and shall, use the proceeds of the DIP Facility to (among other things) repay the Bridge Loans.

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

(i) the execution and delivery of, and performance under, each of the DIP Documents and any collateral documents contemplated thereby;

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

or other modifications or the payment of any fees, including attorneys', accountants', appraisers' and financial advisors' fees, and other expenses, charges, costs, indemnities and other like obligations in connection therewith that do not (i) shorten the maturity of the DIP Facility, (ii) increase the aggregate DIP Commitments, (iii) increase the rate of interest or fees payable thereunder, or (iv) release any DIP Liens (each, a "Material Modification"); *provided*, that for the avoidance of doubt, updates, modifications, and supplements to each Approved Budget or amendments to the milestones shall not require any further approval of this Court; *provided further that*, notice of any non-material modification or amendment to the DIP Documents shall be provided to the U.S. Trustee and any statutory committee. Any Material Modification to the DIP Documents shall be provided (e-mail being sufficient) to the U.S. Trustee, counsel to any statutory committee, and any parties requesting notice pursuant to Bankruptcy Rule 2002 and be filed with the Court. If no objections are filed within five (5) business days of the filing and service of the Material Modification, the Debtors may submit a proposed order to this Court under certification of counsel approving such Material Modification. If an objection is timely filed and served and not resolved, this Court shall hold a hearing on the Material Modification. The foregoing shall be without prejudice to the Debtors' right to seek approval from the Court of a Material Modification on an expedited basis;

(iii) the non-refundable payment to any of the DIP Secured Parties of any reasonable and documented fees in connection with the DIP Facility, including any amendment fees, premiums, servicing fees, audit fees, liquidator fees, structuring fees, administrative agent's, collateral agent's or security trustee's fees, upfront fees, closing fees, commitment premiums, exit fees, closing date fees, prepayment fees or agency fees, including, without limitation, the fees set forth in section 2.09 of the DIP Credit Agreement (including, for

the avoidance of doubt, the Backstop Commitment Premium, the Commitment Premium, and the Exit Premium), and any amounts due in respect of any indemnification and expense reimbursement obligations (including, subject to the review procedures in paragraph 18 of this Interim Order, the reasonable and documented fees and out-of-pocket expenses of professionals retained by, or on behalf of, any of the DIP Secured Parties (in the case of such fees and expenses, limited to those of Milbank LLP, Richards, Layton & Finger, P.A., Evercore, Inc., and any other advisors identified to and agreed upon by the Debtors (e-mail to Ropes & Gray LLP being sufficient) prior to, on, or after, the Petition Date (such agreement not to be unreasonably withheld, conditioned, or delayed) (collectively, the “DIP Fees and Expenses”)), in each case, as provided in the DIP Documents, without the need to file retention or fee applications; the payment of the foregoing amounts shall be irrevocable, and shall be deemed to have been approved upon entry of this Interim Order, whether the obligation for any such payment arose before or after the Petition Date, and whether or not the transactions contemplated hereby are consummated, and upon payment thereof, shall not be subject to any contest, attack, rejection, recoupment, reduction, defense, counterclaim, offset, subordination, recharacterization, avoidance, disallowance, impairment, or other claim, cause of action or other challenge of any nature under the Bankruptcy Code or applicable non-bankruptcy law; and

(iv) the repayment of the Bridge Loans and the performance of such other and further acts as may be necessary, desirable or appropriate in connection therewith, in each case in accordance with the terms of the applicable DIP Documents.

3. *DIP Obligations.* Upon execution and delivery of the DIP Documents, the DIP Documents shall constitute legal, valid, binding and non-avoidable obligations of the Loan Parties, enforceable against each Loan Party and its estate, and any successors thereto, including any

trustee appointed in these Chapter 11 Cases, or in any case under chapter 7 of the Bankruptcy Code upon conversion of any of these cases, or in any other proceeding superseding or related to any of the foregoing (collectively, the “Successor Cases”) in accordance with their respective terms and this Interim Order. Upon execution and delivery of the DIP Documents, the DIP Obligations shall include all loans and any other indebtedness or obligations, contingent or absolute, which may from time to time be owing by any of the Loan Parties to any of the DIP Secured Parties, in such capacities, in each case, under the DIP Documents and this Interim Order, including all principal, interest, costs, fees, expenses, premiums, indemnities and other amounts. The Loan Parties shall be jointly and severally liable for the DIP Obligations. Except as permitted hereby, no obligation, payment, transfer, or grant of security hereunder or under the DIP Documents to the DIP Agent and/or the other DIP Secured Parties shall be stayed, restrained, voidable, avoidable, or recoverable, under the Bankruptcy Code or under any applicable law (including, without limitation, under sections 502(d), 544, and 547 to 550 of the Bankruptcy Code or under any applicable state Uniform Voidable Transactions Act, Uniform Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act, or similar statute or common law), or subject to any defense, avoidance, reduction, setoff, recoupment, offset, recharacterization, subordination (whether equitable, contractual, or otherwise), disallowance, impairment, claim, counterclaim, cross-claim, or any other challenge, whether under the Bankruptcy Code or any other applicable law or regulation by any person or entity for any reason.

4. *Carve-Out.*

(a) As used herein, the “Carve-Out” means the sum of (i) all fees required to be paid to the Clerk of the Court and to the Office of the United States Trustee under section 1930(a) of title 28 of the United States Code plus interest at the statutory rate (without regard to the notice

set forth in clause (iv) below); (ii) all reasonable fees and expenses up to \$50,000 incurred by a trustee under section 726(b) of the Bankruptcy Code (without regard to the notice set forth in clause (iv) below); (iii) to the extent allowed at any time, whether by interim order, procedural order, or otherwise, all unpaid fees and expenses (the “Allowed Professional Fees”) incurred by persons or firms retained by the Debtors pursuant to sections 327, 328, or 363 of the Bankruptcy Code (the “Debtor Professionals”) and, with respect to any professionals retained by a Creditors Committee pursuant to Sections 328 or 1103 of the Bankruptcy Code (the “Committee Professionals” and, together with the Debtor Professionals, the “Professional Persons”), an amount up to \$75,000, at any time before or on the first business day following delivery by the DIP Agent of a Carve-Out Trigger Notice (as defined below), whether allowed by this Court prior to or after delivery of a Carve-Out Trigger Notice; and (iv) Allowed Professional Fees of Professional Persons in an aggregate amount not to exceed \$3.0 million incurred after the first business day following delivery by the DIP Agent of the Carve-Out Trigger Notice, to the extent allowed at any time, whether by interim order, procedural order, or otherwise (the amounts set forth in this clause (iv) being the “Post-Carve-Out Trigger Notice Cap”). For purposes of the foregoing, “Carve-Out Trigger Notice” shall mean a written notice delivered by e-mail (or other electronic means) by the DIP Agent (acting at the direction of the Required Lenders) to the Debtors, their lead restructuring counsel (Ropes & Gray LLP), counsel to the Ad Hoc Group, the U.S. Trustee, and counsel to the Committee (to the extent one has been appointed), which notice may be delivered following the occurrence and during the continuation of an Event of Default, stating that the Post-Carve-Out Trigger Notice Cap has been invoked. For the avoidance of doubt, the Debtors’ obligations to pay Allowed Professional Fees or fund the Carve-Out shall not be limited to funds held in the Funded

Reserve Account, and amounts held in the Funded Reserve Account shall not in any way act as a cap on Allowed Professional Fees.

(b) *Carve-Out Reserves.* The Debtors shall establish and fund a segregated account (the “Funded Reserve Account”) for purposes of funding the Carve-Out. The Funded Reserve Account will be funded first from the DIP Funding Account.⁴ Notwithstanding anything to the contrary in this Interim Order, the DIP Documents, or the Prepetition Loan Documents, (i) in no circumstances (which, for the avoidance of doubt, includes but is not limited to an Event of Default or a termination of the DIP Credit Agreement or DIP Documents) shall the Debtors be prohibited in any way from accessing or drawing upon the DIP Funding Account for the purpose of funding the Funded Reserve Account. Upon entry of this Interim Order, the Debtors shall deposit in the Funded Reserve Account an amount equal to the aggregate amount of Allowed Professional Fees projected to accrue from the Petition Date through November 28, 2024 (the “Initial Funded Reserve Amount”). Commencing November 29, 2024 (or the first business day thereafter), on the first business day of each month, the Debtors shall deposit in the Funded Reserve Account an amount equal to the aggregate amount of Allowed Professional Fees projected to accrue for the following month in the Approved Budget plus twenty percent of such aggregate amount of Allowed Professional Fees projected to accrue in the following month in the Approved Budget (the “Monthly Funded Reserve Amount”). Each Professional Person may deliver to the Debtors a good-faith estimate of the cumulative total amount of unreimbursed fees and expenses incurred in the preceding month (each such statement, a “Fee Statement”), and to the extent the amount of Allowed Professional Fees accrued and claimed in a Fee Statement exceeds the Initial Funded Reserve Amount or the Monthly Funded Reserve Amount for the applicable period or

⁴ “DIP Funding Account” means the segregated account in which the proceeds of the Final Loans are funded.

month, respectively, and such fees and expenses have otherwise not been paid by the Debtors, the Debtors shall, within one business day, fund additional amounts into the Funded Reserve Account equal to the difference between, as applicable, the Initial Funded Reserve Amount or the Monthly Funded Reserve Amount and the amount accrued and claimed in the applicable Fee Statement (each, a “Top Off Amount”). At any time, if the Debtors in good faith believe a restructuring, sale, financing, or other success fee has been earned by a Professional Person, the Debtors shall deposit in the Funded Reserve Account an amount equal to such fee. The Funded Reserve Account shall be maintained, and the funds therein (the “Funded Reserve Amount”) shall be held in trust for the benefit of Professional Persons. Any and all amounts in the Funded Reserve Account shall not be subject to any cash sweep and/or foreclosure provisions in the Prepetition Loan Documents or DIP Documents and neither the Prepetition Secured Parties nor the DIP Secured Parties shall be entitled to sweep or foreclose on such amounts notwithstanding any provision to the contrary in the Prepetition Loan Documents or DIP Financing Agreements.

(c) On the day on which a Carve-Out Trigger Notice is given by the DIP Agent to the Debtors with a copy to counsel to the Committee (the “Termination Declaration Date”), the Carve-Out Trigger Notice shall constitute a demand to the Debtors to utilize all cash on hand as of such date and any available cash thereafter held by any Debtor to fund a reserve in an amount equal to the then unpaid amounts of the Allowed Professional Fees in excess of the Funded Reserve Amount; *provided*, that, in the event that a Termination Declaration Date occurs, Professional Persons shall have two (2) business days to deliver additional Fee Statements to the Debtors, and the Debtors shall fund into the Funded Reserve Amount any Top Off Amounts. The Debtors shall deposit and hold such amounts in the Funded Reserve Account in trust to pay such then unpaid Allowed Professional Fees (the “Pre-Carve-Out Trigger Notice Reserve”) prior to any and all other

claims. On the Termination Declaration Date, after funding the Pre-Carve-Out Trigger Notice Reserve, the Debtors shall utilize all remaining cash on hand as of such date and any available cash thereafter held by any Debtor to fund a reserve in an amount equal to the Post-Carve-Out Trigger Notice Cap to the extent not already fully funded (the “Post-Carve-Out Trigger Notice Reserve” and, together with the Pre-Carve-Out Trigger Notice Reserve, the “Carve-Out Reserves”) prior to any and all other claims. All funds in the Pre-Carve-Out Trigger Notice Reserve shall be used first to pay the obligations set forth in clauses (i) through (iii) of the definition of “Carve-Out” set forth above (the “Pre-Carve-Out Amounts”), but not, for the avoidance of doubt, the Post-Carve-Out Trigger Notice Cap, until indefeasibly paid in full, and only after such obligations have been indefeasibly paid in full, and to the extent the Pre-Carve-Out Trigger Notice Reserve has not been reduced to zero, to pay the DIP Agent for the benefit of the DIP Lenders, unless the DIP Obligations have been indefeasibly paid in full, in cash, and all DIP Commitments have been terminated, in which case any such excess shall be paid to the Debtors’ estates. All funds in the Post-Carve-Out Trigger Notice Reserve shall be used first to pay the obligations set forth in clause (iv) of the definition of “Carve-Out” set forth above (the “Post-Carve-Out Amounts”), and then, to the extent the Post-Carve-Out Trigger Notice Reserve has not been reduced to zero, to pay the DIP Agent for the benefit of the DIP Lenders, unless the DIP Obligations have been indefeasibly paid in full, in cash, and all DIP Commitments have been terminated, in which case any such excess shall be paid to the Prepetition Secured Parties in accordance with their rights and priorities as of the Petition Date. Notwithstanding anything to the contrary in the DIP Documents or this Interim Order, if either of the Carve-Out Reserves is not funded in full in the amounts set forth in this paragraph 4(c), then any excess funds in one of the Carve-Out Reserves following the payment of the Pre-Carve-Out Amounts and Post-Carve-Out Amounts, respectively, shall be used to fund

the other Carve-Out Reserve, up to the applicable amount set forth in this paragraph 4(c), prior to making any payments to the DIP Agent or the Prepetition Secured Parties, as applicable. Notwithstanding anything to the contrary in the DIP Documents or this Interim Order, following delivery of a Carve-Out Trigger Notice, the DIP Agent and the Prepetition Secured Parties shall not sweep or foreclose on cash (including cash received as a result of the sale or other disposition of any assets) of the Debtors until the Carve-Out Reserves have been fully funded, but shall have a security interest in any residual interest in the Carve-Out Reserves, with any excess paid to the DIP Agent for application in accordance with the DIP Documents. Further, notwithstanding anything to the contrary in this Interim Order, (i) disbursements by the Debtors from the Carve-Out Reserves shall not constitute Loans (as defined in the DIP Credit Agreement) or increase or reduce the DIP Obligations, (ii) the failure of the Carve-Out Reserves to satisfy in full the Allowed Professional Fees shall not affect the priority of the Carve-Out, and (iii) in no way shall the Approved Budget, Carve-Out, Post-Carve-Out Trigger Notice Cap, Carve-Out Reserves, or any of the foregoing be construed as a cap or limitation on the amount of the Allowed Professional Fees due and payable by the Debtors. For the avoidance of doubt and notwithstanding anything to the contrary in this Interim Order, the DIP Facility or in any Prepetition Loan Documents, the Carve-Out shall be senior to all liens and claims securing the DIP Facility, the Adequate Protection Liens, and the 507(b) Claims, and any and all other forms of adequate protection, liens, or claims securing the DIP Obligations or the Prepetition Secured Obligations.

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

(e) *No Direct Obligation To Pay Allowed Professional Fees.* None of the DIP Agent, DIP Lenders, or the Prepetition First Lien Parties shall be responsible for the payment or reimbursement of any fees or disbursements of any Professional Person incurred in connection with the Cases or any Successor Cases. Nothing in this Interim Order or otherwise shall be construed to obligate the DIP Agent, the DIP Lenders, or the Prepetition First Lien Parties, in any way, to pay compensation to, or to reimburse expenses of, any Professional Person or to guarantee that the Debtors have sufficient funds to pay such compensation or reimbursement.

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

5. *DIP Superpriority Claims.* Subject to and subordinate to the Carve-Out, pursuant to section 364(c)(1) of the Bankruptcy Code, all of the DIP Obligations shall constitute allowed superpriority claims (the “DIP Superpriority Claims”) against the Loan Parties on a joint and several basis (without the need to file any proof of claim) with priority over any and all unsecured claims and administrative claims against the Loan Parties, now existing or hereafter arising, of any kind whatsoever, including, without limitation but to the extent provided by the Bankruptcy Code, all administrative expenses of the kind specified in sections 503(b) and 507(b) of the Bankruptcy Code and any and all administrative expenses or other claims arising under sections 105, 326, 327, 328, 330, 331, 365, 503(b), 506(c) (subject to entry of a Final Order granting such relief), 507(a), 507(b), and 726 of the Bankruptcy Code (including the Adequate Protection Obligations), whether

or not such expenses or claims may become secured by a judgment lien or other non-consensual lien, levy or attachment. The DIP Superpriority Claims shall, subject only to the Carve-Out and the Prepetition Prior Liens, be payable from, and have recourse to, proceeds of all DIP Collateral (as defined herein) (excluding claims and causes of action under sections 502(d), 544, 545, 547, 548 and 550 of the Bankruptcy Code, or any other avoidance actions under the Bankruptcy Code, collectively, the “Avoidance Actions”) but, subject to entry of a Final Order granting such relief, including any proceeds or property recovered as a result of any Avoidance Actions, whether by judgment, settlement or otherwise (the “Avoidance Proceeds”) or any surcharge of collateral pursuant to section 506(c) of the Bankruptcy Code; *provided*, that for the avoidance of doubt, the DIP Superpriority Claims shall not have recourse to the proceeds of the Excluded Assets (as defined in the DIP Credit Agreement). The DIP Superpriority Claims shall be entitled to the full protection of section 364(e) of the Bankruptcy Code in the event that this Interim Order or any provision hereof is vacated, reversed or modified on appeal or otherwise.

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

The Intercreditor Agreements are, in each case, binding and enforceable against the Prepetition Secured Parties in accordance with their terms.

7. *DIP Liens.* As security for the DIP Obligations, effective and automatically properly perfected on the date this Interim Order is entered, and without the necessity of execution, recordation or filing of any perfection documents, security agreements, pledge agreements, financing statements, control agreements or other agreements or instruments, or the possession or control by the DIP Agent of, or over, any DIP Collateral, without any further action by the DIP Secured Parties, the following valid, binding, continuing, duly perfected, enforceable and non-avoidable security interests and liens (the “DIP Liens”) are hereby granted to the DIP Agent for the benefit of the DIP Secured Parties (all property identified in clauses (a) through (c) below being collectively referred to as the “DIP Collateral”); *provided*, that, the DIP Collateral shall include membership interests or other equity ownership interests in non-wholly owned subsidiaries of the Loan Parties (including joint ventures); *provided, further* that in no case shall DIP Collateral include Excluded Assets or the proceeds of Excluded Assets. For the avoidance of doubt, the DIP Obligations shall not have recourse to the Excluded Assets and the liens securing the DIP Obligations shall not encumber the Excluded Assets:

(a) *Liens on Unencumbered Property.* Subject and subordinate only to the Carve-Out, pursuant to section 364(c)(2) of the Bankruptcy Code, a valid, binding, continuing, enforceable, duly perfected first priority lien on and security interest in any and all tangible and intangible prepetition and postpetition property of the Loan Parties, whether existing on the Petition Date or thereafter acquired, and the proceeds, products, rents, and profits thereof, that, on or as of the Petition Date, is not subject to (i) a valid, perfected, and non-avoidable lien or (ii) a valid and non-avoidable lien in existence as of the Petition Date that is perfected subsequent to the

Petition Date as permitted by section 546(b) of the Bankruptcy Code, other than the Avoidance Actions, but, subject to entry of the Final Order granting such relief, including the Avoidance Proceeds (collectively, the “Unencumbered Property”); *provided that*, the DIP Liens shall encumber membership interests or other equity ownership interests in non-wholly owned subsidiaries (including joint ventures) that are not encumbered as of the Petition Date by duly perfected liens.

(b) *Liens Junior to Certain Other Liens.* Subject and subordinate to the Carve-Out, pursuant to Bankruptcy Code section 364(c)(3), a valid, binding, continuing, enforceable, duly perfected security interest in and lien upon all tangible and intangible prepetition and postpetition property of the Loan Parties that, on or as of the Petition Date, is subject to Prepetition Prior Liens, which shall be immediately junior and subordinate to the Prepetition Prior Liens, but senior to the Prepetition Liens and Prepetition Adequate Protections Liens on all Prepetition Collateral subject to such Prepetition Prior Liens.

(c) *Liens Priming Prior Liens.* Subject and subordinate to the Carve-Out and any applicable Prepetition Prior Liens, pursuant to Bankruptcy Code section 364(d)(1), a valid, binding, continuing, enforceable, duly perfected first priority senior priming lien on and security interest in, to, and under all Collateral secured by Prepetition Liens (the “DIP Priming Liens”). Notwithstanding anything herein to the contrary, but subject and subordinate to the Carve-Out in all respects, the DIP Priming Liens shall (i) be senior in all respects to the Prepetition Liens, other than the Prepetition Prior Lines, on the Prepetition Collateral, (ii) be senior to any Adequate Protection Liens on the Prepetition Collateral, and (iii) not subordinate to any lien, security interest or mortgage that is avoided and preserved for the benefit of the Debtors and their estates under section 551 of the Bankruptcy Code with respect to the DIP Collateral. The Prepetition Liens with

respect to the Prepetition Collateral, other than the Prepetition Prior Liens, shall be primed by and made subject and subordinate to the DIP Priming Liens.

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

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

(a) So long as there are any DIP Obligations outstanding or the DIP Lenders have any outstanding DIP Commitments, the Prepetition Secured Parties shall: (i) have no right to and shall take no action to foreclose upon, or recover in connection with, the liens granted thereto pursuant to the Prepetition Loan Documents or this Interim Order, or otherwise seek to exercise or enforce any rights or remedies against Collateral, including in connection with the Adequate Protection Liens; (ii) be deemed to have consented to any transfer, disposition or sale of, or release of liens on, any Collateral (but not any proceeds of such transfer, disposition or sale to the extent remaining after payment in cash in full of the DIP Obligations and termination of the DIP Commitments) to the extent such transfer, disposition, sale or release is authorized under the DIP Documents; (iii) not file any financing statements, trademark filings, copyright filings, mortgages, notices of lien or similar instruments, or otherwise take any action to perfect their security interests

in the Collateral other than (A) to perfect the liens granted pursuant to this Interim Order or (B) as may be required by applicable state or foreign law to complete a previously commenced process of perfection or to continue the perfection of valid and non-avoidable liens or security interests existing as of the Petition Date; and (iv) deliver or cause to be delivered, at the Loan Parties' cost and expense, any termination statements, releases and/or assignments in favor of the DIP Secured Parties or other documents necessary to effectuate and/or evidence the release, termination and/or assignment of liens on any portion of the Collateral subject to any sale or disposition permitted by the DIP Documents and this Interim Order.

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

(c) Any proceeds of Prepetition Collateral received by any Prepetition Secured Party, whether in connection with the exercise of any right or remedy (including setoff) relating to the Prepetition Collateral or otherwise, shall be segregated and held in trust for the benefit of, and forthwith paid over to, the DIP Agent for the benefit of the DIP Secured Parties in the same form as received, with any necessary endorsements, or as a court of competent jurisdiction may otherwise direct. The DIP Agent is hereby authorized to make any such endorsements as agent for the applicable Prepetition Secured Parties. This authorization is coupled with an interest and is irrevocable.

(d) Upon the occurrence and during the continuation of an Event of Default under any of the DIP Documents that has not been waived by the Required Lenders and following delivery of written notice (a “Termination Notice”) (including by e-mail) on not less than five (5) business days’ notice (such five (5) business day period, the “DIP Agent Remedies Notice Period”) to lead restructuring counsel to the Debtors, lead restructuring counsel to each of the Prepetition Agents, lead counsel to the Creditors’ Committee (if any), and the U.S. Trustee, the DIP Agent (at the direction of the respective Required Lenders) may (and any automatic stay otherwise applicable to the DIP Secured Parties, whether arising under section 362 of the Bankruptcy Code or otherwise, but subject to the terms of this Interim Order (including this paragraph) is hereby modified), without further notice to, hearing of, or order from this Court, unless the Court orders otherwise, *provided* that during the DIP Agent Remedies Notice Period, the Debtors, the Creditors’ Committee (if appointed), and/or any party in interest shall be entitled to seek an emergency hearing (with the DIP Agent consenting to such emergency hearing) with the Court: (a) immediately terminate and/or revoke the Debtors’ right under this Interim Order and any other DIP Documents to use any Cash Collateral (subject to the Carve-Out), (b) terminate the DIP Commitments and any DIP Documents as to any future liability or obligation of the DIP Secured Parties but without affecting any of the DIP Obligations or the DIP Liens securing such DIP Obligations; (c) declare all DIP Obligations to be immediately due and payable; (c) invoke the right to charge interest at the default rate under the DIP Documents; (d) freeze monies or balances in the Debtors’ accounts other than the Funded Reserve Account; (e) immediately set-off any and all amounts in accounts maintained by the Debtors with the DIP Agent or the DIP Secured Parties against the DIP Obligations; (e) enforce any and all rights against the DIP Collateral, including, without limitation, foreclosure on all or any portion of the DIP Collateral, occupying the Debtors’

premises, sale or disposition of the DIP Collateral; and (f) except as otherwise ordered by the Court, take any other actions or exercise any other rights or remedies permitted under this Interim Order, the DIP Documents or applicable law. After delivery of such Termination Notice by the DIP Agent and expiration of the DIP Agent Remedies Notice Period and except as otherwise ordered by the Court, the DIP Secured Parties' and the Prepetition Secured Parties' consent to use their respective Cash Collateral and the Debtors' ability to incur additional DIP Obligations will, unless the Court orders otherwise, automatically terminate; *provided*, that, notwithstanding anything to the contrary in this Order, the Debtors shall continue to have the right to use Cash Collateral solely to pay necessary expenses to avoid irreparable harm to the Debtors' estates, fund the Carve-Out, and meet payroll obligations, in each case in accordance with the terms of this Interim Order and the Approved Budget (including any permitted deviations) during the DIP Agent Remedies Notice Period and pending any final determination from the Court. As soon as reasonably practicable following receipt of a Termination Notice, the Debtors shall file a copy of the same on the docket.

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

9. *Limitation on Charging Expenses Against Collateral.* Subject to entry of a Final Order granting such relief, and without limiting the scope of the Carve-Out, no costs or expenses

of administration of these Chapter 11 Cases or any Successor Case or any future proceeding that may result therefrom, including liquidation in bankruptcy or other proceedings under the Bankruptcy Code, shall be charged against or recovered from the Collateral (including Cash Collateral) pursuant to section 506 of the Bankruptcy Code or any similar principle of law, without the prior written consent of the DIP Agent and the Prepetition First Lien Agent, and no such consent shall be implied from any action, inaction or acquiescence by any of the DIP Secured Parties or Prepetition Secured Parties, and nothing contained in this Interim Order shall be deemed to be a consent by the DIP Secured Parties or Prepetition Secured Parties to any charge, lien, assessment or claims against the Collateral under section 506(e) of the Bankruptcy Code or otherwise.

10. *No Marshaling.* Subject to and upon entry of the Final Order, but effective as of the Petition Date, in no event shall the DIP Secured Parties or the Prepetition Secured Parties be subject to the equitable doctrine of “marshaling” or any similar doctrine with respect to any of the DIP Collateral, the DIP Obligations, the Prepetition First Lien Obligations, or the Prepetition First Lien Collateral, as applicable.

11. *Equities of the Case.* Subject to entry of a Final Order granting such relief, in no event shall the “equities of the case” exception in section 552(b) of the Bankruptcy Code apply to the Prepetition Secured Parties.

12. *Payments Free and Clear.* Subject to the Carve-Out in all respects, any and all payments remitted to the DIP Secured Parties or Prepetition Secured Parties pursuant to the provisions of this Interim Order, the DIP Documents or any subsequent order of this Court shall be irrevocable, received free and clear of any claim, charge, assessment or other liability, including without limitation, and subject only to entry of a Final Order to the extent provided therein, any

claim or charge arising out of or based on, directly or indirectly, sections 506(c) or 552(b) of the Bankruptcy Code, whether asserted or assessed by through or on behalf of the Debtors.

13. *Use of Cash Collateral.* The Debtors are hereby authorized, solely on the terms and conditions of this Interim Order, to use all Cash Collateral in a manner consistent with the Approved Budget (including with respect to permitted variances in such budget(s)), it being acknowledged and agreed that any Approved Budget shall not limit nor be deemed to limit the Carve-Out or the Debtors' obligation to pay or reimburse any obligations otherwise entitled to priority under the Carve-Out.

14. *Adequate Protection of Prepetition Secured Parties.* Subject only to the Carve-Out, the Prepetition Prior Liens, the terms of the applicable Intercreditor Agreement, and the terms of this Interim Order, pursuant to sections 361, 362, 363(e), 364(d)(1), and 507 of the Bankruptcy Code, and in consideration of the stipulations and consents set forth herein, as adequate protection for the Diminution in Value, if any, and as an inducement to the Prepetition Secured Parties to consent or not object to the priming of the Prepetition Liens and the use of their Cash Collateral, the Prepetition Secured Parties are granted the following Adequate Protection (collectively, the "Adequate Protection Obligations"):

(a) *Prepetition First Lien Parties' Adequate Protection Liens.* The Prepetition First Lien Agent is hereby granted, for the benefit of the Prepetition First Lien Parties, and in each case solely to the extent of Diminution in Value, if any, effective and perfected upon the date of this Interim Order and without the necessity of the execution of any mortgages, security agreements, pledge agreements, financing statements or other agreements, a valid, duly perfected replacement security interest in and lien on account of the Prepetition First Lien Parties' Diminution in Value, if any, upon all of the DIP Collateral (the "First Lien Adequate Protection

Liens”), junior, subject, and subordinate solely to the Carve-Out, the DIP Liens, and the Prepetition Prior Liens, but senior to all other liens and *pari passu* with the Sidecar Adequate Protection Liens (as defined below).

(b) *Prepetition First Lien Parties’ Section 507(b) Claim.* The Prepetition First Lien Agent, for the benefit of the Prepetition First Lien Parties, and in each case solely to the extent of Diminution in Value, if any, is hereby granted an allowed superpriority administrative expense claim against the Loan Parties on a joint and several basis (without the need to file any proof of claim) on account of the Prepetition First Lien Parties’ Diminution in Value under section 507(b) of the Bankruptcy Code (the “First Lien 507(b) Claim”), which shall be payable from and have recourse to all DIP Collateral and all proceeds thereof (excluding, for the avoidance of doubt, Avoidance Actions but, subject to entry of the Final Order granting such relief, including the Avoidance Proceeds). The First Lien 507(b) Claim shall be senior to all other claims against the Loan Parties, now existing or hereafter arising, of any kind whatsoever, including, without limitation, all administrative expenses of the kind specified in sections 503(b) and 507(b) of the Bankruptcy Code, whether or not such claims may become secured by a judgment lien or other non-consensual lien, levy or attachment, except for the Carve-Out and the DIP Superpriority Claims, and shall be *pari passu* with the Sidecar 507(b) Claim (as defined below).

(c) *Prepetition First Lien Parties’ Fees and Expenses.* As further adequate protection, the Loan Parties shall currently pay, in cash, all reasonable and documented professional fees and out-of-pocket expenses payable to one counsel and one local counsel (if necessary) to the Prepetition First Lien Agent and the reasonable and documented fees and out-of-pocket expenses of professionals retained by the Ad Hoc Group, including, but not limited to Milbank LLP, Richards, Layton & Finger, P.A., Evercore, Inc., and any other advisors identified

to and agreed upon by the Debtors (e-mail to Ropes & Gray LLP being sufficient) prior to, on, or after the Petition Date (such agreement not to be unreasonably withheld, conditioned, or delayed) (collectively, the “First Lien Adequate Protection Fees and Expenses”), in each case promptly upon receipt of summary form invoices which may be redacted for privileged information, subject to the review procedures set forth in paragraph 18 of this Interim Order.

(d) *Prepetition Sidecar Secured Parties’ Adequate Protection Liens.* The Prepetition Sidecar Agent is hereby granted, for the benefit of the Prepetition Sidecar Secured Parties, effective and perfected upon the date of this Interim Order and without the necessity of the execution of any mortgages, security agreements, pledge agreements, financing statements or other agreements, a valid, duly perfected replacement security interest in and lien on account of the Prepetition Sidecar Secured Parties’ Diminution in Value upon all of the DIP Collateral (the “Sidecar Adequate Protection Liens” and, together with the First Lien Adequate Protection Liens, the “Adequate Protection Liens”), junior, subject, and subordinate solely to the Carve-Out, the DIP Liens, and the Prepetition Prior Liens, but senior to all other liens and *pari passu* with the First Lien Adequate Protection Liens.

(e) *Prepetition Sidecar Secured Parties’ Section 507(b) Claim.* The Prepetition Sidecar Agent, for the benefit of the Prepetition Sidecar Secured Parties, is hereby granted an allowed superpriority administrative expense claim against the Loan Parties on a joint and several basis (without the need to file any proof of claim) on account of the Prepetition Sidecar Secured Parties’ Diminution in Value under section 507(b) of the Bankruptcy Code (the “Sidecar 507(b) Claim” and, together with the First Lien 507(b) Claim, the “507(b) Claims”), which shall be payable from and have recourse to all DIP Collateral and all proceeds thereof (excluding, for the avoidance of doubt, Avoidance Actions but, subject to entry of the Final Order granting such relief,

including Avoidance Proceeds). The Sidecar 507(b) Claim shall be senior to all other claims against the Loan Parties, now existing or hereafter arising, of any kind whatsoever, including, without limitation, all administrative expenses of the kind specified in sections 503(b) and 507(b) of the Bankruptcy Code, whether or not such claims may become secured by a judgment lien or other non-consensual lien, levy or attachment, except for the Carve-Out and the DIP Superpriority Claims, and shall be *pari passu* with the First Lien 507(b) Claim.

(f) *Prepetition Sidecar Secured Parties' Fees and Expenses.* As further adequate protection, the Loan Parties shall currently pay, in cash, reasonable and documented professional fees and out-of-pocket expenses of Kirkland & Ellis LLP, solely in its capacity as counsel to the Prepetition Sidecar Agent (the "Sidecar Adequate Protection Fees and Expenses" and, together with the First Lien Adequate Protection Fees and Expenses, the "Adequate Protection Fees and Expenses"), promptly upon receipt of summary form invoices which may be redacted for privileged information, subject to the review procedures set forth in paragraph 18 of this Interim Order; *provided*, that, the Sidecar Adequate Protection Fees and Expenses payable by the Loan Parties shall not exceed \$1,200,000 in the aggregate.

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

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

(a) Without in any way limiting the validity of the automatic perfection of the DIP Liens and the Adequate Protection Liens by entry of this Interim Order, the DIP Secured Parties and the Prepetition Secured Parties are hereby authorized, but not required, to execute, in the name of the Loan Parties or the Prepetition Loan Parties (as applicable), as their true and lawful

attorneys (with full power of substitution, to the maximum extent permitted by law), and to file or record financing statements, trademark filings, copyright filings, mortgages, notices of lien or similar perfection instruments in any jurisdiction, or take possession of certificated securities, or take any other similar action in a manner not inconsistent herewith to document, validate or perfect the liens and security interests granted to them hereunder (the “Perfection Actions”). All Perfection Actions shall be deemed to have been taken on the date of entry of this Interim Order. The automatic stay shall be modified to the extent necessary to permit the DIP Secured Parties and the Prepetition Secured Parties to take any Perfection Action. For the avoidance of doubt, the DIP Liens and the Adequate Protection Liens shall be deemed valid, duly perfected, enforceable, non-avoidable, and not subject to challenge, dispute or subordination (subject to the priorities set forth in this Interim Order), at the time and on the date of entry of this Interim Order, whether or not the DIP Secured Parties or the Prepetition Secured Parties take such Perfection Actions.

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

17. *Preservation of Rights Granted Under this Interim Order.*

(a) Other than the claims and liens expressly granted or permitted by this Interim Order, including the Carve-Out, no claim or lien having a priority superior to or *pari passu* with those granted by this Interim Order shall be permitted while any of the DIP Obligations or the Adequate Protection Obligations remain outstanding, and, except as otherwise expressly provided in or permitted under this Interim Order, the DIP Liens and the Adequate Protection

Liens shall not be: (i) senior to the Prepetition Prior Liens; (ii) junior to any lien or security interest that is avoided and preserved for the benefit of the Debtors' estates under section 551 of the Bankruptcy Code; (iii) subordinated to or made *pari passu* with any other lien or security interest, whether under section 364(d) of the Bankruptcy Code or otherwise (except for the Prepetition Prior Liens); (iv) subordinated to or made *pari passu* with any liens arising after the Petition Date including, without limitation, any liens or security interests granted in favor of any federal, state, municipal or other domestic or foreign governmental unit (including any regulatory body), commission, board or court for any liability of the Loan Parties; or (v) junior to any intercompany liens or security interests of the Loan Parties.

(b) The occurrence and continuance of any Event of Default shall, after written notice by the DIP Agent (acting at the direction of Required Lenders) to the Borrower, counsel to the Borrower, the U.S. Trustee, and lead counsel to the Creditors' Committee (if any) constitute an event of default under this Interim Order (each an "Event of Default") and, upon such notice, interest, including, where applicable, default interest, shall accrue and be payable as set forth in the DIP Credit Agreement. Notwithstanding any order that may be entered dismissing any of these Chapter 11 Cases under section 1112 of the Bankruptcy Code or converting any of these cases to a Successor Case: (i) the DIP Superpriority Claims, the 507(b) Claims, the DIP Liens, and the Adequate Protection Liens shall continue in full force and effect, shall maintain their priorities as provided in this Interim Order, and shall remain binding on all parties in interest until all DIP Obligations and Adequate Protection Obligations shall have been indefeasibly paid in full; (ii) the other rights granted by this Interim Order, including with respect to the Carve-Out, shall not be affected; and (iii) this Court shall retain jurisdiction, notwithstanding any dismissal, for the purposes of enforcing the claims, liens and security interests granted by this Interim Order.

(c) If any or all of the provisions of this Interim Order are hereafter reversed, modified, vacated or stayed, the DIP Secured Parties and the Prepetition Secured Parties shall be entitled to, and are hereby granted, all the rights, remedies, privileges and benefits arising under sections 364(e) of the Bankruptcy Code.

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

18. *Payment of Fees and Expenses.* The Loan Parties are authorized and directed to pay the DIP Fees and Expenses and the Adequate Protection Fees and Expenses. Subject to the review procedures set forth in this paragraph 18, payment of the DIP Fees and Expenses and Adequate Protection Fees and Expenses shall not be subject to allowance or review by the Court.

Professionals for the DIP Secured Parties and Prepetition Secured Parties shall not be required to comply with the U.S. Trustee's fee guidelines with respect to such fees and expenses; however, any time that any such professional seeks payment of fees and expenses from the Debtors prior to confirmation of a chapter 11 plan, each such professional shall provide summary copies of its invoices (including aggregate amounts of fees and expenses and total amount of time on a per-professional basis), which are not required to contain time detail and which may be redacted or modified to the extent necessary to delete any information subject to the attorney-client privilege, any information constituting attorney work product, or any other confidential information, to counsel to the Loan Parties, counsel to the Creditors' Committee, and the U.S. Trustee (together, the "Review Parties"); *provided, however*, that the provision of such invoices shall not constitute a waiver of the attorney client privilege or of any benefits of the attorney work product doctrine or any other evidentiary privilege or protection recognized under applicable law; and *provided further that*, the Review Parties shall have the right to request additional details regarding the services rendered and expenses incurred by such professionals (each, an "Information Request"). Any objections raised by any Review Party with respect to such invoices must be in writing and state with particularity the grounds therefor and must be submitted to the applicable professional within ten (10) calendar days after receipt (the "Review Period"), which shall not be extended by the delivery of an Information Request. If no written objection is received by 12:00 p.m., prevailing Eastern Time, on the last date of the Review Period, the Debtors shall pay such invoices within five (5) business days. If an objection to a professional's invoice is received within the Review Period, the Debtors shall promptly pay the undisputed portion of the invoice without the necessity of filing formal fee applications, regardless of whether the invoiced amount arose or was incurred before or after the Petition Date, and this Court shall have

jurisdiction to determine the disputed portion of such invoice if the parties are unable to resolve the dispute consensually. Notwithstanding the foregoing, the Debtors are authorized and directed to pay, on or prior to the Closing Date (as defined in the DIP Credit Agreement) (a) any and all costs, fees, expenses (including reasonable and documented legal fees and expenses) of the DIP Agent and the Ad Hoc Group associated with the preparation, execution, delivery and administration of the DIP Loan Documents and any amendment or waiver with respect thereto (including the reasonable and documented expenses of and fees payable to the Ad Hoc Group advisors and DIP Agent Advisors), (b) any and all costs, fees, expenses (including reasonable and documented legal fees and expenses) of the DIP Agent and the Ad Hoc Group in connection with the enforcement of the DIP Orders or protection of rights under the DIP Facility (including the reasonable and documented expenses of and fees payable to the Ad Hoc Group advisors and DIP Agent advisors), and (c) other compensation contemplated by the DIP Documents. No attorney or advisor to any DIP Secured Party or any Prepetition Secured Party shall be required to file an application seeking compensation for services or reimbursement of expenses with the Court. Any and all fees, costs, and expenses paid prior to the Petition Date by any of the Debtors to (a) the DIP Secured Parties in connection with the DIP Facility, or (b) the Prepetition Secured Parties in connection with these cases, are hereby approved in full and shall not be subject to recharacterization, avoidance, subordination, disgorgement or any similar form of recovery by the Debtors or any other person.

19. *Effect of Stipulations on Third Parties.* Subject to the reservation of rights set forth in paragraph 27 of this Interim Order, the Debtors' stipulations, admissions, agreements, and releases contained in this Interim Order shall be binding upon the Debtors. Subject to the reservation of rights set forth in paragraph 27, upon entry of this Interim Order the Debtors'

stipulations, admissions, agreements, and releases contained in this Interim Order shall be binding upon all other parties in interest, including, without limitation, any statutory or non-statutory committees appointed or formed in these cases and any other person or entity acting or seeking to act on behalf of the Debtors' estates, including any chapter 7 or chapter 11 trustee appointed or elected for any of the Debtors, in all circumstances and for all purposes unless a party in interest with requisite standing has timely filed an adversary proceeding or contested matter (subject to the limitations contained herein), or filed a motion seeking standing to file such adversary proceeding or contested matter, by no later than (a) (i) 75 calendar days after the entry of this Interim Order, and (ii) if a chapter 7 or a chapter 11 trustee is appointed or elected prior to the end of the Challenge Period (as defined below), the later of (A) 75 calendar days after entry of this Interim Order, or (B) the date that is 21 calendar days after such trustee's appointment and (b) any such later date as has been agreed to by the Prepetition First Lien Agent with respect to the Prepetition First Lien Obligations (the time period established by the foregoing clauses (a)-(b) (the "Challenge Period"), (x) objecting to or challenging the amount, validity, perfection, enforceability, priority or extent of the Prepetition Secured Obligations or the Prepetition Liens, or (y) asserting or prosecuting any Avoidance Action or any other claims, counterclaims or causes of action, objections, contests, or defenses (collectively, the "Challenges") against any Prepetition Secured Party or their respective subsidiaries, affiliates, officers, directors, managers, principals, employees, agents, financial advisors, attorneys, accountants, investment bankers, consultants, representatives and other professionals and the respective successors and assigns thereof, in each case solely in their respective capacity as such (collectively, the "Representatives") in connection with or related to the Prepetition Loan Documents, the Prepetition Secured Obligations, the Prepetition Liens, and the Prepetition Collateral; and (b) a final non-appealable order in favor of the plaintiff sustaining

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

or any other party acting or seeking to act on behalf of the Debtors' estates, including, without limitation, any chapter 7 or chapter 11 trustee or examiner, whether arising under the Bankruptcy Code or otherwise, against any of the Prepetition First Lien Parties and their Representatives shall be deemed forever waived, released and barred. If any Challenge is timely filed during the Challenge Period, the stipulations, admissions, agreements, and releases contained in this Interim Order shall nonetheless remain binding and preclusive (as provided in the second sentence of this paragraph) on each person or entity, except, solely with respect to the person or entity who made such Challenge to the extent that such challenged stipulations, admissions, agreements, and releases were expressly sustained in a final, non-appealable order of a court of competent jurisdiction. Nothing in this Interim Order vests or confers on any person or entity (each as defined in the Bankruptcy Code), including any statutory or non-statutory committees appointed or formed in these cases, standing or authority to pursue any claim or causes of action belonging to the Debtors or their estates, including, without limitation, any Challenges with respect to the Prepetition Loan Documents, Prepetition Secured Obligations, or Prepetition Liens, and any ruling on standing, if appealed, shall not stay or otherwise delay confirmation of any plan in these cases.

20. *Limitation on Use of DIP Financing Proceeds and Collateral.* Subject to the reservation of rights set forth in paragraph 27 of this Interim Order, no DIP Loans, DIP Collateral, Prepetition Collateral (including Cash Collateral), or any portion of the Carve-Out, may be used directly or indirectly, including, without limitation, through reimbursement of professional fees of any non-Debtor party, in connection with (a) the investigation, threatened initiation or the prosecution of any claims, causes of action, adversary proceedings or other litigation (i) other than with respect to the Debtor Reserved Claims, against any of the DIP Secured Parties, or the Prepetition Secured Parties, or their respective Representatives, or any action purporting to do any

of the foregoing in respect of the DIP Obligations, DIP Liens, DIP Superpriority Claims, Prepetition First Lien Obligations, Prepetition First Liens, Adequate Protection Liens, or 507(b) Claims or (ii) other than with respect to the Debtor Reserved Claims, challenging the amount, validity, perfection, priority, or enforceability of or asserting any defense, counterclaim or offset with respect to the DIP Obligations, the Prepetition Secured Obligations and/or liens, claims, rights, or security interests securing or supporting the DIP Obligations granted under the DIP Orders, the DIP Documents or the Prepetition Loan Documents in respect of the Prepetition Secured Obligations, including, in the case of each (i) and (ii), without limitation, for lender liability or pursuant to section 105, 510, 544, 547, 548, 549, 550 or 552 of the Bankruptcy Code, applicable non-bankruptcy law or otherwise, *provided, however*, that notwithstanding anything to the contrary herein, the proceeds of the DIP Loans and Cash Collateral may be used (I) by the Debtors, with respect to the Debtor Reserved Claims and (II) by the Creditors' Committee, for the Creditors Committee to investigate, but not to prosecute, (A) the claims and liens of the Prepetition Secured Parties and (B) potential claims, counterclaims, causes of action, or defenses against the Prepetition Secured Parties, up to an aggregate cap of no more than \$50,000 (the "Investigation Cap"), (b) attempts to prevent, hinder, or otherwise delay or interfere with the Prepetition Secured Parties' or the DIP Secured Parties', as applicable, enforcement or realization on the Prepetition First Lien Obligations, Prepetition First Lien Collateral, DIP Obligations, DIP Collateral, as applicable, and the liens, claims and rights granted to such parties under the DIP Orders; (c) attempts to seek to modify any of the rights and remedies granted to the Prepetition Secured Parties or the DIP Secured Parties under this Interim Order, the Prepetition Loan Documents or the DIP Documents, as applicable, other than in accordance with this Interim Order; (d) to apply to the Court for authority to approve superpriority claims or grant liens on or security interests in (other

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

21. *Binding Effect; Successors and Assigns.* The DIP Documents and the provisions of this Interim Order, including all findings herein, shall be binding upon all parties in interest in these Chapter 11 Cases, including, without limitation, the DIP Secured Parties, the Prepetition Secured Parties, any statutory or non-statutory committees appointed or formed in these cases, the Debtors and their respective successors and assigns (including any chapter 7 or chapter 11 trustee hereinafter appointed or elected for the estate of any Debtor, an examiner appointed pursuant to section 1104 of the Bankruptcy Code, or any other fiduciary appointed as a legal representative of any Debtor or with respect to the property of the estate of any Debtor) and shall inure to the benefit of the DIP Secured Parties, the Prepetition Secured Parties, the Debtors, and their respective successors and assigns; *provided*, that the DIP Secured Parties and the Prepetition Secured Parties shall have no obligation to permit the use of the Collateral (including Cash Collateral) by, or to extend any financing to, any chapter 7 trustee or chapter 11 trustee or similar responsible person appointed for the estates of any Debtor.

22. Nothing in this Interim Order, the DIP Documents, the Prepetition First Lien Loan Documents or any other documents related to the transactions contemplated hereby shall in any way be construed or interpreted to impose or allow the imposition upon any DIP Secured Party or Prepetition First Lien Party any liability for any claims arising from the prepetition or postpetition activities of the Debtors in the operation of their businesses, or in connection with their restructuring efforts. The DIP Secured Parties and Prepetition Secured Parties shall not, in any way or manner, be liable or responsible for (a) the safekeeping of the Collateral, (b) any loss or damage thereto occurring or arising in any manner or fashion from any cause, (c) any Diminution in Value, or (d) any act or default of any carrier, servicer, bailee, custodian, forwarding agency or other person, and all risk of loss, damage or destruction of any Collateral shall be borne by the Debtors.

23. *Release; Limitation of Liability.* Upon entry of this Interim Order, each of the Debtors and their estates, on their own behalf and on behalf of their respective predecessors, successors, heirs, and past, present and future subsidiaries and assigns, hereby absolutely, unconditionally and irrevocably releases and forever discharge and acquit the DIP Secured Parties and their Representatives (each, solely in their capacities as such), from any and all liability to the Debtors (and their successors and assigns) and from any and all claims, counterclaims, demands, defenses, offsets, debts, accounts, contracts, liabilities, actions and causes of action of any kind, nature and description, whether matured or unmatured, known or unknown, asserted or unasserted, foreseen or unforeseen, accrued or unaccrued, suspected or unsuspected, liquidated or unliquidated, pending or threatened, arising in law or equity, in contract or tort, in each case arising out of or related to, as applicable, the DIP Facility, the DIP Documents, the DIP Loans, the DIP Liens, the negotiation thereof and the transactions and agreements reflected thereby, that the

Debtors at any time had, now have or may have, or that their predecessors, successors or assigns at any time had or may have against any of the DIP Secured Parties for or by reason of any act, omission, matter, or cause arising at any time on or prior to the date of this Interim Order, except as a result of bad faith, willful misconduct, fraud, or gross negligence. In determining to make any loan or other extension of credit under the DIP Documents, to permit the use of the Collateral (including Cash Collateral) or in exercising any rights or remedies as and when permitted pursuant to this Interim Order or the DIP Documents or Prepetition First Lien Loan Documents, as applicable, none of the DIP Secured Parties or Prepetition Secured Parties shall (a) have any liability to any third party or be deemed to be in “control” of the operations of the Debtors; (b) owe any fiduciary duty to the Debtors, their respective creditors, shareholders or estates; or (c) be deemed to be acting as a “Responsible Person” or “Owner” or “Operator” or “managing agent” with respect to the operation or management of any of the Debtors (as such terms or similar terms are used in the United States Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§ 9601, *et seq.*, as amended, or any other federal or state statute, including the Internal Revenue Code). Furthermore, nothing in 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 Prepetition Secured Parties of any liability for any claims arising from the prepetition or postpetition activities of any of the Debtors and their respective Representatives.

24. *Master Proofs of Claim.* Neither the Prepetition Agents nor any other Prepetition Secured Party shall be required to file proofs of claim in these cases or any Successor Cases in order to assert claims for payment of any of the Prepetition Secured Obligations, including, without limitation, any principal, unpaid interest, fees, expenses and other amounts payable under the Prepetition Loan Documents. The description of claims and liens in respect of the Prepetition

Secured Obligations set forth in this Interim Order is deemed to constitute informal proofs of claim in respect of such indebtedness and its secured status. However, in order to facilitate the processing of claims, the Prepetition Agents are authorized, but not directed or required, to file master proofs of claim in the Debtors' lead case, Case No. 12-12441, on behalf of the applicable Prepetition Secured Parties (each, a "Master Proof of Claim"), which shall be deemed to have been filed against each Debtor. The provisions of this paragraph 24 and the filing of Master Proofs of Claim, if any, are intended solely for the purpose of administrative convenience and shall not affect the right of each Prepetition Secured Party (or their respective successors in interest) to vote separately on any plan filed in these cases. The Master Proofs of Claim shall not be required to include any instruments, agreements or other documents evidencing the obligations owing by each Debtor to the Prepetition Secured Parties, which instruments, agreements or other documents will be provided upon written request to counsel to the Prepetition Agents. The DIP Secured Parties shall not be required to file proofs of claim with respect to the DIP Obligations.

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

26. *Credit Bidding.* Subject to the lien priorities set forth herein and the terms of the Intercreditor Agreements, (a) upon entry of the Interim Order, the DIP Agent shall have the right to credit bid up to the full amount of the DIP Loans actually advanced to the Loan Parties (either

directly or through one or more acquisition vehicles) as part of any asset sale process or plan sponsorship process including the DIP Collateral and (b) subject to the reservation of rights set forth in paragraph 19 hereof and section 363(k) of the Bankruptcy Code, the Prepetition First Lien Agent shall have the right to credit bid, up to the full amount of the Prepetition First Lien Obligations, in the sale of the applicable Prepetition First Lien Collateral, except as otherwise ordered for cause pursuant to section 363(k) of the Bankruptcy Code, in each case, without the need for further Court order authorizing the same, whether any such sale is effectuated through sections 363(k), 1123 or 1129(b) of the Bankruptcy Code, by a chapter 7 trustee under section 725 of the Bankruptcy Code or otherwise.

27. *Exit Fee and Applicable Premium.* Notwithstanding anything herein or in the DIP Documents to the contrary, the Debtors, the Prepetition First Lien Parties, and the Prepetition Sidecar Secured Parties acknowledge and agree that the Debtors and the Prepetition First Lien Parties reserve the right to object to the extent, allowability, validity, and enforceability of the Exit Fee and the Applicable Premium (each as defined in the Prepetition Sidecar Credit Agreement) and that nothing in this Interim Order or any of the DIP Documents shall serve to limit the foregoing reservation of rights.

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

29. *Governing Order.* In the event of any inconsistency between the provisions of this Interim Order, the DIP Documents or Prepetition Loan Documents, the provisions of this Interim Order shall govern. Notwithstanding the relief granted in any other order by this Court, (a) all

payments and actions by any of the Debtors pursuant to the authority granted therein shall be subject to this Interim Order, including compliance with the applicable Approved Budget (subject to permitted variances and to the Allowed Professional Fees) and all other terms and conditions hereof, and (b) to the extent there is any inconsistency between the terms of such other order and this Interim Order, this Interim Order shall control, in each case, except to the extent expressly provided otherwise in the other order.

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

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

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

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

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

35. *Automatic Stay.* For all Adequate Protection and stay relief purposes throughout these cases, the Prepetition Secured Parties shall be deemed to have requested relief from the automatic stay and Adequate Protection as of the Petition Date. For the avoidance of doubt, such request will survive termination of this Interim Order.

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

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

38. *Objections.* Any objections or responses to the final approval of the DIP Motion shall be filed on or prior to [●] (Prevailing Eastern Time). Any party objecting to the relief sought at the Final Hearing shall file and serve written objections, which objections shall be served upon (a) the Debtors, (b) the Prepetition First Lien Agent and DIP Agent and counsel thereto, ArentFox Schiff LLP, 1301 Avenue of the Americas, New York, New York 10019, Attn: Jeffrey R. Gleit (jeffrey.gleit@afslaw.com), (c) counsel to the Ad Hoc Group, Milbank LLP, 55 Hudson Yards, New York, New York 10001, Attn: Evan R. Fleck (efleck@milbank.com) and Nelly Almeida (nalmeida@milbank.com), and Richards, Layton & Finger, P.A., 920 North King Street,

Wilmington, Delaware 19801, Attn: Mark D. Collins (collins@rlf.com), Zachary I. Shapiro (shapiro@rlf.com) and David T. Queroli (queroli@rlf.com), (d) the Prepetition Sidecar Agent and counsel thereto, Kirkland & Ellis LLP, 333 West Wolf Point Plaza, Chicago, IL 60654, Attn: Chad Husnick (chusnick@kirkland.com) and Dave Gremling (dave.gremling@kirkland.com), (e) the U.S. Trustee, Attn: Linda J. Casey (lindacasey@usdoj.gov); and (f) if appointed, the Creditors' Committee.

Exhibit 1

DIP Credit Agreement

DEBTOR-IN-POSSESSION CREDIT AGREEMENT

Dated as of October [], 2024

among

EXACTECH, INC.,
as the Borrower,

OSTEON INTERMEDIATE HOLDINGS II, INC.,
as Holdings,

the other Guarantors party hereto,

GLAS USA LLC,
as Administrative Agent and Collateral Agent,

and

THE LENDERS PARTY HERETO

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DEBTOR-IN-POSSESSION CREDIT AGREEMENT

This DEBTOR-IN-POSSESSION CREDIT AGREEMENT (this “**Agreement**”) is entered into as of October [], 2024 by and among Exactech, Inc., a Florida corporation, as debtor and debtor-in-possession (the “**Borrower**”), Osteon Intermediate Holdings II, Inc., a Delaware corporation, as debtor and debtor-in-possession (“**Holdings**”), the other Guarantors party hereto, as debtors and debtors-in-possession, GLAS USA LLC (“**GLAS**”), as administrative agent (in such capacity, including any successor thereto, the “**Administrative Agent**”) under the Loan Documents and as collateral agent (in such capacity, including any successor thereto, the “**Collateral Agent**”) under the Loan Documents, and each lender from time to time party hereto (collectively, the “**Lenders**” and individually, a “**Lender**”).

PRELIMINARY STATEMENTS

On October 9, 2024, the Borrower entered into the Prepetition First Lien Amendment No. 4 (as defined herein), which amended the Prepetition First Lien Credit Agreement (as defined herein) and provided for incremental term loans in an aggregate initial principal amount of \$6,500,000 (the “**Bridge Loans**”).

On October 29, 2024 (the “**Petition Date**”), the Borrower and the other Loan Parties (defined herein) (together with the Borrower, the “**Debtors**”) commenced voluntary cases (the “**Chapter 11 Cases**”) under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware (the “**Bankruptcy Court**”), and the Debtors have continued to operate their businesses and manage their properties as debtors-in-possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

The Borrower has requested and the Lenders have agreed to provide a secured super-priority debtor-in-possession facility to the Borrower (the “**DIP Facility**”), in an aggregate principal amount not to exceed \$85,000,000, the proceeds of which will be used to fund working capital and certain permitted administrative expenses of the Debtors during the pendency of the Chapter 11 Cases in accordance with the Budget and the terms of this Agreement.

The Guarantors have agreed to guarantee the obligations of the Borrower hereunder and the Borrower and the Guarantors have agreed to secure their respective Obligations by granting to Collateral Agent, for the benefit of the Secured Parties, a lien on substantially all of their respective assets, in accordance with the priorities provided in the DIP Order (as defined herein). In consideration of the mutual covenants and agreements herein contained, the parties hereto covenant and agree as follows:

Article I

Definitions and Accounting Terms

SECTION 1.01 Defined Terms. As used in this Agreement (including the introductory paragraph hereof and the preliminary statements hereto), the following terms have the meanings set forth below:

“**Accounts Agreement**” has the meaning set forth in Section 9.08.

“**Ad Hoc Group**” means the ad hoc group of consenting Prepetition First Lien Lenders as defined in the Restructuring Support Agreement.

“**Ad Hoc Group Advisors**” means (i) Milbank LLP, as counsel to the Ad Hoc Group, (ii) Richards, Layton & Finger, P.A., as Delaware co-counsel to the Ad Hoc Group, and (iii) Evercore Group L.L.C., as investment banker to the Ad Hoc Group.

“**Ad Hoc Group Counsel**” means (i) Milbank LLP, as counsel to the Ad Hoc Group, (ii) Richards, Layton & Finger, P.A., as Delaware co-counsel to the Ad Hoc Group, (iii) Ashurst LLP, as Australian counsel to the Ad Hoc Group, (iv) Anderson Mōri & Tomotsune, as Japanese counsel to the Ad Hoc Group, (v) Covington & Burling LLP, as European Union regulatory counsel to the Ad Hoc Group, (vi) Jeantet A.A.R.P.I., as French regulatory counsel to the Ad Hoc Group, (vii) Legance - Avvocati Associati, as Italian regulatory counsel to the Ad Hoc Group, and (viii) J&A Garrigues, S.L.P., as Spanish regulatory counsel to the Ad Hoc Group.

“**Adjusted Term SOFR**” means, for purposes of any calculation, the rate per annum equal to Term SOFR for such calculation; *provided* that if Adjusted Term SOFR as so determined shall ever be less than 2.0%, then Adjusted Term SOFR shall be deemed to be 2.0%.

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

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

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

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

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

“**Affiliate Transaction**” has the meaning specified in Section 7.07(a).

“**Agent Fee Letter**” means that certain Fee Letter, dated as of October [], 2024, by and between the Administrative Agent and the Borrower.

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

“Agent-Related Distress Event” means, with respect to the Administrative Agent or any other Person that directly or indirectly controls the Administrative Agent (each, a **“Distressed Agent”**), (a) that such Distressed Agent is or becomes subject to a voluntary or involuntary case under any Debtor Relief Law, (b) a custodian, conservator, receiver, or similar official is appointed for such Distressed Agent or any substantial part of such Distressed Agent’s assets, or (c) such Distressed Agent is subject to a forced liquidation, makes a general assignment for the benefit of creditors or is otherwise adjudicated as, or determined by any Governmental Authority having regulatory authority over such Distressed Agent or its assets to be, insolvent or bankrupt; *provided* that an Agent-Related Distress Event shall not be deemed to have occurred solely by virtue of the ownership or acquisition of any Equity Interests in the Administrative Agent or any Person that directly or indirectly controls the Administrative Agent by a Governmental Authority or an instrumentality thereof so long as such ownership interest does not result in or provide the Administrative Agent 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 the Administrative Agent (or such Governmental Authority or instrumentality) to reject, repudiate, disavow or disaffirm any contracts or agreements made with the Administrative Agent.

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

“Agents” means, collectively, the Administrative Agent and the Collateral Agent.

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

“Alternative Restructuring” has the meaning assigned to such term in the Restructuring Support Agreement.

“Applicable PIK Rate” means a percentage per annum equal to 7.00%.

“Applicable Rate” means a percentage per annum equal to (i) 8.00% for Term Benchmark Rate Loans and (ii) 7.00% for Base Rate Loans.

“Approved Alternative Sale” means any sale, other than the Approved Sale, of substantially all of the Debtors’ assets that is the winning bid under an auction completed in accordance with the Bid Procedures Order, so long as such sale repays all of the Obligations and the Prepetition Obligations in full in cash as of the closing of such sale.

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

“Approved Plan” means a Chapter 11 Plan that is consistent with the Restructuring Support Agreement and otherwise contains terms and conditions reasonably acceptable to the Borrower and the Ad Hoc Group.

“**Approved Sale**” means the sale of the Debtors’ assets to the Prepetition First Lien Lenders and the Lenders by credit bid pursuant to sections 363 and 1123 of the Bankruptcy Code under the Asset Purchase Agreement.

“**Asset Purchase Agreement**” means the “Stalking Horse APA” as defined in the Restructuring Support Agreement.

“**Asset Sale**” means:

(1) the sale, conveyance, transfer or other disposition, whether in a single transaction or a series of related transactions of property or assets of the Borrower or any Subsidiary (each referred to in this definition as a “**disposition**”); or

(2) the issuance or sale of Equity Interests (other than directors’ qualifying shares or shares or interests required to be held by foreign nationals or other third parties to the extent required by applicable Law) of any Subsidiary (other than to the Borrower or another Subsidiary), whether in a single transaction or a series of related transactions;

in each case, other than:

(a) any disposition of:

(i) Cash Equivalents or Investment Grade Securities,

(ii) obsolete, damaged or worn out property or assets, any disposition of inventory or goods (or other assets) held for sale and property or assets no longer used or useful in the ordinary course or the principal business of the Borrower and its Subsidiaries,

(iii) assets no longer economically practicable or commercially reasonable to maintain (as determined in good faith by the management of the Borrower), and

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

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

(c) [reserved];

(d) [reserved];

(e) any disposition of property or assets or issuance of securities by a Loan Party to another Loan Party;

(f) [reserved];

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

(h) [reserved];

(i) foreclosures, condemnation, expropriation, eminent domain or any similar action (including for the avoidance of doubt, any Casualty Event) with respect to assets;

(j) [reserved];

(k) [reserved];

(l) the sale, lease, assignment, license, sublease or discount of inventory, equipment, accounts receivable, notes receivable or other current assets in the ordinary course of business or consistent with industry practice or the conversion of accounts receivable to notes receivable or other dispositions of accounts receivable in connection with the collection thereof that, in the aggregate under this clause (l), do not exceed \$1,500,000 in the aggregate;

(m) the licensing or sublicensing of intellectual property or other general intangibles in the ordinary course of business or consistent with industry practice;

(n) any surrender or waiver of contract rights or the settlement, release or surrender of contract rights or other litigation claims in the ordinary course of business or consistent with industry practice;

(o) the unwinding of any Hedging Obligations;

(p) [reserved];

(q) the lapse, abandonment or other disposition of intellectual property rights in the ordinary course of business or consistent with industry practice, which, in the reasonable good faith determination of the Borrower, are not material to the conduct of the business of the Borrower and its Subsidiaries taken as a whole;

(r) the granting of a Lien that is permitted under Section 7.01;

(s) the issuance of directors' qualifying shares and shares of Capital Stock of Foreign Subsidiaries issued to foreign nationals as required by applicable Law;

(t) [reserved]; and

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

in each case, the proceeds of which shall be used in accordance with the Budget (subject to Permitted Variances) and the Restructuring Support Agreement.

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

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

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

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

“Australian Corporate Restructuring” means the potential restructuring of Exactech Australia, which may include, among other things, a voluntary administration process together with a Deed of Company Arrangement (“DOCA”) or asset sale, in form and substance acceptable to the Ad Hoc Group in their reasonable discretion.

“Available Tenor” means, as of any date of determination and with respect to the then-current Benchmark, as applicable, (x) if the then-current Benchmark is a term rate, any tenor for such Benchmark that is or may be used for determining the length of an Interest Period or (y) otherwise, any payment period for interest calculated with reference to such Benchmark, as applicable, pursuant to this Agreement as of such date.

“Avoidance Actions” means all causes of action arising under Section 502(d), 544, 545, 547, 548, 549, 550 and 553 of the Bankruptcy Code and any other avoidance actions under the Bankruptcy Code or any other Debtor Relief Laws.

“Backstop Commitments” means, as to each Backstop DIP Lender, its commitment set forth in Schedule I from time to time to the Restructuring Support Agreement opposite each Backstop DIP Lender’s name as its “Backstop Commitment Amount”.

“Backstop DIP Lenders” has the meaning assigned to such term in the Restructuring Support Agreement.

“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 that 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 Title 11 of the United States Code entitled “Bankruptcy,” as applicable to the Chapter 11 Cases, now and hereafter in effect or any successors to such statute.

“Bankruptcy Court” has the meaning assigned to such term in the recitals hereto; *provided* that “Bankruptcy Court” shall also mean any other court having competent jurisdiction over the Chapter 11 Cases.

“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 announced from time to time by the Administrative Agent as its “prime rate” and (c) the Term Benchmark Rate on such day for an Interest Period of one (1) month *plus* 1.00% (or, if such day is not a Business Day, the immediately preceding Business Day). The “prime rate” is a rate set by the Administrative Agent based upon various factors including the Administrative Agent’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 rate announced by the Administrative Agent shall take effect at the opening of business on the day specified in the announcement of such change. If the Base Rate is being used as an alternate rate of interest pursuant to Article III hereof, then the Base Rate shall be the greater of clause (a) and (b) above and shall be determined without reference to clause (c) above. For the avoidance of doubt, if the Base Rate shall be less than 3.0%, such rate shall be deemed to be 3.0% for purposes of this Agreement.

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

“Basket” means any amount, threshold, exception or value permitted or prescribed with respect to any Lien, Indebtedness, Asset Sale, Investment, Restricted Payment, transaction, action, judgment or amount under any provision in this Agreement or any other Loan Document.

“Benchmark” means, initially, Adjusted Term SOFR; *provided* that if a Benchmark Transition Event and a replacement of the applicable Benchmark has occurred pursuant to Section 1.12(2) have occurred with respect to 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 1.12(2).

“Benchmark Replacement” means, with respect to any Benchmark Transition Event, the sum of (a) the alternate benchmark rate and (b) an adjustment (which may be a positive or negative value or zero), in each case, that has been selected by the Administrative Agent (acting at the Direction of the Required Lenders) and the Borrower as the replacement Benchmark giving due consideration to any evolving or then-prevailing market convention, including any applicable recommendations made by the Relevant Governmental Body, for U.S.

dollar-denominated syndicated credit facilities at such time; *provided* that if the Benchmark Replacement as so determined above would be less than zero, the Benchmark Replacement will be deemed to be zero for the purposes of this Agreement and the other Loan Documents. Any Benchmark Replacement shall be applied in a manner consistent with market practices; *provided* that to the extent such market practice is not administratively feasible for the Administrative Agent, such Benchmark Replacement shall be applied in a manner as otherwise reasonably determined by the Administrative Agent (acting at the Direction of the Required Lenders) in consultation with the Borrower.

“Benchmark Replacement Conforming Changes” means, with respect to 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 “Interest Period,” timing and frequency of determining rates and making payments of interest, timing of borrowing requests or prepayment, conversion or continuation notices, applicability and length of lookback periods, the applicability of breakage provisions, and other technical, administrative or operational matters) that the Administrative Agent decides, in consultation with the Borrower, may be appropriate to reflect the adoption and implementation of such Benchmark Replacement and to permit the 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, in consultation with the Borrower, that no market practice for the administration of such Benchmark Replacement exists, in such other manner of administration as the Administrative Agent, in consultation with the Borrower, decides is reasonably necessary in connection with the administration of this Agreement and the other Loan Documents).

“Benchmark Transition Event” means, with respect to any then-current Benchmark, the occurrence of a public statement or publication of information by or on behalf of the administrator of the then-current Benchmark, the regulatory supervisor for the administrator of such Benchmark, the Board of Governors of the Federal Reserve System, the Federal Reserve Bank of New York, an insolvency official with jurisdiction over the administrator for such Benchmark, a resolution authority with jurisdiction over the administrator for such Benchmark or a court or an entity with similar insolvency or resolution authority over the administrator for such Benchmark, announcing or stating that (a) such administrator has ceased or will cease on a specified date to provide all Available Tenors of such Benchmark, permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that is satisfactory to the Administrative Agent that will continue to provide any Available Tenor of such Benchmark or (b) all Available Tenors of such Benchmark are or will no longer be representative of the underlying market and economic reality that such Benchmark is intended to measure and that representativeness will not be restored.

“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 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”.

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

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

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

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

“Bridge Loans” has the meaning assigned to the term in the recitals hereto.

“Budget” means (i) initially, the Initial Budget and (ii) subsequently, each Proposed Budget that is approved by the Required Lenders in accordance with Section 6.01(d).

“Budget Event” means (a) the actual amount of aggregate operating disbursements (excluding professional fees and Commission Amounts) during any Budget Testing Period exceeding the projected operating disbursements in the Budget for such Budget Testing Period by an amount greater than the Permitted Variance, or (b) the actual amount of aggregate cash receipts during any Budget Testing Period being less than the projected amount of cash receipts in the Budget for such Budget Testing Period by an amount greater than the Permitted Variance; *provided* that amounts not used in any Budget Testing Period may be carried forward and used in the following Budget Testing Period.

“Budget Testing Period” means each of the following, as applicable: (a) the one-week period ending on November [8], 2024, (b) the two-week period ending on November [15], 2024, (c) the three-week period ending on November [22], 2024, (d) the four-week period ending on November [29], 2024, and (e) each four-week period ending on each Friday thereafter.

“Business Day” means any day that is not a Legal Holiday, and with respect to any interest rate settings as to a Term Benchmark Rate Loan, any fundings, disbursements, settlements and payments in respect of any such Term Benchmark Rate Loan, or any other dealings to be carried out pursuant to this Agreement in respect of any such Term Benchmark Rate Loan, any day that is not a U.S. Government Securities Business Day.

“Capital Expenditures” means, for any period, the aggregate of all expenditures (whether paid in cash or accrued as liabilities and including in all events all amounts expended or capitalized under Capitalized Lease Obligations) by the Borrower and the Subsidiaries during such period that, in conformity with GAAP, are or are required to be included as capital expenditures on the consolidated statement of cash flows of the Borrower and the Subsidiaries.

“Capital Stock” means:

(1) in the case of a corporation, corporate stock or shares in the capital of such corporation;

(2) in the case of an association or business entity, any and all shares, interests, participations, rights or other equivalents (however designated) of corporate stock;

(3) in the case of a partnership or limited liability company, partnership or membership interests (whether general or limited); and

(4) any other interest or participation that confers on a Person the right to receive a share of the profits and losses of, or distributions of assets of, the issuing Person, but excluding from all of the foregoing any debt securities convertible into or exchangeable for Capital Stock, whether or not such debt securities include any right of participation with Capital Stock.

“Capitalized Lease Obligation” means, at the time any determination thereof is to be made, the amount of the liability in respect of a capital lease that would at such time be required to be capitalized and reflected as a liability on a balance sheet (excluding the footnotes thereto) prepared in accordance with GAAP in accordance with Section 1.03.

“Carve-Out” has the meaning assigned to such term in the DIP Order.

“Carve-Out Reserve Account” has the meaning assigned to such term in the DIP Order.

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

“Cash Equivalents” means:

(1) Dollars;

(2) (a) Euros, Yen, Canadian Dollars, Sterling or any national currency of any participating member state of the EMU;

(b) in the case of any Foreign Subsidiary or any jurisdiction in which the Borrower or any Subsidiary conducts business, such local currencies held by it from time to time in the ordinary course of business or consistent with industry practice;

(3) readily marketable direct obligations issued or directly and fully and unconditionally guaranteed or insured by the U.S. government or any agency or instrumentality thereof the securities of which are unconditionally guaranteed as a full faith and credit obligation of such government with maturities of 36 months or less from the date of acquisition;

(4) certificates of deposit, time deposits and eurodollar time deposits with maturities of three years or less from the date of acquisition, demand deposits, bankers' acceptances with maturities not exceeding three years and overnight bank deposits, in each case with any domestic or foreign commercial bank having capital and surplus of not less than \$500.0 million in the case of U.S. banks and \$100.0 million (or the U.S. dollar equivalent as of the date of determination) in the case of non-U.S. banks;

(5) repurchase obligations for underlying securities of the types described in clauses (3) and (4) above or clauses (7) and (8) below entered into with any financial institution or recognized securities dealer meeting the qualifications specified in clause (4) above;

(6) commercial paper and variable or fixed rate notes rated at least P-2 by Moody's or at least A-2 by S&P (or, if at any time neither Moody's nor S&P is rating such obligations, an equivalent rating from another Rating Agency selected by the Borrower) and in each case maturing within 36 months after the date of acquisition thereof;

(7) marketable short-term money market and similar liquid funds having a rating of at least P-2 or A-2 from either Moody's or S&P, respectively (or, if at any time neither Moody's nor S&P is rating such obligations, an equivalent rating from another Rating Agency selected by the Borrower);

(8) securities issued or directly and fully and unconditionally guaranteed by any state, commonwealth or territory of the United States or any political subdivision or taxing authority of any such state, commonwealth or territory or any public instrumentality thereof having maturities of not more than 36 months from the date of acquisition thereof;

(9) readily marketable direct obligations issued or directly and fully and unconditionally guaranteed by any foreign government or any political subdivision or public instrumentality thereof, in each case having an Investment Grade Rating from either Moody's or S&P (or, if at any time neither Moody's nor S&P is rating such obligations, an equivalent rating from another Rating Agency selected by the Borrower) with maturities of 36 months or less from the date of acquisition;

(10) Indebtedness or Preferred Stock issued by Persons with a rating of "A" or higher from S&P or "A2" or higher from Moody's (or, if at any time neither Moody's nor S&P is rating such obligations, an equivalent rating from another Rating Agency selected by the Borrower) with maturities of 36 months or less from the date of acquisition;

(11) Investments with average maturities of 36 months or less from the date of acquisition in money market funds rated AAA- (or the equivalent thereof) or better by S&P or Aaa3 (or the equivalent thereof) or better by Moody's (or, if at any time neither Moody's nor S&P is rating such obligations, an equivalent rating from another Rating Agency selected by the Borrower); and

(12) investment funds investing substantially all of their assets in securities of the types described in clauses (1) through (11) above.

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

Notwithstanding the foregoing, Cash Equivalents will include amounts denominated in currencies other than those set forth in clauses (1) and (2) above, *provided* that such amounts, except amounts used to pay non-Dollar denominated obligations of the Borrower or any Subsidiary in the ordinary course of business, are expected by the Borrower to be converted into any currency listed in clause (1) or (2) above as promptly as practicable and in any event within ten (10) Business Days following the receipt of such amounts (and solely to the extent so converted on or prior to such tenth (10th) Business Day).

“Cash Management Order” means that certain Interim Order (I) Authorizing Debtors to (A) Continue to Operate Their Cash Management System, (B) Honor Certain Prepetition Obligations Related Thereto, (C) Maintain Existing Business Forms, and (D) Perform Certain Intercompany Transactions, and (II) Granting Related Relief, entered by the Bankruptcy Court on October [], 2024 at Docket No. [], as the same may be amended, modified or supplemented from time to time with the consent of the Required Lenders (and with respect to amendments, modifications or supplements that affect the rights or duties of the Administrative Agent, the Administrative Agent).

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

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

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

- (1) the Permitted Holders ceasing to beneficially own (as defined in Rules 13d-3 and 13d-5 under the Exchange Act), in the aggregate, directly or indirectly, at least a majority of the aggregate ordinary voting power represented by the issued and outstanding Equity Interests of the Borrower; or
- (2) [reserved]; or
- (3) the Borrower ceases to be directly or indirectly wholly owned by Holdings;

unless, in the case of clause (1) above, the Permitted Holders have, at such time, directly or indirectly, the right or the ability by voting power, contract or otherwise to elect or designate for election at least a majority of the board of directors of the Borrower.

“Chapter 11 Cases” has the meaning assigned to such term in the recitals hereto.

“Chapter 11 Orders” means, collectively, the DIP Orders, the Cash Management Order, the Bid Procedures Order and the Sale and Confirmation Order.

“Chapter 11 Plan” means a plan of reorganization of the Debtors pursuant to Chapter 11 of the Bankruptcy Code.

“Claim” has the meaning assigned to such term in Section 101(5) of the Bankruptcy Code.

“Closing Date” means the first date on which all the conditions precedent in Section 4.01 are satisfied.

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

“Collateral” means any and all assets of the Loan Parties that become subject to a Lien pursuant to the DIP Orders and the other Collateral Documents, other than Excluded Assets.

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

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

- (a) the Obligations shall have been unconditionally guaranteed by (i) Holdings, (ii) the HoldCo Debtors and (iii) each Subsidiary of the Borrower (other than any Excluded Subsidiary) (each, a **“Guarantor”**);
- (b) the Obligations and the Guaranty shall have been secured by a perfected first-priority security interest (subject in all respects to the Carve-Out, the DIP

Orders (including with respect to Lien priorities set forth therein) and Liens permitted by Section 7.01) through the provisions of the Interim Order and the Final Order, as applicable, in (i) all the Equity Interests of the Borrower and (ii) all the Equity Interests of each Subsidiary that is directly owned by any Loan Party; and

(c) the Obligations and the Guaranty shall have been secured by a perfected first-priority security interest (subject in all respects to the Carve-Out, the DIP Orders (including with respect to Lien priorities set forth therein) and Liens permitted by Section 7.01) in substantially all tangible and intangible personal property of each Loan Party (including but not limited to accounts, inventory, equipment, general intangibles (including contract rights), deposit and securities accounts, investment property, applications and registrations of intellectual property, real property, intercompany notes, instruments, chattel paper and documents, letter of credit rights, commercial tort claims and proceeds of the foregoing), in each case, with the priority required by the DIP Orders, subject to exceptions and limitations otherwise set forth in this Agreement, the Collateral Documents and the DIP Orders, *provided* that such security interest shall exclude any Excluded Assets.

“Collateral Documents” means, collectively, the DIP Orders, the Security Agreement, any Intellectual Property Security Agreements, any Mortgages, each of the collateral assignments, security agreements, pledge agreements or other similar agreements delivered to the Administrative Agent, the Collateral Agent or the Lenders and each of the other agreements, instruments or documents that creates or purports to create a Lien in favor of the Collateral Agent for the benefit of the Secured Parties.

“Commission Amounts” means, collectively, any sales commissions and commission bridge payments paid by the Loan Parties to their employees, agents and independent contractors.

“Commitment” means, as to each Lender, its obligation to make 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. The aggregate amount of the Commitments as of the Closing Date is \$85,000,000.

“Committed Loan Notice” means a notice of (1) a Borrowing with respect to Loans or (2) a conversion of Loans from one Type to the other, which, if in writing, shall be substantially in the form of Exhibit A-1, or such other form as may be approved by the Administrative Agent and the Borrower (including any form on an electronic platform or electronic transmission system as shall be approved by the Administrative Agent and the Borrower), appropriately completed and signed by a Responsible Officer of the Borrower.

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

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

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

“Consenting Lender Termination Event” has the meaning assigned to such term in the Restructuring Support Agreement.

“Contingent Obligations” means, with respect to any Person, any obligation of such Person guaranteeing any leases, dividends or other monetary obligations that do not constitute Indebtedness (**“primary obligations”**) of any other Person (the **“primary obligor”**) in any manner, whether directly or indirectly, including any obligation of such Person, whether or not contingent:

- (1) to purchase any such primary obligation or any property constituting direct or indirect security therefor;
- (2) to advance or supply funds:
 - (a) for the purchase or payment of any such primary obligation or
 - (b) to maintain working capital or equity capital of the primary obligor or otherwise to maintain the net worth or solvency of the primary obligor; or
- (3) to purchase property, securities or services primarily for the purpose of assuring the owner of any such primary obligation of the ability of the primary obligor to make payment of such primary obligation against loss in respect thereof.

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

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

“Credit Extension” means a Borrowing.

“Debtors” has the meaning assigned to the term 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 and affecting the rights of creditors generally.

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

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

“Default Rate” means an interest rate equal to the interest rate (including any Applicable Rate) otherwise applicable to any Loan (giving effect to Section 2.02(3)) *plus* 2.00% per annum, in each case, to the fullest extent permitted by applicable Laws.

“Defaulting Lender” means, subject to Section 2.15(2), any Lender that (a) has refused (which refusal may be given verbally or in writing and has not been retracted) or failed to perform any of its funding obligations hereunder, including in respect of its Loans, within one Business Day of the date required to be funded by it hereunder, (b) has failed to pay over to the Administrative Agent or any Lender any other amount required to be paid by it hereunder within one (1) Business Day of the date when due, unless the subject of a good faith dispute, (c) has notified the Borrower or the Administrative Agent that it does not intend to comply with its funding obligations or has made a public statement to that effect with respect to its funding obligations hereunder or generally under other agreements in which it commits to extend credit, (d) has failed, within three (3) Business Days after request by the Administrative Agent, to confirm in a manner satisfactory to the Administrative Agent that it will comply with its funding obligations, or (e) has, or has a direct or indirect parent company that has, admitted in writing that it is insolvent. Any determination by the Administrative Agent as to whether a Lender is a Defaulting Lender shall be conclusive absent manifest error.

“DIP Facility” has the meaning assigned to the term in the recitals hereto.

“DIP Funding Account” means the segregated deposit account maintained at PNC Bank, National Association in the name of the Borrower with account number ending in 5739 that is under the sole dominion and control of the Administrative Agent, and otherwise established in a manner reasonably satisfactory to the Administrative Agent, in which the proceeds of the Final Loans shall be deposited and held and used solely for the purposes set forth herein.

“DIP Order” means the Interim Order and, upon entry thereof and thereafter, the Final Order, as applicable and as the context requires.

“Direction of the Required Lenders” means a written direction or instruction from Lenders constituting the Required Lenders (or such higher threshold to the extent required by the Loan Documents), which may be in the form of an e-mail or other form of written communication and which may come from any one of the Ad Hoc Group Advisors acting with the consent or at the direction of Lenders constituting the Required Lenders (or such higher threshold to the extent required by the Loan Documents), it being understood and agreed that the Administrative Agent and/or the Collateral Agent may conclusively rely on any such written direction or instruction from such Lenders or such Ad Hoc Group Advisors. For the avoidance of doubt, with respect to each reference herein to (i) documents, agreements or other matters being “satisfactory”, “acceptable”, “reasonably satisfactory”, “reasonably acceptable” or “determined” (or any expression of similar import) to or by the Required Lenders, such determination may be communicated by a Direction of the Required Lenders as contemplated above and/or (ii) any matter requiring the consent or approval of, or a determination by, the

Required Lenders, such consent, approval or determination may be communicated by a Direction of the Required Lenders as contemplated above. The Administrative Agent and/or the Collateral Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any purported Direction of the Required Lenders, and the Administrative Agent and/or the Collateral Agent shall not have any responsibility to independently determine whether such direction has in fact been authorized by the Required Lenders.

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

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

applicable, will be required to be determined pursuant to this Agreement, and if such price is based upon, or measured by, the fair market value of such Disqualified Stock, such fair market value shall be determined in good faith by the Borrower.

“Distressed Agent” shall have the meaning provided in the definition of the term Agent-Related Distress Event.

“Distressed Person” shall have the meaning provided in the definition of the term Lender-Related Distress Event.

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

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

“Early Opt-in Election” means the occurrence of a notification by the Administrative Agent (at the request of the Borrower) to each of the other parties hereto that (a) U.S. dollar-denominated syndicated credit facilities are being executed or amended, as applicable, at such time, to incorporate or adopt a new benchmark interest rate to replace Term SOFR (and such syndicated credit facilities are identified in such notice and are publicly available for review) and (b) the Borrower and the Administrative Agent (acting at the Direction of the Required Lenders) have jointly elected to trigger a fallback from Term SOFR with a Benchmark Replacement specified in such notification.

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

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

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

“Eligible Assignee” has the meaning specified in Section 10.07(a).

“EMU” means the economic and monetary union as contemplated in the Treaty on European Union.

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

“Environmental Claim” means any and all administrative, regulatory or judicial actions, suits, demands, demand letters, claims, liens, notices of non-compliance or violation, investigations (other than internal reports prepared by any Loan Party or any of its Subsidiaries (a) in the ordinary course of such Person’s business or (b) as required in connection with a financing transaction or an acquisition or disposition of real estate) or proceedings with respect to any Environmental Liability or Environmental Law (hereinafter “Environmental Claims”), including (i) any and all Environmental Claims by governmental or regulatory authorities for enforcement, cleanup, removal, response, remedial or other actions or damages pursuant to any Environmental Law and (ii) any and all Environmental Claims by any third party seeking damages, contribution, indemnification, cost recovery, compensation or injunctive relief pursuant to any Environmental Law.

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

“Environmental Liability” means any liability (including any liability for damages, costs of environmental remediation, fines, penalties or indemnities) of any Loan Party or any of its 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) the Release or threatened Release of any Hazardous Materials or (e) any contract or other written agreement pursuant to which liability is assumed or imposed with respect to any of the foregoing.

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

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

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

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

“ERISA Event” means (a) a Reportable Event with respect to a Pension Plan; (b) a withdrawal by any Loan Party or any of their respective ERISA Affiliates from a Pension Plan subject to Section 4063 of ERISA during a plan year in which it was a substantial employer (as defined in Section 4001(a)(2) of ERISA) or a cessation of operations that is treated as such a withdrawal under Section 4062(e) of ERISA; (c) a complete or partial withdrawal by any Loan Party or any of their respective ERISA Affiliates from a Multiemployer Plan, written notification of any Loan Party or any of their respective ERISA Affiliates concerning the imposition of withdrawal liability or written notification that a Multiemployer Plan is “insolvent” (within the

meaning of Section 4245 of ERISA) or has been determined to be in “endangered” or “critical” status (within the meaning of Section 432 of the Code or Section 305 of ERISA); (d) the filing under Section 4041(c) of ERISA of a notice of intent to terminate a Pension Plan, the treatment of a Pension Plan or Multiemployer Plan amendment as a termination under Sections 4041 or 4041A of ERISA, or the commencement in writing of proceedings by the PBGC to terminate a Pension Plan or Multiemployer Plan; (e) the imposition of any liability under Title IV of ERISA with respect to the termination of any Pension Plan or Multiemployer Plan, other than for the payment of PBGC premiums due but not delinquent under Section 4007 of ERISA, upon any Loan Party or any of their respective ERISA Affiliates; (f) an event or condition which constitutes grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Pension Plan or Multiemployer Plan; (g) a failure to satisfy the minimum funding standard (within the meaning of Section 302 of ERISA or Section 412 of the Code) with respect to a Pension Plan, whether or not waived; (h) the application for a minimum funding waiver under Section 302(c) of ERISA with respect to a Pension Plan; (i) the imposition of a lien under Section 303(k) of ERISA or Section 430(k) of the Code with respect to any Pension Plan; (j) a determination that any Pension Plan is in “at risk” status (within the meaning of Section 303 of ERISA or Section 430 of the Code); or (k) the occurrence of a nonexempt prohibited transaction with respect to any Pension Plan maintained or contributed to by any Loan Party or any of their respective ERISA Affiliates (within the meaning of Section 4975 of the Code or Section 406 of ERISA) which could result in liability to any Loan Party.

“Erroneous Payment” has the meaning set forth in Section 9.19(1).

“Erroneous Payment Recipient” has the meaning set forth in Section 9.19(1).

“Erroneous Payment Subrogation Rights” has the meaning set forth in Section 9.19(4).

“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.

“Euro” or **“euro”** means the single currency of participating member states of the EMU.

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

“Exactech Australia” means Exactech Australia Pty Ltd, a proprietary company limited by shares organized under the laws of Australia.

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

“Excluded Assets” means:

(i) any governmental or regulatory licenses, authorizations, certificates, charters, franchises, approvals and consents (whether Federal, State, or otherwise) to the extent a security interest therein is prohibited or restricted thereby or requires any consent,

acknowledgment or authorization from a Governmental Authority not obtained (without any requirement to obtain such consent, acknowledgment or authorization) (other than proceeds and receivables thereof), other than to the extent such prohibition, restriction or consent requirement is deemed ineffective under the Uniform Commercial Code, any DIP Order or other applicable Law notwithstanding such prohibition, restriction or consent requirement;

(ii) assets to the extent the pledge thereof or grant of security interests therein (x) is prohibited or restricted by any applicable Law, rule or regulation or would require any consent, approval or authorization of any governmental or regulatory authority not obtained (without any requirement to obtain such any consent, approval or authorization) (other than proceeds and receivables thereof), (y) would cause the destruction, invalidation or abandonment of such asset under applicable Law (solely with respect to any intellectual property), or (z) is prohibited by any contract or would require any consent, approval, license or other authorization of any third party (other than Holdings or its Subsidiaries or Affiliates) (*provided* that such requirement existed on the Closing Date or at the time of the acquisition of such asset and was not incurred in contemplation thereof (other than in the case of capital leases and purchase money financings)) or governmental or regulatory authority not obtained (without any requirement to obtain such consent, approval, license or other authorization), in each case other than to the extent such prohibition, restriction or consent requirement is deemed ineffective under the Uniform Commercial Code, any DIP Order or other applicable Law notwithstanding such prohibition, restriction or consent requirement;

(iii) any lease, license or agreement or any property that is subject to a capital lease, purchase money security interest or similar arrangement, in each case permitted by this Agreement, to the extent that a grant of a security interest therein (a) would violate or invalidate such lease, license or agreement or purchase money security interest or similar arrangement or create a right of termination in favor of any other party thereto (other than Holdings or any of its Subsidiaries or Affiliates) after giving effect to the applicable anti-assignment provisions of the UCC (other than proceeds and receivables thereof) or (b) would require governmental or regulatory approval, consent or authorization not obtained (without any requirement to obtain such approval, consent or authorization) (other than proceeds and receivables thereof), in each case other than to the extent such violation, invalidation or consent requirement is deemed ineffective under the Uniform Commercial Code, any DIP Order or other applicable Law notwithstanding such violation, invalidation or consent requirement;

(iv) any intent-to-use trademark applications filed in the United States Patent and Trademark Office, pursuant to Section 1(b) of the Lanham Act, 15 U.S.C. Section 1051, prior to the accepted filing of a “Statement of Use” and issuance of a “Certificate of Registration” pursuant to Section 1(d) of the Lanham Act or an accepted filing of an “Amendment to Allege Use” whereby such intent-to-use trademark application is converted to a “use in commerce” application pursuant to Section 1(c) of the Lanham Act;

(v) any Equity Interests owned by any Excluded Subsidiaries;

(vi) funds held in the Carve-Out Reserve Account (except as to any reversionary interest of the Debtors related thereto); and

(vii) the utilities deposit as set forth in the “first day” Utilities Motion (except as to any reversionary interest of the Debtors related thereto);

provided that, in any event, the Equity Interests of JointMedica owned by the Loan Parties shall not constitute Excluded Assets.

“**Excluded Subsidiary**” means any Subsidiary that is (i) listed on Schedule 1.01 hereto, (ii) a Foreign Subsidiary that is not a Debtor or (iii) prohibited by applicable Law or Contractual Obligations from guaranteeing the Obligations or if guaranteeing the Obligations would require governmental (including regulatory) consent, approval, license or authorization, other than to the extent such prohibition or consent requirement is deemed ineffective under the Uniform Commercial Code, any DIP Order or other applicable Law notwithstanding such prohibition or consent requirement.

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

(1) any Tax imposed on (or measured by) such Agent or Lender’s net income or profits (or net worth Tax in lieu of such Tax on net income or profits), or franchise Taxes, imposed by a jurisdiction as a result of such Agent or Lender being organized under the laws of or having its principal office or applicable Lending Office located in such jurisdiction or as a result of any other present or former connection between such Agent or Lender and the jurisdiction (including as a result of such Agent or Lender carrying on a trade or business, having a permanent establishment or being a resident for Tax purposes in such jurisdiction), other than a connection arising solely from such Agent or Lender having executed, delivered, enforced, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, engaged in any other transaction pursuant to, or sold or assigned an interest in, any Loan or Loan Document,

(2) any branch profits Tax under Section 884(a) of the Code, or any similar Tax, imposed by any jurisdiction described in clause (1),

(3) other than with respect to and to the extent that any Lender becomes a party hereto pursuant to the Borrower’s request under Section 3.07, any U.S. federal Tax that is withheld or required to be withheld on amounts payable to or for the account of a Lender with respect to an applicable interest in a Loan or Commitment pursuant to a Law in effect on the date such Lender (i) acquires such interest in the applicable Commitment or, if such Lender did not fund the applicable Loan pursuant to a prior Commitment, on the date such Lender acquires the applicable interest in such Loan (or where the Lender is a partnership for U.S. federal income Tax purposes, pursuant to a Law in effect on the later of the date on which such Lender acquires such interest or the date on which the affected partner becomes a partner of such Lender), or (ii) designates a new Lending Office (or where the Lender is a partnership for U.S. federal income Tax purposes, pursuant to a Law in effect on the later of the date on which the Lender designates a new Lending Office or, if applicable, the date on which the affected partner designates a new Lending Office) except, in the case of a Lender or partner that designates a new Lending Office or is an assignee, to the extent that such Lender or partner (or its assignor, if any)

was entitled, immediately prior to the time of designation of a new Lending Office (or assignment), to receive additional amounts from a Loan Party with respect to such U.S. federal Tax pursuant to Section 3.01,

(4) any withholding Tax attributable to such Lender's failure to comply with Section 3.01(3),

(5) any Tax imposed under FATCA, and

(6) any U.S. federal backup withholding under Section 3406 of the Code.

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

"Exclusivity Period" has the meaning assigned to such term in the Approved Plan.

"Exit Premium" means, as of any date of determination, an amount equal to 4.00% of (i) the aggregate outstanding principal amount of the Loans plus (ii) the aggregate principal amount of any prepayments of the Loans prior to such date.

"Extraordinary Receipts" means any cash proceeds received by the Borrower or any Subsidiary not in the ordinary course of business, including (a) proceeds of judgments, proceeds of settlements or other consideration of any kind in connection with any cause of action (but not including, for the avoidance of doubt, ordinary course disputes with customers and suppliers of the Borrower or any Subsidiary), (b) indemnification payments received by the Borrower or any Subsidiary (other than to the extent such indemnification payments are immediately payable pursuant to the terms thereof to a Person that is not an Affiliate of the Borrower), (c) any purchase price adjustment or working capital adjustment received by the Borrower or any Subsidiary pursuant to any purchase agreement or related documentation, and (d) any Tax refunds or Benefit Plan reversions received by any Loan Party.

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

"FATCA" means Sections 1471 through 1474 of the Code as in effect on the date hereof or any amended or successor version thereof that is substantively comparable and not materially more onerous to comply with (and, in each case, any current or future regulations promulgated thereunder or official interpretations thereof), any applicable intergovernmental agreement entered into in respect thereof, and any provision of law or administrative guidance implementing or interpreting such provisions, including any agreements entered into pursuant to any such intergovernmental agreement or Section 1471(b)(1) of the Code as of the date hereof (or any amended or successor version described above).

"FCPA" has the meaning specified in Section 5.01.

"Federal Funds Rate" means, for any day, the rate per annum equal to the weighted average of the rates on overnight federal funds transactions with members of the

Federal Reserve System, as published by the Federal Reserve Bank on the Business Day next succeeding such day; *provided* that (a) if such day is not a Business Day, the Federal Funds Rate for such day shall be such rate on such transactions on the next preceding Business Day as so published on the next succeeding Business Day and (b) if no such rate is so published on such next succeeding Business Day, the Federal Funds Rate for such day shall be the average rate (rounded upward, if necessary, to a whole multiple of 1/100 of 1%) of the quotations for the day for such transactions received by the Administrative Agent from three depository institutions of recognized standing selected by it. For the avoidance of doubt, if the Federal Funds Rate shall be less than zero, such rate shall be deemed to be zero for purposes of this Agreement.

“Final Loans” has the meaning specified in Section 2.01(a).

“Final Order” means the final order of the Bankruptcy Court pursuant to Section 364 of the Bankruptcy Code approving the DIP Facility and the Loan Documents, reasonably satisfactory to the Required Lenders and the Borrower, as the same may be amended, modified or supplemented from time to time with the express written joinder or consent of the Required Lenders (and with respect to amendments, modifications or supplements that affect the rights or duties of the Administrative Agent, the Administrative Agent).

“Final Order Entry Date” means the date on which the Final Order shall have been entered on the docket of the Bankruptcy Court.

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

“Flood Insurance Laws” means, collectively, (i) National Flood Insurance Reform Act of 1994 (which comprehensively revised the National Flood Insurance Act of 1968 and the Flood Disaster Protection Act of 1973) as now or hereafter in effect or any successor statute thereto, (ii) the Flood Insurance Reform Act of 2004 as now or hereafter in effect or any successor statute thereto and (iii) the Biggert-Waters Flood Insurance Reform Act of 2012 as now or hereafter in effect or any successor statute thereto.

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

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

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

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

“Fronting Fee Letter” means that certain Fee Letter, dated as of October [], 2024, by and between the Fronting Lender and the Borrower.

“Fronting Lender” means Jefferies Capital Services, LLC, in its capacity as fronting lender hereunder.

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

“Funded Debt” means all Indebtedness of the Borrower and the Subsidiaries for borrowed money that matures more than one year from the date of its creation or matures within one year from such date that is renewable or extendable, at the option of such Person, to a date more than one year from such date or arises under a revolving credit or similar agreement that obligates the lender or lenders to extend credit during a period of more than one year from such date, including Indebtedness in respect of the Loans.

“GAAP” means generally accepted accounting principles in the United States of America set forth in the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or in such other statements by such other entity as have been approved by a significant segment of the accounting profession, as in effect from time to time. At any time after the Closing Date, the Borrower may elect to apply IFRS accounting principles in lieu of GAAP and, upon any such election, references herein to GAAP will thereafter be construed to mean IFRS (except as otherwise provided in this Agreement); *provided, however*, that any such election, once made, will be irrevocable; *provided, further* that any calculation or determination in this Agreement that requires the application of GAAP for periods that include fiscal quarters ended prior to the Borrower’s election to apply IFRS will remain as previously calculated or determined in accordance with GAAP. The Borrower will give notice of any such election made in accordance with this definition to the Administrative Agent. Notwithstanding any other provision contained herein, (i) the amount of any Indebtedness under GAAP with respect to Capitalized Lease Obligations and Attributable Indebtedness shall be determined in accordance with Section 1.03 and (ii) all terms of an accounting or financial nature used herein shall be construed, and all computations of amounts and ratios referred to herein shall be made, without giving effect to any election under Financial Accounting Standards Board Accounting Standards Codification 825 (or any other Financial Accounting Standard having a similar result or effect) to value any Indebtedness or other liabilities of the Borrower or the Loan Parties at “fair value”, as defined therein. Notwithstanding the foregoing, if at any time any change occurs after the Closing Date in GAAP (or IFRS) or in the application thereof that, in each case, would affect the computation of any financial ratio or financial requirement, or compliance with any covenant, set forth in any Loan Document (including, but not limited to, the impact of Accounting Standards Update 2016-2, Revenue from Contracts with Customers (Topic 606) or similar revenue recognition policies promulgated after the Closing Date), and the Borrower shall so request (regardless of whether any such request is given before or after such change), the Administrative Agent, the Lenders and the Borrower will negotiate in good faith to amend (subject to the approval of the Required Lenders) such ratio, requirement or covenant to preserve the original intent thereof in light of such change in GAAP (or IFRS); *provided that*

until so amended, (a) such ratio, requirement or covenant shall continue to be computed in accordance with GAAP (or IFRS) without giving effect to such change therein and (b) if reasonably requested by the Administrative Agent with respect to periods ending prior to the date that is one year after the effectiveness of such change, the Borrower shall provide to the Administrative Agent (for distribution to the Lenders), together with any financial statements to be delivered pursuant to Section 6.01, a summary reconciliation between calculations of any such ratios or requirements required to be included in the corresponding Compliance Certificate to be delivered pursuant to Section 6.02(4) made before and after giving effect to such change in GAAP (or IFRS). For the avoidance of doubt, subject to the requirements of the foregoing clause (b), the operation of this paragraph shall otherwise have no effect with respect to any financial statements required to be delivered pursuant to Section 6.01 unless the Borrower otherwise elects.

“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).

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

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

“Guarantee” means, as to any Person, without duplication, (a) any obligation, contingent or otherwise, of such Person guaranteeing any Indebtedness or other monetary obligation payable or performable by another Person (the **“primary obligor”**) in any manner, whether directly or indirectly, and including any obligation of such Person, direct or indirect, (i) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or other monetary obligation, (ii) to purchase or lease property, securities or services for the purpose of assuring the obligee in respect of such Indebtedness or other monetary obligation of the payment or performance of such Indebtedness or other monetary obligation, (iii) to maintain working capital, equity capital or any other financial statement condition or liquidity or level of income or cash flow of the primary obligor so as to enable the primary obligor to pay such Indebtedness or other monetary obligation or (iv) entered into for the purpose of assuring in any other manner the obligee in respect of such Indebtedness or other monetary obligation of the payment or performance thereof or to protect such obligee against loss in respect thereof (in whole or in part) or (b) any Lien on any assets of such Person securing any Indebtedness or other monetary obligation of any other Person, whether or not such Indebtedness or other monetary obligation is assumed by such Person (or any right, contingent or otherwise, of any holder of such Indebtedness to obtain any such Lien); *provided* that the term **“Guarantee”** shall not include endorsements for collection or deposit, in either case in the ordinary course of business, or customary and reasonable indemnity obligations in effect on the Closing Date or entered into in connection with the Transaction or any acquisition or disposition

of assets permitted under this Agreement (other than such obligations with respect to Indebtedness). The amount of any Guarantee shall be deemed to be an amount equal to the stated or determinable amount of the related primary obligation, or portion thereof, in respect of which such Guarantee is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof as determined by the guaranteeing Person in good faith. The term “Guarantee” as a verb has a corresponding meaning.

“**Guarantor**” has the meaning specified in clause (a) of the definition of “Collateral and Guarantee Requirement”.

“**Guaranty**” means (a) the Guaranty substantially in the form of Exhibit E made by Holdings, the HoldCo Debtors and each Subsidiary Guarantor and (b) each other guaranty and guaranty supplement delivered pursuant to Section 6.11.

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

“**Headquarters**” means all right, title and interest to the owned real property, and improvements thereon, located at 2320 NW 66th Court, Gainesville, Florida, 32653.

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

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

“**HoldCo Debtors**” means Osteon Holdings, Inc., a Delaware corporation, and Osteon Intermediate Holdings I, Inc., a Delaware corporation, each as debtor and debtor-in-possession.

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

“**IFRS**” means international financial reporting standards and interpretations issued by the International Accounting Standards Board or any successor thereto (or the Financial Accounting Standards Board, the Accounting Principles Board of the American Institute of Certified Public Accountants or any successor to either such Board, or the SEC, as the case may be), as in effect from time to time.

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

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

- (1) any indebtedness (including principal and premium) of such Person, whether or not contingent:
 - (a) in respect of borrowed money;
 - (b) evidenced by bonds, notes, debentures or similar instruments or letters of credit or bankers’ acceptances (or, without duplication, reimbursement agreements in respect thereof);
 - (c) representing the deferred and unpaid balance of the purchase price of any property (including Capitalized Lease Obligations) due more than twelve months after such property is acquired, except (i) any such balance that constitutes an obligation in respect of a commercial letter of credit, a trade payable or similar obligation to a trade creditor, in each case accrued in the ordinary course of business or consistent with industry practice, (ii) any earn-out obligations until such obligation is reflected as a liability on the balance sheet (excluding any footnotes thereto) of such Person in accordance with GAAP and is not paid within 60 days after becoming due and payable and (iii) accruals for payroll and other liabilities accrued in the ordinary course of business; or
 - (d) representing the net obligations under any Hedging Obligations;

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

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

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

(i) Contingent Obligations incurred in the ordinary course of business and consistent with past practice,

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

(iii) [reserved],

(iv) accrued expenses,

(v) deferred or prepaid revenues, and

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

provided further that Indebtedness will be calculated without giving effect to the effects of Accounting Standards Codification Topic No. 815, *Derivatives and Hedging*, and related interpretations to the extent such effects would otherwise increase or decrease an amount of Indebtedness for any purpose under this Agreement as a result of accounting for any embedded derivatives created by the terms of such Indebtedness. For the avoidance of doubt, Indebtedness will not be deemed to include obligations incurred in advance of, and the proceeds of which are to be applied in connection with, the consummation of a transaction solely to the extent that the proceeds thereof are and continue to be held in an escrow, trust, collateral or similar account or arrangement (collectively, an “*Escrow*”) and are not otherwise made available for any other purpose and are used for such purpose (it being understood that in any event, any such proceeds held in such Escrow shall be not deemed to be Unrestricted Cash).

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

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

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

“**Initial Budget**” means the 26-week cash flow forecast for the 26-week period beginning on the Petition Date, in the form attached to the Interim Order.

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

“**Interest Payment Date**” means (a) as to any Loan other than a Base Rate Loan, the last day of each Interest Period applicable to such Loan and the Maturity Date; *provided* that if any Interest Period for a Term Benchmark Rate Loan exceeds three months, the respective dates that fall every three months after the beginning of such Interest Period shall also be Interest Payment Dates 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 Term Benchmark Rate Loan, the period commencing on the date such Term Benchmark Rate Loan is disbursed or converted to or continued as a Term Benchmark Rate Loan and ending on the date one, three or six months thereafter, as selected by the Borrower in its Committed Loan Notice; *provided* that:

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

(2) any Interest Period (other than an Interest Period having a duration of less than one month) 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

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

“**Interim Loans**” has the meaning specified in Section 2.01(a).

“**Interim Order**” means that certain Interim Order (I) Authorizing the Debtors to (A) Obtain Postpetition Financing, (B) Use Cash Collateral, and (C) Grant Liens and Superpriority Administrative Expense Claims, (II) Granting Adequate Protection to Certain Prepetition Secured Parties, (III) Modifying the Automatic Stay, (IV) Scheduling a Final Hearing, and (V) Granting Related Relief, entered by the Bankruptcy Court on October [], 2024 at Docket No. [], as the same may be amended, modified or supplemented from time to time with the express written joinder or consent of the Required Lenders (and with respect to amendments, modifications or supplements that affect the rights or duties of the Administrative Agent, the Administrative Agent).

“**Interim Order Entry Date**” means the date on which the Interim Order shall have been entered on the docket of the Bankruptcy Court.

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

“Investment Grade Securities” means:

- (1) securities issued or directly and fully guaranteed or insured by the United States government or any agency or instrumentality thereof (other than Cash Equivalents);
- (2) debt securities or debt instruments with an Investment Grade Rating, but excluding any debt securities or debt instruments constituting loans or advances among the Borrower and its Subsidiaries;
- (3) investments in any fund that invests substantially all of its assets in investments of the type described in clauses (1) and (2) of this definition which fund may also hold immaterial amounts of cash pending investment or distribution; and
- (4) corresponding instruments in countries other than the United States customarily utilized for high quality investments.

“Investments” means, with respect to any Person, all investments by such Person in other Persons (including Affiliates) in the form of loans (including guarantees), advances or capital contributions (excluding accounts receivable, credit card and debit card receivables, trade credit, advances to customers, commission, travel and similar advances to employees, directors, officers, members of management, consultants and independent contractors, in each case made in the ordinary course of business or consistent with industry practice), purchases or other acquisitions for consideration of Indebtedness, Equity Interests or other securities issued by any other Person. The amount of any Investment outstanding at any time will be the original cost of such Investment, reduced by any dividend, distribution, interest payment, return of capital, repayment or other amount received in cash by the Borrower or a Subsidiary in respect of such Investment.

“Investor” means TPG Capital, L.P. and any of its Affiliates and funds or partnerships managed or advised by it or any of its Affiliates but not including, however, any portfolio company of any of the foregoing.

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

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

“JointMedica” means JointMedica Limited, a private limited company organized under the laws of England and Wales.

“Junior Indebtedness” means any Indebtedness of any Loan Party that by its terms is contractually subordinated in right of payment to the Obligations of such Loan Party arising under the Loans or the Guaranty.

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

“**Legal Holiday**” means Saturday, Sunday or a day on which commercial banking institutions are not required to be open in the State of New York or at the place of payment.

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

“**Lender-Related Distress Event**” means, with respect to any Lender or any direct or indirect parent company of such Lender (each, a “**Distressed Person**”), (a) that such Distressed Person is or becomes subject to a voluntary or involuntary case under any Debtor Relief Law, (b) a custodian, conservator, receiver, or similar official is appointed for such Distressed Person or any substantial part of such Distressed Person’s assets, (c) such Distressed Person is subject to a forced liquidation, makes a general assignment for the benefit of creditors or is otherwise adjudicated as, or determined by any Governmental Authority having regulatory authority over such Distressed Person or its assets to be, insolvent or bankrupt or (d) that such Distressed Person becomes the subject of a Bail-in Action; *provided* that a Lender-Related Distress Event shall not be deemed to have occurred solely by virtue of the ownership or acquisition of any Equity Interests in any Lender or any direct or indirect parent company of a Lender by a Governmental Authority or an instrumentality thereof so long as such ownership interest does not result in or provide such Lender with immunity from the jurisdiction of courts within the United States or from the enforcement of judgments or writs of attachment on its assets or permit such Lender (or such Governmental Authority or instrumentality) to reject, repudiate, disavow or disaffirm any contracts or agreements made with such Lender.

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

“**Lien**” means, with respect to any asset, any mortgage, lien (statutory or otherwise), pledge, hypothecation, charge, security interest or encumbrance of any kind in respect of such asset, whether or not filed, recorded or otherwise perfected under applicable law, including any conditional sale or other title retention agreement, any lease in the nature thereof, any option or other agreement to sell or give a security interest in and any filing of or agreement to give any financing statement under the Uniform Commercial Code (or equivalent statutes) of any jurisdiction; *provided* that in no event will an operating lease be deemed to constitute a Lien.

“**Liquidity**” means the amount of cash and Dollar-denominated Cash Equivalents that (a) does not appear (and is not required to appear) as “restricted” on a consolidated balance sheet of the Borrower and its Subsidiaries, (b) is free and clear of all Liens, other than Liens in favor of the Collateral Agent and the Prepetition Holders and any statutory Liens in favor of

banks (including rights of set-off), and (c) is held by the Loan Parties in one of more Deposit Accounts or Securities Accounts which are subject to a valid, perfected Lien in favor of the Collateral Agent, including, in any event, funds held in the DIP Funding Account other than any Reserved Amount (at such time); *provided* that, for purposes of calculating Liquidity under Section 2.01(b), Liquidity shall not include any funds held in the DIP Funding Account.

“Loan” means an extension of credit under Article II by a Lender to the Borrower.

“Loan Documents” means, collectively, (a) this Agreement, (b) the Guaranty, (c) the Collateral Documents, (d) the Agent Fee Letter and the Fronting Fee Letter, (e) the DIP Orders, (f) any document evidencing the terms of the DIP Funding Account, and (g) each other agreement, instrument or document designated by the Borrower, on the one hand, and the Administrative Agent (acting at the Direction of the Required Lenders), on the other hand as a “Loan Document”.

“Loan Parties” means, collectively, (a) Holdings, (b) the HoldCo Debtors, (c) the Borrower and (d) each Subsidiary Guarantor.

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

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

“Material Adverse Effect” means any event, circumstance or condition that has had a materially adverse effect on (a) the business, condition (financial or otherwise), operations, performance, assets, liabilities (actual or contingent), material agreements or prospects of the Borrower and its Subsidiaries, taken as a whole, other than a result of the commencement of the Chapter 11 Cases or any event, circumstance or condition related to or resulting from the Chapter 11 Cases, or any event, circumstance or condition that has been disclosed in the first day declarations (but excluding any material change or development with respect to such event, circumstance or condition since the Petition Date), (b) the ability of the Loan Parties (taken as a whole) to perform their respective obligations under any Loan Document to which any of the Loan Parties is a party or (c) the rights and remedies of the Lenders, the Collateral Agent or the Administrative Agent under any Loan Document to enforce the Loan Documents.

“Maturity Date” means the earliest of (a) April [], 2025; *provided* that if the Sale and Confirmation Order confirming the Approved Sale (or, if applicable, the Approved Alternative Sale) has been entered by the Bankruptcy Court, but the effective date of the Approved Sale (or, if applicable, the Approved Alternative Sale) has not occurred solely due to pending regulatory approvals with respect to such sale closing (and so long as, as of each extension date, (x) the Lenders have not otherwise waived such regulatory approvals as a condition to such sale closing, (y) all other conditions to such sale closing have been satisfied

and (z) the Loan Parties and their Subsidiaries are in compliance with this Agreement, the Restructuring Support Agreement and the Asset Purchase Agreement), then (i) the date under this clause (a) shall automatically extend to (1) *initially*, May [], 2025 (the “**Initial Maturity Date Extension**”), (2) *then*, June [], 2025 and (3) *then*, July [], 2025 and (ii) *thereafter*, the Required Lenders may, in their sole discretion, agree to further extend the date under this clause (a) to a date no later than October [], 2025; *provided, further*, that, for the avoidance of doubt, no extension shall be made in connection with any Alternative Restructuring, (b) the date of acceleration of the Loans and termination of the Commitments pursuant to the terms hereof, (c) the date that the Bankruptcy Court orders the conversion of the Chapter 11 Cases of any Loan Party to a chapter 7 liquidation or the dismissal of the Chapter 11 Case of any Loan Party, (d) the appointment of a chapter 11 trustee or an examiner with expanded powers in the Chapter 11 Cases, (e) the date of consummation of a sale of all or substantially all of the Loan Parties’ assets, under section 363 of the Bankruptcy Code or otherwise, (f) the date that is 35 calendar days after the Petition Date if the Final Order Entry Date shall not have occurred by such date, and (g) the effective date of a Chapter 11 Plan, which has been confirmed by an order entered by the Bankruptcy Court.

“**Maturity Date Extension Premium**” means, as of any date of determination, an amount equal to 1.00% of the aggregate outstanding principal amount of the Loans.

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

“**Milestone**” has the meaning specified in Section 6.19.

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

“**Mortgage**” means a mortgage customary in the jurisdiction to which it is to be filed in form and substance reasonably acceptable to the Administrative Agent (acting at the Direction of the Required Lenders) and the Borrower, in each case with such modifications thereto as the Administrative Agent (acting at the Direction of the Required Lenders) and the Borrower may agree, in each case, including such modifications as may be required by local laws, pursuant to Section 6.13, and any other deeds of trust, trust deeds, hypothecs, deeds to secure debt or mortgages executed and delivered pursuant to Section 6.11.

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

“**Net Proceeds**” means:

(1) with respect to any Asset Sale or any Casualty Event (other than an Approved Sale), the aggregate cash and Cash Equivalents received by the Borrower or any Subsidiary in respect of any Asset Sale or Casualty Event, net of the costs relating to such Asset Sale or Casualty Event, including legal, accounting and investment banking fees, payments made in order to obtain a necessary consent or required by applicable Law, brokerage and sales commissions, title insurance premiums, related search and

recording charges, survey costs and mortgage recording tax paid in connection therewith, all dividends, distributions or other payments required to be made to minority interest holders in Subsidiaries as a result of any such Asset Sale or Casualty Event by a Subsidiary, the amount of any purchase price or similar adjustment claimed by any Person to be owed by the Borrower or any Subsidiary, until such time as such claim will have been settled or otherwise finally resolved, or paid or payable by the Borrower or any Subsidiary, in either case in respect of such Asset Sale or Casualty Event, any relocation expenses incurred as a result thereof, costs and expenses in connection with unwinding any Hedging Obligation in connection therewith, and other fees and expenses, including title and recordation expenses, to be made as a result of the transactions giving rise to such cash and cash equivalents received as a result thereof or any transactions occurring or deemed to occur to effectuate a payment under this Agreement (but excluding, in any event, Taxes paid or payable), and any deduction of appropriate amounts to be provided by the Borrower or any Subsidiary as a reserve in accordance with GAAP against any liabilities associated with the asset disposed of in such transaction and retained by the Borrower or any Subsidiary after such sale or other disposition thereof, including pension and other post-employment benefit liabilities and liabilities related to environmental matters or against any indemnification obligations associated with such transaction; and

(2) with respect to the incurrence or issuance of any Indebtedness by the Borrower or any Subsidiary, the excess, if any, of (i) the sum of the cash and Cash Equivalents received in connection with such incurrence or issuance over (ii) all fees (including investment banking fees, attorneys' fees, accountants' fees, underwriting fees and discounts), commissions, costs and other out-of-pocket expenses and other customary expenses (but excluding, in any event, all Taxes paid or payable) incurred, in each case by the Borrower or such Subsidiary in connection with such incurrence or issuance.

"Non-Consenting Lender" has the meaning specified in Section 3.07.

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

"Non-Excluded Taxes" means all Taxes, other than Excluded Taxes, imposed on or with respect to any payment made by or on account of any obligation of any Loan Party under any Loan Document.

"Note" means a promissory note of the Borrower payable to any Lender or its registered assigns, in substantially the form of Exhibit B hereto.

"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, whether direct or indirect (including those acquired by assumption), absolute or contingent, due or to become due, now existing or hereafter arising and including interest, fees and other amounts that accrue after the commencement by or against any Loan Party of any proceeding under any Debtor Relief Laws naming such Person as the debtor in such proceeding, regardless of whether such interest, fees and other amounts are allowed claims in such proceeding.

“**OFAC**” has the meaning specified in Section 5.17.

“**Officer**” means the Chairman of the Board of Directors, the Chief Executive Officer, the Chief Financial Officer, the Chief Operating Officer, the President, any Executive Vice President, Senior Vice President or Vice President, the Treasurer or the Secretary of the Borrower or any other Person, as the case may be.

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

“**Official Committee**” means the official committee of unsecured creditors appointed in the Chapter 11 Cases pursuant to Section 1102 of the Bankruptcy Code.

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

“**ordinary course of business**” means activity conducted in the ordinary course of business of the Borrower and any Subsidiary.

“**Organizational Documents**” means

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

“**Original Prepetition Advisors**” has the meaning specified in Section 6.14.

“**Other Taxes**” means all present or future stamp or documentary Taxes, intangible, recording, filing, excise (that is not based on net income), property or similar Taxes arising from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Loan Document, except any such Taxes that are imposed with respect to an assignment, grant of participation, designation of a new office for receiving payments by or on account of the Borrower or other transfer (other than an assignment, designation or other transfer at the request of the Borrower).

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

“Parent Company” means any Person that is a direct or indirect parent (which may be organized as, among other things, a partnership) of Holdings and/or the Borrower (for the avoidance of doubt, in the case of the Borrower, including Holdings), as applicable.

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

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

“PBGC” means the Pension Benefit Guaranty Corporation.

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

“Permitted Adequate Protection Payments” means the adequate protection payments to the Prepetition Holders pursuant to the terms of the DIP Orders.

“Permitted Holder” means (1) any of the Investors and Management Stockholders and any group (within the meaning of Section 13(d)(3) or Section 14(d)(2) of the Exchange Act) of which any of the foregoing are members; *provided* that in the case of such group and without giving effect to the existence of such group or any other group, such Investors and Management Stockholders, collectively, have, directly or indirectly, beneficial ownership of more than 50.0% of the total voting power of the Voting Stock of the Borrower or any Permitted Parent held by such group and (2) any Person acting in the capacity of an underwriter (solely to the extent that and for so long as such Person is acting in such capacity) in connection with a public or private offering of Capital Stock of the Borrower or any Parent Company.

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

“Permitted Investments” means:

- (1) any Investment in the Borrower or any Subsidiary Guarantor;
- (2) any Investments in Cash Equivalents or Investment Grade Securities and Investments that were Cash Equivalents or Investment Grade Securities when made;
- (3) [reserved];
- (4) any Investment in securities or other assets not constituting Cash Equivalents or Investment Grade Securities and received in connection with an Asset

Sale made in accordance with Section 7.04 or any other disposition of assets not constituting an Asset Sale;

- (5) any Investment existing on the Petition Date as set forth on Schedule 7.05;
- (6) any Investment acquired by the Borrower or any Subsidiary:
 - (a) in exchange for any other Investment, accounts receivable or indorsements for collection or deposit held by the Borrower or such Subsidiary in connection with or as a result of a bankruptcy, workout, reorganization or recapitalization of, or settlement of delinquent accounts and disputes with or judgments against, the issuer of such other Investment or accounts receivable (including any trade creditor or customer);
 - (b) in satisfaction of judgments against other Persons;
 - (c) as a result of a foreclosure by the Borrower or such Subsidiary with respect to any secured Investment or other transfer of title with respect to any secured Investment in default; or
 - (d) as a result of the settlement, compromise or resolution of
 - (i) litigation, arbitration or other disputes or
 - (ii) obligations of trade creditors or customers that were incurred in the ordinary course of business or consistent with industry practice of the Borrower or any Subsidiary, including pursuant to any plan of reorganization or similar arrangement upon the bankruptcy or insolvency of any trade creditor or customer;
- (7) [reserved];
- (8) [reserved];
- (9) [reserved];
- (10) (a) guarantees of Indebtedness permitted under Section 7.02, performance guarantees and Contingent Obligations incurred in the ordinary course of business and consistent with past practice, and (b) the creation of Liens on the assets of the Borrower or any Subsidiary in compliance with Section 7.01;
- (11) [reserved];
- (12) Investments consisting of purchases and acquisitions of inventory, supplies, material, services, equipment or similar assets or the licensing or contribution of intellectual property pursuant to joint marketing arrangements with other Persons;
- (13) [reserved];
- (14) [reserved];

(15) [reserved];

(16) loans and advances to employees, directors, officers, members of management, independent contractors and consultants for business-related travel expenses, moving expenses, payroll advances and other similar expenses or payroll expenses, in each case incurred in the ordinary course of business and consistent with past practice;

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

(18) any Investment in any Subsidiary or any joint venture in connection with intercompany cash management arrangements or related activities arising in the ordinary course of business and consistent with past practice to the extent in accordance with the Budget (subject to Permitted Variances) and permitted under Section 7.07;

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

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

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

(22) [reserved];

(23) Investments in joint ventures existing on the Petition Date;

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

(25) [reserved];

(26) [reserved];

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

(28) intercompany current liabilities owed to joint ventures incurred in the ordinary course of business and consistent with past practice in connection with the cash

management operations of the Borrower and its Subsidiaries to the extent in accordance with the Budget (subject to Permitted Variances) and permitted under Section 7.07;

(29) any intercompany Indebtedness incurred by Foreign Subsidiaries in connection with the transactions described in Section 7.07(2)(a);

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

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

in each case not inconsistent with the Budget (subject to Permitted Variances) and the Restructuring Support Agreement.

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

(1) Liens created pursuant to any Loan Document;

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

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

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

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

(3) Liens imposed by law, such as landlords’, carriers’, warehousemen’s, materialmen’s, repairmen’s, construction, mechanics’ or other similar Liens, or landlord

Liens specifically created by contract (a) for sums not yet overdue for a period of more than thirty (30) days or, if more than thirty (30) days overdue, are unfiled and no other action has been taken to enforce such Liens or (b) being contested in good faith by appropriate actions or other Liens arising out of or securing judgments or awards against such Person with respect to which such Person will then be proceeding with an appeal or other proceedings for review if such Liens are adequately bonded or adequate reserves with respect thereto are maintained on the books of such Person in accordance with GAAP;

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

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

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

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

(8) Liens existing, or provided for under binding contracts existing, on the Petition Date as set forth on Schedule 7.01;

(9) Liens on property or shares of stock or other assets of a Person at the time such Person becomes a Subsidiary; *provided* that such Liens are not created or incurred in connection with, or in contemplation of, such other Person becoming such a Subsidiary;

(10) Liens on property or other assets at the time the Borrower or a Subsidiary acquired the property or such other assets, including any acquisition by means of a merger, amalgamation or consolidation with or into the Borrower or any Subsidiary

(*provided* that such Liens are not created or incurred in connection with, or in contemplation of, such acquisition, amalgamation, merger or consolidation) and any replacement, extension or renewal of any such Lien (to the extent the Indebtedness and other obligations secured by such replacement, extension or renewal Liens are permitted by this Agreement); *provided* that such replacement, extension or renewal Liens do not cover any property other than the property that was subject to such Liens prior to such replacement, extension or renewal;

(11) Liens securing obligations in respect of Indebtedness or other obligations of a Subsidiary owing to the Borrower or a Subsidiary Guarantor permitted to be incurred in accordance with Section 7.02;

(12) [reserved];

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

(14) leases, subleases, licenses or sublicenses (or other agreement under which the Borrower or any Subsidiary has granted rights to end users to access and use the Borrower's or any Subsidiary's products, technologies or services) (i) that do not either (a) materially interfere with the business of the Borrower and its Subsidiaries, taken as a whole, or (b) secure any Indebtedness and (ii) licenses or sublicenses granted by Holdings or any of its Subsidiaries to customers in the ordinary course of business;

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

(16) Liens in favor of the Borrower or any Guarantor;

(17) Liens on equipment or vehicles of the Borrower or any Subsidiary granted in the ordinary course of business or consistent with industry practice that do not secure any Indebtedness;

(18) [reserved];

(19) Liens to secure any modification, refinancing, refunding, extension, renewal or replacement (or successive modification, refinancing, refunding, extensions, renewals or replacements) as a whole, or in part, of any Indebtedness secured by any Lien referred to in clause (7) of this definition; *provided* that: (a) such new Lien will be limited to all or part of the same property that was subject to the original Lien (plus improvements, accessions, proceeds or dividends or distributions in respect thereof and after-acquired property) and (b) the Indebtedness secured by such Lien at such time is not

increased to any amount greater than the sum of (i) the outstanding principal amount or, if greater, committed amount of the Indebtedness described under such clause (7) at the time the original Lien became a Permitted Lien hereunder, *plus* (ii) any accrued and unpaid interest on the Indebtedness being so refinanced, extended, replaced, refunded, renewed or defeased, *plus* (iii) the amount of any tender premium or penalty or premium required to be paid under the terms of the instrument or documents governing such refinanced Indebtedness and any defeasance costs and any fees and expenses (including original issue discount, upfront fees, underwriting, arrangement and similar fees) incurred in connection with the issuance of such new Indebtedness or the extension, replacement, refunding, refinancing, renewal or defeasance of such refinanced Indebtedness;

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

(21) Liens securing obligations not for borrowed money in an aggregate outstanding amount not to exceed \$1,000,000;

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

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

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

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

(26) [reserved];

(27) Liens that are contractual rights of setoff (a) relating to the establishment of depository relations with banks or other deposit-taking financial institutions or other electronic payment service providers and not given in connection with the issuance of Indebtedness, (b) relating to pooled deposit or sweep accounts to permit satisfaction of overdraft or similar obligations incurred in the ordinary course of business or consistent

with industry practice of the Borrower or any Subsidiary or (c) relating to purchase orders and other agreements entered into with customers of the Borrower or any Subsidiary in the ordinary course of business or consistent with industry practice;

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

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

(30) Liens (a) on cash advances or cash earnest money deposits in favor of the seller of any property to be acquired in an Investment permitted under this Agreement to be applied against the purchase price for such Investment and (b) consisting of a letter of intent or an agreement to sell, transfer, lease or otherwise dispose of any property in a transaction permitted under Section 7.04;

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

(32) [reserved];

(33) [reserved];

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

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

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

(37) [reserved];

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

construction arising from progress or partial payments by a third party relating to such property or assets;

(39) [reserved];

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

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

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

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

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

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

(46) zoning, building and other similar land use restrictions, including site plan agreements, development agreements and contract zoning agreements;

(47) [reserved];

(48) [reserved];

(49) Liens on Equity Interests in joint ventures (A) securing obligations of such joint venture or (B) pursuant to the relevant joint venture agreement or arrangement;

(50) Liens on assets of Subsidiaries that are Foreign Subsidiaries (i) securing Indebtedness and other obligations of such Foreign Subsidiaries or (ii) to the extent arising mandatorily under applicable Law; and

(51) Liens created pursuant to any Prepetition Loan Documents.

For purposes of this definition, the term “Indebtedness” will be deemed to include interest and other obligations payable on or with respect to such Indebtedness.

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

“**Permitted Priority Liens**” means Liens that (i) are senior to the Liens securing the Prepetition Obligations in accordance with the Prepetition Loan Documents and (ii) were either (a) valid, perfected and non-avoidable on the Petition Date or (b) valid and non-avoidable on the Petition Date and are perfected subsequent to the Petition Date in accordance with section 546(b) of the Bankruptcy Code.

“**Permitted Variance**” means, for purposes of testing whether a Budget Event has occurred or for whether receipts or disbursements are set forth in the Budget, for any given Budget Testing Period, a variance of 15.0%.

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

“**Petition Date**” has the meaning assigned to the term in the recitals hereto.

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

“**Plan Assets**” means “plan assets” within the meaning of U.S. Department of Labor Regulation 29 C.F.R. Section 2510.3-101, as modified by Section 3(42) of ERISA.

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

“**Pledged Collateral**” has the meaning specified in the Security Agreement.

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

“**Prepetition First Lien Agent**” means GLAS USA LLC, in its capacities as successor administrative agent and collateral agent to Goldman Sachs Bank USA under the Prepetition First Lien Loan Documents, or any subsequent successor administrative agent and collateral agent under the Prepetition First Lien Loan Documents.

“**Prepetition First Lien Amendment No. 4**” means that certain Amendment No. 4 to Credit Agreement, dated as of October 9, 2024, among Holdings, the Borrower, the Prepetition First Lien Agent and certain Prepetition First Lien Term Lenders.

“Prepetition First Lien Credit Agreement” means that certain Credit Agreement, dated as of February 14, 2018 (as amended by that certain Amendment No. 1 to Credit Agreement, dated as of December 17, 2019, that certain Amendment No. 2 to Credit Agreement, dated as of January 19, 2022, that certain Amendment No. 3 to Credit Agreement, dated as of March 3, 2023, and the Prepetition First Lien Amendment No. 4), among Holdings, the Borrower, the Prepetition First Lien Agent, the Prepetition First Lien Term Lenders and the Prepetition First Lien Revolving Lenders.

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

“Prepetition First Lien Loan Documents” means the Prepetition First Lien Credit Agreement and all other “Loan Documents” (as defined therein).

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

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

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

“Prepetition Holders” means, collectively, the Prepetition First Lien Agent, the Prepetition First Lien Lenders, the Prepetition Sidecar Agent and the Prepetition Sidecar Lenders.

“Prepetition Loan Documents” means, collectively, the Prepetition First Lien Loan Documents and the Prepetition Sidecar Loan Documents.

“Prepetition Obligations” means all of the Prepetition First Lien Obligations and Prepetition Sidecar Obligations incurred prior to the Petition Date.

“Prepetition Sidecar Agent” means TPG VII Osteon Holdings, LP, in its capacities as administrative agent and collateral agent under the Prepetition Sidecar Loan Documents, or any successor administrative agent and collateral agent under the Prepetition Sidecar Loan Documents.

“Prepetition Sidecar Credit Agreement” means that certain Credit Agreement, dated as of September 19, 2023 (as amended by that certain Amendment No. 1 to Credit Agreement, dated as of April 23, 2024), among Holdings, the Borrower, the Prepetition Sidecar Agent and the Prepetition Sidecar Lenders.

“Prepetition Sidecar Lender” means any lender under the Prepetition Sidecar Credit Agreement.

“Prepetition Sidecar Loan” means each “Loan” (as defined in the Prepetition Sidecar Credit Agreement).

“Prepetition Sidecar Loan Documents” means the Prepetition Sidecar Credit Agreement and all other “Loan Documents” (as defined therein).

“Prepetition Sidecar Obligations” means the “Obligations” (as defined in the Prepetition Sidecar Credit Agreement).

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

“Pro Rata Share” means, with respect to each Lender at any time a fraction (expressed as a percentage, carried out to the ninth decimal place), the numerator of which is the amount of the Commitments and, if applicable and without duplication, Term Loans of such Lender at such time and the denominator of which is the amount of the Aggregate Commitments and, if applicable and without duplication, Term Loans at such time.

“Public Lender” has the meaning specified in Section 6.02.

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

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

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

“Refinance” has the meaning assigned in the definition of “Refinancing Indebtedness” and **“Refinancing”** and **“Refinanced”** have meanings correlative to the foregoing.

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

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

“Related Indemnified Person” of an Indemnatee means (1) any controlling Person or controlled Affiliate of such Indemnatee, (2) the respective directors, officers, partners, employees, advisors, other representatives or successors or permitted assigns of such Indemnatee or any of its controlling Persons or controlled Affiliates and (3) the respective agents, trustees and other representatives of such Indemnatee or any of its controlling Persons or controlled

Affiliates, in the case of this clause (3), acting at the instructions of such Indemnatee, controlling Person or such controlled Affiliate; *provided* that each reference to a controlled Affiliate or controlling Person in this definition pertains to a controlled Affiliate or controlling Person involved in the negotiation of this Agreement or the syndication of the Facilities. For purposes of this definition, “control” (including, with correlative meanings, the terms “controlling,” “controlled by” and “under common control with”), as used with respect to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such Person, whether through the ownership of voting securities, by agreement or otherwise.

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

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

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

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

“**Required Lenders**” means, as of any date of determination, Lenders having more than 66.67% of the sum of (a) the aggregate principal amount of outstanding Loans and (b) the aggregate unused Commitments; *provided* that the unused Commitment and the portion of the outstanding Loans held, or deemed held by, any Defaulting Lender shall be excluded for purposes of making a determination of Required Lenders.

“**Reserved Amount**” has the meaning specified in Section 2.01(b).

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

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

action on the part of such Loan Party and such Responsible Officer shall be conclusively presumed to have acted on behalf of such Loan Party. Unless otherwise specified, all references herein to a “Responsible Officer” shall refer to a Responsible Officer of the Borrower.

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

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

“**Restructuring Support Agreement**” means that certain Restructuring Support Agreement, dated as of October [], 2024, among the Loan Parties and the other parties thereto.

“**S&P**” means S&P Global Ratings, a division of S&P Global Inc., and any successor to its rating agency business.

“**Sale-Leaseback Transaction**” means any arrangement providing for the leasing by the Borrower or any Subsidiary of any real or tangible personal property, which property has been or is to be sold or transferred by the Borrower or such Subsidiary to a third Person in contemplation of such leasing.

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

“**Sanctions**” has the meaning specified in Section 5.17.

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

“**Secured Parties**” means, collectively, (a) the Lenders, (b) the Administrative Agent, (c) the Collateral Agent and (d) the successors and permitted assigns of each of the foregoing.

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

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

“**SOFR**” with respect to any day means the secured overnight financing rate published for such day by the Federal Reserve Bank of New York, as the administrator of the benchmark (or a successor administrator) on the Federal Reserve Bank of New York’s website (or any successor source) and, in each case, that has been selected or recommended by the Relevant Governmental Body.

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

“Stalking Horse Purchaser” has the meaning assigned to such term in the Restructuring Support Agreement.

“Sterling” means the lawful currency of the United Kingdom.

“Subsidiary” means, with respect to any Person:

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

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

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

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

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

“Subsidiary Guarantor” means any Guarantor other than Holdings and the HoldCo Debtors.

“Takeback Facility” means the Loans made pursuant to the Takeback Facility Agreement on or after the Takeback Facility Exchange Date.

“Takeback Facility Agent” means the administrative agent and collateral agent under the Takeback Facility.

“Takeback Facility Agreement” means the credit agreement to be entered into with respect to the Takeback Facility in connection with the Approved Sale, which shall be in form and substance satisfactory to the Required Lenders.

“Takeback Facility Exchange Date” means the first date on which the Approved Sale is consummated, the Approved Plan becomes effective and the conditions to the effectiveness of the Takeback Facility as set forth in the Takeback Facility Documents are satisfied or waived in accordance with the terms thereof.

“**Takeback Facility Documents**” means the Takeback Facility Agreement and all other instruments, documents and agreements delivered by any Takeback Facility Loan Party pursuant to the Takeback Facility Agreement in connection therewith on or after the Takeback Facility Exchange Date, which instruments, documents and agreements shall be in form and substance satisfactory to the Required Lenders.

“**Takeback Facility Lenders**” means the Lenders, the Prepetition First Lien Lenders and the Prepetition Sidecar Lenders that are lenders under the Takeback Facility.

“**Takeback Facility Loan Parties**” means the Stalking Horse Purchaser (or its designee) and its Subsidiaries and Affiliates that are obligors under the Takeback Facility.

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

“**Tax Group**” has the meaning specified in Section 7.05(A)(v).

“**Tax Indemnatee**” has the meaning specified in Section 3.01(5).

“**Term Benchmark**” means the Adjusted Term SOFR.

“**Term Benchmark Rate Loan**” refers to a Loan (or Borrowing) bearing interest at a rate determined by reference to the Adjusted Term SOFR.

“**Term Loan**” means the Loans made hereunder.

“**Term SOFR**” means,

(a) for any calculation with respect to a 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 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 “**ABR 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 ABR 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 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 ABR 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 (acting at the Direction of the Required Lenders) in its reasonable discretion).

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

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

“**Termination Conditions**” means, collectively, (a) the payment in full in cash of the Obligations (other than contingent indemnification obligations not then due) and (b) the termination of the Commitments.

“**Threshold Amount**” means \$2,000,000.

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

“**Transaction Expenses**” means any fees, premiums, or expenses and other transaction costs (including original issue discount or upfront fees) payable or otherwise borne by the Borrower and its Subsidiaries in connection with the Transactions and the transactions contemplated thereby.

“**Transactions**” means, collectively, (a) the execution, delivery and performance by the Loan Parties of the Loan Documents to which they are a party and the Borrowings of Loans hereunder and (b) the payment of the Transaction Expenses.

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

“**UCP**” means, with respect to any Letter of Credit, the Uniform Customs and Practice for Documentary Credits, International Chamber of Commerce (“ICC”) Publication No. 600 (or such later version thereof as may be in effect at the time of issuance).

“**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.

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

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

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

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

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

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

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

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

“**Withdrawal**” means a withdrawal of the proceeds of the Final Loans from the DIP Funding Account.

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

“Withdrawal Notice” means a notice of withdrawal substantially in the form of Exhibit A-2 hereto.

“Withholding U.S. Branch” means a U.S. branch of a non-U.S. bank treated as a U.S. person for purposes of Treasury Regulations Section 1.1441-1 and described in Treasury Regulations -1(b)(2)(iv) that agrees, on IRS Form W-8IMY or such other form prescribed by the Treasury or the IRS, to accept responsibility for all U.S. federal income tax withholding and information reporting with respect to payments made to the Administrative Agent for the account of Lenders by or on behalf of any Loan Party under the Loan Documents.

“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.

“Yen” means the lawful currency of Japan.

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

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

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

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

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

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

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

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

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

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

(10) Each reference in the Loan Documents with respect to the priority of Liens shall be determined without regard to the control of applicable remedies, in each case, unless otherwise expressly stated in the Loan Documents in respect thereof.

SECTION 1.03 Accounting Terms. All accounting terms not specifically or completely defined herein shall be construed in conformity with, and all financial data (including financial ratios and other financial calculations) required to be submitted pursuant to this Agreement shall be prepared in conformity with, GAAP, except as otherwise specifically prescribed herein. Notwithstanding any other provision contained herein, (i) all terms of an accounting or financial nature used herein shall be construed, and all computations of amounts and ratios referred to herein shall be made, without giving effect to any election under Financial Accounting Standards Board Accounting Standards Codification 825 (or any other Financial Accounting Standard having a similar result or effect) to value any Indebtedness or other liabilities of Holdings, the Borrower or any of its Subsidiaries at “fair value,” as defined therein and (ii) unless the Borrower has requested an amendment pursuant to the second paragraph of the definition of “GAAP” with respect to the treatment of operating leases and Capitalized Lease Obligations under GAAP (or IFRS) and until such amendment has become effective, all obligations of any Person that are or would have been treated as operating leases for purposes of GAAP prior to the issuance by the Financial Accounting Standards Board on February 25, 2016 of an Accounting Standards Update (the “ASU”) shall continue to be accounted for as operating leases for purposes of all financial definitions and calculations for purpose of this Agreement (whether or not such operating lease obligations were in effect on such date) notwithstanding the fact that such obligations are required in accordance with the ASU (on a prospective or retroactive basis or otherwise) to be treated as Capitalized Lease Obligations in the financial statements to be delivered pursuant to Section 6.01.

SECTION 1.04 Rounding. Any financial ratios required to be satisfied in order for a specific action to be permitted under this Agreement shall be calculated by dividing

the appropriate component by the other component, carrying the result to one place more than the number of places by which such ratio is expressed herein and rounding the result up or down to the nearest number (with a rounding-up if there is no nearest number).

SECTION 1.05 References to Agreements, Laws, etc. Unless otherwise expressly provided herein, (1) references to Organizational Documents, agreements (including the Loan Documents) and other contractual instruments shall be deemed to include all subsequent amendments, restatements, extensions, supplements and other modifications thereto, but only to the extent that such amendments, restatements, extensions, supplements and other modifications are not prohibited by any Loan Document; and (2) references to any Law shall include all statutory and regulatory provisions consolidating, amending, replacing, supplementing or interpreting such Law.

SECTION 1.06 Times of Day and Timing of Payment and Performance. Unless otherwise specified, (1) all references herein to times of day shall be references to New York time (daylight or standard, as applicable) and (2) when the payment of any obligation or the performance of any covenant, duty or obligation is stated to be due or performance required on a day which is not a Business Day, the date of such payment (other than as described in the definition of “Interest Period”) or performance shall extend to the immediately succeeding Business Day.

SECTION 1.07 [Reserved].

SECTION 1.08 [Reserved].

SECTION 1.09 [Reserved].

SECTION 1.10 Currency Generally. The Borrower shall determine in good faith the Dollar equivalent amount of any utilization or other measurement denominated in a currency other than Dollars for purposes of compliance with any Basket. For purposes of determining compliance with any Basket under Article VII or VIII with respect to any amount expressed in a currency other than Dollars, no Default shall be deemed to have occurred solely as a result of changes in rates of currency exchange occurring after the time such Basket utilization occurs or other Basket measurement is made (so long as such Basket utilization or other measurement, at the time incurred, made or acquired, was permitted hereunder).

SECTION 1.11 [Reserved].

SECTION 1.12 Term Benchmark Replacement. Solely with respect to Term Benchmark Rate Loans and notwithstanding anything to the contrary in this Agreement or the other Loan Documents:

(a) [Reserved].

(b) Upon the occurrence of a Benchmark Transition Event or an Early Opt-in Election, as applicable, the Administrative Agent (acting at the Direction of the Required Lenders) and the Borrower may amend this Agreement to replace the then-current Benchmark for all purposes hereunder and under any Loan Document with a

Benchmark Replacement. Any such amendment with respect to a Benchmark Transition Event or an Early Opt-in Election, as applicable, will become effective at 5:00 p.m. on the fifth (5th) Business Day after the Administrative Agent has posted notice of such proposed amendment to all Term 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, in each case, stating that such Benchmark Replacement does not represent a widely adopted replacement index rate for the applicable Benchmark (and any such objections shall be conclusive and binding absent manifest error).

(c) At any time that the administrator of the then-current Benchmark has permanently or indefinitely ceased to provide such Benchmark or such Benchmark has been announced by the regulatory supervisor for the administrator of such Benchmark pursuant to public statement or publication of information to be no longer representative of the underlying market and economic reality that such Benchmark is intended to measure and that representativeness will not be restored, the Borrower may revoke any request for a borrowing of, conversion to or continuation of applicable Term Loans to be made, converted or continued that would bear interest by reference to such Benchmark until the Borrower's receipt of notice from the Administrative Agent that a Benchmark Replacement has replaced such Benchmark, 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 the period referenced in the foregoing sentence, with respect to the DIP Facility the component of the Base Rate based upon the Benchmark will not be used in any determination of the Base Rate.

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

(e) The Administrative Agent will promptly notify the Borrower and the Term Lenders of (i) the implementation of any Benchmark Replacement with respect to the DIP Facility and (ii) the effectiveness of any Benchmark Replacement Conforming Changes with respect to the DIP Facility. Any determination, decision or election that may be made by the Administrative Agent or the Borrower as expressly set forth in this Section 1.12(1) and the defined terms used herein, 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, 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 hereto, except, in each case, as expressly required pursuant to this Section 1.12(1).

(f) At any time (including in connection with the implementation of a Benchmark Replacement), (i) if the then-current Benchmark is a term rate (including

Term SOFR), then the Administrative Agent (acting at the Direction of the Required Lenders) may remove any tenor of such Benchmark that is unavailable or non-representative for such Benchmark (including Benchmark Replacement) settings and (ii) the Administrative Agent (acting at the Direction of the Required Lenders) may reinstate any such previously removed tenor for such Benchmark (including Benchmark Replacement) settings.

Article II

The Commitments and Borrowings

SECTION 2.01 The Loans.

(a) Borrowings. Subject to the terms and conditions set forth herein and in the DIP Orders, each Lender severally agrees to make, on the applicable borrowing date, Loans to the Borrower in an aggregate amount not to exceed such Lender's Commitment. The Borrower may make only two Borrowings under the Commitments that shall be (i) in the case of the Loans made on the Closing Date (the "**Interim Loans**"), one Borrowing in an aggregate principal amount equal to \$35,000,000 and (ii) in the case of the Loans made on or after the Final Order Entry Date (the "**Final Loans**"), one Borrowing in an aggregate principal amount equal to \$50,000,000 on the date that is not more than two Business Days after the Final Order Entry Date. The Commitments in respect of the Interim Loans shall terminate automatically immediately after the making of the Interim Loans on the Closing Date, and the Commitments in respect of the Final Loans shall reduce and terminate automatically immediately after the making of the Final Loans.

(b) Withdrawals from DIP Funding Account. All proceeds of the Final Loans shall be held in the DIP Funding Account at all times until such proceeds are disbursed in accordance with this Section 2.01 for purposes set forth herein. The Borrower may request disbursements from the DIP Funding Account on or after the Final Order Entry Date by delivering to the Administrative Agent a Withdrawal Notice not later than 11:00 a.m., one (1) Business Day before (or such shorter time as agreed by the Administrative Agent) the proposed date of the applicable Withdrawal; *provided that* (i) disbursements from the DIP Funding Account may only be requested when Liquidity (calculated without including any funds held in the DIP Funding Account) is less than \$15,000,000 and (ii) the aggregate principal amount of each Withdrawal shall not exceed \$10,000,000; *provided, further,* that (x) an amount equal to \$15,000,000 shall be held back and not available for Withdrawals until entry of the Bid Procedures Order by the Bankruptcy Court and (y) an additional amount equal to \$15,000,000 shall be held back and not available for Withdrawals until entry of the Sale and Confirmation Order by the Bankruptcy Court (such amounts under clauses (x) and (y), in each case until the date such amount is no longer being held back in accordance with clauses (x) and (y), collectively, the "**Reserved Amount**"). Upon the receipt of a Withdrawal Notice and the satisfaction of the conditions set forth in this Section 2.01(b), the Administrative Agent shall disburse funds from the DIP Funding Account to the Borrower in an aggregate principal amount equal to the amount specified in such Withdrawal Notice. Each

submission by the Borrower to the Administrative Agent of a Withdrawal Notice shall be deemed to constitute a representation and warranty by the Borrower on behalf of the Loan Parties that the conditions set forth in this Section 2.01(b) have been satisfied as of the date of the applicable Withdrawal. With respect to any disbursement, withdrawal, transfer, or application of funds from the DIP Funding Account hereunder, the Administrative Agent shall be entitled to conclusively rely upon, shall be fully protected and shall not incur any liability in relying upon any Withdrawal Notice submitted by the Borrower. For the avoidance of doubt, the Administrative Agent shall have no responsibility to independently determine whether the conditions set forth in this Section 2.01(b) have been satisfied as of the date of the applicable Withdrawal. Notwithstanding anything herein to the contrary, the Administrative Agent shall have no obligation to fund any amount in excess of the amounts then held in the DIP Funding Account.

SECTION 2.02 Borrowings, Conversions and Continuations of Loans.

(1) Each Borrowing shall be made upon the Borrower's irrevocable notice, on behalf of the Borrower, to the Administrative Agent which may be given by: (A) telephone or (B) a Committed Loan Notice; *provided* that any telephonic notice by the Borrower must be confirmed immediately by delivery to the Administrative Agent of a Committed Loan Notice. Each such notice must be received by the Administrative Agent not later than (a) 1:00 p.m., New York time, one (1) Business Day prior to the requested date of any Borrowing or continuation of Term Benchmark Rate Loans or any conversion of Base Rate Loans to Term Benchmark Rate Loans and (b) 1:00 p.m., New York time, on the requested date of any Borrowing of Base Rate Loans or any conversion of Term Benchmark Rate Loans to Base Rate Loans. Each telephonic notice by the Borrower pursuant to this Section 2.02(1) must be confirmed promptly by delivery to the Administrative Agent of a written Committed Loan Notice, appropriately completed and signed by a Responsible Officer of the Borrower. Each Borrowing of, conversion to or continuation of Term Benchmark Rate Loans shall be in a principal amount of \$1.0 million or a whole multiple amount of \$250,000 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 amount of \$100,000 in excess thereof. Each Committed Loan Notice (whether telephonic or written) shall specify:

- (i) whether the Borrower is requesting a Borrowing or a conversion of Loans from one Type to the other or a continuation of Term Benchmark Rate 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) wire instructions of the account(s) to which funds are to be disbursed.

If the Borrower fails to specify a Type of Loan to be made in a Committed Loan Notice, then the applicable Loans shall be made as Term Benchmark Rate Loans with an Interest Period of one (1) month. If the Borrower fails to give a timely notice requesting a conversion or continuation, then the applicable Loans shall be made or continued as the same Type of Loan, which if a Term Benchmark Rate Loan, shall have a one-month Interest Period. Any such automatic continuation of Term Benchmark Rate Loans shall be effective as of the last day of the Interest Period then in effect with respect to the applicable Term Benchmark Rate Loans. If the Borrower requests a Borrowing of, conversion to, or continuation of Term Benchmark Rate 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 (1) month.

Following receipt of a Committed Loan Notice, the Administrative Agent shall promptly notify each Lender of the amount of its Pro Rata Share or other applicable share provided for under this Agreement, and if no timely notice of a conversion or continuation is provided by the Borrower, the Administrative Agent shall notify each Lender of the details of any automatic continuation of Term Benchmark Rate Loans or continuation of Loans described in Section 2.02(1). In the case of each Borrowing, each Lender shall make the amount of its Loan available to the Administrative Agent in Same Day Funds at the Administrative Agent's Office not later than, in the case of Borrowing on the Closing Date, 10:00 a.m., New York time, and otherwise 3:00 p.m., New York time, on the Business Day specified in the applicable Committed Loan Notice. Upon satisfaction of the applicable conditions set forth in Section 4 for any Borrowing, the Administrative Agent shall make all funds so received available to the Borrower in like funds as received by the Administrative Agent by wire transfer of such funds (i) in the case of the Interim Loans, as designated by the Borrower and (ii) in the case of the Final Loans, to the DIP Funding Account.

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

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

(4) 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 ten (10) Interest Periods in effect unless otherwise agreed between the Borrower and the Administrative Agent (acting at the Direction of the Required Lenders).

(5) The failure of any Lender to make the Loan to be made by it as part of any Borrowing shall not relieve any other Lender of its obligation, if any, hereunder to make its Loan on the date of such Borrowing, but no Lender shall be responsible for the failure of any other Lender to make the Loan to be made by such other Lender on the date of any Borrowing.

SECTION 2.03 [Reserved].

SECTION 2.04 [Reserved].

SECTION 2.05 Prepayments.

(1) Optional.

(a) The Borrower may, upon notice to the Administrative Agent by the Borrower, at any time voluntarily prepay the Term Loans in whole (but not in part); *provided* that (x) such notice shall specify the date of such prepayment and must be received by the Administrative Agent not later than (A) 1:00 p.m., New York time, one (1) Business Day prior to any date of prepayment of Term Benchmark Rate Loans and (B) 12:00 p.m., New York time, on the date of prepayment of Base Rate Loans and (y) such prepayment shall be accompanied by the Exit Premium in accordance with Section 2.09(b).

(b) The Administrative Agent will promptly notify each Lender of its receipt of such notice, and of the amount of such Lender's Pro Rata Share of such prepayment. 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. Any prepayment of a Term Benchmark Rate Loan shall be accompanied by all accrued interest thereon, together with any additional amounts required pursuant to Section 3.05.

(c) Notwithstanding anything to the contrary contained in this Agreement, the Borrower may rescind (or delay the date of prepayment identified in) any notice of prepayment under Section 2.05(1)(a) by written notice to the Administrative Agent, with respect to the prepayment of Term Benchmark Rate Loans, not later than 1:00 p.m., New York time, and, with respect to the prepayment of Base Rate Loans, not later than 12:00 p.m., New York time, on such prepayment date if such prepayment would have resulted from a refinancing of all or a portion of the DIP Facility or other conditional event, which refinancing or other conditional event shall not be consummated or shall otherwise be delayed.

(2) Mandatory.

(a) [Reserved].

(b) (i) If (x) the Borrower or any Subsidiary makes an Asset Sale

(other than an Approved Sale) or (y) any Casualty Event occurs, which results in the realization or receipt by the Borrower or such Subsidiary of Net Proceeds, the Borrower shall prepay, or cause to be prepaid, an aggregate principal amount of Term Loans equal to 100% of all Net Proceeds realized or received therefrom, on or prior to the date which is five (5) Business Days after the date of the realization or receipt by the Borrower or such Subsidiary of such Net Proceeds.

(c) If the Borrower or any Subsidiary receives any Extraordinary Receipts, the Borrower shall prepay, or cause to be prepaid, an aggregate principal amount of Term Loans equal to 100% of such Extraordinary Receipts, on or prior to the date which is five (5) Business Days after the receipt by the Borrower or such Subsidiary of such Extraordinary Receipts.

(d) If the Borrower or any Subsidiary incurs or issues any Indebtedness not expressly permitted to be incurred or issued pursuant to Section 7.02, the Borrower shall prepay, or cause to be prepaid, an aggregate principal amount of Term Loans equal to 100% of all Net Proceeds received therefrom, on or prior to the date which is five (5) Business Days after the receipt by the Borrower or such Subsidiary of such Net Proceeds.

(e) Each prepayment of Term Loans required by Sections 2.05(2)(b), (c) and (d) shall be applied pro rata to Term Lenders based upon the outstanding principal amounts owing to each such Term Lender.

(f) [Reserved].

(g) The Borrower shall notify the Administrative Agent in writing of any mandatory prepayment of Term Loans required to be made pursuant to clauses (a) through (d) of this Section 2.05(2) at least three (3) Business Days prior to the date of such prepayment (*provided* that, in the case of clause (b) or (d) of this Section 2.05(2), the Borrower may rescind (or delay the date of prepayment identified in) such notice if such prepayment would have resulted from a refinancing of all or any portion of the applicable Facility or other conditional event, which refinancing or other conditional event shall not be consummated or shall otherwise be delayed). Each such notice shall specify the date of such prepayment and provide a reasonably detailed calculation of the aggregate amount of such prepayment to be made by the Borrower. The Administrative Agent will promptly notify each Lender of the contents of the Borrower's prepayment notice and of such Lender's Pro Rata Share of the prepayment. Each Term Lender may reject all or a portion of its Pro Rata Share of any mandatory prepayment (such declined amounts, the "**Declined Proceeds**") of Term Loans required to be made pursuant to clauses (a) and (b) of this Section 2.05(2) by providing written notice (each, a "**Rejection Notice**") to the Administrative Agent and the Borrower no later than 5:00 p.m., New York time, two (2) Business Days after the date of such Lender's receipt of notice from the Administrative Agent regarding such prepayment. Each Rejection Notice from a given Lender shall specify the principal amount of the mandatory repayment of Term Loans to be rejected by such Lender. If a Term Lender fails to deliver a Rejection Notice to the Administrative Agent within the time frame specified above or such Rejection

Notice fails to specify the principal amount of the Term Loans to be rejected, any such failure will be deemed an acceptance of the total amount of such mandatory prepayment of Term Loans. Any Declined Proceeds remaining shall be retained by the Borrower (or the applicable Subsidiary) and may be applied by the Borrower or such Subsidiary in any manner not prohibited by this Agreement.

(h) [Reserved].

(i) All prepayments under this Section 2.05 shall be accompanied by all accrued interest thereon, together with, in the case of any such prepayment of a Term Benchmark Rate Loan on a date prior to the last day of an Interest Period therefor, any amounts owing in respect of such Term Benchmark Rate Loan pursuant to Section 3.05.

SECTION 2.06 Termination or Reduction of Commitments.

(1) Optional. The Borrower may, upon written notice by the Borrower to the Administrative Agent, terminate the unused Commitments or from time to time permanently reduce the unused Commitments, in each case without premium or penalty; *provided* that any such notice shall be received by the Administrative Agent three (3) Business Days prior to the date of termination or reduction.

(2) Mandatory. The Commitment of each Term Lender shall be automatically and permanently reduced to \$0 on the date of the final incurrence of the Loans.

(3) Application of Commitment Reductions; Payment of Fees. The Administrative Agent will promptly notify the Lenders of any termination or reduction of unused Commitments under this Section 2.06. Upon any reduction of unused Commitments, the Commitment of each Lender shall be reduced on a pro rata basis (determined on the basis of the aggregate Commitments) (other than the termination of the Commitment of any Lender as provided in Section 3.07).

SECTION 2.07 Repayment of Loans. The Borrower shall repay to the Administrative Agent for the ratable account of the Lenders on the Maturity Date the aggregate principal amount of all Loans outstanding, together with all accrued and unpaid interest thereon as of such date and the Exit Premium in accordance with Section 2.09(b).

SECTION 2.08 Interest.

(1) Subject to the provisions of Section 2.08(2), (a) each Term Benchmark Rate Loan shall bear interest on the outstanding principal amount thereof for each Interest Period at a rate per annum equal to the Term Benchmark Rate for such Interest Period, *plus* the Applicable Rate, and (b) each Base Rate Loan shall bear interest on the outstanding principal amount thereof from the applicable Borrowing date at a rate per annum equal to the Base Rate, *plus* the Applicable Rate.

(2) During the continuance of any Event of Default, the Borrower shall pay interest on the Obligations at a fluctuating interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by applicable Laws; *provided* that no interest at the

Default Rate shall accrue or be payable to a Defaulting Lender so long as such Lender shall be a Defaulting Lender.

(3) Interest on each Loan shall be due and payable in cash in arrears on each Interest Payment Date applicable thereto and at such other times as may be specified herein; *provided* that a portion of such interest equal to the Applicable PIK Rate shall be payable in kind by automatically capitalizing and adding such interest to (and constituting part of) the then-outstanding principal amount of the Loans on the applicable Interest Payment Date for all purposes of this Agreement and the other Loan Documents, and such capitalized amounts shall bear interest in accordance with this Agreement. 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.

SECTION 2.09 Fees and Premiums.

(1) Commitment Premium. The Borrower shall pay to the Lenders, on a pro rata basis in accordance with their Commitments, a premium (the “**Commitment Premium**”) in an amount equal to 5.00% of the aggregate amount of the Commitments, which shall be earned and payable in kind on the Closing Date by automatically capitalizing and adding such premium to (and constituting part of) the principal amount of the Loans for all purposes of this Agreement and the other Loan Documents.

(2) Exit Premium. Upon the Maturity Date, or in the event that all of the Loans are repaid or prepaid as a result of any mandatory prepayment, voluntary prepayment or payment made following acceleration of the Loans or after an Event of Default, such repayment or prepayment will be made together with the Exit Premium, subject to Section 2.14. If the Loans are accelerated or otherwise become due prior to the Maturity Date, in each case, as a result of an Event of Default (including the acceleration of claims by operation of law), the amount of principal of and premium on the Loans that becomes due and payable shall equal 100% of the principal amount of the Loans plus the Exit Premium, as if such acceleration or other occurrence were a voluntary prepayment of the Loans accelerated or otherwise becoming due. Without limiting the generality of the foregoing, it is understood and agreed that if the Loans are accelerated or otherwise become due prior to the Maturity Date, in each case, in respect of any Event of Default (including the acceleration of claims by operation of law), the Exit Premium applicable with respect to a voluntary prepayment of the Loans will also be due and payable on the date of such acceleration or such other prior due date as though the Loans were voluntarily prepaid as of such date and shall constitute part of the Obligations, in view of the impracticability and extreme difficulty of ascertaining actual damages and by mutual agreement of the parties as to a reasonable calculation of each Lender’s loss as a result thereof. Any premium payable above shall be presumed to be the liquidated damages sustained by each Lender and the Borrower agrees that it is reasonable under the circumstances currently existing. THE BORROWER EXPRESSLY WAIVES (TO THE FULLEST EXTENT IT MAY LAWFULLY DO SO) THE PROVISIONS OF ANY PRESENT OR FUTURE STATUTE OR LAW THAT PROHIBITS OR MAY PROHIBIT THE COLLECTION OF THE EXIT PREMIUM IN CONNECTION WITH ANY SUCH ACCELERATION. The Borrower expressly agrees (to the fullest extent it may lawfully do so) that: (A) the Exit Premium is reasonable and is the product of an arm’s length transaction between sophisticated business

people, ably represented by counsel; (B) the Exit Premium shall be payable notwithstanding the then prevailing market rates at the time payment is made; (C) there has been a course of conduct between the Lenders and the Borrower giving specific consideration in this transaction for such agreement to pay the Exit Premium; and (D) the Borrower shall be estopped hereafter from claiming differently than as agreed to in this paragraph.

(3) Backstop Commitment Premium. The Borrower shall pay to the Backstop DIP Lenders, on a pro rata basis in accordance with their Backstop Commitments, a premium (the “**Backstop Commitment Premium**”) in an amount equal to 10.00% of the aggregate amount of the Commitments, which shall be earned as of the Closing Date and payable (i) upon the consummation of the Approved Sale, in the form of membership interests in the Stalking Horse Purchaser in accordance with the Asset Purchase Agreement or (ii) if the Approved Sale is not consummated, upon the Maturity Date, or in the event that all of the Loans are repaid or prepaid as a result of any mandatory prepayment, voluntary prepayment or payment made following acceleration of the Loans or after an Event of Default, in cash.

(4) Maturity Date Extension Premium. Upon the occurrence of the Initial Maturity Date Extension, the Borrower shall pay to the Lenders, in accordance with their Pro Rata Share, the Maturity Date Extension Premium, which shall be earned as of the Initial Maturity Date Extension and payable upon the Maturity Date; *provided* that if the Approved Sale is consummated, payment of the Maturity Date Extension Premium shall be waived.

(5) Other Fees. The Borrower shall pay to (a) the Lenders and their Affiliates such fees as shall have been separately agreed upon in the Restructuring Support Agreement, (b) the Administrative Agent such fees as shall have been separately agreed upon in the Agent Fee Letter and (c) the Fronting Lender such fees and expenses (including, without limitation, the fees and expenses of counsel to the Fronting Lender) as shall have been separately agreed upon in the Fronting Fee Letter, in each case in the amounts and at the times so specified. Such fees shall be fully earned when paid and shall not be refundable for any reason whatsoever (except as expressly agreed between the Borrower and the Lenders, the Administrative Agent or the Fronting Lender, as applicable).

(6) Tax Treatment. The Borrower shall treat (a) the Commitment Premium and Exit Premium as additional payments on the Loans and not as payments for services and (b) the Backstop Commitment Premium, in each case, as option premium for U.S. federal (and applicable state and local) income tax purposes. The Borrower shall pay the Backstop Commitment Premium free and clear of any withholding on account of taxes (except for any Taxes arising as a result of a Backstop DIP Lender’s failure to provide an IRS Form W-9 or appropriate IRS Form W-8, as applicable).

SECTION 2.10 Computation of Interest and Fees. All computations of interest for Base Rate Loans shall be made on the basis of a year of 365 days or 366 days, as the case may be, and actual days elapsed. All other computations of fees and interest shall be made on the basis of a 360-day year and actual days elapsed. Interest shall accrue on each Loan for the day on which the Loan is made, and shall not accrue on a Loan, or any portion thereof, for the day on which the Loan or such portion is paid; *provided* that any Loan that is repaid on the same day on which it is made shall, subject to Section 2.12(1), bear interest for one day. Each

determination by the Administrative Agent of an interest rate or fee hereunder shall be conclusive and binding for all purposes, absent manifest error.

SECTION 2.11 Evidence of Indebtedness.

(1) The Credit Extensions made by each Lender shall be evidenced by one or more accounts or records maintained by such Lender and evidenced by one or more entries in the Register maintained by the Administrative Agent, acting solely for purposes of Treasury Regulation Section 5f.103-1(c), as agent for the Borrower, in each case in the ordinary course of business. The accounts or records maintained by the Administrative Agent and each Lender shall be prima facie evidence absent manifest error of the amount of the 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, as set forth in the Register, in respect of such matters, the accounts and records of the Administrative Agent shall control in the absence of manifest error. Upon the request of any Lender made through the Administrative Agent, the Borrower shall execute and deliver to such Lender (through the Administrative Agent) a Note payable to such Lender, which shall evidence such Lender's Loans in addition to such accounts or records. Each Lender may attach schedules to its Note and endorse thereon the date, Type (if applicable), amount and maturity of its Loans and payments with respect thereto.

(2) In the event of any conflict between the accounts and records maintained by the Administrative Agent and the accounts and records of any Lender in respect of such matters, the accounts and records of the Administrative Agent shall control in the absence of manifest error.

(3) Entries made in good faith by the Administrative Agent in the Register pursuant to Sections 2.11(1) and (2), and by each Lender in its account or accounts pursuant to Sections 2.11(1) and (2), shall be prima facie evidence of the amount of principal and interest due and payable or to become due and payable from the Borrower to, in the case of the Register, each Lender and, in the case of such account or accounts, such Lender, under this Agreement and the other Loan Documents, absent manifest error.

SECTION 2.12 Payments Generally.

(1) All payments to be made by the Borrower hereunder shall be made in Dollars without condition or deduction for any counterclaim, defense, recoupment or setoff. Except as otherwise expressly provided herein, all payments by the Borrower hereunder shall be made to the Administrative Agent, for the account of the respective Lenders to which such payment is owed, at the applicable Administrative Agent's Office for payment and in Same Day Funds not later than 12:00 p.m., New York time, on the date specified herein. The Administrative Agent will promptly distribute to each Lender its Pro Rata Share (or other applicable share as provided herein) of such payment in like funds as received by wire transfer to such Lender's Lending Office. Any payments under this Agreement that are made later than 12:00 p.m., New York time, shall be deemed to have been made on the next succeeding Business

Day (but the Administrative Agent may extend such deadline for purposes of computing interest and fees (but not beyond the end of such day) in its sole discretion whether or not such payments are in process).

(2) Except as otherwise expressly provided herein, if any payment to be made by the Borrower shall come due on a day other than a Business Day, payment shall be made on the next following Business Day, and such extension of time shall be reflected in computing interest or fees, as the case may be.

(3) Unless the Borrower or any Lender has notified the Administrative Agent, prior to the date, or in the case of any Borrowing of Base Rate Loans, prior to 11:00 a.m., New York time, on the date of such Borrowing, any payment is required to be made by it to the Administrative Agent hereunder, that the Borrower or such Lender, as the case may be, will not make such payment, the Administrative Agent may assume that the Borrower or such Lender, as the case may be, has timely made such payment and may (but shall not be so required to), in reliance thereon, make available a corresponding amount to the Person entitled thereto. If and to the extent that such payment was not in fact made to the Administrative Agent in Same Day Funds, then:

(a) if the Borrower failed to make such payment, each Lender shall forthwith on demand repay to the Administrative Agent the portion of such assumed payment that was made available to such Lender in Same Day Funds, together with interest thereon in respect of each day from and including the date such amount was made available by the Administrative Agent to such Lender to the date such amount is repaid to the Administrative Agent in Same Day Funds at the Overnight Rate from time to time in effect; and

(b) if any Lender failed to make such payment, such Lender shall forthwith on demand pay to the Administrative Agent the amount thereof in Same Day Funds, together with interest thereon for the period from the date such amount was made available by the Administrative Agent to the Borrower to the date such amount is recovered by the Administrative Agent (the “**Compensation Period**”) at a rate per annum equal to the Overnight Rate from time to time in effect. When such Lender makes payment to the Administrative Agent (together with all accrued interest thereon), then such payment amount (excluding the amount of any interest which may have accrued and been paid in respect of such late payment) shall constitute such Lender’s Loan included in the applicable Borrowing. If such Lender does not pay such amount forthwith upon the Administrative Agent’s demand therefor, the Administrative Agent may make a demand therefor upon the Borrower, and the Borrower shall pay such amount, or cause such amount to be paid, to the Administrative Agent, together with interest thereon for the Compensation Period at a rate per annum equal to the rate of interest applicable to the applicable Borrowing. Nothing herein shall be deemed to relieve any Lender from its obligation to fulfill its Commitment or to prejudice any rights which the Administrative Agent or the Borrower may have against any Lender as a result of any default by such Lender hereunder. A notice of the Administrative Agent to any Lender or the Borrower with respect to any amount owing under this Section 2.12(3) shall be conclusive, absent manifest error.

(c) If any Lender makes available to the Administrative Agent funds for any Loan to be made by such Lender as provided in this Article II, and such funds are not made available to the Borrower by the Administrative Agent because the conditions to the applicable Credit Extension set forth in Section 4.02 are not satisfied or waived in accordance with the terms hereof, the Administrative Agent shall return such funds (in like funds as received from such Lender) to such Lender, without interest.

(d) The obligations of the Lenders hereunder to make Loans are several and not joint. The failure of any Lender to make any Loan or fund any participation 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 or purchase its participation.

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

(f) Whenever any payment received by the Administrative Agent under this Agreement or any of the other Loan Documents is insufficient to pay in full all amounts due and payable to the Administrative Agent and the Lenders under or in respect of this Agreement and the other Loan Documents on any date, such payment shall be distributed by the Administrative Agent and applied by the Administrative Agent and the Lenders in the order of priority set forth in Section 8.03 (or otherwise expressly set forth herein). If the Administrative Agent receives funds for application to the Obligations of the Loan Parties under or in respect of the Loan Documents under circumstances for which the Loan Documents do not specify the manner in which such funds are to be applied, the Administrative Agent may, but shall not be obligated to, elect to distribute such funds to each of the Lenders in accordance with such Lender's Pro Rata Share of the sum of the outstanding amount of all Loans outstanding at such time in repayment or prepayment of such of the outstanding Loans then owing to such Lender.

SECTION 2.13 Sharing of Payments. Other than as expressly provided elsewhere herein, if any Lender shall obtain payment in respect of any principal of or interest on account of the Loans made by it (whether voluntary, involuntary, through the exercise of any right of setoff, or otherwise) in excess of its ratable share (or other share contemplated hereunder) thereof, such Lender shall immediately (1) notify the Administrative Agent of such fact, and (2) purchase from the other Lenders such participations in the Loans made by them as shall be necessary to cause such purchasing Lender to share the excess payment in respect of any principal of or interest on such Loans pro rata with each of them; *provided* that if all or any portion of such excess payment is thereafter recovered from the purchasing Lender under any of the circumstances described in Section 10.06 (including pursuant to any settlement entered into by the purchasing Lender in its discretion), such purchase shall to that extent be rescinded and each other Lender shall repay to the purchasing Lender the purchase price paid therefor, together with an amount equal to such paying Lender's ratable share (according to the proportion of (a) the amount of such paying Lender's required repayment to (b) the total amount so recovered from the purchasing Lender) of any interest or other amount paid or payable by the purchasing

Lender in respect of the total amount so recovered, without further interest thereon. For the avoidance of doubt, the provisions of this Section 2.13 shall not be construed to apply to (i) any payment made by the Borrower pursuant to and in accordance with the express terms of this Agreement as in effect from time to time (including the application of funds arising from the existence of a Defaulting Lender) or (ii) any payment obtained by a Lender as consideration for the assignment any of its Loans to any assignee or participant permitted hereunder. The Borrower agrees that any Lender so purchasing a participation from another Lender pursuant to this Section 2.13 may, to the fullest extent permitted by applicable Law, exercise all its rights of payment (including the right of setoff, but subject to Section 10.10) with respect to such participation as fully as if such Lender were the direct creditor of the Borrower in the amount of such participation. The Administrative Agent will keep records (which shall be conclusive and binding in the absence of manifest error) of participations purchased under this Section 2.13 and will in each case notify the Lenders following any such purchases or repayments. Each Lender that purchases a participation pursuant to this Section 2.13 shall from and after such purchase have the right to give all notices, requests, demands, directions and other communications under this Agreement with respect to the portion of the Obligations purchased to the same extent as though the purchasing Lender were the original owner of the Obligations purchased. For purposes of clause (3) of the definition of Excluded Taxes, any participation acquired by a Lender pursuant to this Section 2.13 shall be treated as having been acquired on the earlier date(s) on which the applicable interest(s) in the Commitment(s) or Loan(s) to which such participation relates were acquired by such Lender.

SECTION 2.14 Takeback Facility Exchange.

(1) Notwithstanding anything herein to the contrary, upon the consummation of the Approved Sale, in lieu of repayment in cash of the Obligations, each Lender agrees that it will receive Indebtedness under the Takeback Facility in exchange for the Obligations upon the Takeback Facility Exchange Date pursuant to the Takeback Facility Documents, subject to the following:

(a) upon (i) the execution and delivery by the Takeback Facility Loan Parties, the Takeback Facility Agent and the Takeback Facility Lenders of the Takeback Facility Documents and (ii) the satisfaction (or waiver in accordance with the terms of the Takeback Facility Documents) of the other conditions precedent set forth in the Takeback Facility Documents as determined by the Required Lenders in their sole discretion, each of the Takeback Facility Loan Parties, the Takeback Facility Agent and the Takeback Facility Lenders shall have assumed and/or acquired the same respective rights and obligations under the Takeback Facility Documents in place of the rights and obligations under this Agreement;

(b) the terms and conditions of the Takeback Facility Documents shall be substantially similar to the Loans Documents or otherwise acceptable to the Required Lenders in their sole discretion; *provided* that the Takeback Facility Documents may include modifications to the terms of this Agreement and each other Loan Document as are necessary and usual and customary for financings provided to debtors exiting from chapter 11 of the Bankruptcy Code, giving effect to the then-current market conditions,

including modifications to remove those provisions in this Agreement that apply solely to the period prior to the Takeback Facility Exchange Date; and

(c) prior to finalizing the terms and conditions of the Takeback Facility Documents, the Required Lenders shall consult with all Lenders as to such terms and conditions; *provided* that the final terms and conditions of the Takeback Facility shall only be subject to the approval of Lenders comprising Required Lenders.

(2) Upon the Takeback Facility Exchange Date, in lieu of payment in cash of the Exit Premium, the Exit Premium shall be payable in kind on such date by automatically capitalizing and adding such premium to (and constituting part of) the principal amount of the Takeback Facility for all purposes of the Takeback Facility Documents.

SECTION 2.15 Defaulting Lenders.

(1) Adjustments. Notwithstanding anything to the contrary contained in this Agreement, if any Lender becomes a Defaulting Lender, then, until such time as that Lender is no longer a Defaulting Lender, to the extent permitted by applicable Law:

(a) Waivers and Amendments. That Defaulting Lender's right to approve or disapprove of any amendment, waiver or consent with respect to this Agreement shall be restricted as set forth in Section 10.01.

(b) Reallocation of Payments. Any payment of principal, interest, fees or other amounts received by the Administrative Agent for the account of that Defaulting Lender (whether voluntary or mandatory, at maturity, pursuant to Article VIII or otherwise), shall be applied at such time or times as may be determined by the Administrative Agent (acting at the Direction of the Required Lenders) as follows: first, to the payment of any amounts owing by that Defaulting Lender to the Administrative Agent hereunder; second, as the Borrower may request (so long as no Default has occurred and is continuing), to the funding of any Loan in respect of which that Defaulting Lender has failed to fund its portion thereof as required by this Agreement, as determined by the Administrative Agent; third, if so determined by the Administrative Agent and the Borrower, to be held in a non-interest bearing deposit account and released in order to satisfy obligations of that Defaulting Lender to fund Loans under this Agreement; fourth, so long as no Default has occurred and is continuing, to the payment of any amounts owing to the Borrower as a result of any judgment of a court of competent jurisdiction obtained by the Borrower against that Defaulting Lender as a result of that Defaulting Lender's breach of its obligations under this Agreement; and fifth, to that Defaulting Lender or as otherwise directed by a court of competent jurisdiction; *provided* that if (i) such payment is a payment of the principal amount of any Loans in respect of which that Defaulting Lender has not fully funded its appropriate share and (ii) such Loans were made at a time when the conditions set forth in Section 4.02 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 that Defaulting Lender. Any payments, prepayments or other amounts paid or payable to a Defaulting Lender that are applied (or held) to pay amounts owed by a

Defaulting Lender pursuant to this Section 2.15(1)(b) shall be deemed paid to and redirected by that Defaulting Lender, and each Lender irrevocably consents hereto.

(2) Defaulting Lender Cure. If the Borrower and the Administrative Agent agree in writing in their sole discretion that a Defaulting Lender should no longer be deemed to be a Defaulting Lender, the Administrative Agent will so notify the parties hereto, whereupon as of the effective date specified in such notice and subject to any conditions set forth therein, that Lender will cease to be a Defaulting Lender; *provided* that no adjustments will be made retroactively with respect to fees accrued or payments made by or on behalf of the Borrower while that Lender was a Defaulting Lender; *provided, further*, that except to the extent otherwise expressly agreed by the affected parties, no change hereunder from Defaulting Lender to Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender having been a Defaulting Lender.

Article III

Taxes, Increased Costs Protection and Illegality

SECTION 3.01 Taxes.

(1) Except as required by applicable Law, all payments by or on account of any Loan Party to or for the account of any Agent or any Lender under any Loan Document shall be made free and clear of and without deduction or withholding for any Taxes.

(2) If any Loan Party or any other applicable withholding agent is required by applicable Law to make any deduction or withholding on account of any Taxes from any sum paid or payable by or on account of any Loan Party to or for the account of any Lender or Agent under any of the Loan Documents:

(a) the applicable Loan Party shall notify the Administrative Agent of any such requirement or any change in any such requirement as soon as such Loan Party becomes aware of it;

(b) the applicable Loan Party or other applicable withholding agent shall make such deduction or withholding and pay to the relevant Governmental Authority any such Tax before the date on which penalties attach thereto, such payment to be made (if the liability to pay is imposed on any Loan Party) for such Loan Party's account or (if that liability is imposed on the Lender or Agent) on behalf of and in the name of the Lender or Agent (as applicable);

(c) if such Tax is a Non-Excluded Tax or Other Tax, the sum payable by any Loan Party to such Lender or Agent (as applicable) shall be increased by such Loan Party to the extent necessary to ensure that, after the making of any required deduction or withholding for Non-Excluded Taxes or Other Taxes (including any deductions or withholdings for Non-Excluded Taxes or Other Taxes attributable to any payments required to be made under this Section 3.01), such Lender (or, in the case of any payment made to the Administrative Agent for its own account, the Administrative

Agent) receives on the due date a net sum equal to what it would have received had no such deduction or withholding been required or made; and

(d) within thirty days after paying any sum from which it is required by Law to make any deduction or withholding, and within thirty days after the due date of payment of any Tax which it is required by clause (b) above to pay (or, in each case, as soon as reasonably practicable thereafter), the Borrower shall deliver to the Administrative Agent evidence reasonably satisfactory to the other affected parties of such deduction or withholding and of the remittance thereof to the relevant Governmental Authority.

(3) Status of Lender. Each Lender shall, at such times as are reasonably requested by the Borrower or the Administrative Agent, provide the Borrower and the Administrative Agent with any documentation prescribed by Laws or reasonably requested by the Borrower or the Administrative Agent certifying as to any entitlement of such Lender to an exemption from, or reduction in, withholding tax with respect to any payments to be made to such Lender under any Loan Document. In addition, any Lender, if reasonably requested by the Borrower or the Administrative Agent, shall deliver such other documentation prescribed by applicable Law or reasonably requested by the Borrower or the Administrative Agent as will enable the Borrower or the Administrative Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements. Each such Lender shall, whenever a lapse in time or change in circumstances renders any such documentation (including any specific documentation required below in this Section 3.01(3)) obsolete, expired or inaccurate in any respect, deliver promptly to the Borrower and the Administrative Agent updated or other appropriate documentation (including any new documentation reasonably requested by the Borrower or the Administrative Agent) or promptly notify the Borrower and Administrative Agent of its legal ineligibility to do so.

Without limiting the foregoing:

(a) Each U.S. Lender shall deliver to the Borrower and the Administrative Agent on or before the date on which it becomes a party to this Agreement two properly completed and duly signed copies of IRS Form W-9 (or successor form) certifying that such Lender is exempt from U.S. federal backup withholding.

(b) Each Foreign Lender shall deliver to the Borrower and the Administrative Agent on or before the date on which it becomes a party to this Agreement (and from time to time thereafter upon the request of the Borrower or the Administrative Agent) whichever of the following is applicable:

(i) two properly completed and duly signed copies of IRS Form W-8BEN or W-8BEN-E (or any successor forms) claiming eligibility for the benefits of an income Tax treaty to which the United States is a party, and such other documentation as required under the Code,

(ii) two properly completed and duly signed copies of IRS Form W-8ECI (or any successor forms),

(iii) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 871(h) or Section 881(c) of the Code, (A) two properly completed and duly signed certificates substantially in the form of Exhibit G (any such certificate, a “**United States Tax Compliance Certificate**”) and (B) two properly completed and duly signed copies of IRS Form W-8BEN or W-8BEN-E (or any successor forms),

(iv) to the extent a Foreign Lender is not the beneficial owner (for example, where such Foreign Lender is a partnership or a participating Lender), IRS Form W-8IMY (or any successor forms) of such Foreign Lender, accompanied by an IRS Form W-8ECI, Form W-8BEN or W-8BEN-E, United States Tax Compliance Certificate, Form W-9, Form W-8IMY and any other required information (or any successor forms) from each beneficial owner that would be required under this Section 3.01(3) if such beneficial owner were a Lender, as applicable (*provided* that, if a Lender is a partnership (and not a participating Lender) and if one or more beneficial owners are claiming the portfolio interest exemption, the United States Tax Compliance Certificate may be provided by such Foreign Lender on behalf of such beneficial owner(s)), or

(v) two properly completed and duly signed copies of any other documentation prescribed by applicable U.S. federal income Tax laws (including the Treasury Regulations) as a basis for claiming a complete exemption from, or a reduction in, U.S. federal withholding tax on any payments to such Lender under the Loan Documents.

(c) If a payment made to a Lender under any Loan Document would be subject to Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Sections 1471(b) or 1472(b) of the Code, as applicable), such Lender shall deliver to the Borrower and the Administrative Agent at the time or times prescribed by law and at such time or times reasonably requested by the Borrower or the Administrative Agent such documentation prescribed by applicable law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by the Borrower or the Administrative Agent as may be necessary for the Borrower and the Administrative Agent to comply with their obligations under FATCA, 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 paragraph (c), the term “FATCA” shall include any amendments made to FATCA after the date of this Agreement.

For the avoidance of doubt, if a Lender is an entity disregarded from its owner for U.S. federal income tax purposes, references to the foregoing documentation are intended to refer to documentation with respect to such Lender's owner and, as applicable, such Lender.

Notwithstanding any other provision of this Section 3.01(3), a Lender shall not be required to deliver any documentation that such Lender is not legally eligible to deliver. 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(3).

(4) Without duplication of other amounts payable by the Borrower pursuant to Section 3.01(2), the Borrower shall pay any Other Taxes to the relevant Governmental Authority in accordance with applicable law.

(5) The Loan Parties shall, jointly and severally, indemnify a Lender or the Administrative Agent (each a "**Tax Indemnitee**"), within 10 days after written demand therefor, for the full amount of any Non-Excluded Taxes paid or payable by such Tax Indemnitee on or attributable to any payment under or with respect to any Loan Document, and any Other Taxes payable by such Tax Indemnitee (including Non-Excluded Taxes or Other Taxes imposed on or attributable to amounts payable under this Section 3.01) (other than any interest, penalties and other costs determined by a final and non-appealable judgment of a court of competent jurisdiction to have resulted from the gross negligence, bad faith or willful misconduct of such Tax Indemnitee), whether or not such Taxes were correctly or legally imposed or asserted by the Governmental Authority; *provided* that if the Borrower reasonably believes that such Taxes were not correctly or legally asserted, such Tax Indemnitee will use reasonable efforts to cooperate with the Borrower to obtain a refund of such Taxes (which shall be repaid to the Borrower in accordance with Section 3.01(6)) so long as such efforts would not, in the sole determination of such Tax Indemnitee, result in any additional out-of-pocket costs or expenses not reimbursed by such Loan Party or be otherwise materially disadvantageous to such Tax Indemnitee. A certificate as to the amount of such payment or liability prepared in good faith and delivered by the Tax Indemnitee or by the Administrative Agent on behalf of another Tax Indemnitee, shall be conclusive absent manifest error.

(6) If and to the extent that a Tax Indemnitee, in its sole discretion (exercised in good faith), determines that it has received a refund (whether received in cash or applied as a credit against any other cash Taxes payable) of any Non-Excluded Taxes or Other Taxes in respect of which it has received indemnification payments or additional amounts under this Section 3.01, then such Tax Indemnitee shall pay to the relevant Loan Party the amount of such refund, net of all out-of-pocket expenses of the Tax Indemnitee (including any Taxes imposed with respect to such refund), and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund), *provided* that the Loan Party, upon the request of the Tax Indemnitee, agrees to repay the amount paid over by the Tax Indemnitee (*plus* any penalties, interest or other charges imposed by the relevant Governmental Authority) to the Tax Indemnitee to the extent the Tax Indemnitee is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this Section 3.01(6), in no event will the Tax Indemnitee be required to pay any amount to a Loan Party pursuant to this Section 3.01(6) the payment of which would place the Tax Indemnitee in a less favorable net

after-Tax position than the Tax Indemnatee would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. This subsection shall not be construed to require a Tax Indemnatee to make available its tax returns (or any other information relating to its Taxes that it deems confidential) to any Loan Party or any other Person.

(7) On or before the date the Administrative Agent becomes a party to this Agreement, the Administrative Agent shall deliver to the Borrower whichever of the following is applicable: (i) if the Administrative Agent is a “United States person” within the meaning of Section 7701(a)(30) of the Code, two executed original copies of IRS Form W-9 certifying that such Administrative Agent is exempt from U.S. federal backup withholding or (ii) if the Administrative Agent is not a “United States person” within the meaning of Section 7701(a)(30) of the Code, (A) with respect to payments received for its own account, two executed original copies of IRS Form W-8ECI and (ii) with respect to payments received on account of any Lender, two executed original copies of IRS Form W-8IMY (together with all required accompanying documentation) certifying that the Administrative Agent is a U.S. branch and may be treated as a United States person for purposes of applicable U.S. federal withholding Tax. At any time thereafter, the Administrative Agent shall provide updated documentation previously provided (or a successor form thereto) when any documentation previously delivered has expired or become obsolete or invalid or otherwise upon the reasonable request of the Borrower. Notwithstanding anything to the contrary in this Section 3.01(7), the Administrative Agent shall not be required to provide any documentation that the Administrative Agent is not legally eligible to deliver as a result of a Change in Law after the Closing Date.

(8) The agreements in this Section 3.01 shall survive the termination of this Agreement and the payment of the Loans and all other amounts payable hereunder.

SECTION 3.02 Illegality.

If any Lender reasonably determines that any Change in Law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for such Lender or its applicable Lending Office to make, maintain or fund Loans whose interest is determined by reference to the Term Benchmark Rate, or to determine or charge interest rates based upon the Term Benchmark Rate, then, on written notice thereof by such Lender to the Borrower through the Administrative Agent, (1) any obligation of such Lender to make or continue Term Benchmark Rate Loans or to convert Base Rate Loans to Term Benchmark Rate Loans shall be suspended, and (2) 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 Term Benchmark Rate component of the Base Rate, the interest rate on which Base Rate Loans of such Lender shall, if necessary to avoid such illegality, be reasonably determined by the Administrative Agent (acting at the Direction of the Required Lenders) without reference to the Term Benchmark Rate 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, (a) the Borrower may revoke any pending request for a Borrowing of, conversion to or continuation of Term Benchmark Rate Loans and shall, upon demand from such Lender (with a copy to the Administrative Agent), prepay or, if applicable, convert all Term

Benchmark Rate Loans of such Lender to Base Rate Loans (the interest rate on which Base Rate Loans of such Lender shall, if necessary to avoid such illegality, be determined by the Administrative Agent without reference to the Term Benchmark Rate component of the Base Rate), either on the last day of the Interest Period therefor, if such Lender may lawfully continue to maintain such Term Benchmark Rate Loans to such day, or immediately, if such Lender may not lawfully continue to maintain such Term Benchmark Rate Loans and (b) if such notice asserts the illegality of such Lender determining or charging interest rates based upon the Term Benchmark Rate component of the Base Rate with respect to any Base Rate Loans, the Administrative Agent shall during the period of such suspension compute the Base Rate applicable to such Lender without reference to the Term Benchmark Rate 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 Term Benchmark Rate. Upon any such prepayment or conversion, the Borrower shall also pay accrued interest on the amount so prepaid or converted.

SECTION 3.03 Inability to Determine Rates.

If the Administrative Agent (acting at the Direction of the Required Lenders) (in the case of clause (a) or (b) below) or the Required Lenders (in the case of clause (c) below) reasonably determine that for any reason in connection with any request for a Term Benchmark Rate Loan or a conversion to or continuation thereof that:

- (a) [reserved],
- (b) adequate and reasonable means do not exist for determining the Term Benchmark Rate for any requested Interest Period with respect to a proposed Term Benchmark Rate Loan or in connection with an existing or proposed Base Rate Loan, or
- (c) the Term Benchmark Rate for any requested Interest Period with respect to a proposed Term Benchmark Rate Loan does not adequately and fairly reflect the cost to such Lenders of funding such Loan,

the Administrative Agent will promptly so notify the Borrower and each Lender. Thereafter, (i) the obligation of the Lenders to make or maintain Term Benchmark Rate Loans shall be suspended, and (ii) in the event of a determination described in the preceding sentence with respect to the Term Benchmark Rate component of the Base Rate, the utilization of the Term Benchmark Rate component in determining the Base Rate shall be suspended, in each case until the Administrative Agent (upon the Direction of the Required Lenders) revokes such notice. Upon receipt of such notice, the Borrower may revoke any pending request for a Borrowing of, conversion to or continuation of Term Benchmark Rate Loans or, failing that, will be deemed to have converted such request into a request for a Borrowing of Base Rate Loans in the amount specified therein.

SECTION 3.04 Increased Cost and Reduced Return; Capital Adequacy; Reserves on Term Benchmark Rate Loans.

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

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

(b) subject any Lender to any Tax of any kind whatsoever with respect to this Agreement, or change the basis of taxation of payments to such Lender in respect thereof (except for Non-Excluded Taxes or Other Taxes covered by Section 3.01 and any Excluded Taxes); or

(c) impose on any Lender any other condition, cost or expense (other than with respect to Taxes) affecting this Agreement or Term Benchmark Rate Loans made by such Lender that is not otherwise accounted for in the definition of “Term Benchmark Rate” or this clause (1);

and the result of any of the foregoing shall be to increase the cost to such Lender of making or maintaining any Loan the interest on which is determined by reference to the Term Benchmark Rate (or of maintaining its obligation to make any such Loan), or to reduce the amount of any sum received or receivable by such Lender (whether of principal, interest or any other amount) then, from time to time within fifteen (15) days after demand by such Lender setting forth in reasonable detail such increased costs (with a copy of such demand to the Administrative Agent), the Borrower will pay to such Lender such additional amount or amounts as will compensate such Lender for such additional costs incurred or reduction suffered; *provided* that such amounts shall only be payable by the Borrower to the applicable Lender under this Section 3.04(1) so long as it is such Lender’s general policy or practice to demand compensation in similar circumstances under comparable provisions of other financing agreements.

(2) Capital Requirements. If any Lender reasonably determines that any Change in Law affecting such Lender or any Lending Office of such Lender or such Lender’s holding company, if any, regarding capital 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 it, or participations in or issuance of Letters of Credit by such Lender, to a level below that which such Lender or such Lender’s holding company, as the case may be, could have achieved but for such Change in Law (taking into consideration such Lender’s policies and the policies of such Lender’s holding company with respect to capital adequacy and liquidity), then from time to time upon demand of such Lender setting forth in reasonable detail the charge and the calculation of such reduced rate of return (with a copy of such demand to the Administrative Agent), the Borrower will pay to such Lender additional amount or amounts as will compensate such Lender or such Lender’s holding company for any such reduction suffered; *provided* that such amounts shall only be payable by the Borrower to the applicable Lender under this Section 3.04(2) so long as it is such Lender’s general policy or practice to demand compensation in similar circumstances under comparable provisions of other financing agreements.

(3) Certificates for Reimbursement. A certificate of a Lender setting forth the amount or amounts necessary to compensate such Lender or its holding company, as the case may be, as specified in subsection (1) or (2) of this Section 3.04 and delivered to the Borrower

shall be conclusive absent manifest error. The Borrower shall pay such Lender, as the case may be, the amount shown as due on any such certificate within fifteen (15) days after receipt thereof.

SECTION 3.05 Funding Losses. Upon written demand of any Lender (with a copy to the Administrative Agent) from time to time, which demand shall set forth in reasonable detail the basis for requesting such amount, the Borrower shall promptly compensate such Lender for and hold such Lender harmless from any loss, cost or expense (excluding loss of anticipated profits or margin) actually incurred by it as a result of:

(1) any continuation, conversion, payment or prepayment of any Term Benchmark Rate Loan on a day prior to the last day of the Interest Period for such Loan (whether voluntary, mandatory, automatic, by reason of acceleration, or otherwise);

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

(3) any assignment of a Term Benchmark Rate Loan on a day prior to the last day of the Interest Period therefor as a result of a request by the Borrower pursuant to Section 3.07; including any loss or expense (excluding loss of anticipated profits or margin) actually incurred by reason of the liquidation or reemployment of funds obtained by it to maintain such Term Benchmark Rate Loan or from fees payable to terminate the deposits from which such funds were obtained.

Notwithstanding the foregoing, no Lender may make any demand under this Section 3.05 with respect to the “floor” specified in the proviso to the definition of “Adjusted Term SOFR”.

SECTION 3.06 Matters Applicable to All Requests for Compensation.

(1) Designation of a Different Lending Office. If any Lender requests compensation under Section 3.04, or the Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.01, or if any Lender gives a notice pursuant to Section 3.02, then such Lender shall use reasonable efforts to designate a different Lending Office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the good faith judgment of such Lender such designation or assignment (a) would eliminate or reduce amounts payable pursuant to Section 3.01 or 3.04, as the case may be, in the future, or eliminate the need for the notice pursuant to Section 3.02, as applicable, and (b) in each case, would not subject such Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender in any material economic, legal or regulatory respect.

(2) Suspension of Lender Obligations. If any Lender requests compensation by the Borrower under Section 3.04, the Borrower may, by notice to such Lender (with a copy to the Administrative Agent), suspend the obligation of such Lender to make or continue Term Benchmark Rate Loans from one Interest Period to another Interest Period, or to convert Base Rate Loans into Term Benchmark Rate Loans until the event or condition giving rise to such

request ceases to be in effect (in which case the provisions of Section 3.06(3) shall be applicable); *provided* that such suspension shall not affect the right of such Lender to receive the compensation so requested.

(3) Conversion of Term Benchmark Rate Loans. If any Lender gives notice to the Borrower (with a copy to the Administrative Agent) that the circumstances specified in Section 3.02, 3.03 or 3.04 hereof that gave rise to the conversion of such Lender's Term Benchmark Rate Loans no longer exist (which such Lender agrees to do promptly upon such circumstances ceasing to exist) at a time when Term Benchmark Rate Loans made by other Lenders, as applicable, are outstanding, such Lender's Base Rate Loans shall be automatically converted, on the first day(s) of the next succeeding Interest Period(s) for such outstanding Term Benchmark Rate Loans to the extent necessary so that, after giving effect thereto, all Loans held by the Lenders holding Term Benchmark Rate Loans and by such Lender are held pro rata (as to principal amounts, interest rate basis, and Interest Periods) in accordance with their respective Pro Rata Shares.

(4) Delay in Requests. Failure or delay on the part of any Lender to demand compensation pursuant to the foregoing provisions of Sections 3.01 or 3.04 shall not constitute a waiver of such Lender's right to demand such compensation; *provided* that the Borrower shall not be required to compensate a Lender pursuant to the foregoing provisions of Section 3.01 or 3.04 for any increased costs incurred or reductions suffered more than one hundred and eighty (180) days prior to the date that such Lender notifies the Borrower of the event giving rise to such claim and of such Lender's intention to claim compensation therefor (except that, if the circumstance giving rise to such increased costs or reductions is retroactive, then the 180-day period referred to above shall be extended to include the period of retroactive effect thereof).

SECTION 3.07 Replacement of Lenders under Certain Circumstances. If

(1) any Lender requests compensation under Section 3.04 or ceases to make Term Benchmark Rate Loans as a result of any condition described in Section 3.02 or Section 3.04, (2) the Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.01 or 3.04, (3) any Lender is a Non-Consenting Lender, or (4) any Lender becomes a Defaulting Lender, then the Borrower may, at its sole expense and effort, upon notice to such Lender and the Administrative Agent,

(a) require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in, and consents required by, Section 10.07), all of its interests, rights and obligations under this Agreement and the related Loan Documents to one or more Eligible Assignees that shall assume such obligations (any of which assignee may be another Lender, if a Lender accepts such assignment), *provided* that:

(i) the Borrower shall have paid to the Administrative Agent the assignment fee specified in Section 10.07(b)(iv);

(ii) such Lender shall have received payment of an amount equal to the applicable outstanding principal of its Loans, accrued interest thereon, accrued fees and all other amounts payable to it hereunder and

under the other Loan Documents (including any amounts under Section 3.05) from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrower (in the case of all other amounts);

(iii) such Lender being replaced pursuant to this Section 3.07 shall (i) execute and deliver an Assignment and Assumption with respect to all, or a portion, as applicable, of such Lender's Commitment and outstanding Loans and (ii) deliver any Notes evidencing such Loans to the Borrower or Administrative Agent (or a lost or destroyed note indemnity in lieu thereof); *provided* that the failure of any such Lender to execute an Assignment and Assumption or deliver such Notes shall not render such sale and purchase (and the corresponding assignment) invalid and such assignment shall be recorded in the Register and the Notes shall be deemed to be canceled upon such failure;

(iv) the Eligible Assignee shall become a Lender hereunder and the assigning Lender shall cease to constitute a Lender hereunder with respect to such assigned Loans, Commitments and participations, except with respect to indemnification and confidentiality provisions under this Agreement, which shall survive as to such assigning Lender;

(v) in the case of any such assignment resulting from a claim for compensation under Section 3.04 or payments required to be made pursuant to Section 3.01, such assignment will result in a reduction in such compensation or payments thereafter;

(vi) such assignment does not conflict with applicable Laws;

(vii) [reserved]; and

(viii) the Lender that acts as Administrative Agent cannot be replaced in its capacity as Administrative Agent other than in accordance with Section 9.11, or

(b) terminate the Commitment of such Lender and repay all Obligations of the Borrower owing to such Lender relating to the Loans and participations held by such Lender as of such termination date.

In the event that (i) the Borrower or the Administrative Agent has requested that the Lenders consent to a departure or waiver of any provisions of the Loan Documents or agree to any amendment thereto, (ii) the consent, waiver or amendment in question requires the agreement of each Lender or all affected Lenders and (iii) the Required Lenders have agreed to such consent, waiver or amendment, then any Lender who does not agree to such consent, waiver or amendment shall be deemed a **"Non-Consenting Lender."**

A Lender shall not be required to make any such assignment or delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling the Borrower to require such assignment and delegation cease to apply.

SECTION 3.08 Survival. All of the Borrower's obligations under this Article III shall survive termination of the Aggregate Commitments, repayment of all other Obligations hereunder and resignation of the Administrative Agent.

Article IV

Conditions Precedent to Credit Extensions

SECTION 4.01 Conditions to Credit Extensions on Closing Date. The obligation of each Lender to make a Credit Extension hereunder on the Closing Date is subject to satisfaction (or waiver) of the following conditions precedent, except as otherwise agreed between the Borrower and the Required Lenders:

(1) The Administrative Agent's receipt of the following, each of which shall be originals, facsimiles or copies in .pdf format (followed promptly by originals) unless otherwise specified, each properly executed by a Responsible Officer of the signing Loan Party:

- (a) this Agreement and the Guaranty;
- (b) the Security Agreement;
- (c) evidence that all UCC-1 financing statements in the appropriate jurisdiction for each Loan Party that the Administrative Agent and the Collateral Agent (acting at the Direction of the Required Lenders) may deem reasonably necessary to satisfy the Collateral and Guarantee Requirement shall have been provided for, and arrangements for the filing thereof in a manner reasonably satisfactory to the Administrative Agent (acting at the Direction of the Required Lenders) shall have been made;
- (d) certificates of good standing from the secretary of state of the state of organization of each Loan Party (to the extent such concept exists in such jurisdiction), customary certificates of resolutions or other action, incumbency certificates or other certificates of Responsible Officers of each Loan Party certifying true and complete copies of the Organizational Documents attached thereto and 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 on the Closing Date;
- (e) [reserved]; and
- (f) a certificate of a Responsible Officer of the Borrower certifying that the conditions set forth in Sections 4.01(4), (12) and (13) and Sections 4.02(1) and (2) have been satisfied.

(2) The Administrative Agent shall have received at least two (2) Business Days prior to the Closing Date all documentation and other information in respect of the Borrower and the Guarantors required under applicable “know your customer” and anti-money laundering rules and regulations (including the USA PATRIOT Act) that has been reasonably requested in writing by it at least three (3) Business Days prior to the Closing Date.

(3) The Collateral Agent, on behalf of the Secured Parties, shall have a valid and perfected lien on and security interest in the Collateral with the priority set forth in the DIP Order (it being acknowledged and agreed that entry of the DIP Order shall be sufficient to perfect such liens on, and security interest in, the Collateral).

(4) There shall not have occurred any fact, circumstance, effect, change, event or development since the Petition Date that, individually or in the aggregate, has had or would reasonably be expected to have a Material Adverse Effect.

(5) All fees and expenses (in the case of expenses, to the extent invoiced at least one (1) Business Day prior to the Closing Date (except as otherwise reasonably agreed by the Borrower)) required to be paid hereunder, under the Interim Order and under the Fronting Fee Letter, in each case, on the Closing Date shall have been paid, or shall be paid substantially concurrently with the initial Borrowing on the Closing Date.

(6) The Chapter 11 Cases shall have been commenced in the Bankruptcy Court, and all drafts of the “first day orders” and all related pleadings to be filed at the time of commencement of the Chapter 11 Cases or shortly thereafter (including, without limitation, any motions related to the DIP Facility, adequate protection and cash management and any critical vendor or supplier motions) shall have been reviewed in advance by the Required Lenders and shall be in form and substance reasonably acceptable to the Required Lenders, and the related orders entered by the Bankruptcy Court shall be in form and substance reasonably acceptable to the Required Lenders (it being understood that the forms of such draft “first day orders”, related pleadings and motions approved by the Required Lenders prior to the Closing Date are deemed reasonably acceptable).

(7) The Interim Order shall have been entered by the Bankruptcy Court, and the Administrative Agent shall have received a true and complete copy of such order, and such order shall be in form and substance reasonably satisfactory to the Required Lenders (and with respect to any provisions that affect the rights or duties of the Administrative Agent, the Administrative Agent) (it being understood that the form of Interim Order approved by the Required Lenders and the Administrative Agent prior to the Closing Date is deemed reasonably satisfactory to the Required Lenders and the Administrative Agent), shall be in full force and effect, and shall not have been reversed, modified, amended, stayed or vacated absent prior written consent of the Required Lenders (and with respect to any provisions that affect the rights or duties of the Administrative Agent, the Administrative Agent).

(8) All orders entered by the Bankruptcy Court pertaining to cash management and adequate protection, including the Cash Management Order and the Interim Order, and all other motions and documents filed or to be filed with, and submitted to, the

Bankruptcy Court in connection therewith, shall be in form and substance reasonably satisfactory to the Required Lenders.

(9) The Prepetition Holders shall have received adequate protection in respect of the Liens securing the Prepetition Obligations in the form set forth in the Interim Order.

(10) The Administrative Agent and the Lenders shall have received the Initial Budget, which shall be in form and substance reasonably acceptable to the Required Lenders (it being understood that the form of Budget attached to the Interim Order is deemed satisfactory to the Required Lenders).

(11) The DIP Funding Account shall have been established by the Borrower for the purposes of receipt of the proceeds of the Final Loans.

(12) There shall exist no action, suit, investigation, litigation or proceeding pending or (to the knowledge of the Loan Parties) threatened in any court or before any arbitrator or governmental instrumentality (other than as set forth on Schedule 5.06 or the Chapter 11 Cases and any action, suit, investigation or proceeding arising from the commencement and continuation of the Chapter 11 Cases or the consequences that would normally result from the commencement and continuation of the Chapter 11 Cases) that is not stayed and could reasonably be expected to result in a Material Adverse Effect.

(13) All governmental and third party consents and approvals necessary in connection with the DIP Facility and the transactions contemplated hereby shall have been obtained (without the imposition of any materially adverse conditions that are not acceptable to the Required Lenders) and shall remain in effect; and the making of the Loans shall not violate any material applicable requirement of law and shall not be enjoined temporarily, preliminarily or permanently.

Without limiting the generality of the provisions of the last paragraph of Section 9.03, for purposes of determining compliance with the conditions specified in this Section 4.01, each Lender that has signed this Agreement shall be deemed to have consented to, approved or accepted or to be satisfied with, each document or other matter required thereunder to be consented to or approved by or acceptable or satisfactory to a Lender unless the Administrative Agent shall have received notice from such Lender prior to the proposed Closing Date specifying its objection thereto.

SECTION 4.02 Conditions to All Credit Extensions. The obligation of each Lender to honor any Request for a Credit Extension (other than a Committed Loan Notice requesting only a conversion of Loans to the other Type or a continuation of Term Benchmark Rate Loans), including on the Closing Date, is subject to the following conditions precedent:

(1) The representations and warranties of the Loan Parties contained in Article V or any other Loan Document shall be true and correct in all material respects on and as of the date of such Credit Extension; *provided* that to the extent that such representations and warranties specifically refer to an earlier date, they shall be true and correct in all material respects as of such earlier date; *provided, further*, that any representation and warranty that is

qualified as to “materiality,” “Material Adverse Effect” or similar language shall be true and correct (after giving effect to any qualification therein) in all respects on such respective dates.

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

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

(4) The DIP Order shall be in full force and effect and shall not have been vacated, reversed, modified, amended or stayed without the written consent of the Administrative Agent (acting at the Direction of the Required Lenders) and the Required Lenders. The Loan Parties shall be in compliance in all material respects with each Chapter 11 Order.

(5) The Administrative Agent and the Lenders shall have received all periodic updates required under the Budget and any Variance Reports, each in form and substance reasonably satisfactory to the Required Lenders (it being understood that the form of Variance Report submitted prior to the Closing Date is deemed satisfactory to the Required Lenders), and the Loan Parties shall be in compliance with the Budget.

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 Term Benchmark Rate Loans) submitted by the Borrower shall be deemed to be a representation and warranty that the conditions specified in Sections 4.02(1), 4.02(2) and 4.02(4) have been satisfied on and as of the date of the applicable Credit Extension.

Article V

Representations and Warranties

Each Loan Party hereto represents and warrants to the Agents and the Lenders at the time of each Borrowing that:

SECTION 5.01 Existence, Qualification and Power; Compliance with Laws. Each Loan Party and each of its respective Subsidiaries:

(1) is a Person duly organized or formed, validly existing and in good standing under the Laws of the jurisdiction of its incorporation or organization (to the extent such concept exists in such jurisdiction),

(2) subject to the entry and terms of the DIP Orders and the other orders of the Bankruptcy Court, as applicable, has all corporate or other organizational power and authority to (a) own or lease its assets and carry on its business as currently conducted and (b) in the case of the Loan Parties, execute, deliver and perform its obligations under the Loan Documents to which it is a party,

(3) is duly qualified and in good standing (to the extent such concept exists) under the Laws of each jurisdiction where its ownership, lease or operation of properties or the conduct of its business as currently conducted requires such qualification,

(4) is in compliance with all applicable Laws orders, writs, injunctions and orders (including with the United States Foreign Corrupt Practices Act of 1977 (the “FCPA”) and the USA PATRIOT Act), and

(5) has all requisite governmental licenses, authorizations, consents and approvals to operate its business as currently conducted,

except, in each case referred to in the preceding clauses (1) (with respect to the good standing of a Person other than the Borrower), (2)(a), (3), (4) or (5), to the extent that failure to do so would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

SECTION 5.02 Authorization; No Contravention.

(1) Subject to the entry and the terms of the DIP Order, the execution, delivery and performance by each Loan Party of each Loan Document to which such Person is a party have been duly authorized by all necessary corporate or other organizational action.

(2) None of the execution, delivery and performance by each Loan Party of each Loan Document, and in the case of clause (a) below, the incurrence of Indebtedness and granting of security interests and guarantees thereunder, as applicable, to which such Person is a party will:

(a) contravene the terms of any of such Person’s Organizational Documents,

(b) result in any breach or contravention of, or the creation of any Lien upon any of the property or assets of such Person or any of the Subsidiaries (other than as permitted by Section 7.01) under (i) any Contractual Obligation to which such Loan Party is a party or affecting such Loan Party or the properties of such Loan Party or any of its Subsidiaries or (ii) any order, injunction, writ or decree of any Governmental Authority or any arbitral award to which such Loan Party or its property is subject, or

(c) violate any applicable Law,

except with respect to any breach, contravention or violation (but not creation of Liens) referred to in the preceding clauses (b) and (c), to the extent that such breach, contravention or violation would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

SECTION 5.03 Governmental Authorization. Other than the DIP Order, no material approval, consent, exemption, authorization, or other action by, or notice to, or filing with, any Governmental Authority is necessary or required in connection with the execution, delivery or performance by, or enforcement against, any Loan Party of this Agreement or any other Loan Document, except for:

(1) filings and registrations necessary to perfect the Liens on the Collateral granted by the Loan Parties in favor of the Secured Parties,

(2) the approvals, consents, exemptions, authorizations, actions, notices and filings that have been duly obtained, taken, given or made and are in full force and effect (except to the extent not required to be obtained, taken, given or made or in full force and effect pursuant to the Collateral and Guarantee Requirement), and

(3) those approvals, consents, exemptions, authorizations or other actions, notices or filings, the failure of which to obtain or make would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

SECTION 5.04 Binding Effect. Subject to the entry and the terms of the DIP Order, this Agreement and each other Loan Document has been duly executed and delivered by each Loan Party that is party hereto or thereto, as applicable. Subject to the entry and the terms of the DIP Order, each Loan Document constitutes a legal, valid and binding obligation of each Loan Party that is party thereto, enforceable against each such Loan Party in accordance with its terms, except as such enforceability may be limited by Debtor Relief Laws, by general principles of equity and principles of good faith and fair dealing.

SECTION 5.05 No Material Adverse Effect. Since the Petition Date, there has been no event or circumstance, either individually or in the aggregate, that has had or would reasonably be expected to have a Material Adverse Effect.

SECTION 5.06 Litigation. Except for the Chapter 11 Cases and as set forth on Schedule 5.06, there shall not exist any action, suit, investigation, litigation or proceeding or other legal or regulatory developments, pending in any court or before any arbitrator or Governmental Authority that is not stayed, that, in the reasonable opinion of Administrative Agent, singly or in the aggregate, could have a Material Adverse Effect and there shall not exist any action, suit, investigation, litigation or proceeding or other legal or regulatory developments, pending or to the knowledge of the Borrower, threatened in any court or before any arbitrator or Governmental Authority that, in the reasonable opinion of Required Lenders, singly or in the aggregate, which relates to the Loans or the transactions contemplated by the Loan Documents. Neither the Borrower nor any of its Subsidiaries (a) is in violation of any applicable laws (including Environmental Laws) that, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect, or (b) is subject to or in default with respect to any final judgments, writs, injunctions, decrees, rules or regulations of any court or any federal, state, municipal or other governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign, in each case that is not stayed, that, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

SECTION 5.07 Labor Matters. Except as would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect: (1) there are no strikes or other labor disputes against the Borrower or its Subsidiaries pending or, to the knowledge of the Borrower, threatened in writing and (2) hours worked by and payment made based on hours worked to employees of each of the Borrower or its Subsidiaries have not been in violation of the Fair Labor Standards Act or any other applicable Laws dealing with wage and hour matters.

SECTION 5.08 Ownership of Property; Liens. Each Loan Party and each of its Subsidiaries has good and valid record title in fee simple to, or valid leasehold interests in, or easements or other limited property interests in, all real property necessary in the ordinary conduct of its business, free and clear of all Liens except for Liens permitted by Section 7.01 and except where the failure to have such title or other interest would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

SECTION 5.09 Environmental Matters. Except as would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect: (a) each Loan Party and each of its Subsidiaries and their respective operations and properties is in compliance with all applicable Environmental Laws; (b) each Loan Party and each of its Subsidiaries has obtained and maintained all Environmental Permits required to conduct their operations; (c) none of the Loan Parties or any of their Subsidiaries is subject to any pending or, to the knowledge of the Borrower, threatened Environmental Claim in writing or Environmental Liability; (d) none of the Loan Parties or any of their respective Subsidiaries or predecessors has treated, stored, transported or Released Hazardous Materials at or from any currently or formerly owned, leased or operated real estate or facility which could reasonably be expected to give rise to any Environmental Liability; and (e) to the knowledge of any Loan Party or any Subsidiary, there are no occurrences, facts, circumstances or conditions which could reasonably be expected to give rise to an Environmental Claim.

SECTION 5.10 Taxes. Except as would not, either individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect, each Loan Party and each of its Subsidiaries has timely filed all tax returns and reports required to be filed, and have timely paid all Taxes (including satisfying its withholding tax obligations) levied or imposed on their properties, income or assets (whether or not shown in a tax return), except those which are being contested in good faith by appropriate actions diligently taken and for which adequate reserves have been provided in accordance with GAAP. There is no proposed Tax assessment, deficiency or other claim against any Loan Party or any of its Subsidiaries except (i) those being actively contested by a Loan Party or such Subsidiary in good faith and by appropriate actions diligently taken and for which adequate reserves have been provided in accordance with GAAP or (ii) those which would not reasonably be expected to, individually or in the aggregate, have a Material Adverse Effect.

SECTION 5.11 ERISA Compliance.

(1) Except as would not, either individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect, each Plan is in compliance with the applicable provisions of ERISA, the Code and other federal or state Laws.

(2) (a) No ERISA Event has occurred or is reasonably expected to occur and (b) none of the Loan Parties or any of their respective ERISA Affiliates has engaged in a transaction that could be subject to Sections 4069 or 4212(c) of ERISA, except, with respect to each of the foregoing clauses of this Section 5.11(2), as would not reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect.

(3) Except where non-compliance or the incurrence of an obligation would not reasonably be expected to result in a Material Adverse Effect, (a) each Foreign Plan has been maintained in compliance with its terms and with the requirements of any and all applicable Laws, and (b) none of Holdings, the HoldCo Debtors, the Borrower or any Subsidiary has incurred any obligation in connection with the termination of or withdrawal from any Foreign Plan.

(4) The Borrower represents and warrants as of the Closing Date that the Borrower is not, and will not, be using Plan Assets of one or more Benefit Plans in connection with the Loans or the Commitments.

SECTION 5.12 Subsidiaries.

(1) As of the Closing Date, all of the outstanding Equity Interests in the Borrower and its Subsidiaries have been validly issued and are fully paid and (if applicable) non-assessable, and all Equity Interests that constitute Collateral owned by the Loan Parties in any of their respective Subsidiaries are owned free and clear of all Liens of any person except (a) those Liens created under the Collateral Documents, (b) those Liens created under the Prepetition Loan Documents and (c) any non-consensual Lien that is permitted under Section 7.01.

(2) As of the Closing Date, Schedule 5.12 sets forth:

- (a) the name and jurisdiction of organization of each Subsidiary, and
- (b) the ownership interests of the Loan Parties and their Subsidiaries in each Subsidiary, including the percentage of such ownership.

SECTION 5.13 Margin Regulations; Investment Company Act.

(a) As of the Closing Date, none of the Collateral is Margin Stock. No Loan Party is engaged nor will it engage, principally or as one of its important activities, in the business of purchasing or carrying Margin Stock (within the meaning of Regulation U issued by the Board of Governors of the Federal Reserve System of the United States), or extending credit for the purpose of purchasing or carrying Margin Stock, and no proceeds of any Borrowings will be used for any purpose that violates Regulation U.

(b) No Loan Party is required to be registered as an “investment company” under the Investment Company Act of 1940.

SECTION 5.14 Disclosure. As of the Closing Date, none of the written information and written data heretofore or contemporaneously furnished in writing by or on behalf of the Borrower or any Subsidiary Guarantor to any Agent or any Lender on or prior to the Closing Date in connection with the Transactions, when taken as a whole, contains any material misstatement of fact or omits to state any material fact necessary to make such written information and written data taken as a whole, in the light of the circumstances under which it was delivered, not materially misleading (after giving effect to all modifications and supplements to such written information and written data, in each case, furnished after the date on which such

written information or such written data was originally delivered and prior to the Closing Date); it being understood that for purposes of this Section 5.14, such written information and written data shall not include any projections, *pro forma* financial information, financial estimates, forecasts and forward-looking information or information of a general economic or general industry nature.

SECTION 5.15 Intellectual Property; Licenses, etc. The Borrower and its Subsidiaries have good and marketable title to, or a valid license or right to use, all patents, patent rights, trademarks, servicemarks, trade names, copyrights, technology, software, know-how, database rights and other intellectual property rights (collectively, “**IP Rights**”) that to the knowledge of the Borrower are reasonably necessary for the operation of their respective businesses as currently conducted, except where the failure to have any such rights, either individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect. To the knowledge of the Borrower, the operation of the respective businesses of the Borrower or any Subsidiary of the Borrower as currently conducted does not infringe upon, dilute, misappropriate or violate any IP Rights held by any Person except for such infringements, dilutions, misappropriations or violations, individually or in the aggregate, that would not reasonably be expected to have a Material Adverse Effect. Except as set forth in Schedule 5.15, no claim or litigation regarding any IP Rights is pending or, to the knowledge of the Borrower, threatened in writing against any Loan Party or Subsidiary, that, either individually or in the aggregate, would reasonably be expected to have a Material Adverse Effect.

SECTION 5.16 [Reserved].

SECTION 5.17 USA PATRIOT Act; Anti-Terrorism Laws. To the extent applicable, each of the Borrower and the Subsidiaries are in compliance, in all material respects, with (i) the USA PATRIOT Act, and (ii) the Trading with the Enemy Act, as amended, and each of the foreign assets control regulations of the United States Treasury Department (31 C.F.R. Subtitle B, Chapter V, as amended) and any other applicable enabling legislation or executive order relating thereto. Neither Holdings, the HoldCo Debtors, the Borrower nor any Subsidiary nor, to the knowledge of the Borrower, any director, officer or employee of Holdings, the HoldCo Debtors, the Borrower or any of the Subsidiaries, is currently the subject of any sanctions administered by the Office of Foreign Assets Control of the U.S. Treasury Department (“**OFAC**”) (such sanctions, “**Sanctions**”). No proceeds of the Loans will be used by Holdings, the HoldCo Debtors, the Borrower or any Subsidiary directly or, to the knowledge of the Borrower, indirectly, for the purpose of financing activities of or with any Person, or in any country, that, at the time of such financing, is the subject of any Sanctions, except to the extent licensed or otherwise approved by OFAC.

SECTION 5.18 Collateral Documents. The DIP Orders are effective to create a legal, valid, perfected and enforceable Lien on all Collateral in favor of the Collateral Agent for the benefit of the Secured Parties, with the priority set forth therein. Except as otherwise contemplated hereby or under any other Loan Documents and subject to limitations set forth in the Collateral and Guarantee Requirement, the provisions of the Collateral Documents, together with such filings and other actions required to be taken hereby or by the applicable Collateral Documents, are effective to create in favor of the Collateral Agent for the benefit of the Secured Parties a legal, valid, perfected and enforceable first priority Lien (subject to Liens

permitted by Section 7.01) on all right, title and interest of the respective Loan Parties in the Collateral described therein.

SECTION 5.19 Secured, Super-Priority Obligations.

(a) The Chapter 11 Cases were commenced on the Petition Date in accordance with applicable law and proper notice thereof and the proper notice for (x) the motions seeking approval of the Loan Documents and the DIP Orders and (y) the hearings for the approval of the DIP Orders was given in each case. The Borrower shall give, on a timely basis as specified in the DIP Orders, all notices required to be given to all parties specified in the DIP Orders.

(b) The provisions of the Loan Documents and the DIP Orders are effective to create in favor of the Collateral Agent, for the benefit of the Secured Parties, legal, valid and perfected Liens on and security interests in all right, title and interest in the Collateral (the “**DIP Liens**”), having the priority set forth in the DIP Order.

SECTION 5.20 DIP Orders. The DIP Orders are in full force and effect and have not been vacated, reversed, modified, amended or stayed without the prior written consent of the Required Lenders.

SECTION 5.21 Budget. Each Budget was prepared in good faith by the management of the Loan Parties, based on assumptions believed by the management of the Loan Parties to be reasonable at the time made and upon information believed by the management of the Loan Parties to have been accurate based upon the information available to the management of the Loan Parties at the time such Budget was furnished.

Article VI

Affirmative Covenants

So long as the Termination Conditions have not been satisfied, the Borrower shall, and shall cause each of its Subsidiaries to:

SECTION 6.01 Financial Statements; Budget and Variance Reporting. Deliver to the Administrative Agent for prompt further distribution by the Administrative Agent to each Lender (subject to the limitations on distribution of any such information to Public Lenders as described in Section 6.02) each of the following:

(a) beginning with the fiscal quarter ending September 30, 2024, within forty-five (45) days after the end of each fiscal quarter of each fiscal year of the Borrower, a consolidated balance sheet of the Borrower and its Subsidiaries as at the end of such fiscal quarter, and the related (a) consolidated statement of income for such fiscal quarter and for the portion of the fiscal year then ended and (b) consolidated statement of cash flows for the portion of the fiscal year then ended, setting forth, in each case of the preceding clauses (a) and (b), in comparative form the figures for the corresponding fiscal quarter of the previous fiscal year and the corresponding portion of the previous fiscal year, accompanied by a Compliance Certificate stating that such financial statements fairly present in all material respects the financial

condition, results of operations and cash flows of the Borrower and its Subsidiaries in accordance with GAAP, subject to normal year-end adjustments and the absence of footnotes;

(b) beginning with the month ending October 31, 2024, within thirty (30) days after the end of each calendar month, a consolidated balance sheet of the Borrower and its Subsidiaries as at the end of such month, and the related (a) consolidated statement of income for such month and for the portion of the fiscal year then ended and (b) consolidated statement of cash flows for the portion of the fiscal year then ended, setting forth, in each case of the preceding clauses (a) and (b), in comparative form the figures for the corresponding month of the previous fiscal year and the corresponding portion of the previous fiscal year, accompanied by a Compliance Certificate stating that such financial statements fairly present in all material respects the financial condition, results of operations and cash flows of the Borrower and its Subsidiaries in accordance with GAAP, subject to normal year-end adjustments and the absence of footnotes;

(c) on the Wednesday of each week, commencing with November [6], 2024, evidence of the Liquidity of the Borrower and its Subsidiaries as of the immediately preceding Friday, certified by a Responsible Officer of Holdings, in reasonable detail to demonstrate compliance with Section 7.12;

(d) on the Friday of every fourth week, commencing with November [29], 2024 (or more frequently at the option of the Loan Parties to accommodate changes in business operating activity), an updated 13-week forecast for the subsequent 13 weeks of the Loan Parties in a form consistent with past practice, broken down by week, which shall include the anticipated uses of the Loans for such period (each, a “**Proposed Budget**”), which Proposed Budget shall modify and supersede any prior Budget upon the approval of the Required Lenders in their reasonable discretion (which approval may be delivered by the Ad Hoc Group Advisors by e-mail correspondence); *provided* that (i) the most recently delivered Proposed Budget shall be deemed approved five (5) Business Days following delivery thereof to the Administrative Agent and the Ad Hoc Group Advisors, unless the Required Lenders or any Ad Hoc Group Advisor shall object to the same in writing on or before such date and (ii) if the Required Lenders or any Ad Hoc Group Advisor objects to such Proposed Budget, the Loan Parties and the Ad Hoc Group Advisors will work in good faith to reconcile the Proposed Budget; *provided, further*, that, for the avoidance of doubt, until the conditions for the most recently delivered Proposed Budget are met, the prior approved Budget shall remain in full force and effect for all purposes; *provided, further*, that after approval of each Proposed Budget, the Borrower shall direct the Administrative Agent (and hereby grants its consent to the Administrative Agent) to post such Proposed Budget on the Platform or otherwise distribute such Proposed Budget to all Lenders;

(e) on the Wednesday of each week, commencing with November [6], 2024, a written variance report reconciling actual cash receipts and operating disbursements for the most recently ended Budget Testing Period measured against the Budget then in effect, which report shall include a reasonably detailed explanation of all material variances (determined on a line-item-by-line-item basis) between actual budgeted receipts and disbursements (each, a “**Variance Report**”);

(f) together with delivery of the monthly financial statements pursuant to Section 6.01(b), a key performance indicator report in form reasonably satisfactory to the Ad Hoc Group (it being understood that the form of key performance indicator report submitted prior to the Closing Date is deemed satisfactory to the Ad Hoc Group); and

(g) together with delivery of each Proposed Budget, a report regarding all accrued fees of the Debtors' legal and financial advisors incurred during the prior four-week period.

SECTION 6.02 Certificates; Other Information. Deliver to the Administrative Agent for prompt further distribution by the Administrative Agent to each Lender (subject to the limitations on distribution of any such information to Public Lenders as described in this Section 6.02):

(1) [reserved];

(2) promptly after the same are publicly available, copies of all special reports and registration statements which Holdings, the Borrower or any Subsidiary files with the SEC or with any Governmental Authority that may be substituted therefor or with any national securities exchange, as the case may be (other than amendments to any registration statement (to the extent such registration statement, in the form it became effective, is delivered to the Administrative Agent), exhibits to any registration statement and, if applicable, any registration statement on Form S-8), and in any case not otherwise required to be delivered to the Administrative Agent pursuant to any other clause of this Section 6.02;

(3) promptly after the furnishing thereof, copies of any notices of default to any holder of any class or series of debt securities of any Loan Party having an aggregate outstanding principal amount greater than the Threshold Amount (in each case, other than in connection with any board observer rights) and not otherwise required to be furnished to the Administrative Agent pursuant to any other clause of this Section 6.02;

(4) [reserved]; and

(5) promptly, but subject to the limitations set forth in Section 6.10 and Section 10.09, such additional information regarding the business and financial affairs of any Loan Party or any Subsidiary, or compliance with the terms of the Loan Documents, as the Administrative Agent may from time to time on its own behalf or on behalf of any Lender reasonably request in writing from time to time.

The Borrower hereby acknowledges that (a) the Administrative Agent will make available to the Lenders materials or information provided by or on behalf of the Borrower hereunder (collectively, the "**Borrower Materials**") by posting the Borrower Materials on Intralinks, SyndTrak, ClearPar, Debtdomain or another similar electronic system (the "**Platform**") and (b) certain of the Lenders may have personnel who do not wish to receive any information with respect to Holdings, their Subsidiaries or their respective securities that is not Public-Side Information, and who may be engaged in investment and other market-related activities with respect to such Person's securities (each, a "**Public Lender**"). The Borrower hereby agrees that (i) at the Administrative Agent's request, all Borrower Materials that are to be

made available to Public Lenders will be clearly and conspicuously marked “PUBLIC” which, at a minimum, means that the word “PUBLIC” will appear prominently on the first page thereof; (ii) by marking Borrower Materials “PUBLIC”, the Borrower will be deemed to have authorized the Administrative Agent and the Lenders to treat such Borrower Materials as containing only Public-Side Information (*provided, however*, that to the extent such Borrower Materials constitute Information, they will be treated as set forth in Section 10.09); (iii) all Borrower Materials marked “PUBLIC” and, except to the extent the Borrower notifies the Administrative Agent to the contrary, any Borrower Materials provided pursuant to Sections 6.01(1) and 6.01(2) are permitted to be made available through a portion of the Platform designated as “Public Side Information”; and (iv) the Administrative Agent shall be entitled to treat Borrower Materials that are not specifically identified as “PUBLIC” as being suitable only for posting on a portion of the Platform not designated as “Public Side Information”. Notwithstanding the foregoing, the Borrower shall be under no obligation to mark the Borrower Materials “PUBLIC”.

Anything to the contrary notwithstanding, nothing in this Agreement will require Holdings, the Borrower or any Subsidiary to disclose, permit the inspection, examination or making copies or abstracts of, or discussion of, any document, information or other matter, or provide information (i) that constitutes non-financial trade secrets or non-financial proprietary information, (ii) in respect of which disclosure is prohibited by Law or binding agreement or (iii) that is subject to attorney-client or similar privilege or constitutes attorney work product; *provided* that in the event that the Borrower does not provide information that otherwise would be required to be provided hereunder in reliance on the exclusions in this paragraph relating to violation of any obligation of confidentiality, the Borrower shall use commercially reasonable efforts to provide notice to the Administrative Agent promptly upon obtaining knowledge that such information is being withheld (but solely if providing such notice would not violate such obligation of confidentiality).

SECTION 6.03 Notices. Promptly after a Responsible Officer obtains actual knowledge thereof, notify the Administrative Agent:

- (1) of the occurrence of any Default or Event of Default;
- (2) of (a) any dispute, litigation, investigation or proceeding between any Loan Party and any arbitrator or Governmental Authority, (b) the filing or commencement of, or any material development in, any litigation or proceeding affecting any Loan Party or any of its Subsidiaries, including pursuant to any applicable Environmental Laws or in respect of IP Rights, (c) the occurrence of any violation by any Loan Party or any of its Subsidiaries of, or liability under, any Environmental Law or Environmental Permit, or (d) the occurrence of any ERISA Event; and
- (3) to the extent the Borrower or any Subsidiary responds in writing (itself or through its Affiliates or agents) to a written proposal regarding an Alternative Restructuring.

Each notice pursuant to this Section 6.03 shall be accompanied by a written statement of a Responsible Officer of the Borrower (a) that such notice is being delivered pursuant to Section 6.03(1) or (2) (as applicable) and (b) setting forth details of the occurrence

referred to therein and stating what action the Borrower has taken and proposes to take with respect thereto.

SECTION 6.04 Payment of Obligations. Timely pay, discharge or otherwise satisfy, as the same shall become due and payable, all of its material obligations and liabilities arising after the Petition Date, all material Taxes imposed upon it or upon its income or profits or in respect of its property after the Petition Date, and all material lawful claims for labor, materials and supplies or otherwise arising after the Petition Date which, if unpaid, would become a Lien or charge upon such properties or any part thereof, except, in each case, to the extent (1) any such Tax is being contested in good faith and by appropriate actions for which appropriate reserves have been established in accordance with GAAP or (2) non-payment and discharge thereof is permitted or required under the Bankruptcy Code or order of the Bankruptcy Court.

SECTION 6.05 Preservation of Existence, etc.

(1) Preserve, renew and maintain in full force and effect its legal existence under the Laws of the jurisdiction of its organization; and

(2) take all reasonable action to obtain, preserve, renew and keep in full force and effect its rights, licenses, permits, privileges, franchises, and IP Rights material to the conduct of its business,

except in the case of clause (1) or (2) to the extent (other than with respect to the preservation of the existence of the Borrower) that failure to do so would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect or pursuant to any merger, consolidation, liquidation, dissolution or disposition permitted by Article VII.

SECTION 6.06 Maintenance of Properties. Except if the failure to do so would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, maintain, preserve and protect all of its material properties and equipment used in the operation of its business in good working order, repair and condition, ordinary wear and tear excepted and casualty or condemnation excepted and any repairs and replacements that are the obligation of the owner or landlord of any property leased by the Borrower or any of the Subsidiaries excepted.

SECTION 6.07 Maintenance of Insurance.

(1) Maintain with insurance companies that the Borrower believes (in the good faith judgment of its management) are financially sound and reputable at the time the relevant coverage is placed or renewed, insurance with respect to the Borrower's and the Subsidiaries' properties and business against loss or damage of the kinds customarily insured against by Persons engaged in the same or similar business, of such types and in such amounts (after giving effect to any self-insurance reasonable and customary for similarly situated Persons engaged in the same or similar businesses as the Borrower and the Subsidiaries) as are customarily carried under similar circumstances by such other Persons, and will furnish to the Lenders, upon written request from the Administrative Agent, information presented in reasonable detail as to the insurance so carried; *provided* that notwithstanding the foregoing, in

no event will the Borrower or any Subsidiary be required to obtain or maintain insurance that is more restrictive than its normal course of practice. Subject to Section 6.13, each such policy of insurance will, as appropriate, (i) name the Collateral Agent, on behalf of the Secured Parties, as an additional insured thereunder as its interests may appear or (ii) in the case of each casualty insurance policy, contain an additional loss payable clause or endorsement that names the Collateral Agent, on behalf of the Secured Parties, as the additional loss payee thereunder.

(2) (a) Maintain, or cause to be maintained, flood insurance with respect to the Headquarters sufficient to comply with all applicable rules and regulations promulgated pursuant to the Flood Insurance Laws and (b) upon request of the Collateral Agent, deliver to the Collateral Agent evidence of such flood insurance.

SECTION 6.08 Compliance with Laws. Comply with the requirements of all Laws (including the USA PATRIOT Act, the FCPA, the United Kingdom Bribery Act of 2010 and Sanctions) and comply with all orders, writs, injunctions and decrees of any Governmental Authority applicable to it or to its business or property, except, in each case, if the failure to comply therewith would not reasonably be expected individually or in the aggregate to have a Material Adverse Effect.

SECTION 6.09 Books and Records. Maintain proper books of record and account, in which entries that are full, true and correct in all material respects shall be made of all material financial transactions and matters involving the assets and business of the Borrower or such Subsidiary, as the case may be (it being understood and agreed that certain Foreign Subsidiaries may maintain individual books and records in conformity with generally accepted accounting principles in their respective countries of organization and that such maintenance shall not constitute a breach of the representations, warranties or covenants hereunder).

SECTION 6.10 Inspection Rights. Permit representatives and independent contractors of the Administrative Agent and of one Lender (selected by the Ad Hoc Group) to visit and inspect any of its properties, to examine its corporate, financial and operating records and make copies thereof or abstracts therefrom and to discuss its affairs, finances and accounts with its directors, officers, and independent public accountants (subject to such accountants' customary policies and procedures), all at the reasonable expense of the Borrower and at such reasonable times during normal business hours and as often as may be reasonably desired, upon reasonable advance written notice to the Borrower; *provided* that, absent the existence of an Event of Default, only one such visit of the Administrative Agent and such Lender shall be at the Borrower's expense; *provided, further*, that when an Event of Default exists, the Administrative Agent and such Lender may do any of the foregoing at the expense of the Borrower at any time during normal business hours and upon reasonable advance written notice. The Administrative Agent and such Lender shall give the Borrower the opportunity to participate in any discussions with the Borrower's independent public accountants. For the avoidance of doubt, this Section 6.10 is subject to the last paragraph of Section 6.02.

SECTION 6.11 Covenant to Guarantee Obligations and Give Security. At the Borrower's expense, take all action necessary or reasonably requested by the Administrative Agent or the Ad Hoc Group Advisors to ensure that the Collateral and Guarantee Requirement continues to be satisfied, including, within five days after the formation or acquisition of any

new Subsidiary (other than an Excluded Subsidiary) or at such later date as the Required Lenders have reasonably agreed, causing such Subsidiary to execute a joinder to this Agreement and the other Loan Documents in form and substance reasonably satisfactory to the Required Lenders.

SECTION 6.12 Compliance with Environmental Laws. Except, in each case, to the extent that the failure to do so would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, (1) comply, and take all reasonable actions to cause any lessees and other Persons operating or occupying its properties to comply, with all applicable Environmental Laws and Environmental Permits (including any cleanup, removal or remedial obligations) and (2) obtain and renew all Environmental Permits required to conduct its operations or in connection with its properties.

SECTION 6.13 Further Assurances. Subject to the provisions of the Collateral and Guarantee Requirement and any applicable limitations in any Collateral Document and in each case at the expense of the Borrower, promptly upon reasonable request from time to time by the Administrative Agent or the Collateral Agent or as may be required by applicable Laws, (a) correct any material defect or error that may be discovered in the execution, acknowledgment, filing or recordation of any Collateral Document or other document or instrument relating to any Collateral, and (b) do, execute, acknowledge, deliver, record, re-record, file, re-file, register and re-register any and all such further acts, deeds, certificates, assurances and other instruments as the Administrative Agent or the Collateral Agent may reasonably request from time to time in order to satisfy the Collateral and Guarantee Requirement.

SECTION 6.14 Use of Proceeds. Use the proceeds of the Loans (a) *first*, to reimburse the costs, expenses and fees of Davis Polk & Wardwell LLP and RPA Advisors, LLC (the “**Original Prepetition Advisors**”) in their capacity as counsel and advisor to Goldman Sachs Bank USA, as the administrative agent and collateral agent under the Prepetition First Lien Loan Documents prior to its resignation immediately prior to the Petition Date, and invoiced to the Borrower prior to the Petition Date, in each case after applying all retainers previously provided to the Original Prepetition Advisors, (b) *second*, to repay the then outstanding amount of the Bridge Loans on the Closing Date and (c) *thereafter*, (i) to pay reasonable and documented transaction costs, fees, and out-of-pocket expenses (including, without limitation, professional fees) that are incurred in connection with the Chapter 11 Cases and the Prepetition Facilities (to the extent provided herein and in the DIP Orders), which such payments are, for the avoidance of doubt, not subject to the Budget, (ii) for general working capital and general corporate purposes of the Loan Parties, (iii) to pay fees, interest, and expenses associated with the DIP Facility, and (iv) to make Permitted Adequate Protection Payments; *provided* that, with the exception of the foregoing clauses (a), (b) and (c)(i), the use of any such Loan proceeds at any time shall be in accordance with the Budget (subject to Permitted Variances); *provided, further*, that the foregoing clause (a) may not be amended without the express written consent of the Original Prepetition Advisors, and the Original Prepetition Advisors are an express third party beneficiary solely with respect to Section 6.14(a).

SECTION 6.15 Maintenance of Ratings. Use commercially reasonable efforts to obtain, within 60 days after the Closing Date, and thereafter maintain a public rating (but not any specific rating) in respect of the Loans from each of S&P and Moody’s.

SECTION 6.16 Chapter 11 Cases.

(1) Comply in all material respects with each Chapter 11 Order.

(2) Use its reasonable best efforts to provide the Ad Hoc Group Advisors with drafts of all material pleadings, motions and applications (together with proposed orders attached thereto, as applicable), including all “first day” and “second day” pleadings to be filed in the Chapter 11 Cases, before filing and with reasonable time (except when not possible due to exigent circumstances) for the Ad Hoc Group Advisors to comment thereon and such material pleadings shall not conflict with the terms of this Agreement, the other Loan Documents or the DIP Orders.

SECTION 6.17 Lender Calls. Cause (i) the Debtors’ senior management and legal and financial advisors to be available to conduct a conference call at least once every two calendar weeks and (ii) the Debtors’ legal and financial advisors to be available to conduct a conference call at least once every calendar week, in each case at reasonable times during normal business hours and upon reasonable prior notice, with all Lenders who choose to attend such conference calls to discuss the Budget, the Variance Reports, the Chapter 11 Cases and the financial condition, performance and business affairs of the Debtors.

SECTION 6.18 Cash Management. Maintain cash management systems in accordance with the Cash Management Order.

SECTION 6.19 Restructuring Support Agreement; Asset Purchase Agreement; Milestones.

(1) Comply in all material respects with the Restructuring Support Agreement and the Asset Purchase Agreement, in each case as then in effect after giving effect to any waivers or amendments thereto made in accordance with the requirements of the Restructuring Support Agreement.

(2) Comply with the following milestones (as any such (x) time and date may be extended or (y) content may be modified with the written consent of the Required Lenders (with email from counsel on behalf of the Required Lenders being sufficient)) (each of the following, a “**Milestone**”):

(a) As soon as practicable, but in no event later than the date that is 35 days after the Petition Date, the Bankruptcy Court shall have entered a bid procedures order approving the Stalking Horse Purchaser as the stalking horse bidder (the “**Bid Procedures Order**”), in form and substance consistent with the Restructuring Support Agreement or otherwise reasonably acceptable to the Ad Hoc Group.

(b) As soon as practicable, but in no event later than the date that is 45 days after the Petition Date, the Bankruptcy Court shall have entered the general bar date order, in form and substance consistent with the Restructuring Support Agreement or otherwise reasonably acceptable to the Ad Hoc Group.

(c) As soon as practicable, but in no event later than the date that is

35 days after the Petition Date, the Borrower and its Subsidiaries will begin discussions with a proposed voluntary administrator(s) of Exactech Australia in relation to the Australian Corporate Restructuring, and will promptly provide to the Ad Hoc Group any oral or written feedback provided by the proposed voluntary administrator(s) in connection with the potential voluntary administration process.

(d) As soon as practicable, but in no event later than the date that is 75 days after the Petition Date, the Debtors shall have either (1) reached a settlement in respect of Federal Court of Australia proceedings number NSD1224/2024 and any matters the subject of those proceedings, that is acceptable to the Ad Hoc Group, or (2) appointed one or more voluntary administrators to Exactech Australia to pursue the voluntary administration of Exactech Australia in Australia; *provided* that if at such time, the relevant governing bodies of the Debtors, Exactech International Operation AG, or Exactech Australia determine that such actions are inconsistent with their fiduciary duties based on the advice of external counsel, such Milestone shall be extended through (a) the Bid Deadline (as defined in the Bid Procedures Order) if there are no higher and better bids than the bid of the Stalking Horse Purchaser, or (b) in the event of an Auction (as defined in the Bid Procedures Order), through the date that the Stalking Horse Purchaser is declared the Winning Bidder (as defined in the Bid Procedures Order).

(e) As soon as practicable, but in no event later than the date that is 60 days after the Petition Date, the Debtors and the Ad Hoc Group shall have agreed on a detailed steps plan to effectuate the corporate restructuring of Exactech UK Limited, including a budget and estimate for fees, costs, taxes, and other expenses resulting from any such steps plan (the “**UK Corporate Restructuring Steps Plan**”), in form and substance consistent with the Restructuring Support Agreement or otherwise reasonably acceptable to the Ad Hoc Group.

(f) If the Stalking Horse Purchaser is determined to be the Winning Bidder, subject to the Stalking Horse Purchaser providing the UK Restructuring Funding, the Debtors shall begin to effectuate the UK Corporate Restructuring Steps Plan on the date the Winning Bidder is declared.

(g) As soon as practicable, but in no event later than the date that is 45 days after the Petition Date, the Borrower and the Ad Hoc Group shall jointly commence a proceeding in the Bankruptcy Court to seek a determination that all of the Borrower’s rights and interests (including membership interests and other Equity Interests) in JointMedica can be transferred (and the relevant agreements, including the distribution agreement, can be assumed and assigned) without the consent of JointMedica Investments Holdings, L.P. (or TPG Capital, L.P. or any of its Affiliates asserting that such consent is required) (the “**JV Proceeding**”), and the Required Lenders shall have the requisite standing and right to raise issues and be heard on all issues in such proceeding, including the right to appeal.

(h) As soon as reasonably practicable, but in no event later than the date that is 100 days after the Petition Date, the Bankruptcy Court shall have entered an order approving the disclosure statement (the “**Disclosure Statement Order**”), in form

and substance consistent with the Restructuring Support Agreement or otherwise reasonably acceptable to the Ad Hoc Group.

(i) As soon as reasonably practicable, but in no event later than 15 days after entry of the Disclosure Statement Order, the Debtors shall have commenced solicitation of the Approved Plan.

(j) As soon as reasonably practicable, but in no event later than 150 days after the Petition Date, the Bankruptcy Court shall have entered a sale and confirmation order approving the Approved Sale (or, if applicable, the Approved Alternative Sale) and the Approved Plan (the “**Sale and Confirmation Order**”), in form and substance consistent with the Restructuring Support Agreement or otherwise reasonably acceptable to the Ad Hoc Group.

(k) The effective date of the Approved Plan shall have occurred as soon as reasonably practicable, but in no event later than the Outside Date (as defined in the Restructuring Support Agreement).

SECTION 6.20 JointMedica Process.

(1) To the extent that the Lenders commence a JV Proceeding, use commercially reasonable efforts to support (i) the Lenders’ position in all respects with respect to such JV Proceeding, including by making any and all relevant information available to the Lenders, and (ii) the prosecution of such proceeding on the timeline proposed by the Lenders.

(2) Consult with the Lenders on a regular basis during the Chapter 11 Cases with respect to any strategic, regulatory, and other material transactions (including with respect to any settlements) impacting the Debtors and their material affiliates.

Article VII

Negative Covenants

So long as the Termination Conditions are not satisfied:

SECTION 7.01 Liens. The Borrower shall not, nor shall the Borrower permit any Subsidiary to, directly or indirectly, create, incur or assume any Lien (except any Permitted Lien(s)) that secures obligations under any Indebtedness or any related guarantee of Indebtedness on any asset or property of the Borrower or any Subsidiary, or any income or profits therefrom.

The expansion of Liens by virtue of accretion or amortization of original issue discount, the payment of dividends in the form of Indebtedness, and increases in the amount of Indebtedness outstanding solely as a result of fluctuations in the exchange rate of currencies will not be deemed to be an incurrence of Liens for purposes of this Section 7.01.

SECTION 7.02 Indebtedness.

(a) The Borrower shall not, nor shall the Borrower permit any Subsidiary to, directly or indirectly:

(i) create, incur, issue, assume, guarantee or otherwise become directly or indirectly liable, contingently or otherwise (collectively, “incur” and collectively, an “incurrence”) with respect to any Indebtedness, or

(ii) issue any shares of Disqualified Stock or permit any Subsidiary to issue any shares of Disqualified Stock or Preferred Stock.

(b) The provisions of Section 7.02(a) will not apply to:

(1) Indebtedness under the Loan Documents;

(2) Indebtedness under the Prepetition Loan Documents;

(3) the incurrence of Indebtedness by the Borrower and any Subsidiary in existence on the Closing Date (excluding Indebtedness described in the preceding clauses (1) and (2)) as set forth on Schedule 7.02;

(4) the incurrence of Indebtedness (including Capitalized Lease Obligations) by the Borrower or any Subsidiary to finance the purchase, lease, expansion, construction, installation, replacement, repair or improvement of property (real or personal), equipment or other fixed assets, whether through the direct purchase of assets or the Capital Stock of any Person owning such assets in an aggregate principal amount, together with any Refinancing Indebtedness in respect thereof (and all other Indebtedness outstanding under this clause (4) at such time), not to exceed \$2,500,000 (as of the date such Indebtedness is incurred);

(5) Indebtedness incurred by the Borrower or any Subsidiary (a) constituting reimbursement obligations with respect to letters of credit, bank guarantees, banker’s acceptances, warehouse receipts, or similar instruments issued or entered into, or relating to obligations or liabilities incurred, in the ordinary course of business or consistent with industry practice in respect of workers’ compensation claims, performance, completion or surety bonds, health, disability or other employee benefits or property, casualty or liability insurance or self-insurance, unemployment insurance or other social security legislation or other Indebtedness with respect to reimbursement-type obligations regarding workers’ compensation claims, performance, completion or surety bonds, health, disability or other employee benefits or property, casualty or liability insurance or self-insurance or (b) as an account party in respect of letters of credit, bank guarantees or similar instruments in favor of suppliers, trade creditors or other similar third-party Persons issued or

incurred in the ordinary course of business or consistent with industry practice;

(6) Indebtedness in the form of license payments arising under that certain License Agreement, dated as of March 13, 2023, among Advata Inc. and the Borrower in an aggregate amount not to exceed \$885,000 (the “**Permitted Advata License Obligations**”);

(7) the incurrence of Indebtedness by the Borrower and owing to a Subsidiary Guarantor; *provided* that any subsequent issuance or transfer of any Capital Stock or any other event that results in any such Subsidiary ceasing to be a Subsidiary or any other subsequent transfer of any such Indebtedness (except to the Borrower or another Subsidiary or any pledge of such Indebtedness or Disqualified Stock constituting a Permitted Lien) will be deemed, in each case, to be an incurrence of such Indebtedness (to the extent such Indebtedness is then outstanding) not permitted by this clause (7);

(8) the incurrence of Indebtedness of a Subsidiary owing to the Borrower or a Subsidiary Guarantor; *provided* that any subsequent issuance or transfer of any Capital Stock or any other event which results in any such Subsidiary ceasing to be a Subsidiary or any such subsequent transfer of any such Indebtedness (except to the Borrower or a Subsidiary or any pledge of such Indebtedness constituting a Permitted Lien) will be deemed, in each case, to be an incurrence of such Indebtedness (to the extent such Indebtedness is then outstanding) not permitted by this clause (8);

(9) [reserved];

(10) [reserved];

(11) the incurrence of obligations in respect of self-insurance and obligations in respect of performance, bid, appeal and surety bonds and performance, banker’s acceptance facilities and completion guarantees and similar obligations provided by the Borrower or any Subsidiary or obligations in respect of letters of credit, bank guarantees or similar instruments related thereto, in each case in the ordinary course of business or consistent with industry practice, including those incurred to secure health, safety and environmental obligations;

(12) [reserved];

(13) [reserved];

(14) [reserved];

(15) the incurrence of Indebtedness arising from the honoring by

a bank or other financial institution of a check, draft or similar instrument drawn against insufficient funds in the ordinary course of business or consistent with industry practice;

(16) [reserved];

(17) the incurrence of any guarantee by the Borrower or a Subsidiary of Indebtedness or other obligations of the Borrower or any Subsidiary Guarantor so long as the incurrence of such Indebtedness or other obligations incurred by the Borrower or such Subsidiary Guarantor is permitted by this Agreement;

(18) [reserved];

(19) customer deposits and advance payments received in the ordinary course of business or consistent with industry practice from customers for goods and services purchased in the ordinary course of business or consistent with industry practice;

(20) the incurrence of Indebtedness owed to banks and other financial institutions incurred in the ordinary course of business or consistent with industry practice in connection with ordinary banking arrangements to manage cash balances of the Borrower and its Subsidiaries (including short-term pooling and similar intercompany arrangements in respect of accounts held by Foreign Subsidiaries);

(21) [reserved];

(22) the incurrence of Indebtedness of the Borrower or any Subsidiary consisting of (a) the financing of insurance premiums or (b) take-or-pay obligations contained in supply arrangements in each case, incurred in the ordinary course of business or consistent with industry practice;

(23) [reserved];

(24) the incurrence of Indebtedness by the Borrower or any Subsidiary undertaken in connection with cash management (including netting services, automatic clearinghouse arrangements, overdraft protections, employee credit card programs and related or similar services or activities) with respect to the Borrower, any Subsidiaries or any joint venture in the ordinary course of business or consistent with industry practice, including with respect to financial accommodations of the type described in the definition of Cash Management Services;

(25) [reserved];

(26) guarantees incurred in the ordinary course of business or consistent with industry practice in respect of obligations to suppliers, customers, franchisees, lessors, licensees, sub-licensees and distribution partners;

(27) [reserved];

(28) the incurrence of Indebtedness representing deferred compensation to employees of the Borrower or any Subsidiary, including Indebtedness consisting of obligations under deferred compensation or any other similar arrangements incurred in connection with the Transactions, any investment or any acquisition (by merger, consolidation or amalgamation or otherwise) permitted under this Agreement;

(29) [reserved];

(30) [reserved];

(31) [reserved];

(32) any intercompany Indebtedness incurred by Foreign Subsidiaries in connection with the transactions described in Section 7.07(2)(a); and

(33) all premiums (if any), interest (including post-petition interest), fees, expenses, charges and additional or contingent interest on obligations described in clauses (1) through (32) above.

(c) For purposes of determining compliance with this Section 7.02:

(1) the principal amount of Indebtedness outstanding under any clause of this Section 7.02 will be determined after giving effect to the application of proceeds of any such Indebtedness to refinance any such other Indebtedness; and

(2) guarantees of, or obligations in respect of letters of credit relating to, Indebtedness that are otherwise included in the determination of a particular amount of Indebtedness will not be included in the determination of such amount of Indebtedness; *provided* that the incurrence of the Indebtedness represented by such guarantee or letter of credit, as the case may be, was incurred in compliance with this Section 7.02.

SECTION 7.03 Fundamental Changes. The Borrower shall not, nor shall the Borrower permit any Subsidiary to, consolidate, amalgamate or merge with or into or wind up into another Person, or liquidate or dissolve 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 (other than as part of the Transactions), except that:

(1) Holdings or any Subsidiary may merge or consolidate with the Borrower (including a merger, the purpose of which is to reorganize the Borrower into a new jurisdiction); *provided* that:

- (a) the Borrower shall be the continuing or surviving Person,
- (b) such merger or consolidation does not result in the Borrower ceasing to be organized under the Laws of the United States, any state thereof or the District of Columbia and
- (c) in the case of a merger or consolidation of Holdings with and into the Borrower,
 - (i) Holdings shall not be an obligor in respect of any Indebtedness that is not permitted to be Indebtedness of the Borrower under this Agreement,
 - (ii) Holdings shall have no direct Subsidiaries at the time of such merger or consolidation other than the Borrower,
 - (iii) no Event of Default exists at such time or after giving effect to such transaction and
 - (iv) after giving effect to such transaction, a direct parent of the Borrower will (A) expressly assume all the obligations of Holdings under this Agreement and the other Loan Documents to which Holdings is a party pursuant to a supplement hereto or thereto in form reasonably satisfactory to the Administrative Agent (acting at the Direction of the Required Lenders) and the Borrower and (B) pledge 100% of the Equity Interests of the Borrower held by such direct parent to the Administrative Agent as Collateral to secure the Obligations in form reasonably satisfactory to the Administrative Agent (acting at the Direction of the Required Lenders) and the Borrower;

(2) (a) any Subsidiary that is not a Loan Party may merge or consolidate with or into any other Subsidiary that is not a Loan Party,

(b) any Subsidiary may merge or consolidate with or into any other Subsidiary that is a Loan Party; *provided* that a Loan Party shall be the continuing or surviving Person; and

(c) any merger the sole purpose of which is to reincorporate or reorganize a Loan Party or Subsidiary in another jurisdiction in the United States will be permitted;

(3) any Subsidiary may dispose of all or substantially all of its assets (upon voluntary liquidation or otherwise) to the Borrower or a Subsidiary Guarantor;

(4) [reserved];

(5) [reserved];

(6) [reserved];

(7) a merger, dissolution, liquidation, consolidation or disposition, the purpose of which is to effect a disposition permitted pursuant to Section 7.04 or a disposition that does not constitute any Asset Sale (other than a transaction described in clause (b) of the definition of Asset Sale);

(8) the Borrower, Holdings and any Subsidiary may (a) convert into a corporation, partnership, limited partnership, limited liability company or trust organized or existing under the laws of the jurisdiction of organization of the Borrower or the laws of a jurisdiction in the United States and (b) change its name; and

(9) the Loan Parties and the Subsidiaries may consummate the Transactions.

SECTION 7.04 Asset Sales. The Borrower shall not, nor shall the Borrower permit any Subsidiary to, consummate any Asset Sale unless (A) such Asset Sale is an Approved Sale or an Approved Alternative Sale or (B) (i) the Borrower or such Subsidiary, as the case may be, receives consideration (including by way of relief from, or by any other Person assuming responsibility for, any liabilities, contingent or otherwise in connection with such Asset Sale) at least equal to the fair market value (measured at the time of contractually agreeing to such Asset Sale) of the assets sold or otherwise disposed of, (ii) any such Asset Sale, taken together with all other Asset Sales after the Closing Date, does not exceed \$1,000,000 in the aggregate and (iii) at least 75.0% of the consideration for such Asset Sale is in the form of cash or Cash Equivalents.

Notwithstanding anything herein to the contrary, except for the pledge under the Collateral Documents, the Loan Parties and their Subsidiaries shall not sell, convey, transfer or otherwise dispose of any Equity Interests of JointMedica owned by the Loan Parties and their Subsidiaries from time to time.

To the extent any Collateral is disposed of as expressly permitted by this Section 7.04 to any Person other than a Loan Party, such Collateral shall automatically be sold free and clear of the Liens created by the Loan Documents, and, if requested by the Administrative Agent, upon the certification by the Borrower that such disposition is permitted by this Agreement, the Administrative Agent and the Collateral Agent shall be authorized to take any actions deemed appropriate in order to effect the foregoing.

SECTION 7.05 Restricted Payments. The Borrower shall not, nor shall the Borrower permit any Subsidiary to, directly or indirectly:

(A) declare or pay any dividend or make any payment or distribution on account of the Borrower's or any Subsidiary's Equity Interests (in each case, solely in such Person's capacity as holder of such Equity Interests), including any

dividend or distribution payable in connection with any merger, amalgamation or consolidation, other than:

(i) dividends, payments or distributions payable solely in Equity Interests (other than Disqualified Stock) of the Borrower or in options, warrants or other rights to purchase such Equity Interests;

(ii) dividends, payments or distributions by a Subsidiary so long as, in the case of any dividend, payment or distribution payable on or in respect of any class or series of securities issued by a Subsidiary other than a wholly owned Subsidiary, the Borrower or a Subsidiary receives at least its pro rata share of such dividend, payment or distribution in accordance with its Equity Interests in such class or series of securities or such other amount to which it is entitled pursuant to the terms of such Equity Interest;

(iii) board payments for the three independent board members of the Board of Directors of the HoldCo Debtors paid only when due under the relevant engagement agreements in an aggregate amount up to \$160,000;

(iv) franchise, excise and similar Taxes and other fees and expenses of the HoldCo Debtors required to maintain their corporate or other legal existence; or

(v) for any taxable period (or portion thereof) for which the Borrower or any of its Subsidiaries are members of a consolidated, combined, unitary or similar Tax group for U.S. federal or applicable foreign, state or local tax purposes of which a HoldCo Debtor is the common parent (a “**Tax Group**”), to pay the portion of any U.S. federal, foreign, state or local Taxes (as applicable) of such Tax Group for such taxable period that are attributable to the taxable income of the Borrower and/or the applicable Subsidiaries; *provided* that for each taxable period, the amount of such payments made in respect of such taxable period in the aggregate will not exceed the amount that the Borrower and the applicable Subsidiaries, as applicable, would have been required to pay in respect of such taxable income as stand-alone taxpayers or a stand-alone Tax Group; *provided, further*, that in no event shall payments under this Section 7.05(A)(v) be greater than as these amounts are set forth in the Budget (subject to Permitted Variances);

(B) purchase, redeem, defease or otherwise acquire or retire for value any Equity Interests of the Borrower or any Parent Company, including in connection with any merger, amalgamation or consolidation, in each case held by Persons other than the Borrower or a Subsidiary;

(C) make any principal payment on, or redeem, repurchase, defease or otherwise acquire or retire for value, in each case, prior to any scheduled repayment, sinking fund payment or final maturity, any Junior Indebtedness; or

(D) make any Restricted Investment

(all such payments and other actions set forth in clauses (A) through (D) above being collectively referred to as “**Restricted Payments**”).

SECTION 7.06 Change in Nature of Business. The Borrower shall not, nor shall the Borrower permit any Subsidiary to, engage in any material line of business substantially different from those lines of business conducted by the Borrower and the Subsidiaries on the Closing Date or any business(es) or any other activities that are reasonably similar, ancillary, incidental, complementary or related to, or a reasonable extension, development or expansion of, the business conducted or proposed to be conducted by the Borrower and the Subsidiaries on the Closing Date.

SECTION 7.07 Transactions with Affiliates.

(1) The Borrower shall not, nor shall the Borrower permit any Subsidiary to, make any payment to, or sell, lease, transfer or otherwise dispose of any of its properties or assets to, or purchase any property or assets from, or enter into or make or amend any transaction, contract, agreement, understanding, loan, advance or guarantee with, or for the benefit of, any Affiliate of the Borrower (each of the foregoing, an “**Affiliate Transaction**”).

(2) The prohibitions of Section 7.07(1) will not prohibit:

(a) (i) intercompany advances by the Borrower or any Subsidiary to Exactech International Operation AG in the ordinary course of business and consistent with past practice and in an aggregate amount not to exceed \$125,000 per calendar month, (ii) intercompany advances by the Borrower or any Subsidiary to Blue Ortho SAS in the ordinary course of business and consistent with past practice and in an aggregate amount not to exceed \$1,225,000 per calendar month, (iii) intercompany advances by the Borrower or any Subsidiary to Exactech Iberica, S.L.U. on terms consistent with past practice and in an aggregate amount not to exceed \$750,000, (iv) extensions of credit by the Borrower or any Subsidiary to any other Foreign Subsidiaries on terms consistent with past practice and in an aggregate principal amount not to exceed \$500,000 with the written consent of the Required Lenders (with email from counsel on behalf of the Required Lenders being sufficient), and (v) intercompany advances among the Borrower and the Subsidiary Guarantors;

(b) any payment of compensation or other employee compensation, benefit plan or arrangement, any health, disability or similar insurance plan which covers current, former or future officers, directors, employees, managers, consultants and independent contractors of the Borrower or any Subsidiary, in each case in the ordinary course of business and consistent with past practice and made in accordance with the Budget (subject to Permitted Variances) and the Restructuring Support Agreement;

(c) transactions with customers, clients, suppliers, contractors, joint venture partners or purchasers or sellers of goods or services, or transactions otherwise relating to the purchase or sale of goods or services, in each case in the ordinary course of business or consistent with industry practice and made in accordance with the Budget (subject to Permitted Variances) and otherwise in compliance with the terms of this Agreement and the Restructuring Support Agreement that are fair to the Borrower and the Restricted Subsidiaries, in the reasonable determination of the Board of Directors or the senior management of the Borrower, or are on terms at least as favorable as might reasonably have been obtained at such time from an unaffiliated party;

(d) payments to or from, and transactions with, any joint venture (including any cash management activities related thereto) with the written consent of the Required Lenders (with email from counsel on behalf of the Required Lenders being sufficient); and

(e) payments made pursuant to Sections 7.05(A)(iii), (iv) and (v).

(3) Notwithstanding anything herein to the contrary, the Borrower and its Subsidiaries shall not, directly or indirectly, (x) provide any financial accommodation to or other Investment in, or make any other payment to, Exactech Australia, including, without limitation, the provision of equity funding, debt funding, letters of comfort, guarantees or any other arrangement which achieves the same or similar commercial effect, without the prior written consent of the Required Lenders (with email from counsel on behalf of the Required Lenders being sufficient) or (y) make any Restricted Payment or other payment to the HoldCo Debtors, except in accordance with Sections 7.05(A)(iii), (iv) and (v).

SECTION 7.08 [Reserved].

SECTION 7.09 Accounting Changes. The Borrower shall not, nor shall the Borrower permit any Subsidiary to, make any change in fiscal year without the prior written consent of the Administrative Agent (acting at the Direction of the Required Lenders).

SECTION 7.10 Modification of Material Documents. The Borrower shall not, nor shall the Borrower permit any Subsidiary to, amend, modify or change in any manner materially adverse to the interests of the Lenders (i) any Organizational Documents of any Loan Party, except as required by the Bankruptcy Code or the Approved Plan consistent with the Restructuring Support Agreement, or (ii) any material term or material amount owed under a material real property lease or material contract, in each case without obtaining the prior written consent of the Required Lenders. The Borrower shall not, nor shall the Borrower permit any Subsidiary to, amend, modify or change in any manner any of the Prepetition Sidecar Loan Documents.

SECTION 7.11 Holding Companies. Holdings and the HoldCo Debtors shall not engage in any material operating or business activities; *provided* that the following and any activities incidental thereto shall be permitted in any event:

(a) ownership of the Equity Interests of the applicable HoldCo Debtor, Holdings, the Borrower and its Subsidiaries, including receipt and payment of Restricted Payments and other amounts in respect of Equity Interests,

(b) the maintenance of their legal existence (including the ability to incur and pay, as applicable, fees, costs and expenses and Taxes relating to such maintenance),

(c) the performance of their obligations with respect to the Transactions, the Loan Documents and any other documents governing Indebtedness permitted hereby,

(d) [reserved],

(e) making contributions to the capital of their Subsidiaries and guaranteeing the obligations of the Borrower and its Subsidiaries expressly permitted hereunder,

(f) if applicable, participating in Tax, accounting and other administrative matters as a member of the consolidated group and the provision of administrative and advisory services (including treasury and insurance services) to their Subsidiaries of a type customarily provided by a holding company to its Subsidiaries,

(g) in the case of Holdings, holding any cash or property (but not operating any property),

(h) providing indemnification to officers and directors,

(i) [reserved],

(j) [reserved],

(k) [reserved],

(l) any transaction with the Borrower and/or any Subsidiary to the extent expressly permitted under this Article VII, and

(m) any activities incidental or reasonably related to the foregoing.

SECTION 7.12 Minimum Liquidity. The Borrower shall not permit Liquidity, as of the Friday of every week, commencing on November 1, 2024, to be less than \$10,000,000, as evidenced by the relevant liquidity certificate delivered pursuant to Section 6.01(c).

SECTION 7.13 Chapter 11 Claims; Adequate Protection. Except as provided in the DIP Order, the Borrower shall not, nor shall the Borrower permit any Subsidiary to, incur, create, assume, suffer to exist or permit (i) any administrative expense, unsecured claim, or other super-priority claim or Lien that is pari passu with or senior to the claims of the

Secured Parties against the Loan Parties hereunder, or apply to the Bankruptcy Court for authority to do so, except for the Carve-Out or any Permitted Priority Liens, or (ii) any obligation to make adequate protection payments, or otherwise provide adequate protection, other than Permitted Adequate Protection Payments. The Loan Parties shall oppose any motion from the Prepetition Sidecar Agent or any Prepetition Sidecar Lender seeking approval of adequate protection beyond the adequate protection payments set forth in the DIP Orders.

SECTION 7.14 Chapter 11 Orders. The Borrower shall not, nor shall the Borrower permit any Subsidiary to, make or permit to be made any material change, amendment or modification, or any application or motion for any change, amendment or modification, to any Chapter 11 Order that is inconsistent with the Restructuring Support Agreement.

SECTION 7.15 Chapter 11 Cases. The Loan Parties shall not (a) assume or reject any executory contract or unexpired lease except to the extent such assumption or rejection is consistent with the Restructuring Support Agreement and the consent rights set forth therein, or (b) consent to termination or reduction of the Exclusivity Period or fail to object to any motion seeking to terminate or reduce the Exclusivity Period other than a motion filed by or with the consent of the Required Lenders. No Loan Party shall seek or consent to any modification, stay, vacation, amendment or other modification of the Sale and Confirmation Order without the prior consent of the Required Lenders.

SECTION 7.16 Use of Proceeds and Cash Collateral. No part of the proceeds of any Loan or the Collateral, including cash collateral, will be used, whether directly or indirectly, (a) in any manner that causes or could reasonably be expected to cause such Loan or the application of such proceeds to violate the Regulations of the Board, including Regulation T, Regulation U and Regulation X, or any other regulation thereof, or to violate the Securities Exchange Act, (b) for any purpose that is prohibited under the Bankruptcy Code or the DIP Orders, (c) to finance or reimburse expenses incurred or to be incurred, directly or indirectly, to prosecute any adversary action, suit, arbitration, proceeding, application, motion or other litigation of any type adverse to the interests of any or all of the Prepetition First Lien Agent, the Prepetition First Lien Lenders, or their respective rights and remedies under this Agreement, the DIP Orders or the Prepetition First Lien Credit Agreement, (d) to make any payment in settlement of any claim, action or proceeding before any court, arbitrator or other governmental body unless such payment is made in accordance with the Budget (subject to Permitted Variances) (including with respect to any insurance proceeds), (e) for the payment of fees, expenses, interest or principal with respect to the Prepetition Obligations (other than Permitted Adequate Protection Payments), (f) for any distribution under a Chapter 11 Plan that is not an Approved Plan, (g) for any distribution under an Approved Plan to the HoldCo Debtors (that are liabilities of the HoldCo Debtors only) or (h) for the investigation (including discovery proceedings), initiation or prosecution of any claims, causes of action, adversary proceedings, or other litigation to determine (x) the amount, validity, perfection or priority of any security interest in favor of the Lenders or the Prepetition First Lien Lenders or (y) the amount, validity or enforceability of the obligations of the Loan Parties under this Agreement or the Prepetition First Lien Credit Agreement or any guarantees thereof against the Prepetition First Lien Agent, the Prepetition First Lien Lenders, the Agents or the Lenders, other than up to \$50,000 in connection with the investigation by the Official Committee, if any, within the challenge period as set forth in the Interim Order, of claims, causes of action, adversary proceedings or other

litigation against the Prepetition First Lien Agent or the Prepetition First Lien Lenders solely concerning the amount, validity, enforceability, perfection, priority, or extent of the liens securing the Prepetition First Lien Obligations. Nothing herein shall in any way prejudice or prevent the Administrative Agent or any of the Lenders from objecting, for any reason, to any requests, motions, or applications made in the Bankruptcy Court, including any application of final allowances of compensation for services rendered or reimbursement of expenses incurred under Sections 105(a), 330 or 331 of the Bankruptcy Code, by any party in interest (and each such order shall preserve the Administrative Agent's and the Lenders' right to review and object to any such requests, motions or applications). Nothing herein shall limit the use of proceeds of any Loan to dispute whether an Event of Default exists and is continuing; *provided* that if such dispute is determined to be unsuccessful by a final and non-appealable judgment of the Bankruptcy Court, the use of proceeds for such dispute shall be deemed prohibited by this Section 7.16.

SECTION 7.17 Additional Restrictions. Without limiting the restrictions set forth in Sections 7.01 through 7.16 above, the Loan Parties shall not:

(a) pay prepetition Indebtedness, except for (i) payments contemplated by this Agreement, the DIP Orders or the Budget (subject to Permitted Variances), (ii) payments authorized by an order of the Bankruptcy Court that is materially consistent with the Restructuring Support Agreement or otherwise in form and substance reasonably acceptable to the Required Lenders, (iii) adequate protection payments as set forth in the DIP Orders and (iv) payments of Permitted Advata License Obligations when due in accordance with the Budget (subject to Permitted Variances);

(b) engage in any activities that would result in any of the Debtors becoming an "investment company" as defined in, or subject to regulation under, the Investment Company Act of 1940;

(c) make any Restricted Payment or other direct or indirect payment to, or incur obligations on behalf of, or transfer any cash or Cash Equivalents that constitute Collateral to, (i) the Investor or any subsidiary or other affiliate of Investor that is not a Debtor (excluding, for the avoidance of doubt, any Subsidiary of the Borrower that is not a Debtor) or (ii) any current or former direct or indirect equity holder of Holdings or any Affiliate thereof, including but not limited to payment for the engagement of financial, legal or other advisors for such parties and payment of existing obligations of or owed to such parties, in each case except for line item disbursements specifically provided for in the Budget, as expressly permitted by the Restructuring Support Agreement, or otherwise with the prior written consent of the Required Lenders;

(d) make any direct or indirect payment to any current or former directors, officers or employees with respect to any bonus, retention, incentive or severance payment, deferred compensation, payments in connection with any key employee incentive program or key employee retention program, or similar arrangement (regardless of "insider" status), or enter into, implement, waive, supplement or amend any agreement with respect thereto, in each case except for line-item disbursements specifically provided for in the Budget, as expressly permitted by the Restructuring

Support Agreement, or otherwise with the prior written consent of the Required Lenders;
or

(e) change the calculation of the Commission Amounts under the Budget (i) in the case of sales commissions, from the calculation thereof prior to the Closing Date in the ordinary course of business and consistent with past practice and (ii) in the case of commission bridge payments, from the agreed formula reflected in the Initial Budget (capped at 90% of the planned sale budget).

Article VIII

Events of Default and Remedies

SECTION 8.01 Events of Default. Each of the events referred to in this Section 8.01 shall constitute an “**Event of Default**”:

(1) Non-Payment. The Borrower fails to pay (a) when and as required to be paid herein, any amount of principal of any Loan or (b) within five (5) Business Days after the same becomes due, any interest on any Loan or any other amount payable hereunder or with respect to any other Loan Document; or

(2) Specific Covenants. The Borrower, any Subsidiary Guarantor or, in the case of Section 7.11, Holdings or any HoldCo Debtor fails to perform or observe any term, covenant or agreement contained in Section 6.01, 6.03(1), 6.05(1) (solely with respect to the Borrower), 6.11, 6.14, 6.16, 6.18, 6.19 or 6.20 or Article VII; or

(3) Other Defaults. The Borrower or any Subsidiary Guarantor fails to perform or observe any other covenant or agreement (not specified in Section 8.01(1) or (2) above) contained in any Loan Document on its part to be performed or observed and such failure continues for fifteen (15) days after receipt by the Borrower of written notice thereof from the Administrative Agent; or

(4) Representations and Warranties. Any representation, warranty, certification or statement of fact made or deemed made by any Loan Party herein, in any other Loan Document, or in any document required to be delivered in connection herewith or therewith shall be untrue in any material respect when made or deemed made; or

(5) Cross-Default. The Borrower or any Subsidiary (a) fails to make any payment beyond the applicable grace period, if any, whether by scheduled maturity, required prepayment, acceleration, demand, or otherwise, in respect of any Indebtedness (other than Indebtedness hereunder) incurred after the Petition Date having an aggregate outstanding principal amount (individually or in the aggregate with all other Indebtedness as to which such a failure shall exist) of not less than the Threshold Amount, or (b) fails to observe or perform any other agreement or condition relating to any such Indebtedness, or any other event occurs (other than, with respect to Indebtedness consisting of Hedging Obligations, termination events or equivalent events pursuant to the terms of such Hedging Obligations and not as a result of any default thereunder by the Borrower or any Subsidiary), the effect of which default or other event is to cause, or to permit the holder or holders of such Indebtedness (or a trustee or agent on

behalf of such holder or holders or beneficiary or beneficiaries) to cause, with the giving of notice if required, such Indebtedness to become due or to be repurchased, prepaid, defeased or redeemed (automatically or otherwise), or an offer to repurchase, prepay, defease or redeem all of such Indebtedness to be made, prior to its stated maturity; *provided* that (A) such failure is unremedied and is not waived by the holders of such Indebtedness prior to any termination of the Commitments or acceleration of the Loans pursuant to Section 8.02 and (B) this clause (5)(b) shall not apply to secured Indebtedness that becomes due as a result of the voluntary sale or transfer of the property or assets securing such Indebtedness, if such sale or transfer is permitted hereunder and under the documents providing for such Indebtedness; or

(6) [Reserved].

(7) Judgments. There is entered against the Borrower, or any Subsidiary, a final non-appealable judgment and order for the payment of money in an aggregate amount exceeding the Threshold Amount (to the extent not paid or covered by insurance or indemnities as to which the insurer or indemnifying party has been notified of such judgment or order and the applicable insurance company or indemnifying party has not denied coverage thereof) and such judgment or order shall not have been satisfied, vacated, discharged or stayed or bonded pending an appeal for a period of thirty (30) consecutive days unless such judgment, order or award is subject to the automatic stay under Section 362 of the Bankruptcy Code; or

(8) ERISA. (a) An ERISA Event occurs with respect to a Pension Plan or Multiemployer Plan, (b) the Borrower or any Subsidiary Guarantor or any of their respective ERISA Affiliates fails to pay when due, after the expiration of any applicable grace period, any installment payment with respect to its Withdrawal Liability under Section 4201 of ERISA under a Multiemployer Plan, or (c) with respect to a Foreign Plan, a termination, withdrawal or non-compliance with applicable Law or plan terms occurs, except, with respect to each of the foregoing clauses of this Section 8.01(8), as would not reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect; or

(9) Invalidity of Loan Documents. Any material provision of the Loan Documents, taken as a whole, at any time after its execution and delivery and for any reason (other than (a) as expressly permitted by a Loan Document (including as a result of a transaction permitted under Section 7.03 or 7.04), (b) as a result of acts or omissions by an Agent or any Lender or (c) due to the satisfaction in full of the Termination Conditions) ceases to be in full force and effect, or any Loan Party contests in writing the validity or enforceability of the Loan Documents, taken as a whole (other than as a result of the satisfaction of the Termination Conditions), or any Loan Party denies in writing that it has any or further liability or obligation under the Loan Documents, taken as a whole (other than (i) as expressly permitted by a Loan Document (including as a result of a transaction permitted under Section 7.03 or 7.04) or (ii) as a result of the satisfaction of the Termination Conditions), or purports in writing to revoke or rescind the Loan Documents, taken as a whole, prior to the satisfaction of the Termination Conditions; or

(10) Collateral Documents. The DIP Orders, together with the Loan Documents, shall cease to create a valid and perfected Lien on the Collateral with such priority required by this Agreement; or

(11) Change of Control. There occurs any Change of Control (except as contemplated by the DIP Orders or the Restructuring Support Agreement); or

(12) Termination of the Restructuring Support Agreement or Asset Purchase Agreement. The termination of (i) the Restructuring Support Agreement as a result of the occurrence of a Consenting Lender Termination Event or (ii) the Asset Purchase Agreement as a result of the occurrence of a Consenting Lender Termination Event; or

(13) Milestones. The failure of the Borrower to satisfy any of the Milestones, unless such Milestone is satisfied prior to delivery of a notice to the Borrower from the Required Lenders notifying the Borrower of the failure to meet the Milestone, or waived or extended by the Required Lenders (with email from counsel on behalf of the Required Lenders being sufficient); or

(14) Budget Event. There occurs any Budget Event; or

(15) The Chapter 11 Cases.

(i) A Final Order shall not have been entered by the Bankruptcy Court on or before the date that is 35 days after the entry of the Interim Order, which Final Order shall be in full force and effect and shall not have been vacated, reversed, modified, amended or stayed in any respect without prior consent of the Required Lenders;

(ii) Any Chapter 11 Cases shall be dismissed (or the Bankruptcy Court shall make a ruling requiring the dismissal of any Chapter 11 Case), suspended or converted to a case under chapter 7 of the Bankruptcy Code, or any Loan Party shall file any pleading requesting any such relief; or a motion shall be filed by any Loan Party for the approval of, or there shall arise, (i) any other Claim having priority senior to or pari passu with the claims of the Agents and the Lenders under the Loan Documents or any other claim having priority over any or all administrative expenses of the kind specified in clause (b) of Section 503 or clause (b) of Section 507 of the Bankruptcy Code (other than the Carve-Out) or (ii) any Lien on the Collateral having a priority senior to or pari passu with the Liens and security interests granted herein, except as expressly provided in the DIP Order;

(iii) Any Loan Party files a motion in the Chapter 11 Cases to obtain additional or replacement financing from a party other than the Lenders under Section 364(d) of the Bankruptcy Code (unless (x) such additional or replacement financing provides for the repayment in full in cash of all Obligations (including, without limitation, the Exit Premium and the Backstop Commitment Premium) and (y) such repayment occurs on or before the earlier of 23 days after the filing of such motion and two Business Days after the entry of an order of the Bankruptcy Court approving such additional or replacement financing) or to use cash collateral of the Lenders under Section 363(c) of the Bankruptcy Code, except with the express written consent of the Required Lenders (it being understood that, in any event, the Lenders shall retain and hereby reserve all rights and objections relating to any such motion);

(iv) Any Loan Party shall file a motion seeking, or the Bankruptcy Court shall enter, an order (i) approving payment of any pre-petition Claim (or the Loan Parties shall otherwise make a payment on any prepetition Claim) other than (x) as provided for in a “first day order” and included in the Budget (subject to Permitted Variances) or (y) otherwise consented to by the Required Lenders in writing, (ii) granting relief from the automatic stay applicable under Section 362 of the Bankruptcy Code to any holder of any security interest to permit foreclosure on any assets having a book value in excess of \$1,000,000 in the aggregate or to permit other actions that would have a material adverse effect on the Loan Parties or their estates, or (iii) approving any settlement or other stipulation not approved by the Required Lenders and not included in the Budget (subject to Permitted Variances) with any secured creditor of any Loan Party providing for payments as adequate protection or otherwise to such secured creditor;

(v) (A) Any Chapter 11 Order shall be amended, supplemented, stayed, reversed, vacated or otherwise modified in any material respect (or any Loan Party shall apply for authority to do so) in a manner that is inconsistent with the Restructuring Support Agreement without the written consent of the Required Lenders (or any Loan Party shall file, or otherwise support, any pleading seeking such relief described in this subparagraph) or (B) any Chapter 11 Order shall cease to be in full force and effect;

(vi) Any of the Loan Parties shall fail to comply with any material term, provision or conditions of the DIP Orders or any other Chapter 11 Order;

(vii) The Bankruptcy Court shall enter an order appointing a trustee under chapter 7 or chapter 11 of the Bankruptcy Code, or a responsible officer or an examiner with expanded powers relating to the operation of the business (powers beyond those set forth in subclauses (3) and (4) of clause (a) of Section 1106 of the Bankruptcy Code) under clause (b) of Section 1106 of the Bankruptcy Code in the Chapter 11 Cases (or any Loan Party shall file, or otherwise support, any pleading seeking such relief described in this subparagraph);

(viii) Entry of an order by the Bankruptcy Court terminating or modifying the exclusive right of any Debtor to file a Chapter 11 Plan pursuant to section 1121 of the Bankruptcy Code, without the prior written consent of the Required Lenders;

(ix) The Loan Parties or any of their Affiliates shall support (in any such case by way of any motion or other pleading filed with the Bankruptcy Court or any other writing to another party-in-interest executed by or on behalf of the Loan Parties or any of their Subsidiaries) any other Person’s opposition of any motion made in the Bankruptcy Court by the Lenders seeking confirmation of the amount of the Lenders’ claim or the validity and enforceability of the Liens in favor of the Collateral Agent;

(x) Any Loan Party files or directly or indirectly supports another party in filing any motion, application, or adversary proceeding challenging the validity, enforceability, perfection, or priority of, or seeking avoidance or subordination of, any Obligations in a manner inconsistent with the stipulations and waivers granted by any Loan Party pursuant to the DIP Order;

(xi) The Loan Parties or any of their Affiliates shall file any pleading or proceeding, or the entry of an order of the Bankruptcy Court with respect to any pleading or proceeding brought by any other Person, that would give rise to a Consenting Lender Termination Event under the Restructuring Support Agreement;

(xii) The Loan Parties or any of their Affiliates shall have filed a motion seeking the entry of, or the Bankruptcy Court shall have entered, an order approving a payment to any Person (whether in cash or other property or whether as adequate protection, settlement of a dispute, or otherwise) that would be materially inconsistent with the treatment of any such Person under the Approved Plan, without the prior written consent of the Required Lenders;

(xiii) Any Loan Party files a Chapter 11 Plan that contains terms and conditions that are inconsistent in any material respect with the Approved Plan (or any exhibit or supplement attached thereto) or the Restructuring Support Agreement, without the prior written consent of the Required Lenders, which filing is not withdrawn, dismissed or denied within three (3) Business Days after such filing;

(xiv) Entry of an order of the Bankruptcy Court approving a disclosure statement in support of a Chapter 11 Plan that contains terms and conditions that are inconsistent in any material respect with the Approved Plan;

(xv) The Approved Plan is amended, supplemented or otherwise modified in any manner that would be materially inconsistent with the Restructuring Support Agreement or that directly and adversely affects the Lenders without the prior written consent of the Required Lenders;

(xvi) The Approved Plan is withdrawn;

(xvii) Any of the following is not materially consistent with the Restructuring Support Agreement or otherwise reasonably satisfactory to the Required Lenders: (A) the Chapter 11 Plan, as confirmed by the Bankruptcy Court, in the Chapter 11 Cases and (B) the Sale and Confirmation Order; or

(xviii) Any of the following occurs: (i) the special committee of the Board of Directors of the Borrower or any of its Subsidiaries determines to enter into an agreement, term sheet, or similar undertaking with respect to an Alternative Restructuring, (ii) any Loan Party makes a public announcement regarding its express intention to pursue an Alternative Restructuring, or (iii) any Loan Party files any motion or pleading in the Bankruptcy Court that is not withdrawn after two days' notice stating the Debtors' express intention to seek approval for, or enter an agreement, term sheet, or similar undertaking with respect to, an Alternative Restructuring; or

(16) Use of Proceeds. The proceeds of any Loans shall have been expended in a manner, or a withdrawal from the DIP Funding Account shall be used for any purpose, not in accordance with the Budget (subject to Permitted Variances) or as otherwise permitted by the DIP Orders or the express terms of this Agreement.

SECTION 8.02 Remedies upon Event of Default. Subject to the procedures set forth in the DIP Orders and the Carve-Out, if any Event of Default occurs and is continuing, the Administrative Agent shall (acting at the Direction of the Required Lenders) take any or all of the following actions:

- (a) declare the commitment of each Lender to make Loans to be terminated, whereupon such commitments and obligation shall be terminated;
- (b) declare the unpaid principal amount of all outstanding Loans, all interest accrued and unpaid thereon, and all other amounts owing or payable hereunder or under any other Loan Document to be immediately due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived by the Borrower; and
- (c) exercise on behalf of itself and the Lenders all rights and remedies available to it and the Lenders under the Loan Documents or applicable Law;

SECTION 8.03 Application of Funds. Subject in all respects to priorities and obligations with respect to, and other terms of, the Carve-Out, after the exercise of remedies provided for in Section 8.02 (or after the Loans have automatically become immediately due and payable), any amounts received on account of the Obligations shall be applied by the Administrative Agent in the following order:

First, to payment of that portion of the Obligations constituting fees, indemnities, expenses and other amounts (other than principal and interest, but including Attorney Costs payable under Section 10.04 and amounts payable under Article III) payable to the Administrative Agent and the Collateral Agent in their capacities as such;

Second, to payment of that portion of the Obligations constituting fees, indemnities and other amounts (other than principal and interest, but including Attorney Costs payable under Section 10.04 and amounts payable under Article III) payable to the Lenders, ratably among them in proportion to the amounts described in this clause Second payable to them;

Third, to payment of that portion of the Obligations constituting accrued and unpaid interest on the Loans, ratably among the Lenders in proportion to the respective amounts described in this clause Third payable to them;

Fourth, to payment of that portion of the Obligations constituting unpaid principal of the Loans ratably among the Secured Parties in proportion to the respective amounts described in this clause Fourth held by them;

Fifth, to the payment of all other Obligations of the Loan Parties that are due and payable to the Administrative Agent and the other Secured Parties on such date, ratably based upon the respective aggregate amounts of all such Obligations owing to the Administrative Agent and the other Secured Parties on such date; and

Last, the balance, if any, after all of the Obligations have been paid in full, to the Borrower or as otherwise required by Law.

Article IX

Administrative Agent and Other Agents

SECTION 9.01 Appointment and Authorization of the Administrative Agent.

(1) Each Lender hereby irrevocably appoints GLAS to act on its behalf as the Administrative Agent hereunder and under the other Loan Documents and authorizes the Administrative Agent to take such actions on its behalf and to exercise such powers as are delegated to the Administrative Agent by the terms hereof or thereof, together with such actions and powers as are reasonably incidental thereto. The provisions of this Article IX (other than Sections 9.07, 9.11, 9.12, 9.15 and 9.16) are solely for the benefit of the Administrative Agent and the Lenders and the Borrower shall not have rights as a third-party beneficiary of any such provision. The Administrative Agent hereby represents and warrants that it is either (i) a “U.S. person” and a “financial institution” and that it will comply with its “obligation to withhold,” each within the meaning of Treasury Regulations Section 1.1441-1(b)(2)(ii) or (ii) a Withholding U.S. Branch.

(2) The Administrative Agent shall also act as the “collateral agent” under the Loan Documents, and each of the Lenders hereby irrevocably appoints and authorizes the Administrative Agent to act as the agent of (and to hold any security interest created by the Collateral Documents for and on behalf of or in trust for) such Lender for purposes of acquiring, holding and enforcing any and all Liens on Collateral granted by any of the Loan Parties to secure any of the Obligations, together with such powers and discretion as are reasonably incidental thereto. In this connection, the Administrative Agent, as “collateral agent” (and any co-agents, sub-agents and attorneys-in-fact appointed by the Administrative Agent pursuant to Section 9.05 for purposes of holding or enforcing any Lien on the Collateral (or any portion thereof) granted under the Collateral Documents, or for exercising any rights and remedies thereunder at the direction of the Administrative Agent), shall be entitled to the benefits of all provisions of this Article IX and Article X with respect to the Administrative Agent (including Sections 10.04 and 10.05), as though such co-agents, sub-agents and attorneys-in-fact were the “collateral agent” under the Loan Documents. In furtherance of the foregoing, all references in this Article IX to the Administrative Agent shall include the Collateral Agent in connection with the rights, privileges and indemnities provided herein. Without limiting the generality of the foregoing, the Lenders hereby expressly authorize the Administrative Agent to execute any and all documents (including releases) with respect to the Collateral and the rights of the Secured Parties with respect thereto, as contemplated by and in accordance with the provisions of this Agreement and the Collateral Documents and acknowledge and agree that any such action by any Agent shall bind the Lenders.

(3) (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 their Affiliates, 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 of one or more Benefit Plans in connection with the Loans, the Letters of Credit or the Commitments,

(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 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 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 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 sub-clause (i) in the immediately preceding clause (a) is true with respect to a Lender or such Lender has not provided another representation, warranty and covenant as provided in 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 its respective Affiliates, and not, for the avoidance of doubt, to or for the benefit of the Borrower or any other Loan Party, that:

(i) none of the Administrative Agent, or any of its respective Affiliates is a fiduciary with respect to the assets of such Lender (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 to hereto or thereto),

(ii) the Person making the investment decision on behalf of such Lender with respect to the entrance into, participation in, administration of and performance of the Loans, the Commitments and this Agreement is independent (within the meaning of 29 CFR § 2510.3-21) and is a bank, an insurance carrier, an investment adviser, a broker-dealer or other person that holds, or has under management or control, total assets of at least \$50 million, in each case as described in 29 CFR § 2510.3-21(c)(1)(i)(A)-(E),

(iii) the Person making the investment decision on behalf of such Lender with respect to the entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement is capable of evaluating investment risks independently, both in general and with regard to particular transactions and investment strategies (including in respect of the Obligations),

(iv) the Person making the investment decision on behalf of such Lender with respect to the entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement is a fiduciary under ERISA or the Code, or both, with respect to the Loans, the Letters of Credit, the Commitments and this Agreement and is responsible for exercising independent judgment in evaluating the transactions hereunder, and

(v) no fee or other compensation is being paid directly to the Administrative Agent or any their respective Affiliates for investment advice (as opposed to other services) in connection with the Loans, the Commitments or this Agreement.

(c) The Administrative Agent and each of its respective Affiliates 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, (i) 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, commitment 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.

SECTION 9.02 Rights as a Lender. Any Lender that is also serving as an Agent (including as Administrative Agent) hereunder shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not an Agent and the term “Lender” or “Lenders” shall, unless otherwise expressly indicated or unless the context otherwise requires, include each Lender (if any) serving as an Agent hereunder in its individual capacity. Any such Person serving as an Agent and its Affiliates may accept deposits from, lend money to, act as the financial advisor or in any other advisory capacity for and generally engage in any kind of business with the Borrower or any Subsidiary or other Affiliate thereof as if such Person were not an Agent hereunder and without any duty to account therefor to the Lenders. The Lenders acknowledge that, pursuant to such activities, any Agent or its Affiliates may receive information regarding any Loan Party or any of its Affiliates (including information that may be subject to confidentiality obligations in favor of such Loan Party or such Affiliate) and acknowledge that no Agent shall be under any obligation to provide such information to them.

SECTION 9.03 Exculpatory Provisions. The Administrative Agent and Collateral Agent shall not have any duties or responsibilities except those expressly set forth in this Agreement and in the other Loan Documents. Without limiting the generality of the foregoing, each Agent (including the Administrative Agent):

(1) shall not be subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing and without limiting the generality of the foregoing, the use of the term “agent” herein and in the other Loan Documents with reference to any Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable Law and instead, such term is used merely as a matter of market custom, and is intended to create or reflect only an administrative relationship between independent contracting parties;

(2) shall 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 such Agent is required to exercise as directed in writing by the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Loan Documents), *provided* that no Agent shall be required to take any action that, in its opinion or the opinion of its counsel, may expose such Agent to liability or that is contrary to any Loan Document or applicable law, 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

(3) 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 any Person serving as an Agent or any of its Affiliates in any capacity.

Neither the Administrative Agent nor any of its Related Persons shall be liable for any action taken or not taken by it (i) with the consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary, or as the

Administrative Agent shall believe in good faith shall be necessary, under the circumstances as provided in Sections 10.01 and 8.02) or (ii) in the absence of its own gross negligence or willful misconduct as determined by the final and non-appealable judgment of a court of competent jurisdiction, in connection with its duties expressly set forth herein; *provided* that any action or inaction taken with the consent or at the request of the Required Lenders (or, if expressly required hereby, consent or instruction from a greater or different proportion of the Lenders as shall be necessary, or as the Administrative Agent shall believe in good faith to be necessary) shall not be deemed gross negligence or willful misconduct. The Administrative Agent shall be deemed not to have knowledge of any Default unless and until notice describing such Default is given to the Administrative Agent by the Borrower or a Lender.

No Agent-Related Person shall be responsible for or have any duty to ascertain or inquire into (i) any recital, statement, warranty or representation made in or in connection with this Agreement or any other Loan Document, (ii) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or therein or the occurrence of any Default, (iv) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Loan Document or any other agreement, instrument or document, or the creation, perfection or priority of any Lien purported to be created by the Collateral Documents, (v) the value or the sufficiency of any Collateral, or (vi) the satisfaction of any condition set forth in Article IV or elsewhere herein, other than to confirm receipt of items expressly required to be delivered to the Administrative Agent. The duties of the Administrative Agent shall be mechanical and administrative in nature; the Administrative Agent shall not have by reason of this Agreement or any other Loan Document a fiduciary relationship in respect of any Lender or the holder of any Note; and nothing in this Agreement or in any other Loan Document, expressed or implied, is intended to or shall be so construed as to impose upon the Administrative Agent any obligations in respect of this Agreement or any other Loan Document except as expressly set forth herein or therein.

For purposes of clarity, and without limiting any rights, protections, immunities or indemnities afforded to the Administrative Agent hereunder (including without limitation this Section 9.03), phrases such as “satisfactory to the Administrative Agent”, “approved by the Administrative Agent”, “acceptable to the Administrative Agent”, “as determined by the Administrative Agent”, “in the Administrative Agent’s discretion”, “selected by the Administrative Agent”, “elected by the Administrative Agent”, “requested by the Administrative Agent” and phrases of similar import that authorize and permit the Administrative Agent to approve, disapprove, determine, act or decline to act in its discretion shall be subject to the Administrative Agent receiving written direction from the Required Lenders (or such other number or percentage of the Lenders as expressly required hereunder or under the other Loan Documents) to take such action or to exercise such rights.

SECTION 9.04 Lack of Reliance on the Administrative Agent.

Independently and without reliance upon the Administrative Agent and of their respective Affiliates, each Lender and the holder of each Note, to the extent it deems appropriate, has made and shall continue to make (i) its own independent investigation of the financial condition and affairs of Holdings, the Borrower and the Subsidiaries in connection with the making and the continuance of the Loans and the taking or not taking of any action in connection herewith and

(ii) its own appraisal of the creditworthiness of Holdings, the Borrower and the Subsidiaries and, except as expressly provided in this Agreement, the Administrative Agent and any of its Affiliates shall not have any duty or responsibility, either initially or on a continuing basis, to provide any Lender or the holder of any Note with any credit or other information with respect thereto, whether coming into its possession before the making of the Loans or at any time or times thereafter. The Administrative Agent and any of its respective Affiliates shall not be responsible to any Lender or the holder of any Note for any recitals, statements, information, representations or warranties herein or in any document, certificate or other writing delivered in connection herewith or for the execution, effectiveness, genuineness, validity, enforceability, perfection, collectability, priority or sufficiency of this Agreement or any other Loan Document or the financial condition of Holdings, the Borrower or any of the Subsidiaries or be required to make any inquiry concerning either the performance or observance of any of the terms, provisions or conditions of this Agreement or any other Loan Document, or the financial condition of Holdings, the Borrower or any of the Subsidiaries or the existence or possible existence of any Default or Event of Default.

SECTION 9.05 Certain Rights of the Administrative Agent. If the Administrative Agent requests instructions from the Required Lenders with respect to any act or action (including failure to act) in connection with this Agreement or any other Loan Document, the Administrative Agent shall be entitled to refrain from such act or taking such action unless and until the Administrative Agent shall have received instructions from the Required Lenders; and the Administrative Agent shall not incur liability to any Lender by reason of so refraining. Without limiting the foregoing, neither any Lender nor the holder of any Note shall have any right of action whatsoever against the Administrative Agent as a result of the Administrative Agent acting or refraining from acting hereunder or under any other Loan Document in accordance with the instructions of the Required Lenders.

In no event shall the Administrative Agent be responsible or liable for special, indirect, punitive, or consequential loss or damage of any kind whatsoever (including, but not limited to, loss of profit) irrespective of whether the Administrative Agent has been advised of the likelihood of such loss or damage and regardless of the form of action.

The Administrative Agent is not required to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties or exercise of any of its rights or powers if the Administrative Agent has reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it, in its sole discretion.

In no event shall the Administrative Agent be responsible or liable for any failure or delay in the performance of its obligations hereunder arising out of or caused by, directly or indirectly, forces beyond its control, including, without limitation, strikes, work stoppages, accidents, acts of war or terrorism, civil or military disturbances, nuclear or natural catastrophes, pandemics or epidemics, or acts of God, and interruptions, loss or malfunctions of utilities, communications or computer (software and hardware) services; it being understood that the Administrative Agent shall use reasonable efforts that are consistent with accepted practices in the banking industry to resume performance as soon as practicable under the circumstances.

The rights, privileges, protections, immunities and benefits provided to the Administrative Agent hereunder, including its rights to indemnification, are extended to, and shall be enforceable by, the Administrative Agent in each of its capacities hereunder and under each other Loan Document, and to each agent, custodian or other person employed to act for the Administrative Agent hereunder or under any other Loan Document.

SECTION 9.06 Reliance by the Administrative Agent. The Administrative Agent shall be entitled to rely upon, and shall be fully protected in relying upon, any note, writing, resolution, notice, statement, certificate, telex, teletype or facsimile message, cablegram, radiogram, order or other document or telephone message signed, sent or made by any Person that the Administrative Agent believed to be the proper Person, and, with respect to all legal matters pertaining to this Agreement and any other Loan Document and its duties hereunder and thereunder, upon advice of counsel selected by the Administrative Agent. In determining compliance with any condition hereunder to the making of a Loan that by its terms must be fulfilled to the satisfaction of a Lender, the Administrative Agent may presume that such condition is satisfactory to such Lender unless the Administrative Agent shall have received notice to the contrary from such Lender prior to the making of such Loan t. The Administrative Agent may consult with legal counsel (who may be counsel for the Borrower), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

SECTION 9.07 Delegation of Duties. The Administrative Agent may perform any and all of its duties and exercise its rights and powers hereunder or under any other Loan Documents by or through any one or more sub-agents appointed by the Administrative Agent. The Administrative Agent and any such sub-agent may perform any and all of its duties and exercise its rights and powers by or through their respective Agent-Related Persons. The exculpatory provisions of this Article shall apply to any such sub-agent and to the Agent-Related Persons of the Administrative Agent and any such sub-agent, and shall apply to their respective activities in connection with the syndication of the credit facilities provided for herein as well as activities as Administrative Agent. Notwithstanding anything to the contrary in this Section 9.07 or Section 9.15, any payments under any Loan Document for the account of any Lender shall be received directly by the Administrative Agent. The Administrative Agent shall not be responsible for the negligence or misconduct of any sub-agent, except to the extent that a court of competent jurisdiction determines in a final and non-appealable judgment that the Administrative Agent acted with gross negligence or willful misconduct in the selection of such sub-agent.

SECTION 9.08 Indemnification. Whether or not the transactions contemplated hereby are consummated, to the extent the Administrative Agent or any other Agent-Related Person (solely to the extent any such Agent-Related Person was performing services on behalf of the Administrative Agent) is not reimbursed and indemnified by the Borrower, the Lenders will reimburse and indemnify the Administrative Agent or any other Agent-Related Person (solely to the extent any such Agent-Related Person was performing services on behalf of the Administrative Agent) in proportion to their respective Pro Rata Shares for and against any and all liabilities, obligations, losses, damages, penalties, claims, actions, judgments, costs, expenses or disbursements of whatsoever kind or nature which may be imposed on, asserted against or incurred by the Administrative Agent or any other Agent-Related

Person (solely to the extent any such Agent-Related Person was performing services on behalf of the Administrative Agent) in performing its duties hereunder or under any other Loan Document or in any way relating to or arising out of this Agreement or any other Loan Document; *provided* that no Lender shall be liable for any portion of such liabilities, obligations, losses, damages, penalties, claims, actions, judgments, suits, costs, expenses or disbursements resulting from the Administrative Agent's or any other Agent-Related Person's gross negligence or willful misconduct (as determined by a court of competent jurisdiction in a final and non-appealable decision). In the case of any investigation, litigation or proceeding giving rise to any Indemnified Liabilities, this Section 9.08 applies whether any such investigation, litigation or proceeding is brought by any Lender or any other Person. Without limitation of the foregoing, each Lender shall reimburse the Administrative Agent upon demand for its Pro Rata Share of any costs or out-of-pocket expenses (including Attorney Costs) incurred by the Administrative Agent in connection with the preparation, execution, delivery, administration, modification, amendment or enforcement (whether through negotiations, legal proceedings or otherwise) of, or legal advice in respect of rights or responsibilities under, this Agreement, any other Loan Document, or any document contemplated by or referred to herein, to the extent that the Administrative Agent is not reimbursed for such expenses by or on behalf of the Borrower, *provided* that such reimbursement by the Lenders shall not affect the Borrower's continuing reimbursement obligations with respect thereto, *provided further* that the failure of any Lender to indemnify or reimburse the Administrative Agent shall not relieve any other Lender of its obligation in respect thereof. The undertaking in this Section 9.08 shall survive termination of the Aggregate Commitments, the payment of all other Obligations, the resignation of the Administrative Agent and termination of this Agreement.

In addition to the foregoing, to the extent not reimbursed or indemnified by the Borrower, each Lender hereby agrees to pay the Collateral Agent such Lender's percentage share, within any period required under any applicable account control agreement or similar agreement (an "**Accounts Agreement**") following receipt of a written notice thereof by the Collateral Agent, such funds necessary in order for the Collateral Agent to make the payments required to be made to any account bank pursuant to any Accounts Agreement, including, without limitation, as a result of any indemnification by the Collateral Agent and/or the return of any cheque, money order, wire transfer, note, draft, other order for payment of money, other remittance or other adjustment as required by the applicable account bank pursuant to the terms of the applicable Accounts Agreement, *provided* that no such payment shall be required to the extent that it is determined by a court of competent jurisdiction by final and non-appealable judgement that the Collateral Agent's obligation to make the applicable payment to such account bank has resulted from the gross negligence or willful misconduct of the Collateral Agent.

SECTION 9.09 The Administrative Agent in Its Individual Capacity. With respect to its obligation to make Loans under this Agreement, the Administrative Agent shall have the rights and powers specified herein for a "Lender" and may exercise the same rights and powers as though it were not performing the duties specified herein; and the term "Lender," "Required Lenders" or any similar terms shall, unless the context clearly indicates otherwise, include the Administrative Agent in its respective individual capacities. The Administrative Agent and its affiliates may accept deposits from, lend money to, and generally engage in any kind of banking, investment banking, trust or other business with, or provide debt financing, equity capital or other services (including financial advisory services) to any Loan Party or any

Affiliate of any Loan Party (or any Person engaged in a similar business with any Loan Party or any Affiliate thereof) as if they were not performing the duties specified herein, and may accept fees and other consideration from any Loan Party or any Affiliate of any Loan Party for services in connection with this Agreement and otherwise without having to account for the same to the Lenders. The Lenders acknowledge that, pursuant to such activities, any Agent or its Affiliates may receive information regarding any Loan Party or any of its Affiliates (including information that may be subject to confidentiality obligations in favor of such Loan Party or such Affiliate) and acknowledge that no Agent shall be under any obligation to provide such information to them.

SECTION 9.10 No Other Duties, Etc. Anything herein to the contrary notwithstanding, none of the Agents 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, the Collateral Agent, a Lender, hereunder, as the case may be. Resignation by the Administrative Agent. The Administrative Agent may resign from the performance of all its respective functions and duties hereunder or under the other Loan Documents at any time by giving 30 Business Days prior written notice to the Lenders and the Borrower. If the Administrative Agent becomes subject to a Lender-Related Distress Event, then the Administrative Agent may be removed as the Administrative Agent at the reasonable request of the Required Lenders. If the Administrative Agent becomes subject to an Agent-Related Distress Event, then the Borrower may remove the Administrative Agent from such role upon 15 days' prior written notice to the Lenders. Such resignation or removal shall take effect upon the appointment of a successor Administrative Agent as provided below.

Notwithstanding anything to the contrary in this Agreement, no successor Administrative Agent shall be appointed unless such successor Administrative Agent represents and warrants that it is (i) a "U.S. person" and a "financial institution" and that it will comply with its "obligation to withhold," each within the meaning of U.S. Treasury Regulations Section 1.1441-1, or (ii) a Withholding U.S. Branch.

Upon any such notice of resignation by, or notice of removal of, the Administrative Agent, the Required Lenders shall appoint a successor Administrative Agent hereunder or thereunder who shall be a commercial bank or trust company reasonably acceptable to the Borrower, which acceptance shall not be unreasonably withheld or delayed (*provided* that the Borrower's approval shall not be required if an Event of Default under Section 8.01(1) has occurred and is continuing).

If a successor Administrative Agent shall not have been so appointed within such 30 Business Day period, the Administrative Agent, with the consent of the Borrower (which consent shall not be unreasonably withheld or delayed, *provided* that the Borrower's consent shall not be required if an Event of Default under Section 8.01(1) has occurred and is continuing), shall then appoint a successor Administrative Agent who shall serve as Administrative Agent hereunder or thereunder until such time, if any, as the Required Lenders appoint a successor Administrative Agent as provided above.

If no successor Administrative Agent has been appointed pursuant to the foregoing by the 35th Business Day after the date such notice of resignation was given by the

Administrative Agent or such notice of removal was given by the Required Lenders or the Borrower, as applicable, the Administrative Agent's resignation shall nonetheless become effective and the Required Lenders shall thereafter perform all the duties of the Administrative Agent hereunder or under any other Loan Document until such time, if any, as the Required Lenders appoint a successor Administrative Agent as provided above. The retiring Administrative Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents (except that in the case of any collateral security held by the Administrative Agent on behalf of the Lenders under any of the Loan Documents, the retiring Administrative Agent shall continue to hold such collateral security until such time as a successor Administrative Agent is appointed) and 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 as the Required Lenders appoint a successor Administrative Agent as provided for above in this Section 9.11.

Upon the acceptance of a successor's appointment as Administrative Agent hereunder and upon the execution and filing or recording of such financing statements, or amendments thereto, and such amendments or supplements to the Mortgages, and such other instruments or notices, as may be necessary or desirable, or as the Required Lenders may request, in order to (i) continue the perfection of the Liens granted or purported to be granted by the Collateral Documents or (ii) otherwise ensure that the Collateral and Guarantee Requirement is satisfied, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring (or retired) Administrative Agent, and the retiring Administrative Agent shall be discharged from all of its duties and obligations hereunder or under the other Loan Documents (if not already discharged therefrom as provided above in this Section 9.10).

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 Administrative Agent's resignation hereunder and under the other Loan Documents, the provisions of this Article and Sections 10.04 and 10.05 shall continue in effect for the benefit of such retiring Administrative Agent, its sub-agents and their respective Agent-Related Persons in respect of any actions taken or omitted to be taken by any of them while the retiring Administrative Agent was acting as Administrative Agent.

Upon a resignation or removal of the Administrative Agent pursuant to this Section 9.10, the Administrative Agent (i) shall continue to be subject to Section 10.09 and (ii) shall remain indemnified to the extent provided in this Agreement and the other Loan Documents and the provisions of this Article IX (and the analogous provisions of the other Loan Documents) shall continue in effect for the benefit of the Administrative Agent for all of its actions and inactions while serving as the Administrative Agent.

SECTION 9.11 Collateral Matters. Each Lender irrevocably authorizes and directs the Administrative Agent and the Collateral Agent to take the actions to be taken by them as set forth in Sections 7.04 and 10.24.

Each Lender hereby agrees, and each holder of any Note by the acceptance thereof will be deemed to agree, that, except as otherwise set forth herein, any action taken by the Required Lenders in accordance with the provisions of this Agreement or the Collateral Documents, and the exercise by the Required Lenders of the powers set forth herein or therein, together with such other powers as are reasonably incidental thereto, shall be authorized and binding upon all of the Lenders. The Collateral Agent is hereby authorized on behalf of all of the Lenders, without the necessity of any notice to or further consent from any Lender, from time to time, to take any action with respect to any Collateral or Collateral Documents which may be necessary to perfect and maintain perfected the security interest in and liens upon the Collateral granted pursuant to the Collateral Documents.

Upon request by the Administrative Agent at any time, the Lenders will confirm in writing the Collateral Agent's authority to release particular types or items of Collateral pursuant to this Section 9.11. In each case as specified in this Section 9.11, Section 7.04 and Section 10.24, the applicable Agent will (and each Lender irrevocably authorizes the applicable Agent to), at the Borrower's expense, execute and deliver to the applicable Loan Party such documents as such Loan Party may reasonably request to evidence the release or subordination of such item of Collateral from the assignment and security interest granted under the Collateral Documents, or to evidence the release of such Guarantor from its obligations under the Guaranty, in each case in accordance with the terms of the Loan Documents, this Section 9.12, Section 7.04 and Section 10.24.

The Collateral Agent shall have no obligation whatsoever to the Lenders or to any other Person to assure that the Collateral exists or is owned by any Loan Party or is cared for, protected or insured or that the Liens granted to the Collateral Agent herein or pursuant hereto have been properly or sufficiently or lawfully created, perfected, protected or enforced or are entitled to any particular priority, or to exercise or to continue exercising at all or in any manner or under any duty of care, disclosure or fidelity any of the rights, authorities and powers granted or available to the Collateral Agent in this Section 9.12, Section 7.04, Section 10.24 or in any of the Collateral Documents, it being understood and agreed that in respect of the Collateral, or any act, omission or event related thereto, the Collateral Agent may act in any manner it may deem appropriate, in its sole discretion, given the Collateral Agent's own interest in the Collateral as one of the Lenders and that the Collateral Agent shall have no duty or liability whatsoever to the Lenders, except for its gross negligence or willful misconduct (as determined by a court of competent jurisdiction in a final and non-appealable decision).

SECTION 9.12 [Reserved].

SECTION 9.13 Administrative Agent May File Proofs of Claim. In case of the pendency of any proceeding under any Debtor Relief Law or any other judicial proceeding relative to any Loan Party, the Administrative Agent (irrespective of whether the principal of any Loan shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Administrative Agent shall have made any demand on the Borrower) shall be entitled and empowered, by intervention in such proceeding or otherwise:

(a) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans and all other Obligations that are owing

and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Lenders and the Administrative Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of the Lenders and the Administrative Agent and their respective agents and counsel and all other amounts due the Lenders and the Administrative Agent under Sections 2.09 and 10.04) allowed in such judicial proceeding; and

(b) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same;

and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender to make such payments to the Administrative Agent and, in the event that the Administrative Agent shall consent to the making of such payments directly to the Lenders, to pay to the Administrative Agent any amount due for the reasonable compensation, expenses, disbursements and advances of the Agents and their respective agents and counsel, and any other amounts due the Administrative Agent under Sections 2.09 and 10.04.

Nothing contained herein shall be deemed to authorize the Administrative Agent to authorize or consent to or accept or adopt on behalf of any Lender any plan of reorganization, arrangement, adjustment or composition affecting the Obligations or the rights of any Lender or to authorize the Administrative Agent to vote in respect of the claim of any Lender in any such proceeding.

The Secured Parties hereby irrevocably authorize the Administrative Agent, at the Direction of the Required Lenders, to credit bid all or any portion of the Obligations (including accepting some or all of the Collateral in satisfaction of some or all of the Obligations pursuant to a deed in lieu of foreclosure or otherwise) and in such manner purchase (either directly or through one or more acquisition vehicles) all or any portion of the Collateral (a) at any sale thereof conducted under the provisions of the Bankruptcy Code, including under Sections 363, 1123 or 1129 of the Bankruptcy Code, or any similar Laws in any other jurisdictions to which a Loan Party is subject, (b) at any other sale or foreclosure or acceptance of collateral in lieu of debt conducted by (or with the consent or at the direction of) the Administrative Agent (whether by judicial action or otherwise) in accordance with any applicable Law. In connection with any such credit bid and purchase, the Obligations owed to the Secured Parties shall be entitled to be, and shall be, credit bid on a ratable basis (with Obligations with respect to contingent or unliquidated claims receiving contingent interests in the acquired assets on a ratable basis that would vest upon the liquidation of such claims in an amount proportional to the liquidated portion of the contingent claim amount used in allocating the contingent interests) in the asset or assets so purchased (or in the Equity Interests or debt instruments of the acquisition vehicle or vehicles that are used to consummate such purchase). In connection with any such bid (i) the Administrative Agent shall be authorized to form one or more acquisition vehicles to make a bid, (ii) to adopt documents providing for the governance of the acquisition vehicle or vehicles (*provided* that any actions by the Administrative Agent with respect to such acquisition vehicle or vehicles, including any disposition of the assets or Equity Interests thereof shall be governed, directly or indirectly, by the vote of the Required Lenders, irrespective of the termination of this Agreement and without giving effect to the limitations on actions by the Required Lenders

contained in clauses (a) through (i) of the first proviso to Section 10.01(1) of this Agreement), (iii) the Administrative Agent shall be authorized to assign the relevant Obligations to any such acquisition vehicle pro rata by the Lenders, as a result of which each of the Lenders shall be deemed to have received a pro rata portion of any Equity Interests and/or debt instruments issued by such an acquisition vehicle on account of the assignment of the Obligations to be credit bid, all without the need for any Secured Party or acquisition vehicle to take any further action, and (iv) to the extent that Obligations that are assigned to an acquisition vehicle are not used to acquire Collateral for any reason (as a result of another bid being higher or better, because the amount of Obligations assigned to the acquisition vehicle exceeds the amount of debt credit bid by the acquisition vehicle or otherwise), such Obligations shall automatically be reassigned to the Lenders pro rata and the Equity Interests and/or debt instruments issued by any acquisition vehicle on account of the Obligations that had been assigned to the acquisition vehicle shall automatically be cancelled, without the need for any Secured Party or any acquisition vehicle to take any further action.

SECTION 9.14 [Reserved].

SECTION 9.15 [Reserved].

SECTION 9.16 [Reserved].

SECTION 9.17 [Reserved].

SECTION 9.18 Withholding Tax. To the extent required by any applicable Laws, the Administrative Agent may withhold from any payment to any Lender an amount equivalent to any applicable withholding Tax. Without limiting or expanding the provisions of Section 3.01, each Lender shall indemnify and hold harmless the Administrative Agent against, and shall make payable in respect thereof within ten (10) days after demand therefor, any and all Taxes and any and all related losses, claims, liabilities and expenses (including fees, charges and disbursements of any counsel for the Administrative Agent) incurred by or asserted against the Administrative Agent by the IRS or any other Governmental Authority as a result of the failure of the Administrative Agent to properly withhold tax from amounts paid to or for the account of such Lender for any reason (including because the appropriate form was not delivered or not properly executed, or because such Lender failed to notify the Administrative Agent of a change in circumstance that rendered the exemption from, or reduction of withholding tax ineffective). Each Lender shall severally indemnify the Administrative Agent, within 10 days after demand therefor, for (i) any Non-Excluded Taxes attributable to such Lender (but only to the extent that any Loan Party has not already indemnified the Administrative Agent for such Non-Excluded Taxes and without limiting the obligation of the Loan Parties to do so), (ii) any Taxes attributable to such Lender's failure to comply with the provisions of Section 10.07(e) relating to the maintenance of a Participant Register and (iii) any Excluded Taxes attributable to such Lender, in each case, that are payable or paid by the Administrative Agent in connection with any Loan Document, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Lender by the Administrative Agent shall be conclusive absent manifest error. Each Lender hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time

owing to such Lender under this Agreement or any other Loan Document against any amount due the Administrative Agent under this Section 9.18. The agreements in this Section 9.18 shall survive the resignation or replacement of the Administrative Agent, any assignment of rights by, or the replacement of, a Lender, the termination of the Commitments and the repayment, satisfaction or discharge of all other Obligations.

SECTION 9.19 Erroneous Payments.

(1) Each Lender hereby agrees that if the Administrative Agent notifies a Lender or any Person who has received funds on behalf of a Lender (any such Lender or other recipient, a “**Erroneous Payment Recipient**”) in writing that the Administrative Agent has determined in its reasonable discretion that the Administrative Agent or its Affiliates mistakenly transmitted funds to such Erroneous Payment Recipient, as a result of a clerical, mechanical, technological or other error, whether or not known to such Erroneous Payment Recipient (any such funds, whether as a payment, prepayment or repayment of principal, interest, fees or otherwise, individually and collectively, an “**Erroneous Payment**”) and demands in writing the return of such Erroneous Payment (or a portion thereof), such Erroneous Payment Recipient shall make commercially reasonable efforts to promptly return to the Administrative Agent the amount of any such Erroneous Payment (or portion thereof) as to which such a written demand was made, in same day funds (in the currency so received). A notice from the Administrative Agent to any Lender under this Section 9.19(1) shall set forth the facts and circumstances resulting in such Erroneous Payment; provided that the Administrative Agent shall not make any demand under this Section 9.19(1) unless the notice described herein is delivered within fifteen (15) Business Days after the making of the applicable Erroneous Payment.

(2) Without limiting the immediately preceding clause (1), each Lender hereby further agrees that if it (or an Erroneous Payment Recipient on its behalf) receives a payment from the Administrative Agent (x) in a different amount or on a different date than the amount or date specified in a notice of payment sent by the Administrative Agent with respect to such payment, (y) that was not preceded or accompanied by a notice of payment sent by the Administrative Agent, or (z) that Lender (or Erroneous Payment Recipient on its behalf) otherwise becomes aware was transmitted, or received, in error or by mistake (in whole or in part) then, in each case, such Lender shall presume that an error has been made (absent written confirmation from the Administrative Agent) and shall promptly (and, in all events, within one (1) Business Day of its knowledge of such error) notify the Administrative Agent of its receipt of such payment, the details thereof (in reasonable detail) and that it is so notifying the Administrative Agent pursuant to this Section 9.19(2).

(3) Each Erroneous Payment Recipient hereby authorizes the Administrative Agent to set off, net and apply any amounts at any time owing to such Erroneous Payment Recipient under any Loan Document against any amount due to the Administrative Agent under the preceding clause (1).

(4) The Borrower and each other Loan Party hereby agrees that (i) in the event an Erroneous Payment (or portion thereof) is not recovered from any Erroneous Payment Recipient (and without limiting the Administrative Agent’s rights and remedies under this Section 9.19), the Administrative Agent shall be subrogated to all the rights of such Erroneous

Payment Recipient with respect to such amount (such rights, the “**Erroneous Payment Subrogation Rights**”) and (ii) an Erroneous Payment shall not pay, prepay, repay, discharge or otherwise satisfy any Obligations owed by the Borrower or any other Loan Party. If the amount of any Erroneous Payment is subsequently recovered by the Administrative Agent or its Affiliates, the Administrative Agent or such Affiliate shall return to the applicable Erroneous Payment Recipient either (x) the Loans acquired pursuant to this clause (4) or (y) if applicable, the proceeds of such Loans. Notwithstanding anything to the contrary contained herein, and for the avoidance of doubt, in no event shall the occurrence of an Erroneous Payment (or any Erroneous Payment Subrogation Rights or other rights of the Administrative Agent in respect of an Erroneous Payment) result in the Administrative Agent becoming or being deemed to be a Lender hereunder or the holder of any Loans hereunder.

(5) In addition to any rights and remedies of the Administrative Agent provided by law, the Administrative Agent shall have the right, without prior notice to any Lender, any such notice being expressly waived by such Lender to the extent permitted by applicable law, with respect to any Erroneous Payment for which a demand has been made in accordance with this Section 9.19 and which has not been returned to the Administrative Agent, to set off and appropriate and apply against such amount any and all deposits (general or special, time or demand, provisional or final but excluding trust accounts), in any currency, and any other credits, indebtedness or claims, in any currency, in each case whether direct or indirect, absolute or contingent, matured or unmatured, at any time held or owing by the Administrative Agent or any Affiliate, branch or agency thereof to or for the credit or the account of such Lender. The Administrative Agent agrees to promptly notify the Lender after any such setoff and application made by the Administrative Agent; provided that the failure to give such notice shall not affect the validity of such setoff and application.

Each party’s obligations under this Section 9.19 shall survive the resignation or replacement of the Administrative Agent, the termination of the Commitments or the repayment, satisfaction or discharge of all Obligations (or any portion thereof) under any Loan Document.

Article X

Miscellaneous

SECTION 10.01 Amendments, etc.

(1) Except as otherwise set forth in this Agreement, no amendment or waiver of any provision of this Agreement or any other Loan Document, and no consent to any departure by the Borrower or any other Loan Party therefrom, shall be effective unless in writing signed by the Required Lenders (with email from counsel on behalf of the Required Lenders being sufficient) (other than with respect to any amendment or waiver contemplated in clauses (a), (b) or (c), which shall only require the consent of the Lenders expressly set forth therein and not the Required Lenders) (or by the Administrative Agent (acting at the Direction of the Required Lenders)) and the Borrower or the applicable Loan Party, as the case may be, and acknowledged by the Administrative Agent, and the Administrative Agent hereby agrees to acknowledge any such waiver, consent or amendment that otherwise satisfies the requirements of this Section 10.01 as promptly as possible, however, to the extent the final form of such waiver,

consent or amendment has been delivered to the Administrative Agent at least one Business Day prior to the proposed effectiveness of the consents by the Lenders party thereto, the Administrative Agent shall acknowledge such waiver, consent or amendment (i) immediately, in the case of any amendment which does not require the consent of any existing Lender under this Agreement or any amendment for which delivery of an email by counsel on behalf of the Required Lenders is sufficient or (ii) otherwise, within two hours of the time copies of the Required Lender consents or other applicable Lender consents required by this Section 10.01 have been provided to the Administrative Agent, it being understood that with respect to clauses (i) and (ii) of this proviso, if the applicable waiver, consent or amendment has not been acknowledged by the Administrative Agent in the time frames provided, the Administrative Agent shall be deemed to have acknowledged such applicable waiver, consent or amendment; and each such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given; *provided* that no such amendment, waiver or consent shall:

(a) extend or increase the Commitment of any Lender, or modify the Pro Rata Share of any Lender or otherwise modify or increase any Lender's ratable share of any obligations (including any indemnification and reimbursement obligations) hereunder, without the written consent of such Lender (it being understood that a waiver of any condition precedent set forth in Section 4.01 or 4.02 or the waiver of any Default, Event of Default, mandatory prepayment or mandatory reduction of the Commitments shall not constitute an extension or increase of any Commitment of any Lender);

(b) postpone any date scheduled for, or reduce the amount of, any payment of principal or interest under Section 2.07 or 2.08 (other than pursuant to Section 2.08(2)) or any payment of fees or premiums hereunder or under any Loan Document with respect to payments to any Lender without the written consent of such Lender, it being understood that none of the following will constitute a postponement of any date scheduled for, or a reduction in the amount of, any payment of principal, interest, fees or premiums: (i) the waiver of (or amendment to the terms of) any mandatory prepayment of the Loans and (ii) the waiver of any Default or Event of Default;

(c) reduce the principal of, or the rate of interest specified herein on, any Loan or Unreimbursed Amount, or any fees or other amounts payable hereunder or under any other Loan Document to any Lender without the written consent of such Lender; *provided* that only the consent of the Required Lenders shall be necessary to amend the definition of "Default Rate";

(d) except as contemplated by clause (C) in the second proviso immediately succeeding clause (i) of this Section 10.01(1), change any provision of this Section 10.01 or the definition of "Required Lenders" or any other provision specifying the number of Lenders or portion of the Loans or Commitments required to take any action under the Loan Documents, without the written consent of each Lender directly and adversely affected thereby;

(e) other than in a transaction permitted under Section 7.03 or Section 7.04, release all or substantially all of the aggregate value of the Collateral in any transaction or series of related transactions, without the written consent of each Lender;

(f) other than in a transaction permitted under Section 7.03 or Section 7.04, release all or substantially all of the aggregate value of the Guaranty, without the written consent of each Lender;

provided that:

(I) no amendment, waiver or consent shall, unless in writing and signed by the Administrative Agent in addition to the Lenders required above, affect the rights or duties of, or any fees or other amounts payable to, the Administrative Agent under this Agreement or any other Loan Document; and

(II) Section 10.07(g) may not be amended, waived or otherwise modified without the consent of each Granting Lender all or any part of whose Loans are being funded by an SPC at the time of such amendment, waiver or other modification;

provided further that notwithstanding the foregoing:

(A) no Defaulting Lender shall have any right to approve or disapprove of any amendment, waiver or consent hereunder (and any amendment, waiver or consent which by its terms requires the consent of all Lenders or each affected Lender may be effected with the consent of the applicable Lenders other than Defaulting Lenders), except that the Commitment of such Defaulting Lender may not be increased or extended without the consent of such Defaulting Lender (it being understood that any Commitments or Loans held or deemed held by any Defaulting Lender shall be excluded for a vote of the Lenders hereunder requiring any consent of the Lenders);

(B) [reserved];

(C) this Agreement may be amended (or amended and restated) with the written consent of the Required Lenders, the Administrative Agent (acting at the Direction of the Required Lenders) and the Borrower (i) to add one or more additional credit facilities to this Agreement and to permit the extensions of credit from time to time outstanding thereunder and the accrued interest and fees in respect thereof to share ratably in the benefits of this Agreement and the other Loan Documents with the Term Loans and the accrued interest and fees in respect thereof and (ii) to include appropriately the Lenders holding such credit facilities in any determination of the Required Lenders;

(D) [reserved];

(E) any provision of this Agreement or any other Loan Document may be amended by an agreement in writing entered into by the Borrower and the Administrative Agent (or the Collateral Agent, as applicable) to cure any ambiguity, omission, defect or inconsistency (including amendments, supplements or waivers to any of the Collateral Documents, guarantees, intercreditor agreements or related documents executed by any Loan Party or any other Subsidiary in connection with this Agreement if such amendment, supplement or waiver is delivered in order to cause such Collateral Documents, guarantees, intercreditor agreements or related documents to be consistent with this Agreement and the other Loan Documents) so long as, in each case, the Lenders shall have received at least five (5) Business Days' prior written notice thereof and the Administrative Agent shall not have received, within five (5) Business Days of the date of such notice to the Lenders, a written notice from the Required Lenders stating that the Required Lenders object to such amendment; *provided* that the consent of the Lenders or the Required Lenders, as the case may be, shall not be required to make any such changes necessary to be made in connection with any borrowing of Incremental Loans, any borrowing of Other Loans, any Extension or any borrowing of Replacement Loans and otherwise to effect the provisions of Section 2.14, 2.15 or 2.16 or the immediately succeeding paragraph of this Section 10.01, respectively; and

(F) the Borrower and the Administrative Agent may, without the input or consent of the other Lenders effect changes to any Mortgage as may be necessary or appropriate in the opinion of the Collateral Agent.

(2) [Reserved].

(3) In addition, notwithstanding anything to the contrary in this Section 10.01,

(a) the Guaranty, the Collateral Documents and related documents executed by Loan Parties in connection with this Agreement and the other Loan Documents may be in a form reasonably determined by the Administrative Agent (acting at the Direction of the Required Lenders) and may be, together with this Agreement, amended and waived with the consent of the Administrative Agent (acting at the Direction of the Required Lenders) at the request of the Borrower without the need to obtain the consent of any other Lender if such amendment or waiver is delivered in order (i) to comply with local Law or advice of local counsel, (ii) to cure ambiguities or defects or (iii) to cause the Guaranty, Collateral Documents or other document to be consistent with this Agreement and the other Loan Documents (including by adding additional parties as contemplated herein or therein) and

(b) if the Administrative Agent and the Borrower shall have jointly identified an obvious error, mistake, ambiguity, incorrect cross-reference or any error or omission of a technical or immaterial nature, in each case, in any provision of this Agreement or any other Loan Document (including, for the avoidance of doubt, any

exhibit, schedule or other attachment to any Loan Document), then the Administrative Agent (acting in its sole discretion) and the Borrower or any other relevant Loan Party shall be permitted to amend such provision and such amendment shall become effective without any further action or consent of any other party to any Loan Document. Notification of such amendment shall be made by the Administrative Agent to the Lenders promptly upon such amendment becoming effective.

SECTION 10.02 Notices and Other Communications; Facsimile Copies.

(1) General. Except in the case of notices and other communications expressly permitted to be given by telephone (and except as provided in subsection (2) below), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by facsimile as follows, and all notices and other communications expressly permitted hereunder to be given by telephone shall be made to the applicable telephone number, as follows:

(a) if to Holdings, the HoldCo Debtors, the Borrower or the Administrative Agent, to the address, facsimile number, electronic mail address or telephone number specified for such Person on Schedule 10.02; and

(b) if to any other Lender, to the address, facsimile number, electronic mail address or telephone number specified in its Administrative Questionnaire.

Notices and other communications sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received; notices and other communications sent by facsimile shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next succeeding Business Day for the recipient). Notices and other communications delivered through electronic communications to the extent provided in subsection (2) below shall be effective as provided in such subsection (2).

(2) Electronic Communication. Notices and other communications to the Lenders hereunder may be delivered or furnished by electronic communication (including e-mail and Internet or intranet websites) pursuant to procedures approved by the Administrative Agent, *provided* that the foregoing shall not apply to notices to any Lender pursuant to Article II if such Lender, as applicable, has notified the Administrative Agent that it is incapable of receiving notices under such Article by electronic communication. The Administrative Agent or the Borrower may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it, *provided* that approval of such procedures may be limited to particular notices or communications.

(3) Unless the Administrative Agent otherwise prescribes, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement), *provided* that if such notice or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of

business on the next succeeding Business Day for the recipient, and (ii) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing clause (i) of notification that such notice or communication is available and identifying the website address therefor.

(4) The Platform. THE PLATFORM IS PROVIDED “AS IS” AND “AS AVAILABLE.” THE AGENT PARTIES (AS DEFINED BELOW) DO NOT WARRANT THE ACCURACY OR COMPLETENESS OF THE BORROWER MATERIALS OR THE ADEQUACY OF THE PLATFORM, AND EXPRESSLY DISCLAIM LIABILITY FOR ERRORS IN OR OMISSIONS FROM THE BORROWER MATERIALS. NO WARRANTY OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF THIRD-PARTY RIGHTS OR FREEDOM FROM VIRUSES OR OTHER CODE DEFECTS, IS MADE BY ANY AGENT PARTY IN CONNECTION WITH THE BORROWER MATERIALS OR THE PLATFORM. In no event shall the Administrative Agent or any of its Agent-Related Persons (collectively, the “**Agent Parties**”) have any liability to Holdings, the Borrower, any Lender, or any other Person for losses, claims, damages, liabilities or expenses of any kind (whether in tort, contract or otherwise) arising out of the Borrower’s or the Administrative Agent’s transmission of Borrower Materials through the Internet, except to the extent that such losses, claims, damages, liabilities or expenses are determined by a court of competent jurisdiction by a final and non-appealable judgment to have resulted from the gross negligence, bad faith or willful misconduct of such Agent Party; *provided, however*, that in no event shall any Agent Party have any liability to Holdings, the Borrower, any Lender or any other Person for indirect, special, incidental, consequential or punitive damages (as opposed to direct or actual damages).

(5) Change of Address. Each Loan Party and the Administrative Agent may change its address, facsimile or telephone number for notices and other communications hereunder by written notice to the other parties hereto. Each other Lender may change its address, facsimile or telephone number for notices and other communications hereunder by written notice to the Borrower and the Administrative Agent. In addition, each Lender agrees to notify the Administrative Agent from time to time to ensure that the Administrative Agent has on record (i) an effective address, contact name, telephone number, facsimile number and electronic mail address to which notices and other communications may be sent and (ii) accurate wire instructions for such Lender. Furthermore, each Public Lender agrees to cause at least one individual at or on behalf of such Public Lender to at all times have selected the “Private-Side Information” or similar designation on the content declaration screen of the Platform in order to enable such Public Lender or its delegate, in accordance with such Public Lender’s compliance procedures and applicable Law, including United States Federal and state securities Laws, to make reference to Borrower Materials that are not made available through the “Public Side Information” portion of the Platform and that may contain material non-public information with respect to the Borrower or its securities for purposes of United States Federal or state securities laws.

(6) Reliance by the Administrative Agent. The Administrative Agent and the Lenders shall be entitled to rely and act upon any notices (including telephonic 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 Borrower shall indemnify the Administrative Agent and its Agent-Related Persons, each Lender and the Related Persons of each of them from all losses, costs, expenses and liabilities resulting from the reliance by such Person on each notice purportedly given by or on behalf of the Borrower. All telephonic notices to and other telephonic communications with the Administrative Agent may be recorded by the Administrative Agent, and each of the parties hereto hereby consents to such recording.

SECTION 10.03 No Waiver; Cumulative Remedies. No failure by any Lender or the Administrative Agent to exercise, and no delay by any such Person in exercising, any right, remedy, power or privilege hereunder or under any other Loan Document shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges herein provided, and provided under each other Loan Document, are cumulative and not exclusive of any rights, remedies, powers and privileges provided by Law.

Notwithstanding anything to the contrary contained herein or in any other Loan Document, the authority to enforce rights and remedies hereunder and under the other Loan Documents against the Loan Parties or any of them shall be vested exclusively in, and all actions and proceedings at law in connection with such enforcement shall be instituted and maintained exclusively by, the Administrative Agent in accordance with Section 8.02 for the benefit of all the Lenders; *provided, however*, that the foregoing shall not prohibit (a) the Administrative Agent from exercising on its own behalf the rights and remedies that inure to its benefit (solely in its capacity as Administrative Agent) hereunder and under the other Loan Documents, (b) [reserved], (c) any Lender from exercising setoff rights in accordance with Section 10.10 (subject to the terms of Section 2.13), or (d) 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), (c) and (d) of the preceding proviso and subject to Section 2.13, any Lender may, with the consent of the Required Lenders, enforce any rights and remedies available to it and as authorized by the Required Lenders.

SECTION 10.04 Costs and Expenses. The Borrower agrees (a) on the Closing Date, to pay or reimburse the Administrative Agent and the Ad Hoc Group for all reasonable and documented out-of-pocket costs and expenses of the Administrative Agent and the Ad Hoc Group incurred in connection with the preparation, negotiation, syndication, execution, delivery and administration of this Agreement and the other Loan Documents and any amendment, waiver, consent or other modification of the provisions hereof and thereof (whether or not the transactions contemplated thereby are consummated), and the consummation and administration of the transactions contemplated hereby and thereby, including all Attorney Costs of U.S. counsel to the Administrative Agent, the Ad Hoc Group Counsel and local counsel in any

other relevant material jurisdiction and, without duplication, all reasonable and documented out-of-pocket costs and expenses of the Ad Hoc Group Advisors (as defined in the Restructuring Support Agreement), and (b) upon presentation of a summary statement, together with any supporting documentation reasonably requested by the Borrower, to pay or reimburse the Administrative Agent and the Ad Hoc Group, promptly following a written demand therefor, for all reasonable and documented out-of-pocket costs and expenses incurred in connection with the enforcement of any rights or remedies under this Agreement or the other Loan Documents (including all such costs and expenses incurred during any legal proceeding, including any proceeding under any Debtor Relief Law, and including all Attorney Costs of U.S. counsel to the Administrative Agent, the Ad Hoc Group Counsel and local counsel in any other relevant material jurisdiction and, solely in the case of a conflict of interest, one additional counsel in each relevant material jurisdiction to each group of affected Lenders similarly situated taken as a whole, and, without duplication, all reasonable and documented out-of-pocket costs and expenses of the Ad Hoc Group Advisors (as defined in the Restructuring Support Agreement)). The agreements in this Section 10.04 shall survive the termination of the Aggregate Commitments and repayment of all other Obligations. All amounts due under this Section 10.04 shall be paid within thirty (30) calendar days following receipt by the Borrower of an invoice relating thereto setting forth such expenses in reasonable detail. If any Loan Party fails to pay when due any costs, expenses or other amounts payable by it hereunder or under any other Loan Document, such amount may be paid on behalf of such Loan Party by the Administrative Agent in its sole discretion.

SECTION 10.05 Indemnification by the Borrower. The Borrower shall indemnify and hold harmless the Agents and the Agent-Related Persons and each Lender and their respective Related Persons, in each case, in its capacity as a Lender hereunder (collectively, the “**Indemnitees**”), from and against any and all losses, claims, damages, liabilities or expenses (including Attorney Costs and Environmental Liabilities) to which any such Indemnatee may become subject arising out of, resulting from or in connection with (but limited, in the case of legal fees and expenses, to the reasonable and documented out-of-pocket fees, disbursements and other charges of one counsel to the Administrative Agent, one counsel to all Lenders taken as a whole and, if reasonably necessary, a single local counsel for all Indemnitees taken as a whole in each relevant material jurisdiction, and solely in the case of a conflict of interest, one additional counsel in each relevant material jurisdiction to each group of affected Indemnitees similarly situated taken as a whole) any actual or threatened claim, litigation, investigation or proceeding relating to the Transactions or to the execution, delivery, enforcement, performance and administration of this Agreement, the other Loan Documents, the Loans, or the use, or proposed use of the proceeds therefrom, whether based on contract, tort or any other theory (including any investigation of, preparation for, or defense of any pending or threatened claim, litigation, investigation or proceeding), and regardless of whether any Indemnatee is a party thereto (all the foregoing, collectively, the “**Indemnified Liabilities**”); *provided* that such indemnity shall not, as to any Indemnatee, be available to the extent that such losses, claims, damages, liabilities or expenses resulted from (x) the gross negligence, bad faith or willful misconduct of such Indemnatee or any of its Related Indemnified Persons as determined by a final, non-appealable judgment of a court of competent jurisdiction, (y) a material breach of any obligations under any Loan Document by such Indemnatee or any of its Related Indemnified Persons as determined by a final, non-appealable judgment of a court of competent jurisdiction or (z) any dispute solely among Indemnitees other than any claims against an Indemnatee in its capacity or in fulfilling its

role as an administrative agent or arranger or any similar role under any Loan Document and other than any claims arising out of any act or omission of Holdings or any of its Affiliates (as determined by a final, non-appealable judgment of a court of competent jurisdiction). To the extent that the undertakings to indemnify and hold harmless set forth in this Section 10.05 may be unenforceable in whole or in part because they are violative of any applicable Law or public policy, the Borrower shall contribute the maximum portion that they are permitted to pay and satisfy under applicable Law to the payment and satisfaction of all Indemnified Liabilities incurred by the Indemnitees or any of them. No Indemnatee shall be liable for any damages arising from the use by others of any information or other materials obtained through DebtDomain or other similar information transmission systems in connection with this Agreement (except to the extent such damages are found in a final non-appealable judgment of a court of competent jurisdiction to have resulted from the willful misconduct, bad faith or gross negligence of such Indemnatee), nor shall any Indemnatee or any Loan Party have any liability for any special, punitive, indirect or consequential damages relating to this Agreement or any other Loan Document or arising out of its activities in connection herewith or therewith (whether before or after the Closing Date) (other than, in the case of any Loan Party, in respect of any such damages incurred or paid by an Indemnatee to a third party for which such Indemnatee is otherwise entitled to indemnification pursuant to this Section 10.05). In the case of an investigation, litigation or other proceeding to which the indemnity in this Section 10.05 applies, such indemnity shall be effective whether or not such investigation, litigation or proceeding is brought by any Loan Party, its directors, stockholders or creditors or an Indemnatee or any other Person, whether or not any Indemnatee is otherwise a party thereto and whether or not any of the transactions contemplated hereunder or under any of the other Loan Documents is consummated. All amounts due under this Section 10.05 shall be paid within thirty (30) calendar days after written demand therefor. The agreements in this Section 10.05 shall survive the resignation of the Administrative Agent, the replacement of any Lender, the termination of the Aggregate Commitments and the repayment, satisfaction or discharge of all the other Obligations. This Section 10.05 shall not apply to Taxes, except any Taxes that represent losses or damages arising from any non-tax claim. Notwithstanding the foregoing, each Indemnatee shall be obligated to refund and return promptly any and all amounts paid by any Loan Party or any of its Affiliates under this Section 10.05 to such Indemnatee for any such fees, expenses or damages to the extent such Indemnatee is not entitled to payment of such amounts in accordance with the terms hereof.

SECTION 10.06 Marshaling; Payments Set Aside. None of the Administrative Agent or any Lender shall be under any obligation to marshal any assets in favor of the Loan Parties or any other party or against or in payment of any or all of the Obligations. To the extent that any payment by or on behalf of the Borrower is made to any Agent or any Lender, or any Agent or any Lender exercises its right of setoff, and such payment or the proceeds of such setoff or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by such Agent or such Lender in its discretion) to be repaid to a trustee, receiver or any other party, in connection with any proceeding under any Debtor Relief Law or otherwise, then (a) to the extent of such recovery, the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such setoff had not occurred, and (b) each Lender severally agrees to pay to the Administrative Agent upon demand its applicable share of any amount so recovered from or repaid by any Agent, plus

interest thereon from the date of such demand to the date such payment is made at a rate per annum equal to the Overnight Rate from time to time in effect.

SECTION 10.07 Successors and Assigns.

(a) The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and registered assigns permitted hereby, except that none of Holdings, the HoldCo Debtors or the Borrower may, except as permitted by Section 7.03, assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the Administrative Agent (acting at the Direction of the Required Lenders) and each Lender and no Lender may assign or otherwise transfer any of its rights or obligations hereunder (including to existing Lenders and their Affiliates) except (i) to an assignee in accordance with the provisions of Section 10.07(b) (such an assignee, an “**Eligible Assignee**”), (ii) by way of participation in accordance with the provisions of Section 10.07(d), (iii) by way of pledge or assignment of a security interest subject to the restrictions of Section 10.07(f), or (iv) to an SPC in accordance with the provisions of Section 10.07(g) (and any other attempted assignment or transfer by any party hereto shall be null and void). Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants to the extent provided in Section 10.07(d) and, to the extent expressly contemplated hereby, Related Persons of each of the Administrative Agent and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) Assignments by Lenders. Any Lender may at any time assign to one or more assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitment and the Loans at the time owing to it); *provided* that any such assignment shall be subject to the following conditions:

(i) Minimum Amounts.

(A) in the case of an assignment of the entire remaining amount of the assigning Lender’s Commitment and the Loans at the time owing to it or in the case of an assignment to a Lender, an Affiliate of a Lender or an Approved Fund, no minimum amount need be assigned; and

(B) in any case not described in subsection (b)(i)(A) of this Section 10.07, the aggregate amount of the Commitment or, the principal outstanding balance of the Loans of the assigning Lender subject to each such assignment, determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Administrative Agent or, if “Trade Date” is specified in the Assignment and Assumption, as of the Trade Date, shall not be less than \$1.0 million, in the case of Term Loans unless each of the Administrative Agent and, so long as no Event of Default under Section 8.01(1) has occurred and is continuing, the Borrower otherwise consents (in the case of an assignment

of Term Loans, each such consent not to be unreasonably withheld or delayed); *provided, however*, that concurrent assignments to members of an Assignee Group and concurrent assignments from members of an Assignee Group to a single Eligible Assignee (or to an Eligible Assignee and members of its Assignee Group) will be treated as a single assignment for purposes of determining whether such minimum amount has been met.

(ii) 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; *provided* that the assignment by the Fronting Lender of funded Interim Loans shall be exclusive of, and will not contain any portion of, any unfunded Commitment held by the Fronting Lender at the time of assignment of such Interim Loans.

(iii) Required Consents. No consent shall be required for any assignment except to the extent required by Section 10.07(b)(i)(B) and, in addition:

(A) the consent of the Borrower (such consent not to be unreasonably withheld or delayed) shall be required unless (1) an Event of Default under Section 8.01(1) has occurred and is continuing at the time of such assignment determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Administrative Agent or, if a "Trade Date" is specified in the Assignment and Assumption, as of the Trade Date or (2) in respect of an assignment of all or a portion of the Term Loans only, such assignment is to a Lender, an Affiliate of a Lender or an Approved Fund; *provided* that the Borrower shall be deemed to have consented to any assignment of all or a portion of the Term Loans unless it shall have objected thereto by written notice to the Administrative Agent within ten (10) Business Days after having received notice of a failure to respond to such request for assignment;

(B) the consent of the Administrative Agent (such consent not to be unreasonably withheld or delayed) shall be required if such assignment is to a Person that is not a Lender, an Affiliate of such Lender or an Approved Fund with respect to such Lender;

(iv) Assignment and Assumption. The parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Assumption via an electronic settlement system acceptable to the Administrative Agent (or, if previously agreed with the Administrative Agent, manually), and shall pay to the Administrative Agent a processing and recordation fee of \$3,500 (which fee may be waived or reduced in the sole discretion of the Administrative Agent). The Eligible Assignee, if it shall not be a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire and all applicable

tax forms.

(v) No Assignments to Certain Persons. No such assignment shall be made (A) to Holdings, the HoldCo Debtors, the Borrower or any of the Borrower's Subsidiaries, (B) to any Affiliate of the Borrower, (C) to a natural person or (D) to any Defaulting Lender.

In connection with any assignment of rights and obligations of any Defaulting Lender hereunder, no such assignment shall be effective unless and until, in addition to the other conditions thereto set forth herein, the parties to the assignment shall make such additional payments to the Administrative Agent in an aggregate amount sufficient, upon distribution thereof as appropriate (which may be outright payment, purchases by the assignee of participations or sub participations, or other compensating actions, including funding, with the consent of the Borrower and the Administrative Agent, the applicable Pro Rata Share of Loans previously requested but not funded by the Defaulting Lender, to each of which the applicable assignee and assignor hereby irrevocably consent), to (x) pay and satisfy in full all payment liabilities then owed by such Defaulting Lender to the Administrative Agent or any Lender hereunder (and interest accrued thereon) and (y) acquire (and fund as appropriate) its full Pro Rata Share of all Loans and participations in Letters of Credit and Swing Line Loans in accordance with its Pro Rata Share. Notwithstanding the foregoing, in the event that any assignment of rights and obligations of any Defaulting Lender hereunder shall become effective under applicable Law without compliance with the provisions of this paragraph, then the assignee of such interest shall be deemed to be a Defaulting Lender for all purposes of this Agreement until such compliance occurs.

Subject to acceptance and recording thereof by the Administrative Agent pursuant to clause (c) of this Section 10.07, from and after the effective date specified in each Assignment and Assumption, (x) the assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, and (y) the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto but shall continue to be entitled to the benefits of Sections 3.01, 3.04, 3.05, 10.04 and 10.05 with respect to facts and circumstances occurring prior to the effective date of such assignment), but shall in any event continue to be subject to Section 10.09. Upon request, and the surrender by the assigning Lender of its Note, the Borrower (at its expense) shall execute and deliver a Note to the assignee Lender. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this subsection shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with Section 10.07(d).

(c) The Administrative Agent, acting solely for this purpose as an agent of the Borrower, shall maintain at the Administrative Agent's Office a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Commitments of, and principal amounts (and related interest amounts) of the Loans, owing to each Lender pursuant to the terms

hereof from time to time (the “**Register**”). The entries in the Register shall be conclusive absent manifest error, and the Borrower, the Agents and the Lenders shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. The Register shall be available for inspection by the Borrower, any Agent and, with respect to its own Loans, any Lender, at any reasonable time and from time to time upon reasonable prior notice. This Section 10.07(c) and Section 2.11 shall be construed so that all Loans are at all times maintained in “registered form” within the meaning of Sections 163(f), 871(h)(2) and 881(c)(2) of the Code and any related Treasury regulations (or any other relevant or successor provisions of the Code or of such Treasury regulations).

(d) Any Lender may at any time, without the consent of, or notice to, the Borrower or the Administrative Agent, sell participations to any Person (other than a natural person, the Borrower and its Affiliates or a Defaulting Lender) (each, a “**Participant**”) in all or a portion of such Lender’s rights or obligations under this Agreement (including all or a portion of its Commitment or the Loans owing to it); *provided* that (i) such Lender’s obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (iii) the Borrower, the Agents and the other Lenders shall continue to deal solely and directly with such Lender in connection with such Lender’s rights and obligations under this Agreement. Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and the other Loan Documents and to approve any amendment, modification or waiver of any provision of this Agreement or any other Loan Document; *provided* that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, waiver or other modification described in the first proviso to Section 10.01(1) (other than clauses (g), (h) and (i) thereof) that directly and adversely affects such Participant. Subject to subsection (e) of this Section 10.07, the Borrower agrees that each Participant shall be entitled to the benefits of Sections 3.01 (subject to the requirements of Section 3.01 (including subsections (2), (3) and (4), as applicable) as though it were a Lender; *provided* that any forms required to be provided under Section 3.01(3) shall be provided solely to the participating Lender), 3.04 and 3.05 (through the applicable Lender) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to subsection (b) of this Section 10.07. To the extent permitted by applicable Law, each Participant also shall be entitled to the benefits of Section 10.10 as though it were a Lender; *provided* that such Participant shall agree to be subject to Section 2.13 as though it were a Lender.

(e) Limitations upon Participant Rights. A Participant shall not be entitled to receive any greater payment under Section 3.01, 3.04 or 3.05 than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant, unless the sale of the participation to such Participant is made with the Borrower’s prior written consent. Each Lender that sells a participation shall (acting solely for this purpose as a non-fiduciary agent of the Borrower) maintain a register complying with the requirements of Sections 163(f), 871(h) and 881(c)(2) of the Code and the Treasury regulations issued thereunder on which is entered the name and

address of each Participant and the principal amounts (and related interest amounts) of each Participant's interest in the Loans or other obligations under this Agreement (the "**Participant Register**"). The entries in the Participant Register shall be conclusive absent manifest error, and such Lender and the Borrower shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary; *provided* that no Lender shall have the obligation to disclose all or a portion of the Participant Register (including the identity of the Participant or any information relating to a Participant's interest in any commitments, loans, letters of credit or other obligations under any Loan Document) to any Person except to the extent such disclosure is necessary to establish that any such commitments, loans, letters of credit or other obligations are in registered form for U.S. federal income tax purposes or such disclosure is otherwise required under Treasury Regulations Section 5f.103-1(c).

(f) Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement (including under its Note, if any) to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank or any other central bank; *provided* that no such pledge or assignment shall release such Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

(g) Notwithstanding anything to the contrary contained herein, any Lender (a "**Granting Lender**") may grant to a special purpose funding vehicle identified as such in writing from time to time by the Granting Lender to the Administrative Agent and the Borrower (an "**SPC**") the option to provide all or any part of any Loan that such Granting Lender would otherwise be obligated to make pursuant to this Agreement; *provided* that (i) nothing herein shall constitute a commitment by any SPC to fund any Loan, (ii) if an SPC elects not to exercise such option or otherwise fails to make all or any part of such Loan, the Granting Lender shall be obligated to make such Loan pursuant to the terms hereof and (iii) such SPC and the applicable Loan or any applicable part thereof shall be appropriately reflected in the Participant Register. Each party hereto hereby agrees that (i) neither the grant to any SPC nor the exercise by any SPC of such option shall increase the costs or expenses or otherwise increase or change the obligations of the Borrower under this Agreement (including its obligations under Section 3.01, 3.04 or 3.05), (ii) no SPC shall be liable for any indemnity or similar payment obligation under this Agreement for which a Lender would be liable, and (iii) the Granting Lender shall for all purposes, including the approval of any amendment, waiver or other modification of any provision of any Loan Document, remain the Lender hereunder. The making of a Loan by an SPC hereunder shall utilize the Commitment of the Granting Lender to the same extent, and as if, such Loan were made by such Granting Lender. Notwithstanding anything to the contrary contained herein, any SPC may (i) with notice to, but without prior consent of the Borrower and the Administrative Agent and with the payment of a processing fee of \$3,500 (which processing fee may be waived by the Administrative Agent in its sole discretion), assign all or any portion of its right to receive payment with respect to any Loan to the Granting Lender and (ii) disclose on a confidential basis any non-public information relating to its funding of Loans to any rating agency, commercial paper dealer or provider of any surety or Guarantee or credit

or liquidity enhancement to such SPC.

(h) [Reserved].

(i) [Reserved].

(j) [Reserved].

(k) [Reserved].

(l) [Reserved].

(m) Notwithstanding anything to the contrary contained herein, without the consent of the Borrower or the Administrative Agent, (1) any Lender may in accordance with applicable Law create a security interest in all or any portion of the Loans owing to it and the Note, if any, held by it and (2) any Lender that is a Fund may create a security interest in all or any portion of the Loans owing to it and the Note, if any, held by it to the trustee for holders of obligations owed, or securities issued, by such Fund as security for such obligations or securities; *provided* that unless and until such trustee actually becomes a Lender in compliance with the other provisions of this Section 10.07, (i) no such pledge shall release the pledging Lender from any of its obligations under the Loan Documents and (ii) such trustee shall not be entitled to exercise any of the rights of a Lender under the Loan Documents even though such trustee may have acquired ownership rights with respect to the pledged interest through foreclosure or otherwise.

SECTION 10.08 [Reserved].

SECTION 10.09 Confidentiality. Each of the Agents and the Lenders agrees to maintain the confidentiality of the Information in accordance with its customary procedures (as set forth below), except that Information may be disclosed (a) to its Affiliates and to its and its Affiliates' respective partners, directors, officers, employees, legal counsel, independent auditors, agents, trustees, managers, controlling Persons, advisors and representatives who need to know such information (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential, with such Affiliate being responsible for such Person's compliance with this Section 10.09; *provided, however*, that such Agent or Lender, as applicable, shall be principally liable to the extent this Section 10.09 is violated by one or more of its Affiliates or any of its or their respective partners, directors, officers, employees, legal counsel, independent auditors, agents, trustees, managers, controlling Persons, advisors or representatives), (b) to the extent requested by any regulatory authority purporting to have jurisdiction over it (including any self-regulatory authority, such as the National Association of Insurance Commissioners); *provided, however*, that each Agent and each Lender agrees to notify the Borrower promptly thereof (except in connection with any request as part of a regulatory examination) to the extent it is legally permitted to do so, (c) to the extent required by applicable laws or regulations or by any subpoena or otherwise (including by order) as required by applicable Law or regulation or as requested by a governmental authority; *provided* that such Agent or such Lender, as applicable, agrees that it will notify the Borrower as soon as practicable in the event of any such disclosure

by such Person (except in connection with any request as part of a regulatory examination) unless such notification is prohibited by law, rule or regulation, (d) to any other party hereto, subject to an agreement containing provisions at least as restrictive as those of this Section 10.09, to (i) subject to Section 10.07(b)(v)(D), any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights or obligations under this Agreement or any Eligible Assignee (or its agent) invited to be an Additional Lender or (ii) any actual or prospective direct or indirect counterparty (or its advisors) to any swap or derivative transaction relating to Holdings, the Borrower or any of their Subsidiaries or any of their respective obligations; *provided* that such disclosure shall be made subject to the acknowledgment and acceptance by such prospective Lender, Participant or Eligible Assignee that such Information is being disseminated on a confidential basis (on substantially the terms set forth in this paragraph or as is otherwise reasonably acceptable to the Borrower and the Agents including as set forth in any confidential information memorandum or other marketing materials) in accordance with the standard syndication process of the Agents or market standards for dissemination of such type of information which shall in any event require “click through” or other affirmative action on the part of the recipient to access such confidential information, (e) for purposes of establishing a “due diligence” defense, (f) on a confidential basis to (i) any rating agency in connection with rating the Borrower or its Subsidiaries or the credit facilities provided hereunder, (ii) the CUSIP Service Bureau or any similar agency in connection with the issuance and monitoring of CUSIP numbers or other market identifiers with respect to the credit facilities provided hereunder, or (iii) service providers to the Agents and the Lenders in connection with the administration, settlement and management of this Agreement and the credit facilities provided hereunder, (g) with the consent of the Borrower, (h) to market data collectors for customary purposes in the lending industry in connection with the Facilities or (i) to the extent such Information (x) becomes publicly available other than as a result of a breach by any Person of this Section 10.09 or any other confidentiality provision in favor of any Loan Party, (y) becomes available to any Agent or any Lender or any of their respective Affiliates on a non-confidential basis from a source other than Holdings, the Borrower or any Subsidiary thereof, and which source is not known by such Agent, such Lender or the applicable Affiliate to be subject to a confidentiality restriction in respect thereof in favor of Holdings, the Borrower or any Affiliate thereof or (z) is independently developed by the Agents, the Lenders, or their respective Affiliates, in each case, so long as not based on information obtained in a manner that would otherwise violate this Section 10.09.

For purposes of this Section 10.09, “**Information**” means all information received from any Loan Party or any Subsidiary thereof relating to any Loan Party or any Subsidiary or Affiliate thereof or their respective businesses, other than any such information that is available to any Agent or any Lender on a non-confidential basis prior to disclosure by any Loan Party or any Subsidiary thereof; it being understood that no information received from Holdings, the Borrower or any Subsidiary or Affiliate thereof after the date hereof shall be deemed non-confidential on account of such information not being clearly identified at the time of delivery as being confidential. Any Person required to maintain the confidentiality of Information as provided in this Section 10.09 shall be considered to have complied with its obligation to do so in accordance with its customary procedures if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information.

Each Agent and each Lender acknowledges that (a) the Information may include trade secrets, protected confidential information, or material non-public information concerning the Borrower or a Subsidiary, as the case may be, (b) it has developed compliance procedures regarding the use of such information and (c) it will handle such information in accordance with applicable Law, including United States Federal and state securities Laws and to preserve its trade secret or confidential character.

The respective obligations of the Agents and the Lenders under this Section 10.09 shall survive, to the extent applicable to such Person, (x) the payment in full of the Obligations and the termination of this Agreement and (y) any assignment of its rights and obligations under this Agreement.

SECTION 10.10 Setoff. In Subject to the terms of the DIP Order and the Carve-Out, if an Event of Default shall have occurred and be continuing, each Lender is hereby authorized at any time and from time to time, after obtaining the prior written consent of the Administrative Agent, to the fullest extent permitted by applicable Law, to set off and apply any and all deposits (general or special, time or demand, provisional or final, in whatever currency) at any time held and other obligations (in whatever currency) at any time owing by such Lender to or for the credit or the account of any Loan Party against any and all of the obligations of such Loan Party then due and payable under this Agreement or any other Loan Document to such Lender, irrespective of whether or not such Lender shall have made any demand under this Agreement or any other Loan Document; *provided* that in the event that any Defaulting Lender shall exercise any such right of setoff, (x) all amounts so set off shall be paid over immediately to the Administrative Agent for further application in accordance with the provisions of Section 2.15 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 under this Section 10.10 are in addition to other rights and remedies (including other rights of setoff) that such Lender may have. Each Lender agrees to notify the Borrower and the Administrative Agent promptly after any such setoff and application, *provided* that the failure to give such notice shall not affect the validity of such setoff and application.

SECTION 10.11 Interest Rate Limitation. Notwithstanding anything to the contrary contained in any Loan Document, the interest paid or agreed to be paid under the Loan Documents shall not exceed the maximum rate of non-usurious interest permitted by applicable Law (the “**Maximum Rate**”). If any Agent or any Lender shall receive interest in an amount that exceeds the Maximum Rate, the excess interest shall be applied to the principal of the Loans or, if it exceeds such unpaid principal, refunded to the Borrower. In determining whether the interest contracted for, charged, or received by an Agent or a Lender exceeds the Maximum Rate, such Person may, to the extent permitted by applicable Law, (a) characterize any payment that is not principal as an expense, fee, or premium rather than interest, (b) exclude voluntary prepayments and the effects thereof, and (c) amortize, prorate, allocate, and spread in equal or unequal parts the total amount of interest throughout the contemplated term of the Obligations hereunder.

SECTION 10.12 Counterparts; Integration; Effectiveness. This Agreement and each of the other Loan Documents 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, the other Loan Documents and the Restructuring Support Agreement constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Except as provided in Section 4.01, this Agreement shall become effective when it shall have been executed by the Administrative Agent and when the Administrative Agent shall have received counterparts hereof that, when taken together, bear the signatures of each of the other parties hereto. Delivery of an executed counterpart of a signature page of this Agreement by facsimile or other electronic imaging (including in .pdf format) means shall be effective as delivery of a manually executed counterpart of this Agreement.

SECTION 10.13 Electronic Execution of Assignments and Certain Other Documents. The words “delivery,” “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 modifications, 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, physical delivery thereof or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable Law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act.

SECTION 10.14 Survival of Representations and Warranties. 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.

SECTION 10.15 Severability. If any provision of this Agreement or the other Loan Documents is held to be illegal, invalid or unenforceable, (a) the legality, validity and enforceability of the remaining provisions of this Agreement and the other Loan Documents shall not be affected or impaired thereby and (b) the parties shall endeavor in good faith negotiations to replace the illegal, invalid or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the illegal, invalid or unenforceable provisions. The invalidity of a provision in a particular jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

SECTION 10.16 GOVERNING LAW.

(a) THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK, EXCEPT TO THE EXTENT NEW YORK LAW IS SUPERSEDED BY THE BANKRUPTCY CODE.

(b) ANY LEGAL ACTION OR PROCEEDING WITH RESPECT TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT SHALL BE BROUGHT IN THE BANKRUPTCY COURT, AND, BY EXECUTION AND DELIVERY OF THIS AGREEMENT, EACH OBLIGOR HEREBY IRREVOCABLY ACCEPTS IN RESPECT OF ITS PROPERTY, GENERALLY AND UNCONDITIONALLY, THE JURISDICTION OF THE BANKRUPTCY COURT. EACH OBLIGOR HEREBY IRREVOCABLY CONSENTS TO THE SERVICE OF PROCESS OUT OF THE BANKRUPTCY COURT AND IN ANY SUCH ACTION OR PROCEEDING BY THE MAILING OF COPIES THEREOF BY REGISTERED OR CERTIFIED MAIL, POSTAGE PREPAID, TO THE LOAN PARTIES AT THEIR ADDRESS FOR NOTICES AS SET FORTH IN SECTION 10.02. THE LOAN PARTIES AGREE THAT A FINAL JUDGMENT IN ANY SUCH ACTION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. NOTHING HEREIN SHALL AFFECT THE RIGHT OF THE ADMINISTRATIVE AGENT AND THE LENDERS TO SERVICE OF PROCESS IN ANY OTHER MANNER PERMITTED BY LAW OR TO COMMENCE LEGAL PROCEEDINGS OR OTHERWISE PROCEED AGAINST ANY LOAN PARTY IN ANY OTHER JURISDICTION. EACH OBLIGOR HEREBY EXPRESSLY AND IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY OBJECTION WHICH IT MAY NOW OR HEREAFTER HAVE TO THE JURISDICTION OR LAYING OF VENUE OF ANY SUCH LITIGATION BROUGHT IN SUCH COURT AND ANY CLAIM THAT ANY SUCH LITIGATION HAS BEEN BROUGHT IN AN INCONVENIENT FORUM. TO THE EXTENT THAT ANY LOAN PARTY HAS OR HEREAFTER MAY ACQUIRE ANY IMMUNITY FROM JURISDICTION OF ANY COURT OR FROM ANY LEGAL PROCESS (WHETHER THROUGH SERVICE OR NOTICE, ATTACHMENT PRIOR TO JUDGMENT, ATTACHMENT IN AID OF EXECUTION OR OTHERWISE) WITH RESPECT TO ITSELF OR ITS PROPERTY, EACH OBLIGOR HEREBY IRREVOCABLY WAIVES SUCH IMMUNITY IN RESPECT OF ITS OBLIGATIONS UNDER THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS.

SECTION 10.17 WAIVER OF RIGHT TO TRIAL BY JURY. EACH OBLIGOR, THE ADMINISTRATIVE AGENT AND EACH LENDER HEREBY WAIVES ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM CONCERNING ANY RIGHTS UNDER THIS AGREEMENT OR THE OTHER LOAN DOCUMENTS, OR UNDER ANY AMENDMENT, WAIVER, CONSENT, INSTRUMENT, DOCUMENT OR OTHER AGREEMENT DELIVERED OR WHICH IN THE FUTURE MAY BE DELIVERED IN CONNECTION THEREWITH, OR ARISING FROM ANY FINANCING RELATIONSHIP EXISTING IN CONNECTION WITH THIS

AGREEMENT, AND AGREES THAT ANY SUCH ACTION, PROCEEDINGS OR COUNTERCLAIM SHALL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY. EACH OBLIGOR CERTIFIES THAT NO OFFICER, REPRESENTATIVE, AGENT OR ATTORNEY OF THE ADMINISTRATIVE AGENT OR ANY LENDER HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT THE ADMINISTRATIVE AGENT OR ANY LENDER WOULD NOT, IN THE EVENT OF ANY ACTION, PROCEEDING OR COUNTERCLAIM, SEEK TO ENFORCE THE FOREGOING WAIVERS. EACH OBLIGOR HEREBY ACKNOWLEDGES THAT THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE ADMINISTRATIVE AGENT AND THE LENDERS ENTERING INTO THIS AGREEMENT.

SECTION 10.18 Binding Effect. This Agreement shall become effective when it shall have been executed by the Borrower and the Administrative Agent and the Administrative Agent shall have been notified by each Lender that each such Lender has executed it and thereafter shall be binding upon and inure to the benefit of the Borrower, each Agent, each Lender, each other party hereto and their respective successors and assigns.

SECTION 10.19 Lender Action. Each Lender agrees that it shall not take or institute any actions or proceedings, judicial or otherwise, for any right or remedy against any Loan Party under any of the Loan Documents (including the exercise of any right of setoff, rights on account of any banker's lien or similar claim or other rights of self-help), or institute any actions or proceedings, or otherwise commence any remedial procedures, with respect to any Collateral or any other property of any such Loan Party, without the prior written consent of the Administrative Agent. The provision of this Section 10.19 are for the sole benefit of the Lenders and shall not afford any right to, or constitute a defense available to, any Loan Party.

SECTION 10.20 [Reserved].

SECTION 10.21 USA PATRIOT Act. Each Lender that is subject to the USA PATRIOT Act and the Administrative Agent (for itself and not on behalf of any Lender) hereby notifies the Borrower that pursuant to the requirements of the USA PATRIOT Act, it is required to obtain, verify and record information that identifies each Loan Party, which information includes the name and address of each Loan Party and other information that will allow such Lender or the Administrative Agent, as applicable, to identify each Loan Party in accordance with the USA PATRIOT Act. The Borrower shall, promptly following a request by the Administrative Agent or any Lender, provide all documentation and other information that the Administrative Agent or such Lender requests in order to comply with its ongoing obligations under applicable "know your customer" and anti-money laundering rules and regulations, including the USA PATRIOT Act.

SECTION 10.22 Service of Process. EACH PARTY HERETO IRREVOCABLY CONSENTS TO SERVICE OF PROCESS IN THE MANNER PROVIDED FOR NOTICES IN SECTION 10.02. NOTHING IN THIS AGREEMENT WILL AFFECT THE RIGHT OF ANY PARTY HERETO TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY APPLICABLE LAW.

SECTION 10.23 No Advisory or Fiduciary Responsibility. In connection with all aspects of each transaction contemplated hereby (including in connection with any amendment, waiver or other modification hereof or of any other Loan Document), each of the Borrower and Holdings acknowledges and agrees that (i) (A) the arranging and other services regarding this Agreement provided by the Agents and the Lenders are arm's-length commercial transactions between the Borrower, Holdings and their respective Affiliates, on the one hand, and the Administrative Agent and the Lenders, on the other hand, (B) each of the Borrower and Holdings has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate, and (C) each of the Borrower and Holdings is capable of evaluating, and understands and accepts, the terms, risks and conditions of the transactions contemplated hereby and by the other Loan Documents; (ii) (A) each Agent and Lender is and has been acting solely as a principal and, except as expressly agreed in writing by the relevant parties, has not been, is not, and will not be acting as an advisor, agent or fiduciary for the Borrower, Holdings or any of their respective Affiliates, or any other Person and (B) none of the Agents nor any Lender has any obligation to the Borrower, Holdings or any of their respective Affiliates with respect to the transactions contemplated hereby except those obligations expressly set forth herein and in the other Loan Documents; and (iii) the Agents, the Lenders and their respective Affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Borrower, Holdings and their respective Affiliates, and none of the Agents nor any Lender has any obligation to disclose any of such interests to the Borrower, Holdings or any of their respective Affiliates. To the fullest extent permitted by law, each of the Borrower and Holdings hereby waives and releases any claims that it may have against the Agents or any Lender with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transaction contemplated hereby.

SECTION 10.24 Release of Collateral and Guarantee Obligations;
Subordination of Liens.

(a) The Lenders hereby irrevocably agree that the Liens granted to the Administrative Agent or the Collateral Agent by the Loan Parties on any Collateral shall be automatically released (i) in full, as set forth in clause (b) below, (ii) upon the sale or other transfer of such Collateral (including as part of or in connection with any other sale or other transfer permitted hereunder) to any Person other than another Loan Party, to the extent such sale, transfer or other disposition is made in compliance with the terms of this Agreement (and the Collateral Agent may rely conclusively on a certificate to that effect provided to it by any Loan Party upon its reasonable request without further inquiry), (iii) to the extent such Collateral is comprised of property leased to a Loan Party by a Person that is not a Loan Party, upon termination or expiration of such lease, (iv) if the release of such Lien is approved, authorized or ratified in writing by the Required Lenders (or such other percentage of the Lenders whose consent may be required in accordance with Section 10.01), (v) to the extent the property constituting such Collateral is owned by any Guarantor, upon the release of such Guarantor from its obligations under the Guaranty (in accordance with the second succeeding sentence), (vi) as required by the Collateral Agent (acting at the Direction of the Required Lenders) to effect any sale, transfer or other disposition of Collateral in connection with any exercise of remedies of the Collateral Agent pursuant to the Collateral Documents and (vii) to the extent such Collateral otherwise becomes Excluded Assets. Any such release shall not in any manner

discharge, affect, or impair the Obligations or any Liens (other than those being released) upon (or obligations (other than those being released) of the Loan Parties in respect of) all interests retained by the Loan Parties, including the proceeds of any sale, all of which shall continue to constitute part of the Collateral except to the extent otherwise released in accordance with the provisions of the Loan Documents. Additionally, the Lenders hereby irrevocably agree that the Guarantors shall be released from the Guaranties upon consummation of any transaction permitted hereunder resulting in such Subsidiary ceasing to constitute a Subsidiary. The Lenders hereby authorize the Administrative Agent and the Collateral Agent, as applicable, to execute and deliver any instruments, documents, consents, acknowledgements, and agreements necessary or desirable to evidence or confirm the release of any Guarantor or Collateral pursuant to the foregoing provisions of this paragraph, all without the further consent or joinder of any Lender. Any representation, warranty or covenant contained in any Loan Document relating to any such released Collateral or Guarantor shall no longer be deemed to be repeated.

(b) Notwithstanding anything to the contrary contained herein or any other Loan Document, when the Termination Conditions are satisfied, upon request of the Borrower, the Administrative Agent or Collateral Agent, as applicable, shall (without notice to, or vote or consent of, any Secured Party) take such actions as shall be required to release its security interest in all Collateral, and to release all obligations under any Loan Document, whether or not on the date of such release there may be any contingent obligations not then due. Any such release of Obligations shall be deemed subject to the provision that such Obligations shall be reinstated if after such release any portion of any payment in respect of the Obligations guaranteed thereby shall be rescinded or must otherwise be restored or returned upon the insolvency, bankruptcy, dissolution, liquidation or reorganization of the Borrower or any Guarantor, or upon or as a result of the appointment of a receiver, intervenor or conservator of, or trustee or similar officer for, the Borrower or any Guarantor or any substantial part of its property, or otherwise, all as though such payment had not been made.

(c) Notwithstanding anything to the contrary contained herein or in any other Loan Document, upon request of the Borrower in connection with any Liens permitted by the Loan Documents, the Administrative Agent or Collateral Agent, as applicable, shall (acting at the Direction of the Required Lenders) take such actions as shall be required to subordinate the Lien on any Collateral to any Lien permitted under Section 7.01 to be senior to the Liens in favor of the Collateral Agent.

SECTION 10.25 [Reserved].

SECTION 10.26 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, notwithstanding anything to the contrary in any Loan Document or in any other agreement, arrangement or understanding among the parties hereto, each party hereto acknowledges that any liability of any Affected Financial Institution arising under any Loan Document, to the extent such liability is unsecured, may be subject to the write-down and conversion powers of the applicable Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

(a) the application of any Write-Down and Conversion Powers by the applicable Resolution Authority to any such liabilities arising hereunder which may be payable to it by any party hereto that is an Affected Financial Institution; and

(b) the effects of any Bail-In Action on any such liability, including, if applicable:

(i) a reduction in full or in part or cancellation of any such liability;

(ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such Affected Financial Institution, its parent entity, 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.

Article XI

Security and Priority

SECTION 11.01 Collateral; Grant of Lien and Security Interest.

(1) Pursuant to, and otherwise subject to the terms of, the DIP Orders and in accordance with the terms thereof, as security for the full and timely payment and performance of all of the Obligations and subject to the limitations, reservations, restrictions, and qualifications contained in any Collateral Document, the Loan Parties hereby pledge and grant to the Collateral Agent, for the benefit of the Secured Parties, a security interest in and a Lien on all of the Collateral without duplication.

(2) Notwithstanding anything herein to the contrary, all proceeds received by the Agents and the Lenders from the Collateral subject to the Liens granted in this Section 11.01 and in each other Loan Document and by the DIP Orders shall be subject in all respects to the Carve-Out.

SECTION 11.02 Grants, Rights and Remedies. The Liens and security interests granted pursuant to Section 11.01(1) hereof and the administrative priority and lien priority granted pursuant to the DIP Orders may be independently granted by the Loan Documents and by other Loan Documents hereafter entered into. This Agreement, the DIP Orders and such other Loan Documents supplement each other, and the grants, priorities, rights and remedies of the Agents and the Lenders hereunder and thereunder are cumulative, *provided* that to the extent of conflict the DIP Order controls.

SECTION 11.03 No Filings Required. The Liens and security interests referred to herein shall be deemed valid and perfected by entry of the Interim Order or the Final Order, as the case may be. The Agents shall not be required to file any financing statements, mortgages, notices of Lien or similar instruments in any jurisdiction or filing office, take possession or control of any Collateral, execute any security agreements, pledge agreements or control agreements, or take any other action in order to validate or perfect the Lien and security interest granted by or pursuant to this Agreement, the Interim Order or the Final Order, as the case may be, or any other Loan Document.

SECTION 11.04 Survival. The Liens, lien priority, administrative priorities and other rights and remedies granted to the Agents and the Lenders pursuant to this Agreement, the DIP Orders and the other Loan Documents (specifically including, but not limited to, the existence, perfection and priority of the Liens and security interests provided herein and therein, and the administrative priority provided herein and therein) shall not be modified, altered or impaired in any manner by any other financing or extension of credit or incurrence of Indebtedness by the Borrower (pursuant to Section 364 of the Bankruptcy Code or otherwise), or by any dismissal or conversion of any of the Chapter 11 Cases, or by any other act or omission whatsoever. Without limitation, notwithstanding any such order, financing, extension, incurrence, dismissal, conversion, act or omission, except with respect to the Carve-Out, no costs or expenses of administration which have been or may be incurred in the Chapter 11 Cases or any conversion of the same or in any other proceedings related thereto, and no priority claims, are or will be prior to or on parity with any claim of the Agents and the Lenders against the Borrower in respect of any Obligation.

SECTION 11.05 Conflicts. If any provision in this Agreement expressly conflicts with any provision in the DIP Order, the provisions in the DIP Order shall govern and control, and if any provision of the Loan Documents expressly conflicts with any provisions of this Agreement, the provisions of this Agreement shall govern and control.

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Schedule 1

Initial DIP Budget

Exactech Inc.

Weekly DIP Budget

\$ in 000s

Week Week Ended	November					December				January				
	1	2	3	4	5	6	7	8	9	10	11	12	13	14
	11/1 Frst	11/8 Frst	11/15 Frst	11/22 Frst	11/29 Frst	12/6 Frst	12/13 Frst	12/20 Frst	12/27 Frst	1/3 Frst	1/10 Frst	1/17 Frst	1/24 Frst	1/31 Frst
Collections														
US Collections	\$ 4,331	\$ 4,012	\$ 4,307	\$ 4,575	\$ 4,504	\$ 4,346	\$ 4,324	\$ 4,497	\$ 4,595	\$ 4,568	\$ 4,160	\$ 4,131	\$ 4,195	\$ 4,122
International Collections	566	400	-	-	2,344	-	-	-	1,894	-	-	-	-	2,732
Other Collections	65	65	65	65	95	65	65	65	1,095	65	65	65	65	95
Total Collections	\$ 4,962	\$ 4,477	\$ 4,372	\$ 4,640	\$ 6,944	\$ 4,411	\$ 4,389	\$ 4,562	\$ 7,584	\$ 4,633	\$ 4,225	\$ 4,196	\$ 4,260	\$ 6,949
Disbursements														
Salaries & Benefits	\$ (107)	\$ (2,453)	\$ (100)	\$ (2,453)	\$ (100)	\$ (2,453)	\$ (100)	\$ (2,453)	\$ (100)	\$ (2,453)	\$ (100)	\$ (2,703)	\$ (100)	\$ (2,453)
Commissions	(3,883)	-	-	-	(5,282)	-	-	-	(4,515)	-	-	-	-	(4,456)
Rebates & Admin Fees	-	-	-	-	(119)	-	-	-	(797)	-	-	-	-	(119)
Manufacturing Vendors	(100)	(1,098)	(995)	(107)	(1,472)	(120)	(1,482)	(125)	(1,285)	(127)	(1,427)	(148)	(1,623)	(164)
Royalties	(406)	-	-	-	-	(911)	-	-	-	-	-	-	-	(406)
Other Operating	(1,919)	(100)	(200)	(260)	(948)	(226)	(338)	(1,235)	(801)	(916)	(484)	(27)	(569)	(441)
Blue Ortho Funding	(275)	(275)	(275)	(275)	(115)	(250)	(250)	(250)	(165)	(200)	(200)	(200)	(200)	(115)
EIO Funding	-	-	-	-	(100)	-	-	-	(100)	-	-	-	-	(100)
CapEx	-	-	-	-	(348)	(36)	(430)	(46)	(482)	(50)	(270)	(250)	(250)	(264)
Leases	(409)	-	(176)	-	-	(409)	-	(176)	-	(409)	-	(153)	-	-
Professionals	(275)	-	(100)	-	-	(100)	-	-	-	(100)	-	-	-	(100)
Total Operating Disbursements	\$ (7,374)	\$ (3,927)	\$ (1,846)	\$ (3,095)	\$ (8,485)	\$ (4,506)	\$ (2,599)	\$ (4,285)	\$ (8,245)	\$ (4,256)	\$ (2,481)	\$ (3,482)	\$ (2,742)	\$ (8,619)
Operating Cash Flow	\$ (2,412)	\$ 550	\$ 2,526	\$ 1,545	\$ (1,542)	\$ (95)	\$ 1,790	\$ 277	\$ (661)	\$ 378	\$ 1,744	\$ 714	\$ 1,518	\$ (1,670)
Restructuring & Financing														
Professional Fees	\$ (16,663)	-	-	-	-	\$ (5,675)	\$ (1,385)	-	-	\$ (5,675)	-	\$ (1,385)	-	-
KERP	-	-	-	-	-	(1,394)	-	-	-	-	-	-	-	-
Commission Bridge	-	-	-	-	-	-	-	-	-	-	-	-	-	(59)
Critical Vendors	(2,000)	(1,500)	(1,500)	-	(1,000)	-	(1,250)	-	(1,250)	-	(1,000)	-	-	-
Adequate Assurance - Utility Deposit	-	-	(175)	-	-	-	-	-	-	-	-	-	-	-
Admin + 503(b)(9) Claims	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Wind Down Budget	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Adequate Protection (Pre-Petition 1L)	-	-	-	-	-	-	-	-	-	-	-	-	-	-
DIP Related Costs	(151)	-	-	-	-	(371)	-	-	-	(418)	-	-	-	-
International Entities	-	-	-	-	-	-	-	-	-	(250)	-	-	-	(250)
Repayment of Bridge Facility	(6,549)	-	-	-	-	-	-	-	-	-	-	-	-	-
Min. NewCo Liquidity at Closing	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Total Restructuring & Financing Items	\$ (25,362)	\$ (1,500)	\$ (1,675)	\$ -	\$ (1,000)	\$ (7,440)	\$ (2,635)	\$ -	\$ (1,250)	\$ (6,343)	\$ (1,000)	\$ (1,385)	\$ -	\$ (309)
Net Cash Flow	\$ (27,774)	\$ (950)	\$ 851	\$ 1,545	\$ (2,542)	\$ (7,535)	\$ (845)	\$ 277	\$ (1,911)	\$ (5,965)	\$ 744	\$ (671)	\$ 1,518	\$ (1,979)
Opening US Cash Balance	\$ 4,937	\$ 12,163	\$ 11,213	\$ 12,064	\$ 13,609	\$ 11,067	\$ 13,532	\$ 12,687	\$ 12,964	\$ 11,054	\$ 15,088	\$ 15,833	\$ 15,162	\$ 16,680
Net Cash Flow	(27,774)	(950)	851	1,545	(2,542)	(7,535)	(845)	277	(1,911)	(5,965)	744	(671)	1,518	(1,979)
DIP Loan Draws	35,000	-	-	-	-	10,000	-	-	-	10,000	-	-	-	-
Ending US Cash Balance	\$ 12,163	\$ 11,213	\$ 12,064	\$ 13,609	\$ 11,067	\$ 13,532	\$ 12,687	\$ 12,964	\$ 11,054	\$ 15,088	\$ 15,833	\$ 15,162	\$ 16,680	\$ 14,701
Ending DIP Funding Account Balance	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 10,000	\$ 10,000	\$ 25,000	\$ 25,000	\$ 15,000	\$ 15,000	\$ 15,000	\$ 15,000	\$ 15,000
Total US Liquidity	\$ 12,163	\$ 11,213	\$ 12,064	\$ 13,609	\$ 11,067	\$ 23,532	\$ 22,687	\$ 37,964	\$ 36,054	\$ 30,088	\$ 30,833	\$ 30,162	\$ 31,680	\$ 29,701
Memo:														
Opening DIP Commitment	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
(+) Funding Per Orders	35,000	-	-	-	-	50,000	-	-	-	-	-	-	-	-
(-) To DIP Funding Account	(35,000)	-	-	-	-	(50,000)	-	-	-	-	-	-	-	-
Ending DIP Commitment	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Opening DIP Funding Account	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 10,000	\$ 10,000	\$ 25,000	\$ 25,000	\$ 15,000	\$ 15,000	\$ 15,000	\$ 15,000
(+) Funding from DIP Commitment	35,000	-	-	-	-	50,000	-	-	-	-	-	-	-	-
(-) Draws from Operating Account	(35,000)	-	-	-	-	(10,000)	-	-	-	(10,000)	-	-	-	-
(-/+) (Holdback for Bid Procedures)/Reversal	-	-	-	-	-	(15,000)	-	15,000	-	-	-	-	-	-
(-/+) (Holdback for Sale Order)/Reversal	-	-	-	-	-	(15,000)	-	-	-	-	-	-	-	-
Ending DIP Funding Account	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 10,000	\$ 10,000	\$ 25,000	\$ 25,000	\$ 15,000	\$ 15,000	\$ 15,000	\$ 15,000	\$ 15,000

Exactech Inc.

Weekly DIP Budget

\$ in 000s

	February				March				April				Total		
Week	15	16	17	18	19	20	21	22	23	24	25	26	6 Month	Min. NewCo	Adj. Total
Week Ended	2/7	2/14	2/21	2/28	3/7	3/14	3/21	3/28	4/4	4/11	4/18	4/25	Chapter 11	Liquidity	
	Frst	Frst	Frst	Frst	Frst	Frst	Frst	Frst	Frst	Frst	Frst	Frst	Frst	Frst	Frst
Collections															
US Collections	\$ 4,097	\$ 4,003	\$ 4,086	\$ 3,933	\$ 3,944	\$ 4,423	\$ 4,491	\$ 4,491	\$ 4,381	\$ 4,438	\$ 4,550	\$ 4,576	\$ 112,081	\$ -	\$ 112,081
International Collections	-	-	-	2,316	-	-	-	2,282	-	-	-	-	12,535	-	12,535
Other Collections	65	65	65	95	65	65	65	95	65	65	65	95	2,870	-	2,870
Total Collections	\$ 4,162	\$ 4,068	\$ 4,151	\$ 6,345	\$ 4,009	\$ 4,488	\$ 4,556	\$ 6,868	\$ 4,446	\$ 4,503	\$ 4,615	\$ 4,671	\$ 127,486	\$ -	\$ 127,486
Disbursements															
Salaries & Benefits	\$ (100)	\$ (2,453)	\$ (100)	\$ (2,453)	\$ (100)	\$ (2,453)	\$ (100)	\$ (2,453)	\$ (100)	\$ (2,453)	\$ (100)	\$ (2,453)	\$ (33,449)	\$ -	\$ (33,449)
Commissions	-	-	-	(4,178)	-	-	-	-	(4,367)	-	-	-	(26,681)	-	(26,681)
Rebates & Admin Fees	-	-	-	(119)	-	-	-	(616)	-	-	-	(119)	(1,891)	-	(1,891)
Manufacturing Vendors	(1,757)	(164)	(1,740)	(157)	(1,652)	(168)	(1,594)	(164)	(1,558)	(163)	(1,683)	(174)	(21,251)	-	(21,251)
Royalties	-	-	-	(1,026)	-	-	-	-	-	-	-	-	(2,750)	-	(2,750)
Other Operating	(628)	(135)	(499)	(443)	(580)	(80)	(544)	(380)	(1,725)	(126)	(1,361)	(434)	(15,399)	-	(15,399)
Blue Ortho Funding	(250)	(250)	(250)	(165)	(250)	(125)	(375)	(115)	(250)	(250)	(250)	(125)	(5,700)	-	(5,700)
EIO Funding	-	-	-	(100)	-	-	-	(100)	-	-	-	(100)	(600)	-	(600)
CapEx	(276)	(267)	(258)	(251)	(246)	(237)	(230)	(223)	(218)	(218)	(217)	(216)	(5,283)	-	(5,283)
Leases	(409)	-	(153)	(409)	-	-	(153)	-	(409)	-	(153)	-	(3,418)	-	(3,418)
Professionals	-	-	-	(100)	-	-	-	(100)	-	-	-	(100)	(975)	-	(975)
Total Operating Disbursements	\$ (3,420)	\$ (3,269)	\$ (3,001)	\$ (9,402)	\$ (2,828)	\$ (3,063)	\$ (2,995)	\$ (4,151)	\$ (8,627)	\$ (3,210)	\$ (3,765)	\$ (3,723)	\$ (117,396)	\$ -	\$ (117,396)
Operating Cash Flow	\$ 742	\$ 799	\$ 1,149	\$ (3,058)	\$ 1,181	\$ 1,425	\$ 1,560	\$ 2,716	\$ (4,181)	\$ 1,293	\$ 850	\$ 948	\$ 10,090	\$ -	\$ 10,090
Restructuring & Financing															
Professional Fees	\$ (5,925)	\$ (1,385)	\$ -	\$ -	\$ (5,675)	\$ -	\$ (1,385)	\$ -	\$ (5,225)	\$ (1,385)	\$ -	\$ (10,585)	\$ (62,348)	\$ -	\$ (62,348)
KERP	-	-	-	-	-	-	-	-	-	-	-	-	(1,394)	-	(1,394)
Commission Bridge	-	-	-	(234)	-	-	-	-	(308)	-	-	(485)	(1,087)	-	(1,087)
Critical Vendors	(1,000)	-	(500)	-	(500)	-	-	-	-	-	-	-	(11,500)	-	(11,500)
Adequate Assurance - Utility Deposit	-	-	-	-	-	-	-	-	-	-	-	-	(175)	-	(175)
Admin + 503(b)(9) Claims	-	-	-	-	-	-	-	-	-	-	-	(1,000)	(1,000)	-	(1,000)
Wind Down Budget	-	-	-	-	-	-	-	-	-	-	-	(2,250)	(2,250)	-	(2,250)
Adequate Protection (Pre-Petition 1L)	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
DIP Related Costs	(421)	-	-	-	(423)	-	-	-	(425)	-	-	(428)	(2,637)	-	(2,637)
International Entities	-	-	-	(250)	-	-	-	(250)	-	-	-	-	(1,000)	-	(1,000)
Repayment of Bridge Facility	-	-	-	-	-	-	-	-	-	-	-	-	(6,549)	-	(6,549)
Min. NewCo Liquidity at Closing	-	-	-	-	-	-	-	-	-	-	-	-	-	(10,000)	(10,000)
Total Restructuring & Financing Items	\$ (7,346)	\$ (1,385)	\$ (500)	\$ (484)	\$ (6,598)	\$ -	\$ (1,385)	\$ (250)	\$ (5,959)	\$ (1,385)	\$ -	\$ (14,748)	\$ (89,939)	\$ (10,000)	\$ (99,939)
Net Cash Flow	\$ (6,603)	\$ (586)	\$ 649	\$ (3,542)	\$ (5,417)	\$ 1,425	\$ 175	\$ 2,466	\$ (10,140)	\$ (92)	\$ 850	\$ (13,800)	\$ (79,850)	\$ (10,000)	\$ (89,850)
Opening US Cash Balance	\$ 14,701	\$ 18,098	\$ 17,512	\$ 18,161	\$ 14,619	\$ 14,202	\$ 15,628	\$ 15,803	\$ 18,270	\$ 13,130	\$ 13,037	\$ 13,887	\$ 4,937	\$ -	\$ 4,937
Net Cash Flow	(6,603)	(586)	649	(3,542)	(5,417)	1,425	175	2,466	(10,140)	(92)	850	(13,800)	(79,850)	(10,000)	(89,850)
DIP Loan Draws	10,000	-	-	-	5,000	-	-	-	5,000	-	-	-	75,000	-	75,000
Ending US Cash Balance	\$ 18,098	\$ 17,512	\$ 18,161	\$ 14,619	\$ 14,202	\$ 15,628	\$ 15,803	\$ 18,270	\$ 13,130	\$ 13,037	\$ 13,887	\$ 87	\$ 87	\$ (10,000)	\$ (9,913)
Ending DIP Funding Account Balance	\$ 5,000	\$ 5,000	\$ 5,000	\$ 5,000	\$ -	\$ -	\$ -	\$ -	\$ 10,000	\$ 10,000	\$ 10,000	\$ 10,000	\$ 10,000	\$ -	\$ 10,000
Total US Liquidity	\$ 23,098	\$ 22,512	\$ 23,161	\$ 19,619	\$ 14,202	\$ 15,628	\$ 15,803	\$ 18,270	\$ 23,130	\$ 23,037	\$ 23,887	\$ 10,087	\$ 10,087	\$ (10,000)	\$ 87
Memo:															
Opening DIP Commitment	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
(+) Funding Per Orders	-	-	-	-	-	-	-	-	-	-	-	-	85,000	-	85,000
(-) To DIP Funding Account	-	-	-	-	-	-	-	-	-	-	-	-	(85,000)	-	(85,000)
Ending DIP Commitment	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Opening DIP Funding Account	\$ 15,000	\$ 5,000	\$ 5,000	\$ 5,000	\$ 5,000	\$ -	\$ -	\$ -	\$ -	\$ 10,000	\$ 10,000	\$ 10,000	\$ -	\$ -	\$ -
(+) Funding from DIP Commitment	-	-	-	-	-	-	-	-	-	-	-	-	85,000	-	85,000
(-) Draws from Operating Account	(10,000)	-	-	-	(5,000)	-	-	-	(5,000)	-	-	-	(75,000)	-	(75,000)
(-/+)(Holdback for Bid Procedures)/Reversal	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
(-/+)(Holdback for Sale Order)/Reversal	-	-	-	-	-	-	-	-	15,000	-	-	-	-	-	-
Ending DIP Funding Account	\$ 5,000	\$ 5,000	\$ 5,000	\$ 5,000	\$ -	\$ -	\$ -	\$ -	\$ 10,000	\$ 10,000	\$ 10,000	\$ 10,000	\$ 10,000	\$ -	\$ 10,000