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*Proposed Attorneys for the Debtors
and Debtors in Possession*

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

In re:

HARVEST SHERWOOD FOOD
DISTRIBUTORS, INC., *et al.*,¹

Debtors.

Chapter 11

Case No. 25-80109 (SGJ)

(Joint Administration Requested)
(Emergency Hearing Requested)

¹ The Debtors in these chapter 11 cases, together with the last four digits of each Debtor's federal tax identification number, are Del Mar Holding LLC (9207), Del Mar Acquisition Inc. (8866), Surfliner Holdings, Inc. (9456), Harvest Sherwood Food Distributors, Inc. (8995), Harvest Meat Company, Inc. (9136), LAMCP Capital, LLC (N/A), Western Boxed Meats Distributors, Inc. (8735), Cascade Food Brokers, Inc. (1389), Hamilton Meat, LLC (6917), SFD Acquisition LLC (8995), SFD Transportation Corp. (1551), Sherwood Food Distributors, L.L.C. (4375), and SFD Company LLC (1175). The Debtors' service address is c/o Epiq Corporate Restructuring, LLC 10300 SW Allen Blvd., Beaverton, OR 97005.

**DEBTORS' EMERGENCY MOTION
FOR ENTRY OF INTERIM AND FINAL
ORDERS (I) AUTHORIZING THE DEBTORS TO
(A) OBTAIN POSTPETITION FINANCING, (B) USE CASH
COLLATERAL, (C) GRANT SENIOR SECURED LIENS AND
PROVIDE CLAIMS WITH SUPERPRIORITY ADMINISTRATIVE
EXPENSE STATUS, AND (D) GRANT ADEQUATE PROTECTION TO THE
PREPETITION SECURED PARTIES; (II) MODIFYING THE AUTOMATIC STAY;
(III) SCHEDULING A FINAL HEARING, AND (IV) GRANTING RELATED RELIEF**

Emergency relief has been requested. Relief is requested not later than May 9, 2025.

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

A hearing will be conducted on the matters set forth in this motion on May 9, 2025, at 9:30 a.m. (prevailing Central Time) in Courtroom #1, 14th Floor, Earle Cabell Federal Building, 1100 Commerce Street, Suite 1254, Dallas, Texas 75242.

Audio communication will be by use of the Court's dial-in facility. You may access the facility at 1.650.479.3207. The meeting code is 2304 154 2638. Video communication will be by the use of the Cisco WebEx platform. Connect via the Cisco WebEx application or click the link on Judge Jernigan's home page. Click the settings icon in the upper right corner and enter your name under the personal information setting. WebEx hearing instructions may be obtained from Judge Jernigan's hearing/calendar site: <https://www.txnb.uscourts.gov/judges-info/hearing-dates/chief-judge-jernigans-hearing-dates>

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

Harvest Sherwood Food Distributors, Inc. and its debtor affiliates, as debtors and debtors in possession (collectively, the "Debtors") in the above-captioned chapter 11 cases, file this motion (this "Motion"). In support of this Motion, the Debtors submit the *Declaration of Eric Kaup in Support of the Debtors' Chapter 11 Petitions, Debtor in Possession Financing, and First Day Pleadings* (the "First Day Declaration") and the *Declaration of Samir Saleem in Support of the Debtors' Emergency Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to (A) Obtain Postpetition Financing, (B) Use Cash Collateral, (C) Grant Senior Secured Liens and Provide Claims with Superpriority Administrative Expense Status, and (D) Grant Adequate Protection to the Prepetition Secured Parties; (II) Modifying the Automatic Stay; (III) Scheduling*

a Final Hearing; and (IV) Granting Related Relief (the “Saleem Declaration,” and together with the First Day Declaration, the “First Day Declarations”), filed contemporaneously herewith and incorporated herein by reference.² In further support of this Motion, the Debtors state as follows:

PRELIMINARY STATEMENT

1. Following extensive negotiations, the Debtors commenced these chapter 11 cases to consummate their value-maximizing winddown process that will inure to the benefit of all stakeholders. As noted in the First Day Declaration, for months the Debtors, in coordination with their advisors, proactively engaged with their ABL Lenders to review strategic alternatives and engage in a constructive and arm’s-length dialogue. As part of this process, the Debtors and their advisors negotiated amendments under their prepetition debt documents while simultaneously pursuing a potential sale process. Given the challenges set forth in the First Day Declaration, the sale process was ultimately unsuccessful and the Debtors commenced a winddown process. The Debtors now commence these cases to complete their winddown process and maximize recovery to all stakeholders.

2. The Debtors, with the assistance of their advisors, have negotiated the terms of a postpetition financing facility—the ABL Lenders will provide \$25,896,170.16 of new money financing to the Debtors, of which \$5,000,000, will be available upon entry of the Interim Order with the balance available upon entry of the Final Order and in accordance with the DIP Documents and the Approved Budget (each as defined below). The Debtors have been, and remain, committed to evaluating all value-maximizing paths forward. In light of the facts and circumstances, the proposed DIP Facility provides the best financing available to the Debtors and

² Capitalized terms used but not otherwise defined herein shall have the respective meanings ascribed to such terms in the First Day Declaration or the DIP Orders (as defined herein), as applicable.

will allow the Debtors to complete their Winddown to Process maximize the value of the Debtors' estate for the benefit of all parties in interest. Accordingly, the Debtors respectfully request that the Court grant this Motion.

RELIEF REQUESTED

3. By this Motion, the Debtors seek entry of an interim order, substantially in the form attached hereto as **Exhibit A** (the "Interim Order"), and a final order (the "Final Order")³ and together with the Interim Order, the "DIP Orders"), granting, among other things, the following relief:

- a. authorizing Harvest Sherwood Food Distributors, Inc., Harvest Meat Company, Inc., Hamilton Meat, LLC, Western Boxed Meats Distributors, Inc., SFD Acquisition LLC, SFD Company LLC, and Sherwood Food Distributors, L.L.C. (collectively, the "Borrowers" and, each individually, a "Borrower") to obtain, and each of the other Debtors other than Del Mar Holding LLC and Del Mar Acquisition Inc. (the "Guarantors") to unconditionally guarantee on a joint and several basis, debtor-in-possession financing ("DIP Financing"), consisting of a senior secured superpriority debtor-in-possession revolving credit facility in the aggregate principal amount of up to \$105,000,000 (the "DIP Facility"), comprised of:
 - i. \$25,896,170.16 of new money DIP loans, \$5,000,000 of which shall only be made available upon entry of the Interim Order, with the remainder available upon entry of the Final Order (the "New-Money DIP Loans"), and
 - ii. a roll up and conversion into DIP Obligations of the remaining \$79,103,829.84 of Prepetition Obligations (the "Roll-Up DIP Loans"), with the Roll-Up DIP Loans available upon entry of the Interim Order, pursuant to the terms and conditions of the Interim Order and the DIP Documents (as defined below);
- b. authorizing the Debtors to enter into and perform under the *Senior Secured Superpriority Debtor-in-Possession Credit Agreement* (as may be amended, restated, amended and restated, supplemented, or otherwise modified from time to time in accordance with the terms thereof and the Interim Order, the "DIP Credit Agreement" and, together with all agreements, documents, and instruments delivered or executed in connection therewith, the "DIP Documents") among the Borrowers, JPMorgan Chase Bank, N.A., as administrative agent (the "DIP Agent"), and the lenders from time to time party thereto (the "DIP Lenders" and, together with the DIP Agent, the "DIP Secured Parties"), which shall be in

³ The Debtors will file the form of Final Order prior to the Final Hearing (as defined herein).

substantially the same form attached to the Interim Order as Exhibit 2, and to perform their respective obligations thereunder and all such other and further acts as may be necessary, appropriate, or desirable in connection with the DIP Documents;

- c. authorizing the Debtors to effectuate the Roll-Up DIP Loans and use proceeds of the DIP Facility solely in accordance with the DIP Documents and the Interim Order;
- d. authorizing the Debtors to use “cash collateral” (as defined in section 363 of the Bankruptcy Code) and all other Prepetition Collateral;
- e. authorizing the Debtors to provide adequate protection to the lenders under the *Credit Agreement* dated June 17, 2022 (as amended on October 10, 2024, and March 18, 2025, and as may be further amended, restated, amended and restated, supplemented or otherwise modified from time to time, the “Prepetition Credit Agreement,” and, the loans thereunder, the “Prepetition Loans” and, all security, pledge and guaranty agreements and all other documentation executed in connection with the foregoing, each as amended, supplemented or otherwise modified, the “Prepetition Credit Documents”), among the Borrowers, JPMorgan Chase Bank, N.A., as administrative agent (the “Prepetition Agent”), and the lenders party thereto from time to time (the “Prepetition Lenders” and, together with the Prepetition Agent, the “Prepetition Secured Parties”);
- f. authorizing the Debtors to grant security interests, liens, and superpriority claims to the DIP Agent for the benefit of the DIP Secured Parties, including (a) superpriority administrative claims pursuant to sections 364(c)(1), 503(b), and 507(b) of the Bankruptcy Code, (b) liens pursuant to sections 364(c)(2) and 364(c)(3) of the Bankruptcy Code, and (c) priming liens pursuant to section 364(d) of the Bankruptcy Code to secure the Debtors’ obligations under the DIP Documents, and on the terms and conditions set forth herein and the DIP Documents including, upon entry of the Final Order, liens on Avoidance Proceeds;
- g. subject to entry of the Final Order (but retroactive to the Petition Date (as defined below)), authorizing a waiver of the Debtors’ and the estates’ right to (a) surcharge against the Prepetition Collateral and the DIP Collateral pursuant to section 506(c) of the Bankruptcy Code, (b) the equitable doctrine of “marshaling” and other similar doctrines with respect to the Prepetition Collateral and the DIP Collateral, and (c) assert any “equities of the case” exception pursuant to section 552(b) of the Bankruptcy Code;
- h. modifying the automatic stay imposed pursuant to section 362 of the Bankruptcy Code to the extent necessary to implement and effectuate the terms of the DIP Orders;
- i. scheduling a final hearing (the “Final Hearing”) to consider entry of a Final Order authorizing and approving, among other things, the relief requested in the Motion

on a final basis, which order shall be in form substantially similar to the Interim Order and otherwise reasonably acceptable in form and substance to the Debtors and the DIP Secured Parties, and approving the form of notice with respect to the Final Hearing; and

- j. granting related relief.

JURISDICTION AND VENUE

4. The United States Bankruptcy Court for the Northern District of Texas (the “Court”) has jurisdiction over this matter pursuant to 28 U.S.C. § 1334 and the *Order of Reference of Bankruptcy Cases and Proceedings Nunc Pro Tunc* dated August 3, 1984, entered by the United States District Court for the Northern District of Texas. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2). Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

5. The legal predicates for the relief requested in this Motion are sections 105, 361, 362, 363, 364, 503, 507, and 522 of title 11 of the United States Code (the “Bankruptcy Code”), rules 2002, 4001, 6003, 6004, and 9014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and the Local Bankruptcy Rules for the Northern District of Texas (the “Bankruptcy Local Rules”), and the Procedures for Complex Cases in the Northern District of Texas.

6. The Debtors confirm their consent to the entry of a final order by the Court in connection with the Motion in the event 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.

DEBTORS’ BACKGROUND

7. Prior to the Petition Date, Harvest Sherwood Food Distributors, Inc., along with its affiliated Debtors (collectively, “Harvest”), was the largest independent wholesale food distributor

in the United States with approximately \$4 billion of annual revenue. Through its vast network of distribution centers, Harvest shipped over 32 million pounds of food per week to protein and perishable food producers, independent food retailers, regional and national retail chains, cruise lines, and food service customers throughout the United States. Offering a wide range of commodities and branded selections such as bakery products, deli, beef, pork, lamb, veal, poultry, seafood, and frozen foods, Harvest met the unique needs of niche markets and food retailers of all sizes, and offered marketing resources that help maximize grocery sales.

8. In February of this year, Harvest commenced a process to wind up its ordinary course business operations, sell its remaining inventory, collect on outstanding accounts receivable, and sell certain of its branch operations to third-party buyers. The Debtors have now commenced these chapter 11 cases to complete an efficient wind down of their estates with the support of their ABL Lenders and an Ad Hoc Unsecured Creditors' Committee and to preserve and monetize their key remaining long-term assets for the benefit of all stakeholders.

9. On the date hereof (the "Petition Date"), each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code in the Court. The Debtors continue to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No party has requested the appointment of a trustee or examiner in these cases, and no statutory committee has been appointed.

10. Additional information regarding the Debtors' business, capital structure and the circumstances preceding the Petition Date may be found in the First Day Declaration.

SUMMARY TERMS OF DIP DOCUMENTS

11. Pursuant to, and in accordance with, Bankruptcy Rule 4001(c) and the Procedures for Complex Cases in the Northern District of Texas, the following is a concise statement of certain material provisions of the Interim Order.

Provision	Summary	Location
DIP Borrowers	Harvest Sherwood Food Distributors, Inc., Harvest Meat Company, Inc., Hamilton Meat, LLC, Western Boxed Meats Distributors, Inc., SFD Acquisition LLC, SFD Company LLC, and Sherwood Food Distributors, L.L.C.	Interim Order, Preamble
DIP Guarantors	Each of the other Debtors other than Del Mar Holding LLC and Del Mar Acquisition Inc. in these chapter 11 cases.	Interim Order, Preamble
DIP Agent	JPMorgan Chase Bank, N.A.	Interim Order, Preamble
DIP Lenders	The ABL Lenders	Interim Order, Preamble
DIP Facility Type and Amount	The DIP Facility is a senior secured superpriority debtor-in-possession revolving credit facility in the aggregate principal amount of up to \$105,000,000 (the “ <u>DIP Facility</u> ”), comprised of \$25,896,170.16 of new money DIP loans, \$5,000,000 of which shall only be made available upon entry of the Interim Order, with the remainder available upon entry of the Final Order (the “ <u>New-Money DIP Loans</u> ”), a roll up and conversion into DIP Obligations (as defined below) of the remaining \$79,103,829.84 of Prepetition Obligations (the “ <u>Roll-Up DIP Loans</u> ”), the Roll-Up DIP Loans available upon entry of the Interim Order, pursuant to the terms and conditions of the Interim Order and the DIP Documents.	Interim Order, Preamble
Budget	The Debtors may only use Cash Collateral and the proceeds of the DIP Facility in accordance with a projected statement of sources and uses of cash for the Debtors for the 24 calendar months (but not any preceding months) attached to the Interim Order as <u>Exhibit 1</u> (as may be amended, replaced, extended, supplemented, or otherwise modified in accordance with the terms of the Interim Order and the DIP Documents, the “ <u>DIP Budget</u> ”) and a 13-week cash flow forecast (as may be amended, replaced, extended, supplemented, or otherwise modified in accordance with the	Interim Order, ¶ 8(a)

	terms of the Interim Order and the DIP Documents, the “ <u>Short-Term DIP Budget</u> ” and, together with the Long-Term DIP Budget, the “ <u>DIP Budgets</u> ”), subject to permitted variances as set forth in the DIP Documents and to fund the Carve Out and Carve Out Account. On the Friday of the fourth calendar week after the week in which the Petition Date occurs, and each four weeks thereafter, the Debtors shall deliver to the DIP Agent an updated Short-Term DIP Budget that is substantially consistent with the Long-Term DIP Budget and is acceptable to the Required DIP Lenders.	
Variance Covenant	Variance from the DIP Budget shall be tested on a rolling four-week basis and total disbursements shall not be more than 105% of the projected disbursements in the Short-Term DIP Budget.	Interim Order, ¶ 8(b)
Interest Rates	The Loans comprising each Term Benchmark Borrowing shall bear interest at the Adjusted Term SOFR Rate for the Interest Period in effect for such Borrowing plus the Applicable Rate. Each RFR Loan shall bear interest at a rate per annum equal to the Adjusted Daily Simple SOFR plus the Applicable Rate.	DIP Credit Agreement, § 2.13(b)
Expenses and Fees	a) Prepetition Lender Amendment Fee: \$3.375 million b) DIP Upfront Fee: \$1.5 million c) Prepetition Agent Amendment Fee: \$1.625 million d) PIK Interest Amount: 5% per annum of pro rata lender revolving exposure	DIP Credit Agreement, § 2.09(e)
Maturity Date	“ <u>Maturity Date</u> ” means the earlier of (i) April 30, 2027 and (ii) the date on which the Revolving Commitments are otherwise reduced to \$0 pursuant to the terms of this Agreement (whether voluntarily, mandatorily or by enforcement of remedies).	DIP Credit Agreement, § 1.01
DIP Collateral and Security	All prepetition and postpetition property of the Debtors and proceeds from the disposition of	Interim Order, ¶ 12

	the foregoing (as applicable), whether existing on the Petition Date or thereafter acquired and wherever located, including any unencumbered cash of the Debtors (whether maintained with the DIP Agent or otherwise) and any investment of such cash, deposit accounts, securities accounts, inventory, goods, contract rights, mineral rights, instruments, documents, chattel paper, patents, trademarks, tradenames, copyrights, and other intellectual property and any licenses therefor, accounts, accounts receivable, receivables and receivables records, general intangibles, payment intangibles, tax or other refunds, insurance proceeds, letters of credit, intercompany claims, contracts, owned real estate, fixtures, deposit accounts, commercial tort claims, instruments, investment property, letter-of-credit rights, supporting obligations, vehicles, machinery and equipment, real property, proceeds from the disposition of leases, all of the issued and outstanding capital stock of each Debtor, other equity or ownership interests, including equity interests in subsidiaries and non-wholly-owned subsidiaries, money, investment property, causes of action (including, <u>upon entry of the Final Order</u>, the Avoidance Proceeds), and all cash and non-cash proceeds of any of the collateral described above. The DIP Collateral shall not include (and the DIP Liens will not encumber) Avoidance Actions (except that <u>upon entry of the Final Order</u>, the DIP Liens will encumber the Avoidance Proceeds).	
Priority	As security for the DIP Obligations, effective and automatically perfected upon the date of the Interim Order, and without the necessity of the execution, recordation or filings by the Debtors or the DIP Secured Parties of mortgages, security agreements, control agreements, pledge agreements, financing statements or other similar documents, or the possession or control by the DIP Secured Parties of, or over, any DIP Collateral, the following security interests and liens are	Interim Order, ¶ 11

	hereby granted by the Debtors to the DIP Agent, for the benefit of the DIP Lenders, subject and subordinate only to the Carve Out and any Prepetition Permitted Liens (all such liens and security interests granted to the DIP Agent, for the benefit of the DIP Lenders, pursuant to the Interim Order and the DIP Documents, the “<u>DIP Liens</u>”): a) <i>DIP Liens on Unencumbered Property.</i> Subject and subordinate only to the Carve Out, pursuant to section 364(c)(2) of the Bankruptcy Code, a valid, legal, binding, continuing, enforceable, unavoidable, allowed, and properly and fully perfected first priority senior security interest in and lien on all DIP Collateral not subject to (i) a valid, perfected, and unavoidable lien or (ii) a valid and unavoidable 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; b) <i>DIP Liens Junior to Certain Other Liens.</i> Pursuant to section 364(c)(3) of the Bankruptcy Code, a valid, legal, binding, continuing, enforceable, unavoidable, allowed, and properly and fully perfected junior security interest in and lien on all DIP Collateral that is subject to a Prepetition Permitted Lien (i) in existence and properly perfected immediately prior to the Petition Date and (ii) in existence immediately prior to the Petition Date that is perfected subsequent to the Petition Date as permitted by section 546(b) of the Bankruptcy Code. c) <i>DIP Liens Priming Prepetition Liens.</i> Pursuant to section 364(d)(1) of the Bankruptcy Code, a valid, legal, binding, continuing, enforceable, unavoidable, allowed, and properly and fully perfected first priority senior priming security interest in and lien on all DIP Collateral.	
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Adequate Protection	Subject to the terms of the Interim Order, pursuant to sections 361, 362, 363, 364, 503, and 507 of the Bankruptcy Code and in consideration of the stipulations and consents set forth herein as adequate protection of their interests in the Prepetition Collateral (including Cash Collateral), for and equal in amount to the aggregate postpetition diminution in value of such interests (each such diminution, a “<u>Diminution in Value</u>”), resulting from the imposition of the priming DIP Liens on the Prepetition Collateral, the Carve Out, the Debtors’ sale, lease or use of the Prepetition Collateral (including Cash Collateral), the imposition of the automatic stay, and any other reason for which adequate protection may be granted under the Bankruptcy Code, the below secured parties are hereby granted the following adequate protection (collectively, the “<u>Adequate Protection Obligations</u>”): a) <i>First Lien Adequate Protection Liens.</i> As security for and solely to the extent of any Diminution in Value, the Prepetition Agent, for the benefit of itself and the other Prepetition Secured Parties, is granted additional and replacement valid, binding, enforceable unavoidable, and effective and automatically perfected postpetition security interests in, and liens on, as of the date of the Interim Order (the “<u>Adequate Protection Liens</u>”), without the necessity of the execution by the Debtors (or recordation or other filing) of security agreements, control agreements, pledge agreements, financing statements, mortgages, or other similar documents, all DIP Collateral. Subject to the terms of the Interim Order, the Adequate Protection Liens shall be subordinate only to (i) the Carve Out, (ii) the DIP Liens, and (iii) any Prepetition Permitted Liens. The Adequate Protection Liens shall	Interim Order, ¶ 18
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	otherwise be senior to all other security interests in, liens on, or claims against any of the DIP Collateral (including the Prepetition Liens and any lien or security interest that is avoided and preserved for the benefit of the Debtors and their estates under section 551 of the Bankruptcy Code). b) <i>Adequate Protection Superpriority Claim.</i> As further adequate protection, and to the extent provided by sections 503(b) and 507(b) of the Bankruptcy Code, the Prepetition Agent, for the benefit of themselves and the other Prepetition Secured Parties, are granted an allowed administrative expense claim in these chapter 11 cases to the extent of any postpetition Diminution in Value senior to any and all other administrative expense claims in these chapter 11 cases other than the DIP Superpriority Claims (the “<u>Adequate Protection Superpriority Claim</u>”). The Adequate Protection Superpriority Claim shall be payable from and have recourse to all prepetition and postpetition property of the Debtors and all proceeds thereof (excluding Avoidance Actions, but including, <u>subject to entry of the Final Order</u>, the Avoidance Proceeds). Subject to the Carve Out and the DIP Superpriority Claims in all respects, the Adequate Protection Superpriority Claim will not be junior to any claims and shall have priority over all administrative expense claims against each of the Debtors, now existing or hereafter arising, of any kind or nature whatsoever, including administrative expense claims of the kinds specified in or ordered pursuant to sections 105, 326, 328, 330, 331, 365, 503(a), 503(b), 506(c) (<u>subject to entry of the Final Order</u>), 507(a), 507(b), 546(d), 726, 1113 and 1114 of	
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	the Bankruptcy Code. The Prepetition Secured Parties shall not receive or retain any payments, property or other amounts in respect of the Adequate Protection Superpriority Claims granted hereunder unless and until the DIP Obligations have been indefeasibly paid in full, in cash, or satisfied in a manner otherwise agreed to by the Required DIP Lenders, in each case as provided in the DIP Documents. c) <i>Fees and Expenses.</i> As further adequate protection, the Debtors are authorized and directed to pay, without further Court order, reasonable and documented fees and expenses (the “<u>Adequate Protection Fees</u>”), whether incurred before or after the Petition Date, of the Prepetition Agent, including the reasonable and documented fees and expenses of (a) Latham & Watkins LLP as counsel to the Prepetition Agent and the DIP Agent, and (b) Huron Consulting Group as financial advisor to the Prepetition Agent and the DIP Agent. The invoices for such fees and expenses shall not be required to comply with any particular format, may be in summary form only, and may include redactions. The applicable professional shall serve copies of the invoices supporting the Adequate Protection Fees on counsel to the Debtors, the U.S. Trustee and counsel to any Creditors’ Committee, and any Adequate Protection Fees shall be subject to prior ten-day review by the Debtors, the U.S. Trustee and any Creditors’ Committee. If no objection is filed within such ten-day review period, such invoice shall be paid without further order of the Court within five days after the expiration of the foregoing review period and shall	
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	not be subject to any further review, challenge, or disgorgement. If the Debtors, the U.S. Trustee, or the Creditors' Committee shall file with this Court an objection to any such legal invoice, the undisputed amounts shall be paid immediately and the portion subject to such objection shall not be paid until resolution of such objection by this Court. For the avoidance doubt, the provision of such invoices shall not constitute a waiver of attorney-client privilege or any benefits of the attorney work product doctrine.	
Use of DIP Proceeds	Proceeds of the DIP Facility and Cash Collateral shall be used in accordance with the DIP Credit Agreement, the Interim Order and subject to the DIP Budgets, and the other DIP Documents, including for (i) the Roll-Up DIP Loans approved pursuant to the Interim Order, (ii) paying interest, fees, and expenses (including attorneys' fees) to the DIP Lenders and the Prepetition Lenders pursuant to the Interim Order and/or the DIP Credit Agreement, as applicable, (iii) funding fees and expenses incurred in connection with the liquidating the Debtors' assets, (iv) paying the fees and expenses incurred by, and/or payable to, any Professional Person (as defined below), including to fund the Carve Out and Carve Out Account (as defined below), and (v) paying certain other costs and expenses of administration of these chapter 11 cases, in each case, in accordance with the DIP Budgets.	Interim Order, ¶ 7(c)
Conditions Precedent to Effectiveness / Credit Extensions	Customary and usual provisions for financings of this type including, without limitation: a) Execution of definitive documentation; b) Applicable closing and officer certificates; c) Payment of lender expenses in accordance with the definitive documentation; d) Entry of the Interim Order;	DIP Credit Agreement, § 4.01

	e) Delivery of the Long-Term DIP Budget and Short-Term DIP Budget; and f) Compliance with applicable milestones.	
Affirmative Covenants	Customary and usual provisions for financings of this type and substantially consistent with prepetition credit documents.	DIP Credit Agreement, §§ 5.01 to 5.14
Negative Covenants	Customary and usual provisions for financings of this type and substantially consistent with prepetition credit documents.	DIP Credit Agreement, §§ 6.01 to 6.14
Events of Default	Customary and usual provisions for financings of this type and substantially consistent with prepetition credit documents, including, without limitation: a) Entry of a Financing Order in form or substance that is not acceptable to the Required Lenders; b) Entry of an order approving claims for recovery of amounts under section 506(c) of the Bankruptcy Code; c) Use of Cash Collaterals inconsistent with the Financing Orders, DIP Budgets, and/or Loan Documents; d) The filing of a motion seeking approval of a section 363 sale without consent of the Required Lenders; e) The appointment of a trustee, receiver, examiner, or similar person in the chapter 11 cases; f) The filing of a chapter 11 plan not consented to by the Required Lenders; g) Conversion of the chapter 11 cases; and h) Dismissal of the chapter 11 cases.	DIP Credit Agreement, Article VII, sections (a) through (y)
Milestones	a) The Petition Date shall be no later than 11:59 p.m., Dallas, Texas time, on May 5, 2025; b) The Interim Order shall be entered no later than the fifth (5th) calendar day following the Petition Date;	Interim Order, ¶ 25

	c) The Loan Parties shall file with the Court by not later than the fifth (5th) Business Day following a written request by the Administrative Agent, on behalf of the Required Lenders (email being sufficient) (i) a motion for an order from the Bankruptcy Court enforcing the automatic stay (the “<u>Automatic Stay Motion</u>”), (ii) an adversary proceeding, complaint, or other pleading (as may be mutually agreed to by the Loan Parties and the Required Lenders) to remove to the Bankruptcy Court any pending litigation in which the Loan Parties are involved, or (iii) an adversary proceeding, complaint, or other pleading (as may be mutually agreed to by the Loan Parties and the Required Lenders) in the Bankruptcy Court for the purposes of collecting amounts owed to any of the Loan Parties or preventing any interference with property of the estates of the Loan Parties, in each case with respect to any third-party identified in such written request; provided that the Loan Parties shall not have to comply with such request if inconsistent with the Loan Parties’ fiduciary duties or applicable law; and d) The Final Order shall be entered no later than the 30th calendar day following the Petition Date.	
Carve-Out	As used in the Interim Order, the “ <u>Carve Out</u> ” means the sum of (i) all fees required to be paid to the Clerk of the Court and to the Office of the U.S. Trustee under section 1930(a) of title 28 of the United States Code plus interest at the statutory rate (without regard to the notice set forth in (iii) below); (ii) all reasonable fees and expenses up to \$50,000 incurred by a trustee under section 726(b) of the Bankruptcy Code (without regard to the notice set forth in (iii)	Interim Order, ¶ 13

	below); (iii) to the extent allowed, whether by interim order, procedural order, or otherwise, 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>”) or an official committee of unsecured creditors (the “<u>Creditors’ Committee</u>”) pursuant to section 328 or 1103 of the Bankruptcy Code (the “<u>Committee Professionals</u>” and, together with the Debtor Professionals, the “<u>Professional Persons</u>”) (x) at any time on or before delivery by the DIP Agent of a Carve Out Trigger Notice (as defined below), whether allowed by this Court before or after delivery of a Carve Out Trigger Notice (the “<u>Pre-Carve Out Trigger Amount</u>”), plus at any time after the delivery of a Carve Out Trigger Notice, (y) the Allowed Professional Fees of the Debtor Professionals in an aggregate amount not to exceed \$1,000,000 (the “<u>Debtor Post-Carve Out Trigger Notice Cap</u>”) and (z) the Allowed Professional Fees of the Committee Professionals in an aggregate amount not to exceed \$50,000 (the “<u>Committee Post-Carve Out Trigger Notice Cap</u>” and together with the Debtor Post-Carve Out Trigger Notice Cap, the “<u>Post-Carve Out Trigger Notice Cap</u>”) and the Pre-Carve Out Trigger Amount together with the Post-Carve Out Trigger Notice Cap the “<u>Professional Carve Out Cap</u>”). For purposes of the foregoing, “<u>Carve Out Trigger Notice</u>” shall mean (i) a written notice, including by e-mail (which shall be deemed delivered when sent), by the DIP Agent to the Debtors, their lead restructuring counsel, the U.S. Trustee, and lead counsel to the Creditors’ Committee (if appointed) providing that an Event of Default has occurred under the DIP Facility and stating that the Post-Carve Out Trigger Notice Cap has been invoked or (ii) the occurrence of the Maturity Date under the DIP Credit Agreement, which will be deemed as automatic delivery of a Carve Out Trigger	
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	Notice, regardless of when actual notice was provided by the DIP Agent.	
Prepayments	The Borrowers shall have the right at any time and from time to time to prepay any Borrowing in whole or in part, subject to prior notice in accordance with paragraph (d) of Section 2.11 and, if applicable, payment of any break funding expenses. All prepayments made pursuant to Section 2.11(a) shall be applied to prepay such Loans in accordance with the Lenders' respective Applicable Percentages without a corresponding reduction in the applicable Commitments.	DIP Credit Agreement, § 2.11
Remedies; Waivers or Modification of Automatic Stay	Subject to the terms of the DIP Documents and the Interim Order, the automatic stay provisions of section 362 of the Bankruptcy Code shall be modified to the extent necessary to permit the DIP Secured Parties to exercise all rights and remedies and to take any or all of the following actions, without further order of or application to the Court, after five (5) business days (such period, the "<u>Remedies Notice Period</u>") from the delivery of a written notice (email being sufficient) of the occurrence and continuance of an Event of Default (the "<u>Default Notice</u>") by the DIP Secured Parties, as directed by the requisite lenders under the DIP Credit Agreement, to the Debtors, their counsel (Sidley Austin LLP), the U.S. Trustee, any official Creditors' Committee appointed in these chapter 11 cases, and any other lienholders for any Event of Default. The Debtors, any official Creditors' Committee (if appointed), and/or any party in interest shall be entitled to seek an emergency hearing (with the DIP Agent and the DIP Secured Parties deemed to consent to such emergency hearing pursuant to the Interim Order) within five (5) business days of the issuance of the Default Notice or such other time as the Court can schedule the hearing in accordance with the local rules for the purpose	Interim Order, ¶ 24

	of (i) contesting whether, in fact, an Event of Default has occurred and is continuing and/or (ii) obtaining non-consensual use of Cash Collateral, provided that if a request for such hearing is made prior to the end of the Remedies Notice Period, then the Remedies Notice Period shall automatically be continued until the Court hears and rules with respect thereto.	
Indemnification	As set forth in the DIP Documents, the Debtors will, jointly and severally, indemnify the DIP Secured Parties and their respective Related Parties (as defined below) (each, in their capacity as such, an “ <u>Indemnified Person</u> ”), and hold them harmless from and against any and all losses, claims, damages (including any special, indirect, or consequential damages), costs, expenses (including reasonable and documented legal fees and expenses), and liabilities arising out of or relating to the execution or delivery of the DIP Documents, transactions contemplated hereby and thereby, and any actual or proposed use of the proceeds of any loans made under the DIP Facility in accordance with the terms of the DIP Credit Agreement; <u>provided</u> that no such person will be indemnified for costs, expenses, or liabilities to the extent determined by a final, non-appealable judgment of a court of competent jurisdiction to have been incurred solely by reason of the actual fraud, gross negligence, or willful misconduct of such person.	Interim Order, ¶ 28(b)
Section 506(c) Waiver	<u>Subject to entry of the Final Order</u> (but retroactive to the Petition Date), no expenses of administration of these chapter 11 cases or any future proceeding that may result therefrom, including liquidation in bankruptcy or other proceedings under the Bankruptcy Code, shall be charged against or recovered from the Prepetition Collateral or the DIP Collateral, the DIP Secured Parties, or the Prepetition Secured Parties pursuant to sections 105(a) or 506(c) of the Bankruptcy	Interim Order, ¶ 14

	Code or any similar principle of law or equity, without the prior written consent of the DIP Secured Parties and the Prepetition Secured Parties, as applicable, and no such consent shall be implied from any other action, inaction, or acquiescence by the DIP Secured Parties or the Prepetition Secured Parties.	
Section 552(b) Waiver	<u>Subject to entry of the Final Order</u> (but retroactive to the Petition Date), (a) the DIP Secured Parties, and the Prepetition Secured Parties shall be entitled to all of the rights and benefits of section 552(b) of the Bankruptcy Code and (b) the “equities of the case” exception under section 552(b) of the Bankruptcy Code shall not apply to such parties with respect to the proceeds, products, offspring, or profits of any of the Prepetition Collateral or the DIP Collateral, as applicable.	Interim Order, ¶16
Avoidance Actions	Avoidance Action shall be subject to the DIP Collateral, DIP Superpriority Claims, and Adequate Protection Superpriority Claims <u>upon entry of the Final Order</u> .	Interim Order, ¶¶ 10, 12, 18
Release, Waivers or Limitation on any Claim or Cause of Action	Subject to the Challenge Period, each of the Debtors (in their own right and on behalf of their estates and their current and former direct and indirect subsidiaries, the predecessors, successors, and assigns of each such entity, and the Related Parties of each such entity, in each case to the extent permitted by applicable law and solely in such parties capacity as such) shall to the maximum extent permitted by applicable law, unconditionally, irrevocably and fully forever release, remise, acquit, relinquish, irrevocably waive and discharge each of the DIP Secured Parties and the Prepetition Secured Parties, and each of their respective former, current or future officers, employees, directors, agents, representatives, owners, members, partners, affiliated investment funds or investment vehicles, managed, advised or sub-advised accounts, funds or other entities, investment advisors, sub-advisors or managers, financial advisors,	Interim Order, ¶ 31

	legal advisors, shareholders, managers, consultants, accountants, attorneys, affiliates, and predecessors in interest, each in their capacity as such (collectively, the “<u>Related Parties</u>”), of and from any and all claims, demands, liabilities, responsibilities, disputes, remedies, causes of action, indebtedness and obligations, rights, assertions, allegations, actions, suits, controversies, proceedings, losses, damages, injuries, attorneys’ fees, costs, expenses, or judgments of every type, whether known, unknown, asserted, unasserted, suspected, unsuspected, accrued, unaccrued, fixed, contingent, pending, or threatened including all legal and equitable theories of recovery, arising under common law, statute or regulation or by contract, of every nature and description that exist on the date hereof with respect to or relating to the DIP Obligations, the DIP Superpriority Claims, the DIP Liens, the DIP Documents, the Prepetition Obligations, the Prepetition Liens, or the Prepetition Credit Documents, as applicable, including (i) any so-called “lender liability” or equitable subordination claims or defenses, (ii) any and all claims and causes of action arising under the Bankruptcy Code, and (iii) any and all claims and causes of action regarding the validity, priority, extent, enforceability, perfection or avoidability of the liens or claims of the DIP Secured Parties and the Prepetition Secured Parties.	
Marshalling	Subject to entry of the Final Order (but retroactive to the Petition Date), the DIP Agent and the Prepetition Agent shall be entitled to apply the payments or proceeds of the DIP Collateral and the Prepetition Collateral in accordance with the provisions of the Interim Order or the Final Order, as applicable, the DIP Documents and the Prepetition Credit Documents, as applicable, and in no event shall the DIP Secured Parties or any of the Prepetition Secured Parties be subject to the equitable doctrine of “marshaling” or any other	Interim Order, ¶ 15

	similar doctrine with respect to any of the DIP Collateral or the Prepetition Collateral.	
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DEBTORS PREPETITION CAPITAL STRUCTURE

12. As of the Petition Date, the Debtors have approximately \$321.5 to \$556.5 million in total liabilities as set forth below.

Facility / Obligations	Outstanding Amount
Prepetition ABL Facility	\$79.1 million
Capital Provision Agreement	\$35-\$70 million ⁴
Unsecured Note	\$9.4 million
Trade / Vendor / Lease Obligations	\$200-\$400 million ⁵
Total Estimated Liabilities	\$323.5 to \$558.5 million

13. *Prepetition ABL Facility.* On June 17, 2022, Surfliner, Harvest Sherwood, HMC, Hamilton, Western, SFD Acquisition, SFD, and Sherwood entered into that certain Credit Agreement (as amended, restated, amended and restated, supplemented, or otherwise modified from time to time, including as amended by that certain Amendment No. 1 to Credit Agreement, dated as of October 10, 2024 (the “First Amendment”), and that certain Amendment No. 2 to Credit Agreement, dated as of March 18, 2025 (the “Second Amendment”), the “Prepetition Credit Agreement”) with the lenders party thereto and JPMorgan Chase Bank, N.A., as administrative agent for the lenders party thereto, which initially provided for a \$350 million revolving credit facility (the “Prepetition ABL Facility”).⁶ The Prepetition ABL Facility is secured by liens on substantially all of the Debtors’ assets. As of the Petition Date, the Debtors estimate approximately \$79.10 million in total funded debt obligations under the Prepetition ABL Facility.

⁴ These amounts exclude the accumulation of interest, as described further below.

⁵ The Debtors continue to evaluate total trade and vendor obligations as numerous vendors commenced litigation against the Company prepetition and asserted damages for, in addition to ordinary payables claims, lost profits, and consequential and punitive damages, among other things.

⁶ Pursuant to the Second Amendment, the total aggregate commitment under the Prepetition Credit Agreement was reduced to \$140 million.

14. *Capital Provision Agreement.* On December 21, 2022, certain of the Company entities executed that certain Capital Provision Agreement, dated December 21, 2022, with Blakemore Investments LLC and Milwaukee Investments LP (collectively, “Burford Capital”) in which Burford Capital provided \$35,000,000 to the Company to be used for operating capital (such agreement, the “Capital Provision Agreement”). The Capital Provision Agreement includes an unsecured obligation of the Company to pay Burford Capital 100% of the first \$35,000,000 of proceeds obtained from the Anti-Trust Litigation Assets and 50% of the next \$70,000,000 of such proceeds (with additional interest accruing after 2025 if the Litigation Financing Agreement is still in effect).

15. *Unsecured Note.* On December 1, 2017, Del Mar Holding entered that certain Management Equity Subscription and Agreement (the “Option Agreement”) with a minority owner and former executive of the Company (the “Equity Holder”). Following a dispute regarding the payment terms of the Option Agreement, the Equity Holder commenced litigation against Del Mar Holding for payment under the Option Agreement (the “Option Agreement Litigation”) in the amount of \$9,398,253,70.⁷ In connection with the Option Agreement Litigation, Del Mar Holding entered into a certain Promissory Note, dated November 22, 2024, with the Equity Holder (the “Unsecured Note”) with a face value equal to the same amount and a maturity date of December 31, 2028. The Unsecured Note includes quarterly payments commencing December 31, 2025 if certain Company liquidity conditions are met. The Equity Holder dismissed the Option Agreement Litigation shortly after entry into the Unsecured Note.

⁷ See *Leavy v. Del Mar Holdings LLC*, C.A. No. 2024-1075- (Del. Ch. Oct. 21, 2024).

16. *Trade, Vendor, and Lease Obligations.* In addition to the Company's funded debt obligations, as of the Petition Date, the Company owes an estimated \$200 to 400 million to third-party suppliers, vendors, and other ordinary course unsecured creditors.⁸

THE DIP FACILITY

I. The Debtors' Immediate Need for DIP Financing

17. The Debtors require immediate access to the proceeds of the DIP Facility to ensure they have sufficient liquidity to safely and effectively wind down business operations and administer their estates for the duration of these chapter 11 cases. Without additional financing and the ability to use Cash Collateral, the Debtors will lack the liquidity needed to carry out these proceedings and would be forced to convert to a value-destructive chapter 7 process. *See* First Day Declaration ¶ 61. Accordingly, prior to the Petition Date, the Debtors, in consultation with their advisors, reviewed and analyzed the Debtors' projected cash needs and prepared an Initial DIP Budget outlining the Debtors' postpetition cash need in the initial thirteen weeks of the chapter 11 cases. *See* Saleem Declaration ¶ 7. The Debtors believe the Short-Term DIP Budget and DIP Financing will provide the Debtors with the funds necessary to, among other things, satisfy certain obligations critical to wind down processes, and satisfy their other working capital and general corporate obligations while simultaneously pursuing consummation of their restructuring transactions. *See id.* ¶ 13.

II. The Debtors' Efforts to Obtain Postpetition Financing

18. The Debtors, with the assistance of their advisors, focused on negotiating with the DIP Lenders and their advisors to obtain the best terms available. *See* First Day Declaration ¶ 64.

⁸ As set forth above, the Debtors continue to evaluate total trade and vendor obligations as numerous vendors commenced litigation against the Company prepetition and asserted damages for, in addition to ordinary payables claims, lost profits, and consequential and punitive damages, among other things.

This decision was based on several factors. **First**, given the Debtors' total funded debt obligations and the fact that the prepetition debt facilities are secured by valid and perfected first-priority liens on substantially all of the Debtors' assets, there are insufficient unencumbered assets to secure postpetition financing. *Id.* at ¶ 62. **Second**, a third party would be highly unlikely to lend on a non-priming basis. *Id.* **Third**, the Prepetition Secured Parties were unlikely to consent to the priming of their security interests by a third party proposing postpetition financing. *Id.* **Fourth**, no party would likely lend on an unsecured or junior secured basis. *Id.* **Fifth**, the Debtors' collateral package, which consists primarily of litigation assets, makes third-party DIP financing particularly challenging. *Id.* Accordingly, in light of the foregoing, as well as the Debtors' liquidity needs, the current state of debt markets, and inquiries to potential postpetition financing sources, alternative sources of postpetition financing were not readily available to the Debtors. *Id.* at ¶ 63.

19. Notwithstanding the foregoing, the Debtors, with the assistance of their advisors, developed a targeted list of third parties outside of the Debtors' existing capital structure that may have been potentially interested in providing actionable postpetition financing to the Debtors on a junior basis. *Id.* As of the date hereof, the Debtors have not received an actionable proposal from such prospective lenders. *Id.*

20. Given the Debtors' prepetition capital structure and the challenges facing their business, the proposed DIP Facility represents the best and only actionable financing available to the Debtors under the circumstances and will allow the Debtors to continue operations and consummate their restructuring transactions to maximize the value of the Debtors' estate for the benefit of all parties in interest. *Id.* at ¶ 65.

BASIS FOR RELIEF REQUESTED

I. Entry into the DIP Documents is a Sound Exercise of the Debtors' Business Judgment

21. The Court should authorize the Debtors, as an exercise of their sound business judgment, to enter into the DIP Documents and obtain access to the DIP Facility. If an agreement to obtain secured credit does not run afoul of the provisions of, and policies underlying, the Bankruptcy Code, courts give debtors considerable deference in acting in accordance with their sound business judgment in obtaining postpetition credit. *See, e.g., In re N. Bay Gen. Hosp., Inc.*, No. 08-20368 (Bankr. S.D. Tex. July 11, 2008) (order approving postpetition financing on an interim basis as exercise of debtors' business judgment).

22. The Fifth Circuit has described the business judgment standard as a flexible one, which will be satisfied if a debtor articulates a business justification, and the decision furthers the interests of the debtors and other parties in interest. *See ASARCO, Inc. v. Elliott Mgmt. (In re ASARCO, L.L.C.)*, 650 F.3d 593, 601 (5th Cir. 2011) (in the context of section 363 of the Bankruptcy Code). To determine whether the business judgment test is satisfied, "the court is required to examine whether a reasonable business person would make a similar decision under similar circumstances." *In re Dura Auto. Sys. Inc.*, No. 06-11202 (KJC), 2007 WL 7728109, at *97 (Bankr. D. Del. Aug. 15, 2007) (citation omitted). In considering whether the terms of postpetition financings are fair and reasonable, courts consider the terms in light of the relative circumstances of both the debtor and the potential lender. *In re Farmland Indus., Inc.*, 294 B.R. 855, 880 (Bankr. W.D. Mo. 2003).

23. The Debtors' decision to enter into the DIP Facility is an exercise of their sound business judgment. As further discussed in the First Day Declaration, the DIP Financing is the best available option to the Debtors under the circumstances and is the product of arm's-length negotiations. *See* First Day Declaration ¶ 64. Given the Debtors' current cash position, absent

access to the proceeds of the DIP Financing, the Debtors may be forced to liquidate, which would be detrimental to all stakeholders. The Debtors could not secure sufficient financing in the form of unsecured credit, as an administrative expense in exchange for the grant of a superpriority administrative expense claim, or without granting priming liens, and were not able to obtain postpetition financing or other financial accommodations from any alternative prospective lender or group of lenders on more favorable terms and conditions than those for which approval is being sought. *Id.* at ¶ 63. Accordingly, the Court should authorize the Debtors' entry into the DIP Documents as a reasonable exercise of the Debtors' business judgment.

24. In addition, the Debtors seek, upon entry of the Interim Order, the Roll-Up of \$79,103,829.84 of Prepetition Obligations. Such payments are routinely made in the context of debtor-in-possession financing with the same or similar amounts and structure provided in this case. *See, e.g., In re Pier 1 Imports, Inc.*, Case No. 20-30805 (KRH) (Bankr. E.D. Vir. 2020) (\$265 million roll up without new money financing); *In re Edigio, Inc.*, Case No. 24-11985 (KBO) (Bankr. D. Del. 2024) (\$104 million roll up with \$12.5 of new money financing); *In re Byju's Alpha, Inc.*, Case No. 24-10140 (BLS) (Bankr. D. Del. 2024) (\$140 million roll up with \$20 million of new money financing). The Roll-Up—including authorization upon entry of the Interim Order—are an essential feature of the DIP Facility, without which the DIP Lenders would not have committed to provide funding for the Debtors. *See* First Day Declaration. ¶ 65. The Roll-Up will benefit the Debtors and their estates because it will enable the Debtors to obtain urgently needed financing critical to administering these chapter 11 cases, which financing would not otherwise be available. *See id.* ¶ 67.

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

25. The Debtors propose to obtain DIP Financing by providing security interests and liens as set forth in the DIP Documents and described above. The Debtors satisfy the requirements

for relief under section 364 of the Bankruptcy Code, which authorizes a debtor to incur secured or superpriority debt under certain circumstances. Specifically, section 364(c) of the Bankruptcy Code provides that:

If the trustee is unable to obtain secured 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).

26. 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. *Bray v. Shenandoah Fed. Savs. & Loan Ass’n (In re Snowshoe Co.)*, 789 F.2d 1085, 1088 (4th Cir. 1986); *In re Crouse Grp., Inc.*, 71 B.R. 544, 549 (Bankr. E.D. Pa. 1987) (finding that secured credit under section 364(c) of the Bankruptcy Code is authorized, after notice and a hearing, upon a showing that unsecured credit cannot be obtained). “The statute imposes no duty to seek credit from every possible lender before concluding that such credit is unavailable.” *In re Snowshoe Co.*, 789 F.2d at 1088; *see also Pearl-Phil GMT (Far East) Ltd. v. Caldor Corp.*, 266 B.R. 575, 584 (S.D.N.Y. 2001) (finding that superpriority administrative expenses should be authorized where debtor could not obtain credit as an administrative expense). When few lenders are likely to be willing to extend the necessary credit to a debtor, “it would be unrealistic and unnecessary to require [the debtor] to conduct such an exhaustive search for financing.” *In re Sky Valley, Inc.*, 100 B.R. 107, 113 (Bankr. N.D. Ga. 1988), *aff’d sub nom.*

Anchor Sav. Bank FSB v. Sky Valley Inc., 99 B.R. 117 (N.D. Ga. 1989); *see also In re Snowshoe Co.*, 789 F.2d at 1088 (finding that credit was unavailable absent a senior priming lien because the debtor had made unsuccessful contact with other financial institutions in the relevant geographic area); *In re Stanley Hotel, Inc.*, 15 B.R. 660, 663 (D. Colo. 1981) (finding that the fact that two national banks refused to grant unsecured loans was sufficient to support the conclusion that the requirements of section 364 were met); *In re Ames Dep't Stores, Inc.*, 115 B.R. 24, 40 (Bankr. S.D.N.Y. 1990) (approving financing facility and finding that debtor made reasonable efforts to satisfy the requirements of section 364(c) by approaching four lending institutions, two of which refused to provide financing, and selecting the most favorable of the two offers it received).

27. Courts have articulated a three-part test to determine whether a debtor is entitled to financing under section 364(c) of the Bankruptcy Code. Specifically, courts look to whether: (i) the debtor is unable to obtain secured credit under section 364(b) of the Bankruptcy Code (*i.e.*, by allowing a lender only an administrative claim); (ii) the credit transaction is necessary to preserve the assets of the estate; and (iii) the terms of the transaction are fair, reasonable, and adequate, given the circumstances of the debtor-borrower and proposed lenders. *See In re Aqua Assocs.*, 123 B.R. 192, 195–96 (Bankr. E.d. Pa. 1991); *In re Ames Dep't Stores*, 115 B.R. at 37–40; *Norris Square Civic Ass'n v. St. Mary Hosp. (In re St. Mary Hosp.)*, 86 B.R. 393, 401–02 (Bankr. E.D. Pa. 1988); *Crouse Grp.*, 71 B.R. at 549.

28. Furthermore, in the event that a debtor is unable to obtain unsecured credit allowable as an administrative expense under section 503(c)(1) of the Bankruptcy Code, section 364(c) provides that a court “may authorize the obtaining of credit or the incurring of debt (1) with priority over any or all administrative expenses of the kind specified in section 503(b) or 507(b) of the [Bankruptcy Code]; (2) secured by a lien on property of the estate that is not

otherwise subject to a lien; or (3) secured by a junior lien on property of the estate that is subject to a lien.” 11 U.S.C. § 364(c). As described above and in the First Day Declaration, the Debtors do not believe alternative financing is presently available on an unsecured or administrative priority only basis. Thus, the Debtors determined that the DIP Facility provided the best opportunity available to the Debtors under the circumstances to fund these chapter 11 cases. Therefore, approving superpriority claims in favor of the DIP Lenders is reasonable and appropriate.

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

30. Most importantly, here, any priming is consensual. The Prepetition Secured Parties support the priming of their Prepetition Collateral in exchange for an adequate protection package. Further, the Debtors are not aware of any available financing on equal or better terms from the DIP Lenders absent the granting of first priority liens on the Prepetition Collateral, to which the Prepetition Secured Parties were unwilling to consent. 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.

III. Interests of Prepetition Secured Parties are Adequately Protected

31. Parties with an interest in prepetition collateral are entitled to adequate protection. *See* 11 U.S.C. § 363(e). Adequate protection may be provided in various forms, including payment of adequate protection fees, payment of interest, or granting of replacement liens or administrative claims. Thus, what constitutes adequate protection is decided on a case-by-case basis. *See, e.g., In re CareMax, Inc.*, Case No. 24-80093 (MLV) (Bankr. N.D. Tex. Nov. 19, 2024) [ECF No. 71]; *In re Ebix, Inc.*, Case No. 23-80004 (SWE) (Bankr. N.D. Tex. Dec. 19, 2023) [ECF No. 64]; *In re Impel Pharmaceuticals, Inc.*, Case No. 23-80016 (SGJ) (Bankr. N.D. Tex. Dec. 22, 2023) [ECF No. 73]; *In re Tuesday Morning*, Case No. 23-90001 (ELM) (Bankr. N.D. Tex. May 19, 2023) [ECF No. 1100]; *In re J. Hilburn, Inc.*, Case No. 20-31308 (HDH) (Bankr. N.D. Tex. May 6, 2020) [ECF No. 25]; *In re PFO Global, Inc.*, Case No. 17-30355 (HDH) (Bankr. N.D. Tex. Feb. 3, 2017) [ECF No. 23]; *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 proceedings”)).

32. The Prepetition Secured Parties are entitled, pursuant to sections 361, 362, 363(e) and 507 of the Bankruptcy Code, to adequate protection of their interests in all Prepetition Collateral, to the extent of any diminution in the value of the Prepetition Secured Parties’ interests in the Prepetition Collateral from and after the Petition Date, if any, for any reasons provided for under the Bankruptcy Code. The Debtors propose to grant the Prepetition Secured Parties certain adequate protection liens over the DIP Collateral and other adequate protection described herein, to the extent of any diminution in value of the Prepetition Collateral, in exchange for the

Prepetition Secured Parties' support of the priming of their Prepetition Collateral. Granting such adequate protection liens to the Prepetition Secured Parties to obtain their consent to the Debtors' use of the Prepetition Collateral as provided in the Interim Order was a reasonable exercise of the Debtors' business judgment. Following the Debtors' advisors' prepetition discussions with potential third party financing sources, it is unlikely there are any available financing on equal or better terms from a third party absent the granting of superpriority senior liens on the Prepetition Collateral to such third party, to which the Prepetition Secured Parties would be unwilling to consent.

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

IV. The Carve-Out is Appropriate

34. The liens granted pursuant to the DIP Facility, adequate protection claims, and the superpriority claims of the Prepetition Secured Parties and the DIP Lenders are subject and subordinate to the Carve-Out. Without the Carve-Out, the Debtors' estates may be deprived of possible rights and powers because the services for which professionals may be paid in these cases is restricted. *See In re Ames Dep't Stores*, 115 B.R. at 38 (observing that courts insist on carve outs for professionals representing parties in interest because "[a]bsent such protection, the collective rights and expectations of all parties-in-interest are sorely prejudiced"). Additionally, the Carve-Out protects against administrative insolvency during the course of these cases by ensuring that assets remain for the payment of U.S. Trustee fees and professional fees,

notwithstanding the grant of superpriority claims and replacement liens as part of the adequate protection of Prepetition Secured Parties' interests in the Prepetition Collateral.

V. The Debtors Should be Authorized to Pay the Fees Due Under the DIP Documents

35. The Debtors have agreed to pay certain interest and fees in connection with the DIP Facility, which are integral to the financing package. The DIP Facility, including the fees and other economic terms of the DIP Facility, were all negotiated at arm's-length. *See* First Day Declaration ¶ 64. Under the circumstances, the terms of the DIP Facility, which include the fees payable in connection therewith, are the most favorable terms the Debtors could obtain. *Id.* at ¶ 65. Furthermore, the Debtors submit that the interest payments and fees required by the DIP Facility are reasonable, comparable to other debtor in possession financings, and generally consistent with market terms for companies facing similar circumstances as the Debtors. *Id.* at ¶ 66. The Debtors believe that under these circumstances, authorization to pay the fees is warranted.

VI. DIP Lender Should be Deemed Good Faith Lender under Section 364(e)

36. 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 the grant of such liens is later reversed or modified on appeal. Section 364(e) provides that:

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

11 U.S.C. § 364(e).

37. Here, the Debtors believe the DIP Financing embodies the most favorable terms on which the Debtors could obtain postpetition financing. As described in the First Day Declaration, all negotiations of the DIP Documents with the DIP Lenders were conducted in good faith and at arm's-length. *See* First Day Declaration ¶ 64. The terms and conditions of the DIP Documents are fair and reasonable under the circumstances, and the proceeds of the DIP Facility will be used only for purposes that are permissible under the Bankruptcy Code, in accordance with the DIP Orders and the DIP Documents and in accordance with the Approved Budget (subject to Permitted Variances). Further, no consideration is being provided to any party to the DIP Documents other than as described herein. Accordingly, the Court should find that the DIP Lenders are “good faith” lenders within the meaning of section 364(e) of the Bankruptcy Code and that the DIP Lenders are thus entitled to all of the protections afforded by that section.

VII. Modification of the Automatic Stay is Warranted

38. The relief requested herein contemplates a modification of the automatic stay to permit the Debtors to, among other things, (a) grant the security interests, liens, and superpriority claims described above with respect to the DIP Lenders and the Prepetition Secured Parties, as applicable, and to perform such acts as may be requested to assure the perfection and priority of such security interests and liens; (b) permit the Debtors to incur all liabilities and obligations to the DIP Agent, the DIP Lenders, and the Prepetition Secured Parties under the DIP Documents, the DIP Facility, and the Interim Order, as applicable; and (c) authorize the Debtors to pay, and the DIP Agent, the DIP Lenders, and the Prepetition Secured Parties, to retain and apply payments made in accordance with the terms of the Interim Order and the DIP Documents. Under these circumstances, the Debtors believe that the extent of the modifications to the automatic stay under the Interim Order is reasonable and should be approved.

VIII. Immediate Access to Cash Collateral Should be Approved

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

40. Here, the Debtors and their estates will suffer immediate and irreparable harm if the interim relief requested herein is not granted promptly. The Debtors have an immediate need for continued access to Cash Collateral, and any disruption in the use of Cash Collateral would cause a severe decrease in the value of the Debtors’ estates by preventing the Debtors from making necessary disbursements and effectuating an effective and orderly wind down. As set forth in the Approved Budget, the Debtors expect that they will need approximately \$5 million during the interim period and approximately \$21 million through the course of these cases. *See Saleem Declaration* ¶¶ 13-15. Absent interim relief, the Debtors will be unable to, among other things, complete an efficient wind down of their estates, preserve and monetize their key remaining assets for the benefit of all stakeholders, and fund working capital and general corporate requirements. *See Saleem Declaration* ¶ 13. Accordingly, for the reasons set forth above, prompt entry of the Interim Order is necessary to avoid the value destruction that would otherwise result in immediate and irreparable harm to the Debtors’ estates.

EMERGENCY CONSIDERATION

41. The Debtors request emergency consideration of this Motion pursuant to Bankruptcy Rule 6003, which empowers a court to grant relief within the first 21 days after the commencement of a chapter 11 case “to the extent that relief is necessary to avoid immediate and

irreparable harm.” The failure to receive the requested relief during the first 21 days of these chapter 11 cases would severely disrupt the Debtors’ operations and significantly impact the Debtors’ ability to swiftly and efficiently move forward with a value-maximizing transaction. Accordingly, the Debtors have satisfied the “immediate and irreparable harm” standard of Bankruptcy Rule 6003 and request that the Court approve the relief requested in this Motion on an emergency basis.

REQUEST FOR BANKRUPTCY RULE 6004 WAIVERS

42. The Debtors request a waiver of any applicable notice requirements under Bankruptcy Rule 6004(a) and any stay of the order granting the relief requested herein pursuant to 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’ ongoing operations and value-maximization process. Accordingly, ample cause exists to justify the waiver of the notice requirements under Bankruptcy Rule 6004(a) and the 14-day stay imposed by Bankruptcy Rule 6004(h), to the extent such notice requirements and such stay apply.

RESERVATION OF RIGHTS

43. Nothing contained herein or any action taken pursuant to relief requested is intended to be or shall be construed as (a) an admission as to the validity of any claim against the Debtors; (b) a waiver of the Debtors’ or any party in interest’s rights to dispute the amount of, basis for, or validity of any claim or interest under applicable law or nonbankruptcy law; (c) a promise or requirement to pay any claim; (d) a waiver of the Debtors’ or any other party in interest’s rights under the Bankruptcy Code or any other applicable law; (e) a request for or granting of approval for assumption of any agreement, contract, program, policy, or lease under section 365 of the Bankruptcy Code; or (f) an admission as to the validity, priority, enforceability, or perfection of any lien on, security interest in, or other encumbrance on property of the Debtors’

estates. 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

44. Notice of this Motion has been provided by email, facsimile, or overnight courier to (a) the proposed Complex Service List (as defined in the Creditor Matrix Motion filed contemporaneously herewith); and (b) the DIP Lenders and Prepetition Secured Parties, or counsel thereto. The Debtors submit that, in light of the nature of the relief requested, no other or further notice need be given.

NO PREVIOUS REQUEST

45. No previous request for the relief sought herein has been made by the Debtors to this or any other court.

[Remainder of the page intentionally left blank.]

WHEREFORE, the Debtors request entry of interim and final orders, substantially in the forms of the Interim DIP Order filed with this Motion and the Final DIP Order, granting the relief requested herein and granting such other relief as is just and proper.

Dated: May 5, 2025
Dallas, Texas

/s/ Thomas R. Califano

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*Proposed Attorneys for the Debtors
and Debtors in Possession*

Certificate of Service

I certify that on May 5, 2025, I caused a copy of the foregoing document to be served by the Electronic Case Filing System for the United States Bankruptcy Court for the Northern District of Texas.

/s/ Thomas R. Califano
Thomas R. Califano

Exhibit A

Proposed Interim DIP Order

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

In re:

HARVEST SHERWOOD FOOD
DISTRIBUTORS, INC., *et al.*,¹

Debtors.

Chapter 11

Case No. 25-80109 (SGJ)

(Jointly Administered)

Related to Dkt. No. [•]

**INTERIM ORDER (I) AUTHORIZING
THE DEBTORS TO (A) OBTAIN POSTPETITION
FINANCING AND (B) USE CASH COLLATERAL; (II) GRANTING
LIENS AND SUPERPRIORITY CLAIMS; AND (III) GRANTING RELATED RELIEF**

¹ The Debtors in these chapter 11 cases, together with the last four digits of each Debtor's federal tax identification number, are Del Mar Holding LLC (9207), Del Mar Acquisition Inc. (8866), Surfliner Holdings, Inc. (9456), Harvest Sherwood Food Distributors, Inc. (8995), Harvest Meat Company, Inc. (9136), LAMCP Capital, LLC (N/A), Western Boxed Meats Distributors, Inc. (8735), Cascade Food Brokers, Inc. (1389), Hamilton Meat, LLC (6917), SFD Acquisition LLC (8995), SFD Transportation Corp. (1551), Sherwood Food Distributors, L.L.C. (4375), and SFD Company LLC (1175). The Debtors' service address is c/o Epiq Corporate Restructuring, LLC 10300 SW Allen Blvd., Beaverton, OR 97005.

Upon the motion (the “Motion”)² of Harvest Sherwood Food Distributors, Inc. and its debtor affiliates, as debtors and debtors in possession (collectively, the “Debtors”), pursuant to sections 105, 361, 362, 363, 364, 503, 506 (c), and 507 of title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq.* (as amended, the “Bankruptcy Code”), rules 2002, 4001, 6003, 6004 and 9014 of the Federal Rules of Bankruptcy Procedure (as amended, the “Bankruptcy Rules”), rules 2002-1 and 9013-1 of the Local Bankruptcy Rules (as amended, the “Local Rules”) of the United States Bankruptcy Court for the Northern District of Texas (this “Court”), and Section D of the Procedures for Complex Cases in the Northern District of Texas (the “Complex Case Procedures”), seeking entry of an interim order (this “Interim Order”) and a final order (the “Final Order”) and, together with the Interim Order, the “Financing Orders”) authorizing:

- (i) Harvest Sherwood Food Distributors, Inc., Harvest Meat Company, Inc., Hamilton Meat, LLC, Western Boxed Meats Distributors, Inc., SFD Acquisition LLC, SFD Company LLC, and Sherwood Food Distributors, L.L.C. (collectively, the “Borrowers” and, each individually, a “Borrower”) to obtain, and each of the other Debtors other than Del Mar Holding LLC and Del Mar Acquisition Inc. (the “Guarantors”) to unconditionally guarantee on a joint and several basis, debtor-in-possession financing (“DIP Financing”), consisting of a senior secured superpriority debtor-in-possession revolving credit facility in the aggregate principal amount of up to \$105,000,000 (the “DIP Facility”), comprised of:
 - (a) \$25,896,170.16 of new money DIP loans, \$5,000,000 of which shall only be made available upon entry of the Interim Order, with the remainder available upon entry of the Final Order (the “New-Money DIP Loans”), and
 - (b) a roll up and conversion into DIP Obligations (as defined below) of the remaining \$79,103,829.84 of Prepetition Obligations (the “Roll-Up DIP Loans”) and, together with the New-Money DIP Loans, the “DIP Loans”) pursuant to the terms and conditions of this Interim Order and the DIP Documents (as defined below);
- (ii) the Debtors to enter into and perform under the *Senior Secured Superpriority Debtor-in-Possession Credit Agreement* (as may be amended, restated, amended

² Unless otherwise indicated herein, capitalized terms used but not defined herein shall have the meaning ascribed to them in the Motion, the First Day Declarations (as defined in the Motion), or the DIP Credit Agreement (as defined below), as applicable.

and restated, supplemented, or otherwise modified from time to time in accordance with the terms thereof and this Interim Order, the “DIP Credit Agreement” and, together with all agreements, documents, and instruments delivered or executed in connection therewith, the “DIP Documents”) among the Borrowers, JPMorgan Chase Bank, N.A., as administrative agent (the “DIP Agent”), and the lenders from time to time party thereto (the “DIP Lenders” and, together with the DIP Agent, the “DIP Secured Parties”), which shall be in substantially the same form attached hereto as **Exhibit 3**, and to perform their respective obligations thereunder and all such other and further acts as may be necessary, appropriate, or desirable in connection with the DIP Documents;

- (iii) the Debtors to effectuate the Roll-Up DIP Loans and use proceeds of the DIP Facility solely in accordance with the DIP Documents and the Financing Orders, as applicable;
- (iv) the Debtors to use “cash collateral” (as defined in section 363 of the Bankruptcy Code) and all other Prepetition Collateral (as defined below);
- (v) the Debtors to provide adequate protection to the lenders under the *Credit Agreement* dated June 17, 2022 (as amended on October 10, 2024, and March 18, 2025, and as may be further amended, restated, amended and restated, supplemented or otherwise modified from time to time, the “Prepetition Credit Agreement,” and, the loans thereunder, the “Prepetition Loans” and, all security, pledge and guaranty agreements and all other documentation executed in connection with the foregoing, each as amended, supplemented or otherwise modified, the “Prepetition Credit Documents”), among the Borrowers, JPMorgan Chase Bank, N.A., as administrative agent (the “Prepetition Agent”), and the lenders party thereto from time to time (the “Prepetition Lenders” and, together with the Prepetition Agent, the “Prepetition Secured Parties”) pursuant to the terms and conditions of this Interim Order and the DIP Documents;
- (vi) the Debtors to grant security interests, liens, and superpriority claims to the DIP Agent for the benefit of the DIP Secured Parties, including, in each case, subject to the Carve Out (as defined below) (a) superpriority administrative claims pursuant to sections 364(c)(1), 503(b), and 507(b) of the Bankruptcy Code, (b) liens pursuant to sections 364(c)(2) and 364(c)(3) of the Bankruptcy Code, and (c) priming liens pursuant to section 364(d) of the Bankruptcy Code to secure the Debtors’ obligations under the DIP Documents, and on the terms and conditions set forth herein and the DIP Documents including, upon entry of the Final Order, liens on Avoidance Proceeds (as defined below);
- (vii) subject to entry of the Final Order (but retroactive to the Petition Date), waiver of the Debtors’ and the estates’ right to (a) surcharge against the Prepetition Collateral and the DIP Collateral (as defined below) pursuant to section 506(c) of the Bankruptcy Code, (b) the equitable doctrine of “marshaling” and other similar doctrines with respect to the Prepetition Collateral and the DIP Collateral, and

- (c) assert any “equities of the case” exception pursuant to section 552(b) of the Bankruptcy Code;
- (viii) modification of the automatic stay imposed pursuant to section 362 of the Bankruptcy Code to the extent necessary to implement and effectuate the terms of the Financing Orders;
- (ix) this Court hold an interim hearing (the “Interim Hearing”) to consider the relief requested in the Motion and entry of the proposed Interim Order; and
- (x) this Court schedule a final hearing (the “Final Hearing”) to consider entry of the Final Order authorizing and approving the relief requested in the Motion on a final basis.

Upon consideration of the Motion, the First Day Declarations, the evidence submitted or proffered and the arguments of counsel made at the Interim Hearing; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Order of Reference of Bankruptcy Cases and Proceedings Nunc Pro Tunc* dated August 3, 1984, entered by the United States District Court for the Northern District of Texas; and the matter being a core proceeding within the meaning of 28 U.S.C. § 157(b)(2); and venue of this proceeding and the Motion in this District being proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court being able to issue a final order consistent with Article III of the United States Constitution; and due and sufficient notice of the Interim Hearing having been given under the particular circumstances; and it appearing that no other or further notice is necessary; and it appearing that the relief requested in the Motion is in the best interests of the Debtors, their estates, their creditors, and other parties-in-interest; and it appearing that the Debtors’ entry into the DIP Documents is a sound and prudent exercise of the Debtors’ business judgment; and after due deliberation thereon; and good and sufficient cause appearing therefor,

IT IS FOUND, DETERMINED, ORDERED, AND ADJUDGED, that:³

1. Disposition. The Motion is GRANTED on an interim basis in accordance with the terms of this Interim Order. Any objections to the Motion with respect to the entry of this Interim Order that have not been withdrawn, waived, or settled, and all reservation of rights included therein, are hereby denied and overruled.

2. Commencement of Chapter 11 Cases. On May 5, 2025 (the “Petition Date”), each Debtor filed with this Court a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Debtors are continuing to operate their businesses as debtors in possession under sections 1107 and 1108 of the Bankruptcy Code. No chapter 11 trustee has been appointed in these chapter 11 cases.

3. Jurisdiction. This Court has core jurisdiction over these chapter 11 cases commenced on the Petition Date, the Motion, and the parties and property affected hereby pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

4. Notice. The notice given by the Debtors of the Motion, the relief requested therein, and the Interim Hearing complies with Bankruptcy Rules 4001(b) and (c), the Local Rules, and the Complex Case Procedures or otherwise constitutes due and sufficient notice under the circumstances and no further notice of the relief sought at the Interim Hearing and the relief granted herein is necessary or required.

³ Findings of fact shall be construed as conclusions of law, and conclusions of law shall be construed as findings of fact.

5. Debtors' Stipulations. Without prejudice to the rights of any other party, but subject to the limitations thereon contained in paragraph 30 of this Interim Order, the Debtors represent, admit, stipulate, and agree as follows:

(a) Prepetition Obligations. As of the Petition Date, the Borrowers, without defense, counterclaim, or offset of any kind, were jointly and severally indebted and liable to the Prepetition Secured Parties under the Prepetition Credit Documents in the aggregate amount of not less than \$79,103,829.84, which consists of (x) approximately \$78,353,793.26 in principal amount of revolving loans advanced under the Prepetition Credit Agreement, plus (y) no less than \$668,122.62 on account of accrued and unpaid interest thereon as of the Petition Date ((x) and (y) together, the "Prepetition Obligations Amount"), plus all other fees, costs, expenses, indemnification obligations, reimbursement obligations (including on account of issued and undrawn letters of credit), charges, any premiums, additional interest, any other "Obligations" (as defined in the Prepetition Credit Agreement), and all other obligations of whatever nature owing, regardless of whether contingent, whenever arising, accrued, accruing, due, owing or chargeable under the Prepetition Credit Documents (collectively, including the Prepetition Obligations Amount, the "Prepetition Obligations"). The Prepetition Obligations constitute legal, valid, binding, and unavoidable obligations against each of the Debtors, and no portion of the Prepetition Obligations or any payment made to the Prepetition Secured Parties or applied to or paid on account of the Prepetition Obligations prior to the Petition Date is subject to any contest, attack, rejection, recovery, reduction, avoidance, recharacterization, effect, counterclaim, defense, offset, subordination, other "claim" (as defined in section 101(5) of the Bankruptcy Code), cause of action, choses in action, or other challenge of any kind under the Bankruptcy Code or under other applicable law.

(b) *Prepetition Liens.* Pursuant to the Prepetition Credit Documents, the Prepetition Obligations are secured by valid, binding, properly and fully perfected, enforceable, and unavoidable first priority liens on and security interests in (collectively, the “Prepetition Liens”) the “Collateral” (as defined in the Prepetition Credit Documents, the “Prepetition Collateral”), subject only to certain “Permitted Liens” (as defined in and as permitted under the Prepetition Credit Documents, the “Prepetition Permitted Liens”). The Prepetition Liens (i) are valid, binding, properly and fully perfected, enforceable, and unavoidable first priority liens and security interests in the Prepetition Collateral, (ii) are not subject, pursuant to the Bankruptcy Code or other applicable law, to any contest, rejection, recovery, reduction, avoidance, recharacterization, recovery, subordination, attack, offset, counterclaim, defense, or claim of any kind, (iii) as of the Petition Date are subject or subordinate only to certain Prepetition Permitted Liens as permitted by the terms of the Prepetition Credit Documents, and (iv) constitute the legal, valid, and binding obligation of the “Loan Parties” (as defined in the Prepetition Credit Documents) that are enforceable in accordance with the terms of the applicable Prepetition Credit Documents. No claims or causes of action held by the Debtors or their estates exist against, or with respect to, the Prepetition Secured Parties or their representatives under or relating to the Prepetition Credit Documents.

(c) *Cash Collateral.* All of the Debtors’ cash, including cash and other amounts on deposit or maintained in any account or accounts by the Debtors, and any amounts generated by the collection of accounts receivable or other disposition of the Prepetition Collateral existing as of the Petition Date or from time to time, and the proceeds of any of the foregoing, is the Prepetition Secured Parties’ cash collateral within the meaning of section 363(a) of the Bankruptcy Code (the “Cash Collateral”).

6. *Findings Regarding the DIP Facility and Use of Cash Collateral.*

(a) Good cause has been shown for the entry of this Interim Order and for authorization of the Debtors to use Cash Collateral and obtain financing pursuant to the DIP Documents in order to, among other things, (i) administer and preserve the value of their estates; (ii) pay contractor obligations; and (iii) pay fees and expenses incurred in connection with liquidating the Debtors' assets and other costs associated with administering these chapter 11 cases and satisfy other general corporate purposes of the Debtors, in each case subject to the DIP Budgets. The Debtors will not have sufficient sources of working capital and financing to maintain their properties in the ordinary course of business or fund these chapter 11 cases without the DIP Facility and authorized use of Cash Collateral. In the absence of the DIP Facility and the use of Cash Collateral, the Debtors' estates would suffer immediate and irreparable harm. The access by the Debtors to sufficient liquidity through the use of Cash Collateral, the incurrence of new indebtedness under the DIP Documents, and the other financial accommodations provided under the DIP Documents are necessary and vital to the preservation, maintenance and maximization of the value of the Debtors and to a successful and orderly liquidation of the Debtors.

(b) The DIP Facility is the best source of debtor in possession financing available to the Debtors. As set forth in the First Day Declarations, the Debtors are unable to obtain financing on more favorable terms from sources other than the DIP Lenders under the DIP Documents and are unable to obtain (i) adequate unsecured credit allowable under section 503(b) of the Bankruptcy Code as an administrative expense, (ii) adequate unsecured credit allowable under section 503(c)(1) of the Bankruptcy Code having priority over administrative expenses of the kind specified in sections 503(b) or 507(b) of the Bankruptcy Code, (iii) adequate credit secured by a senior lien on unencumbered assets under section 364(c)(2) of the Bankruptcy Code or secured by

a junior lien on encumbered assets under section 364(c)(3) of the Bankruptcy Code, or (iv) secured credit from sources other than the DIP Secured Parties on terms more favorable than the terms of the DIP Facility. Financing on a post-petition basis on better terms is not available without granting the DIP Lender, (i) perfected security interests in and liens on the DIP Collateral, (ii) superpriority claims; and (iii) the other protections set forth in this Interim Order.

(c) The terms of the DIP Facility, the DIP Documents, and the use of Cash Collateral are fair and reasonable, reflect the Debtors' exercise of prudent business judgement consistent with their fiduciary duties and constitute reasonably equivalent value and fair consideration.

(d) The DIP Facility has been negotiated in good faith and at arm's length among the Debtors and the DIP Secured Parties, and all of the Debtors' obligations and indebtedness arising under, in respect of, or in connection with the DIP Facility and the DIP Documents including all loans made to and guarantees issued by the Debtors pursuant to the DIP Documents and all other "Obligations" (as defined in the DIP Credit Agreement, collectively, the "DIP Obligations") 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. The DIP Obligations, the DIP Liens (as defined below), and the DIP Superpriority Claims (as defined below) shall be entitled to the full protection of section 364(e) of the Bankruptcy Code if this Interim Order or any provision hereof is reversed or modified on appeal and the validity and priority of the DIP Obligations, the DIP Liens, and the DIP Superpriority Claims granted to the DIP Secured Parties hereunder arising before the effective date of any such reversal or modification of this Interim Order shall be governed in all respects by the original provisions of this Interim Order, including entitlement to all rights, remedies, privileges, and benefits granted herein.

(e) The conversion or roll up of the Prepetition Obligations into the DIP Obligations in accordance with this Interim Order in connection with the DIP Financing is compensation for, in consideration or, and solely for account of, the agreement of the DIP Lenders to fund amounts under the DIP Documents, not as payments under, adequate protection for, or otherwise on account of the Prepetition Obligations. Such conversion or roll up reflects the Debtors' exercise of prudent business judgment consistent with their fiduciary duties. The Prepetition Secured Parties would not otherwise consent to the use of their Cash Collateral and the DIP Secured Parties would not be willing to provide the DIP Facility or extend credit to the Debtors without such conversion or roll up. The conversion or roll up of the Prepetition Obligations into the DIP Obligations in connection with the DIP Financing pursuant to this Interim Order will benefit the Debtors and their estates because they will enable the Debtors to obtain needed financing critical to administering these chapter 11 cases and liquidating the Debtors' assets, which financing would not otherwise be available.

(f) The Debtors have requested entry of this Interim Order pursuant to Bankruptcy Rules 4001(b)(2) and 4001(c)(2), the Local Rules, and the Complex Case Procedures. For the reasons set forth in the Motion, the First Day Declarations, and the record presented to this Court at the Interim Hearing, absent granting the relief sought by this Interim Order, the Debtors' estates will be immediately and irreparably harmed. Consummation of the DIP Facility and authorization of the use of the Prepetition Collateral (including the Cash Collateral) in accordance with this Interim Order and the DIP Documents are, therefore, in the best interests of the Debtors' estates and are consistent with the Debtors' fiduciary duties.

7. Authorization of the DIP Facility and the DIP Documents.

(a) The Debtors are hereby expressly authorized and empowered to execute and deliver and, on such execution and delivery, directed to perform under the DIP Documents, including the DIP Credit Agreement.

(b) Upon entry of this Interim Order, the Borrowers are hereby authorized to borrow, and the Guarantors are hereby authorized to guaranty, borrowings of aggregate principal amount of \$5,000,000 of New-Money DIP Loans under the DIP Facility (plus interest, fees, indemnities, and other expenses and other amounts provided for in the DIP Documents), subject to and in accordance with this Interim Order and the DIP Documents.

(c) Proceeds of the DIP Facility and Cash Collateral shall be used in accordance with the DIP Credit Agreement, this Interim Order and subject to the DIP Budgets, and the other DIP Documents, including for (i) the Roll-Up DIP Loans approved pursuant to this Interim Order, (ii) paying interest, fees, and expenses (including attorneys' fees) to the DIP Lenders and the Prepetition Lenders pursuant to this Interim Order and/or the DIP Credit Agreement, as applicable, (iii) funding fees and expenses incurred in connection with the liquidating the Debtors' assets, (iv) paying the fees and expenses incurred by, and/or payable to, any Professional Person (as defined below), including to fund the Carve Out and Carve Out Account (as defined below), and (v) paying certain other costs and expenses of administration of these chapter 11 cases, in each case, in accordance with the DIP Budgets.

(d) In furtherance of the foregoing and without further approval of this Court, each Debtor is authorized, and the automatic stay imposed by section 362 of the Bankruptcy Code is hereby lifted to the extent necessary and applicable, to perform all acts and to make, execute, and deliver all instruments and documents, and to pay all fees, expenses, indemnities, and other

amounts contemplated thereby or that may be reasonably required or necessary for the Debtors' performance of their obligations under the DIP Facility including:

(i) the execution, delivery, and performance of the DIP Documents, including the DIP Credit Agreement and any collateral documents contemplated thereby;

(ii) the execution, delivery, and performance of one or more amendments, waivers, consents or other modifications to and under the DIP Documents, in each case in accordance with the terms of the DIP Documents and in such form as the Debtors, the DIP Agent, and the Required Lenders (as defined in the DIP Credit Agreement, the "Required DIP Lenders") may agree; it being understood that no further approval of this Court shall be required for any amendments, waivers, consents, or other modifications to and under the DIP Documents or the DIP Budgets, except that any modifications or amendments to the DIP Documents that shorten the maturity of the DIP Credit Agreement, increase the aggregate commitments thereunder or the rate of interest payable with respect to the obligations thereunder, or materially adversely affect the Debtors' estates shall be on notice and subject to a hearing and Court approval, as necessary; provided that, notwithstanding the foregoing, to the extent that an amendment or modification to the DIP Documents is materially adverse to any party-in-interest that has not affirmatively consented to such amendment or modification, the Debtors shall provide not less than five business days' notice to such party-in-interest prior to the effective date of such amendment or modification;

(iii) the non-refundable and, upon entry of this Interim Order, irrevocable payment to each of the DIP Secured Parties, as applicable, of the fees referred to in the DIP Documents (which fees, in each case, shall be, and shall be deemed to have been, approved upon entry of this Interim Order, and which fees shall not be subject to any challenge, contest, attack, rejection, recoupment, reduction, defense, counterclaim, offset, subordination, recharacterization, avoidance or other

claim, cause of action or other challenge of any nature under the Bankruptcy Code, under applicable non-bankruptcy law or otherwise) and any amounts due (or that may become due) in respect of any reimbursement or indemnification obligations under the DIP Documents; and

(iv) the performance of all other acts required under or in connection with the DIP Documents.

(e) Upon execution and delivery of the DIP Credit Agreement and the other DIP Documents, such DIP Documents shall constitute legal, valid, binding, and unavoidable obligations of the Debtors enforceable against each Debtor party thereto in accordance with their respective terms and the terms of this Interim Order for all purposes during these chapter 11 cases, any subsequently converted case of any Debtor to a case under chapter 7 of the Bankruptcy Code, or after the dismissal of any Case. No obligation, payment, transfer, or grant of security under the DIP Credit Agreement, the other DIP Documents or this Interim Order shall be stayed, restrained, voidable, avoidable or recoverable under the Bankruptcy Code or under any applicable law (including under sections 502(d), 548, or 549 of the Bankruptcy Code, or under any applicable state Uniform Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act, Uniform Voidable Transactions Act or similar statute or common law), or subject to any defense, reduction, setoff, recoupment, or counterclaim.

(f) The Guarantors hereby are authorized and directed to jointly, severally, and unconditionally guarantee in full all of the DIP Obligations of the Borrowers and to incur any DIP Obligations and DIP Liens in connection therewith.

(g) Effective immediately upon the entry of this Interim Order and the funding of the New-Money DIP Loans provided for herein, and without any further action by any party to the DIP Documents, the Court or any other “person” (as defined in section 101(41) the Bankruptcy Code), (i) all of the Prepetition Obligations shall be, on a cashless basis, automatically deemed to

constitute DIP Obligations that shall be due and payable in accordance with the terms and conditions set forth in the DIP Credit Agreement as if originally funded hereunder on the date of this Interim Order, and (ii) from and after the entry of this Interim Order, the Prepetition Obligations shall be automatically and irrevocably reduced by the amount of the Roll-Up DIP Loans approved by this Interim Order. The cashless substitution and exchange of the Prepetition Obligations by “rolling-up” such amounts into DIP Obligations as described in this paragraph shall be authorized as compensation for, in consideration for, as a necessary inducement for, and on account of the agreement of the DIP Lenders to fund the New-Money DIP Loans and not as adequate protection for, or otherwise on account of, the Prepetition Obligations.

8. DIP Budgets.

(a) Except as otherwise provided herein or in the DIP Documents, the Debtors may only use Cash Collateral and the proceeds of the DIP Facility in accordance with the projected statement of sources and uses of cash for the Debtors for the 24 calendar months (but not any preceding months) attached hereto as **Exhibit 1** (as may be amended, replaced, extended, supplemented, or otherwise modified in accordance with the terms of this Interim Order and the DIP Documents, the “Long-Term DIP Budget”) and a 13-week cash flow forecast (as may be amended, replaced, extended, supplemented, or otherwise modified in accordance with the terms of this Interim Order and the DIP Documents, the “Short-Term DIP Budget” and, together with the Long-Term DIP Budget, the “DIP Budgets”). The Short-Term DIP Budget attached hereto as **Exhibit 2** shall constitute the initial Short-Term DIP Budget. On the Friday of the fourth calendar week after the week in which the Petition Date occurs, and each four weeks thereafter, or at any more frequent interval as the Debtors may choose in their sole discretion, the Debtors shall deliver to the DIP Agent an updated Short-Term DIP Budget that is substantially consistent with the Long-

Term DIP Budget and is acceptable to the Required DIP Lenders. Subject to the Permitted Variances described and defined in the following paragraph, the disbursements set forth in the Short-Term DIP Budget shall be adhered to on a cumulative 4-week basis for the period then ending, as described below.

(b) No later than the fourth Business Day each week, the Debtors shall deliver a budget variance report/reconciliation (the “Variance Report”) to the DIP Agent (for delivery to the DIP Lenders). Variance from the Short-Term DIP Budget shall be tested on a rolling four-week basis and total disbursements shall not be more than 105% of the projected disbursements in the Short-Term DIP Budget (the “Permitted Variances”). The Variance Report will include (i) the variance (as compared to the applicable Short-Term DIP Budget) of the disbursements made by the Debtors set forth in the Short-Term DIP Budget, and (ii) an explanation, in reasonable detail, for any material variances set forth in such Variance Report, certified by the Chief Restructuring Officer of the Debtors.

(c) The consent of the Required DIP Lenders to any applicable DIP Budget shall not be construed as consent to the use of any Cash Collateral or use of proceeds from the DIP Facility after the occurrence of an “Event of Default” (as defined in the DIP Credit Agreement), regardless of whether the aggregate funds shown on any applicable DIP Budget have been expended. In accordance with the DIP Documents, the DIP Agent may from time to time, and in its sole discretion, reduce the Commitments (as defined in the DIP Credit Agreement) by providing written notice to the Debtors and the DIP Lenders of such reduction; provided that in no event shall the Commitments be reduced to less than the amounts to be funded under the Long-Term DIP Budget. For the avoidance of doubt, any professional fees payable to the DIP Agent’s counsel or financial

advisors shall not be limited by the Budgets (and any overruns by such professionals shall not give rise to any Event of Default or be considered in connection with any variance test).

9. Reporting Requirements/Access to Records. The Debtors shall provide the DIP Lenders with all reporting and other information required to be provided to the DIP Agent under the DIP Documents. In addition to, and without limiting, whatever rights to access the DIP Secured Parties have under the DIP Documents, upon reasonable notice, at reasonable times during normal business hours, the Debtors shall permit representatives, agents, and employees of the DIP Secured Parties to (a) have access to and inspect the Debtors' assets, (b) examine the Debtors' books and records, and (c) discuss the Debtors' affairs, finances, and condition with the Debtors' officers and advisors.

10. DIP Superpriority Claims. Subject and subordinate only to the Carve Out, pursuant to section 364(c)(1) of the Bankruptcy Code and without the need to file any proof of claim or request for payment of administrative expenses, all of the DIP Obligations shall constitute allowed senior administrative expense claims of the DIP Secured Parties against each of the Debtors' estates (the "DIP Superpriority Claims") with priority over (a) any and all administrative expenses, adequate protection claims, diminution claims, and all other claims against the Debtors, now existing or hereafter arising, of any kind whatsoever, including all administrative expenses of the kind specified in sections 503(b) and 507(b) of the Bankruptcy Code, and (b) any and all administrative expenses or other claims arising under sections 105, 326, 328, 330, 331, 503(b), 506(c) (subject to entry of the Final Order), 507(a), 507(b), 726, 1113, or 1114 of the Bankruptcy Code or otherwise, regardless of whether such expenses or claims may become secured by a judgment lien or other non-consensual lien, levy or attachment, which DIP Superpriority Claims shall for the purposes of section 1129(a)(9)(A) of the Bankruptcy Code be considered

administrative expenses allowed under section 503(b) of the Bankruptcy Code and which shall be payable from and have recourse to all prepetition and postpetition property of the Debtors and all proceeds thereof, including, upon entry of the Final Order, the proceeds of any claims or causes of action arising under chapter 5 of the Bankruptcy Code (the “Avoidance Actions” and any proceeds thereof, the “Avoidance Proceeds”) and all commercial tort claims. Except as set forth in, or permitted by, this Interim Order, no other superpriority claims shall be granted or allowed in these chapter 11 cases.

11. DIP Liens. As security for the DIP Obligations, effective and automatically perfected upon the date of this Interim Order, and without the necessity of the execution, recordation or filings by the Debtors or the DIP Secured Parties of mortgages, security agreements, control agreements, pledge agreements, financing statements or other similar documents, or the possession or control by the DIP Secured Parties of, or over, any DIP Collateral, the following security interests and liens are hereby granted by the Debtors to the DIP Agent, for the benefit of the DIP Lenders, subject and subordinate only to the Carve Out and any Prepetition Permitted Liens (all such liens and security interests granted to the DIP Agent, for the benefit of the DIP Lenders, pursuant to this Interim Order and the DIP Documents, the “DIP Liens”):

(a) DIP Liens on Unencumbered Property. Subject and subordinate only to the Carve Out, pursuant to section 364(c)(2) of the Bankruptcy Code, a valid, legal, binding, continuing, enforceable, unavoidable, allowed, and properly and fully perfected first priority senior security interest in and lien on all DIP Collateral not subject to (i) a valid, perfected, and unavoidable lien or (ii) a valid and unavoidable 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;

(b) *DIP Liens Junior to Certain Other Liens.* Pursuant to section 364(c)(3) of the Bankruptcy Code, a valid, legal, binding, continuing, enforceable, unavoidable, allowed, and properly and fully perfected junior security interest in and lien on all DIP Collateral that is subject to a Prepetition Permitted Lien (i) in existence and properly perfected immediately prior to the Petition Date and (ii) in existence immediately prior to the Petition Date that is perfected subsequent to the Petition Date as permitted by section 546(b) of the Bankruptcy Code.

(c) *DIP Liens Priming Prepetition Liens.* Pursuant to section 364(d)(1) of the Bankruptcy Code, a valid, legal, binding, continuing, enforceable, unavoidable, allowed, and properly and fully perfected first priority senior priming security interest in and lien on all DIP Collateral.

12. *DIP Collateral.* The DIP Liens as approved and perfected by this Interim Order include liens on and security interests in all prepetition and postpetition property of the Debtors and proceeds from the disposition of the foregoing (as applicable), whether existing on the Petition Date or thereafter acquired and wherever located (collectively, the “DIP Collateral”), including any unencumbered cash of the Debtors (whether maintained with the DIP Agent or otherwise) and any investment of such cash, deposit accounts, securities accounts, inventory, goods, contract rights, mineral rights, instruments, documents, chattel paper, patents, trademarks, tradenames, copyrights, and other intellectual property and any licenses therefor, accounts, accounts receivable, receivables and receivables records, general intangibles, payment intangibles, tax or other refunds, insurance proceeds, letters of credit, intercompany claims, contracts, owned real estate, fixtures, deposit accounts, commercial tort claims, instruments, investment property, letter-of-credit rights, supporting obligations, vehicles, machinery and equipment, real property, proceeds from the disposition of leases, all of the issued and outstanding capital stock of each Debtor, other equity

or ownership interests, including equity interests in subsidiaries and non-wholly-owned subsidiaries, money, investment property, causes of action (including, upon entry of the Final Order, the Avoidance Proceeds), and all cash and non-cash proceeds of any of the collateral described above. The DIP Collateral shall not include (and the DIP Liens will not encumber) Avoidance Actions (except that, upon entry of the Final Order, the DIP Liens will encumber the Avoidance Proceeds).

13. Carve Out.

(a) *Generally*. As used in this Interim Order, 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 U.S. Trustee under section 1930(a) of title 28 of the United States Code plus interest at the statutory rate (without regard to the notice set forth in (iii) below); (ii) all reasonable fees and expenses up to \$50,000 incurred by a trustee under section 726(b) of the Bankruptcy Code (without regard to the notice set forth in (iii) below); (iii) to the extent allowed, 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”) or an official committee of unsecured creditors (the “Creditors’ Committee”) pursuant to section 328 or 1103 of the Bankruptcy Code (the “Committee Professionals” and, together with the Debtor Professionals, the “Professional Persons”) (x) at any time on or before delivery by the DIP Agent of a Carve Out Trigger Notice (as defined below), whether allowed by this Court before or after delivery of a Carve Out Trigger Notice (the “Pre-Carve Out Trigger Amount”), plus at any time after the delivery of a Carve Out Trigger Notice, (y) the Allowed Professional Fees of the Debtor Professionals in an aggregate amount not to exceed \$1,000,000 (the “Debtor Post-Carve Out Trigger Notice Cap”) and (z) the Allowed

Professional Fees of the Committee Professionals in an aggregate amount not to exceed \$50,000 (together with the Debtor Post-Carve Out Trigger Notice Cap, the “Post-Carve Out Trigger Notice Cap” and the Pre-Carve Out Trigger Amount together with the Post-Carve Out Trigger Notice Cap the “Professional Carve Out Cap”). Under no circumstances shall the Pre-Carve Out Trigger Amount (plus the amount of any unused retainers held by or on behalf of any Professional Persons) exceed the cumulative amount set forth in the applicable Short-Term DIP Budget for the Professional Persons incurred from the Petition Date to the date of the Carve Out Trigger Notice without the consent of the Required Lenders. For the avoidance of doubt, the Post-Carve Out Trigger Notice Cap shall in no way be limited by the DIP Budgets. For purposes of the foregoing, “Carve Out Trigger Notice” shall mean (i) a written notice, including by e-mail (which shall be deemed delivered when sent), by the DIP Agent to the Debtors, their lead restructuring counsel, the U.S. Trustee, and lead counsel to the Creditors’ Committee (if appointed) providing that an Event of Default has occurred under the DIP Facility and stating that the Post-Carve Out Trigger Notice Cap has been invoked or (ii) the occurrence of the Maturity Date under the DIP Credit Agreement, which will be deemed as automatic delivery of a Carve Out Trigger Notice, regardless of when actual notice was provided by the DIP Agent.

(b) *Carve Out Procedure.* The Debtors must, upon reasonable request of the DIP Agent, but no less frequently than once every two weeks, provide to DIP Agent a written report (“Carve Out Report”), in which Debtors disclose their then current estimate of: (i) the aggregate amount of unpaid professional fees, costs, and expenses accrued or incurred by the Professional Persons through the date of the Carve Out Report; and (ii) the projected fees, costs, and expenses of the Professional Persons for the 30-day period after the date of such Carve Out Report.

(i) Within five (5) business days of the initial funding of the DIP Loans, the Debtors may fund into a segregated account not subject to the control of the DIP Secured Parties or the Prepetition Secured Parties (the “Carve Out Account”) an amount equal to the total budgeted Debtor Professionals’ and Committee Professionals’ fees, respectively, for the first two (2) weeks set forth in the Short-Term DIP Budget and, thereafter, the Debtors are authorized to transfer into the Carve Out Account on a weekly basis cash in an amount equal to the estimated Debtor Professionals’ and Committee Professionals’ fees (excluding any restructuring, sale, success, or other transaction fee of any investment bankers, financial advisors, or consultants), respectively, for the next unfunded week set forth in the Short-Term DIP Budget and, to the extent agreed by the Required Lenders, any actual fees of Professional Persons for any prior postpetition weeks not already provided for in the Short-Term DIP Budget. Thereafter, the Debtors shall use such funds held in the Carve Out Account to pay Professional Persons’ fees as they become allowed and payable pursuant to interim or final orders of the Court; provided that the Debtors’ obligations to pay the Allowed Professional Fees of the Professional Persons shall not be limited or deemed limited to funds held in the Carve Out Account.

(ii) Immediately following receipt of a Carve Out Trigger Notice, and prior to the payment of any DIP Obligations, (A) the Carve Out Trigger Notice shall be deemed a notice of borrowing by the Debtors for the DIP Loans under the DIP Facility in an amount equal to the Professional Carve Out Cap less any amounts already funded in the Carve Out Account and any of the Debtors’ unrestricted cash on hand as of the date of the Carve Out Trigger Notice; and (B) the Debtors shall be required to deposit into the Carve Out Account any unrestricted cash on hand in an amount not to exceed the difference between the applicable Professional Carve Out Cap and the balance held in the applicable Carve Out Account as of date of the Carve Out Trigger

Notice. Notwithstanding anything to the contrary herein or in the DIP Documents, following delivery of a Carve Out Trigger Notice, the DIP Agent shall not sweep or foreclose on cash (including cash received as a result of the sale or other disposition of assets) of the Debtors until the Carve Out Account has been fully funded as required herein in an amount equal to all obligations benefitting from the Carve Out.

(iii) The amounts in the Carve Out Account shall be available only to satisfy Allowed Professional Fees and other amounts included in the Carve Out until such amounts are paid in full. Notwithstanding anything to the contrary herein, (A) failure of the Carve Out Account to satisfy in full the amount set forth in the Carve Out shall not affect the priority of the Carve Out and (B) in no way shall any DIP Budget, Carve Out, or Carve Out Account restrict any Professional Persons from seeking allowance of compensation with the Court in accordance with the compensation procedures approved in the chapter 11 cases; *provided* that nothing in the Financing Orders shall impact or modify any fee cap provisions set forth in any engagement letters of any Professional Persons and nothing herein shall prohibit the DIP Agent or DIP Lenders from contesting any such compensation in accordance with such procedures. All funds in the Carve Out Account shall be used first to pay all obligations benefitting from the Pre-Carve Out Trigger Amount, until paid in full, and then the obligations benefitting from the Post-Carve Out Trigger Notice Cap; provided that the amounts in the Carve Out Account shall be reduced on a dollar-for-dollar basis for Allowed Professional Fees that are paid after the delivery of the Carve Out Trigger Notice, and the Carve Out Account shall not be replenished for such amounts so paid.

(iv) Payments from the Carve Out shall be subject to any terms and conditions of the engagement agreements and appurtenant orders for the employment of each Professional Person. The Debtors shall be permitted to pay compensation and reimbursement of expenses incurred prior

to the occurrence of an Event of Default to the extent allowed and payable under sections 330 and 331 of the Bankruptcy Code.

(v) Notwithstanding anything to the contrary herein or elsewhere, the Carve Out shall be senior to all claims and liens, including liens securing the DIP Facility, as well as any adequate protection liens and claims described herein, and the DIP Collateral shall exclude the Carve Out Account; provided that, if after paying all amounts set forth in the definition of Carve Out, the Carve Out Account has not been reduced to zero, all remaining funds shall be distributed to the DIP Agent on behalf of the DIP Loans, unless the DIP Obligations have been indefeasibly paid in full in cash and the DIP Obligations have been terminated.

(c) *Reservation of Rights.* Nothing herein may be construed as consent by the DIP Secured Parties or the Prepetition Secured Parties to the allowance of any fees, costs, or expenses of the Professionals Persons or will affect the right of DIP Secured Parties or the Prepetition Secured Parties to object to the allowance and payment of any such fees, costs, or expenses, or the right of the DIP Secured Parties or the Prepetition Secured Parties to the return of any portion of the Carve Out that is funded with respect to fees, costs, and expenses for a Professional Person that are approved on an interim basis, but that are later denied on a final basis.

(d) *No Direct Obligation to Pay Allowed Professional Fees.* Neither the DIP Secured Parties nor the Prepetition Secured Parties shall be responsible for the payment or reimbursement of any fees or disbursements of any Professional Person incurred in connection with these chapter 11 cases or any successor cases under any chapter of the Bankruptcy Code. Nothing in this Interim Order or otherwise shall be construed to obligate the DIP Secured Parties, the Prepetition Secured Parties, or the Debtors, 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 (other than the Carve Out and Carve Out Account in accordance with this Interim Order).

14. Limitation on Charging Expenses Against Collateral. Subject to entry of the Final Order (but retroactive to the Petition Date), no expenses of administration of these chapter 11 cases or any future proceeding that may result therefrom, including liquidation in bankruptcy or other proceedings under the Bankruptcy Code, shall be charged against or recovered from the Prepetition Collateral or the DIP Collateral, the DIP Secured Parties, or the Prepetition Secured Parties pursuant to sections 105(a) or 506(c) of the Bankruptcy Code or any similar principle of law or equity, without the prior written consent of the DIP Secured Parties and the Prepetition Secured Parties, as applicable, and no such consent shall be implied from any other action, inaction, or acquiescence by the DIP Secured Parties or the Prepetition Secured Parties.

15. No Marshaling/Application of Proceeds. Subject to entry of the Final Order (but retroactive to the Petition Date), the DIP Agent and the Prepetition Agent shall be entitled to apply the payments or proceeds of the DIP Collateral and the Prepetition Collateral in accordance with the provisions of this Interim Order or the Final Order, as applicable, the DIP Documents and the Prepetition Credit Documents, as applicable, and in no event shall the DIP Secured Parties or any of the Prepetition Secured Parties be subject to the equitable doctrine of “marshaling” or any other similar doctrine with respect to any of the DIP Collateral or the Prepetition Collateral.

16. Equities of the Case. Subject to entry of the Final Order (but retroactive to the Petition Date), (a) the DIP Secured Parties, and the Prepetition Secured Parties shall be entitled to all of the rights and benefits of section 552(b) of the Bankruptcy Code and (b) the “equities of the case” exception under section 552(b) of the Bankruptcy Code shall not apply to such parties with

respect to the proceeds, products, offspring, or profits of any of the Prepetition Collateral or the DIP Collateral, as applicable.

17. Use of Cash Collateral. The Debtors are hereby authorized to use all Cash Collateral solely in accordance with this Interim Order, the DIP Documents, and subject to the DIP Budgets from the date of this Interim Order through and including the date of the Final Hearing. Except on the terms and conditions of this Interim Order, the Debtors shall be enjoined and prohibited from at any time using the Cash Collateral.

18. Adequate Protection for the Prepetition Secured Parties. Subject to the terms of this Interim Order, pursuant to sections 361, 362, 363, 364, 503, and 507 of the Bankruptcy Code and in consideration of the stipulations and consents set forth herein as adequate protection of their interests in the Prepetition Collateral (including Cash Collateral), for and equal in amount to the aggregate postpetition diminution in value of such interests (each such diminution, a “Diminution in Value”), resulting from the imposition of the priming DIP Liens on the Prepetition Collateral, the Carve Out, the Debtors’ sale, lease or use of the Prepetition Collateral (including Cash Collateral), the imposition of the automatic stay, and any other reason for which adequate protection may be granted under the Bankruptcy Code, the below secured parties are hereby granted the following adequate protection (collectively, the “Adequate Protection Obligations”):

(a) First Lien Adequate Protection Liens. As security for and solely to the extent of any Diminution in Value, the Prepetition Agent, for the benefit of itself and the other Prepetition Secured Parties, is granted additional and replacement valid, binding, enforceable unavoidable, and effective and automatically perfected postpetition security interests in, and liens on, as of the date of this Interim Order (the “Adequate Protection Liens”), without the necessity of the execution by the Debtors (or recordation or other filing) of security agreements, control agreements, pledge

agreements, financing statements, mortgages, or other similar documents, all DIP Collateral. Subject to the terms of this Interim Order, the Adequate Protection Liens shall be subordinate only to (i) the Carve Out, (ii) the DIP Liens, and (iii) any Prepetition Permitted Liens. The Adequate Protection Liens shall otherwise be senior to all other security interests in, liens on, or claims against any of the DIP Collateral (including the Prepetition Liens and any lien or security interest that is avoided and preserved for the benefit of the Debtors and their estates under section 551 of the Bankruptcy Code).

(b) *Adequate Protection Superpriority Claim.* As further adequate protection, and to the extent provided by sections 503(b) and 507(b) of the Bankruptcy Code, the Prepetition Agent, for the benefit of themselves and the other Prepetition Secured Parties, are granted an allowed administrative expense claim in these chapter 11 cases to the extent of any postpetition Diminution in Value senior to any and all other administrative expense claims in these chapter 11 cases other than the DIP Superpriority Claims (the “Adequate Protection Superpriority Claim”). The Adequate Protection Superpriority Claim shall be payable from and have recourse to all prepetition and postpetition property of the Debtors and all proceeds thereof (excluding Avoidance Actions, but including, subject to entry of the Final Order, the Avoidance Proceeds). Subject to the Carve Out and the DIP Superpriority Claims in all respects, the Adequate Protection Superpriority Claim will not be junior to any claims and shall have priority over all administrative expense claims against each of the Debtors, now existing or hereafter arising, of any kind or nature whatsoever, including administrative expense claims of the kinds specified in or ordered pursuant to sections 105, 326, 328, 330, 331, 365, 503(a), 503(b), 506(c) (subject to entry of the Final Order), 507(a), 507(b), 546(d), 726, 1113 and 1114 of the Bankruptcy Code. The Prepetition Secured Parties shall not receive or retain any payments, property or other amounts in respect of the

Adequate Protection Superpriority Claims granted hereunder unless and until the DIP Obligations have been indefeasibly paid in full, in cash, or satisfied in a manner otherwise agreed to by the Required DIP Lenders, in each case as provided in the DIP Documents.

(c) *Fees and Expenses.* As further adequate protection, the Debtors are authorized and directed to pay, without further Court order, reasonable and documented fees and expenses (the “Adequate Protection Fees”), whether incurred before or after the Petition Date, of the Prepetition Agent, including the reasonable and documented fees and expenses of (a) (i) Latham & Watkins LLP and (ii) Hunton Andrews Kurth LLP as co-counsel to the Prepetition Agent and the DIP Agent, and (b) Huron Consulting Group as financial advisor to the Prepetition Agent and the DIP Agent. The invoices for such fees and expenses shall not be required to comply with any particular format, may be in summary form only, and may include redactions. The applicable professional shall serve copies of the invoices supporting the Adequate Protection Fees on counsel to the Debtors, the U.S. Trustee and counsel to any Creditors’ Committee, and any Adequate Protection Fees shall be subject to prior ten-day review by the Debtors, the U.S. Trustee and any Creditors’ Committee. If no objection is filed within such ten-day review period, such invoice shall be paid without further order of the Court within five days after the expiration of the foregoing review period and shall not be subject to any further review, challenge, or disgorgement. If the Debtors, the U.S. Trustee, or the Creditors’ Committee shall file with this Court an objection to any such legal invoice, the undisputed amounts shall be paid immediately and the portion subject to such objection shall not be paid until resolution of such objection by this Court. For the avoidance doubt, the provision of such invoices shall not constitute a waiver of attorney-client privilege or any benefits of the attorney work product doctrine.

19. Proofs of Claim. The DIP Secured Parties and the Prepetition Secured Parties shall be authorized, but not required, to file proofs of claim in any of these chapter 11 cases or any successor cases under any chapter of the Bankruptcy Code in respect of any of the DIP Obligations or the Prepetition Obligations, and the Debtors' stipulations in this Order shall be deemed to constitute a timely filed proof of claim against each applicable Debtor. Notwithstanding any bar date order entered by this Court, if the DIP Agent or the Prepetition Agent files a proof of claim with respect to the DIP Obligations or Prepetition Obligations, then (i) such proof of claim may be a single master consolidated proof of claim filed in the lead case, which shall be deemed a valid proof of claim filed against each Debtor in its chapter 11 case or any successor case under any chapter of the Bankruptcy Code and (ii) such consolidated proof of claim is not required to include any supporting agreements, documents, or evidence as required by the Bankruptcy Rules. Any proof of claim filed by the DIP Agent or the Prepetition Agent shall be deemed to be in addition to and not in lieu of any other proof of claim that may be filed by any of the DIP Secured Parties or Prepetition Secured Parties, respectively.

20. Section 507(b) Reservation. Nothing herein shall impair or modify the application of section 507(b) of the Bankruptcy Code if the adequate protection provided to the Prepetition Secured Parties is insufficient to compensate for any Diminution in Value of their interests in the Prepetition Collateral during these chapter 11 cases. Nothing contained herein shall be deemed a finding by this Court, or an acknowledgment by any of the Prepetition Secured Parties, that the adequate protection granted herein does in fact adequately protect any of the Prepetition Secured Parties against any diminution in value of their respective interests in the Prepetition Collateral (including the Cash Collateral).

21. Restrictions on Disposition of Material Assets Outside the Ordinary Course of Business. Except as expressly permitted under the “first day” pleadings or the DIP Documents, the Debtors shall not use, sell, or lease any material assets outside the ordinary course of business (including, for the avoidance of doubt, resolve any commercial tort or other litigation claims), or seek authority of this Court to the extent required by section 363 of the Bankruptcy Code, without obtaining the prior written consent of the DIP Agent at least five days (or such shorter period as the DIP Agent may agree) before the date on which the Debtors seek the Court’s authority for such use, sale, or lease. Except as otherwise provided under the DIP Documents, subject to the Prepetition Permitted Liens, in the event of any such sale, lease, transfer, license, or other disposition of property of the Debtors that constitutes DIP Collateral (including, for the avoidance of doubt, any commercial tort or other litigation claims) outside the ordinary course of business (to the extent permitted by the DIP Documents and this Interim Order), the Debtors are authorized and shall promptly pay, without further notice or order of this Court, the DIP Agent for the benefit of the DIP Secured Parties, 100% of the net cash proceeds resulting therefrom no later than the second business day after receipt of such proceeds. Until payment in full of the DIP Obligations, subject to the Prepetition Permitted Liens, the Debtors are authorized and shall promptly pay, without further notice or order of this Court, the Prepetition Agent (for the benefit of the Prepetition Secured Parties) 100% of the net cash proceeds resulting from any such sale, lease, transfer, license, or other disposition of property of the Debtors that constitutes DIP Collateral (including, for the avoidance of doubt, any commercial tort or other litigation claims) outside the ordinary course of business (to the extent permitted by the DIP Documents and this Interim Order) no later than the second business day after receipt of such proceeds, which will be distributed and applied in accordance with the priorities required by the Prepetition Credit Documents. Except as

otherwise provided under the DIP Documents, subject to the Prepetition Permitted Liens, in the event of any casualty, condemnation, or similar event with respect to property that constitutes DIP Collateral, the Debtors are authorized and shall promptly pay to the DIP Agent, for the benefit of the DIP Secured Parties, any insurance proceeds, condemnation award, or similar payment (excluding any amounts on account of any D&O policies) no later than the second business day after receipt of payment by the Debtors, unless the DIP Agent consents in writing to the funds being reinvested by the Debtors.

22. Reservation of Rights of the DIP Prepetition Secured Parties and Prepetition Secured Parties. The entry of this Interim Order is without prejudice to, and does not constitute a waiver of, expressly or implicitly, or otherwise impair: (a) any of the rights of any of the Prepetition Secured Parties to seek any other or supplemental relief in respect of the Debtors including the right to seek additional adequate protection; provided that any such further or different adequate protection shall at all times be subordinate and junior to the claims and liens of the DIP Secured Parties granted under this Interim Order and the DIP Documents; (b) any of the rights of the DIP Secured Parties or the Prepetition Secured Parties under the Bankruptcy Code or under non-bankruptcy law, including the right of any of the DIP Secured Parties or the Prepetition Secured Parties to (i) request modification of the automatic stay, (ii) request dismissal of any of these chapter 11 cases, conversion of any of these chapter 11 cases to cases under chapter 7, or appointment of a chapter 11 trustee or examiner with expanded powers in any of these chapter 11 cases, or (iii) seek to propose, subject to the provisions of section 1121 of the Bankruptcy Code, a chapter 11 plan or plans; or (c) any other rights, claims, or privileges (whether legal, equitable, or otherwise) of any of the DIP Secured Parties or the Prepetition Secured Parties. The delay in or failure of the DIP Secured Parties or the Prepetition Secured Parties to seek relief or otherwise

exercise their rights and remedies shall not constitute a waiver of any of the DIP Secured Parties' or the Prepetition Secured Parties' rights and remedies.

23. Remedies.

(a) Subject to the terms of the DIP Documents and this Interim Order, the automatic stay provisions of section 362 of the Bankruptcy Code shall be modified to the extent necessary to permit the DIP Secured Parties to exercise all rights and remedies and to take any or all of the following actions, without further order of or application to the Court, after five (5) business days (such period, the "Remedies Notice Period") from the delivery of a written notice (email being sufficient) of the occurrence and continuance of an Event of Default (the "Default Notice") by the DIP Agent to the Debtors, their counsel (Sidley Austin LLP), the U.S. Trustee, and counsel to any official Creditors' Committee appointed in these chapter 11 cases.

(b) Upon issuance of the Default Notice and prior to the expiration of the Remedies Notice Period, the DIP Secured Parties may (i) terminate, reduce, or restrict the Debtors' use of any Cash Collateral, and (ii) cease or reduce making any DIP Loans under the DIP Credit Agreement. Following the expiration of the Remedies Notice Period and during the continuation of any Event of Default, the DIP Secured Parties may: (i) terminate, reduce, or restrict the Debtors' use of any Cash Collateral; (ii) cease or reduce making any DIP Loans under the DIP Credit Agreement; (iii) declare all DIP Obligations to be immediately due and payable; (iv) charge the default rate of interest on the DIP Loans; (v) freeze monies or balances in the Debtors' accounts; (vi) immediately set-off any and all amounts in accounts maintained by the Debtors and subject to the control of the DIP Secured Parties against the DIP Obligations; (vii) otherwise enforce any and all rights and remedies against the DIP Collateral available to them under this Interim Order, the DIP Documents, and applicable non-bankruptcy law; (viii) enforce all of the guaranty rights; and

(ix) take any other actions or exercise any other rights or remedies permitted under the Financing Orders, the DIP Documents, or applicable law to effect the repayment of the DIP Obligations.

(c) The automatic stay under section 362 of the Bankruptcy Code otherwise applicable to the DIP Agent and DIP Lenders is hereby modified so that after the Remedies Notice Period the DIP Agent shall be entitled to exercise all rights and remedies against the DIP Collateral in accordance with the DIP Documents and this Interim Order, and shall be permitted to satisfy the DIP Liens, the DIP Superpriority Claims, the Adequate Protection Liens and Adequate Protection Superpriority Claims, subject only to the Carve Out and Prepetition Permitted Liens. Unless the Court during the Remedies Notice Period orders otherwise, the automatic stay shall automatically be terminated at the end of the Remedies Notice Period without further notice or order, and the DIP Agent shall be permitted to exercise all remedies as set forth herein, in the DIP Documents, and as otherwise available at law against the DIP Collateral, without further order of or application or motion to the Court, and without restriction or restraint by any stay under sections 105 or 362 of the Bankruptcy Code, or otherwise, against the enforcement of the liens and security interest in the DIP Collateral or any other rights and remedies granted to the DIP Agent with respect thereto pursuant to the DIP Documents or this Interim Order; provided that during the Remedies Notice Period the Debtors may use the proceeds of the DIP Facility (to the extent drawn before receipt of a Default Notice) or Cash Collateral only to fund operations in accordance with the DIP Credit Agreement and the DIP Budgets; provided further that during the Remedies Notice Period the Debtors and the DIP Secured Parties consent to a hearing on an expedited basis to consider whether an Event of Default has occurred; provided further, that if a hearing to consider the foregoing is requested to be heard before the end of the Remedies Notice Period but is scheduled for a later

date by the Court, the Remedies Notice Period shall be automatically extended to the date of such hearing but in no event later than ten (10) business days after delivery of the Default Notice.

(d) Upon or after the occurrence of any Event of Default, the DIP Agent and the DIP Lenders may, in their sole discretion, consistent with the terms of this Interim Order and the DIP Documents, advance funds to the Debtors or may consent to the Debtors' use of Cash Collateral, and all such advances or consent to use of Cash Collateral shall not constitute a waiver, limitation, or modification of the DIP Agent's or the DIP Lenders' rights and remedies pursuant to the DIP Documents, this Interim Order, and applicable law.

24. Milestones. The Debtors agree that failure to comply with any of the milestones (as defined in, and set forth in sections 1.10 and 6.14 of, the DIP Credit Agreement, the "Milestones") shall constitute an Event of Default. Each of the Milestones may be extended or waived in writing at any time by the DIP Agent. The Milestones are as follows:

(a) The Petition Date shall be no later than 11:59 p.m., Dallas, Texas time, on May 5, 2025;

(b) The Interim Order shall be entered no later than the fifth (5th) calendar day following the Petition Date;

(c) The Loan Parties shall file with the Court by not later than the fifth (5th) Business Day following a written request by the Administrative Agent, on behalf of the Required Lenders (email being sufficient) (i) a motion for an order from the Bankruptcy Court enforcing the automatic stay (the "Automatic Stay Motion"), (ii) an adversary proceeding, complaint, or other pleading (as may be mutually agreed to by the Loan Parties and the Required Lenders) to remove to the Bankruptcy Court any pending litigation in which the Loan Parties are involved, or (iii) an adversary proceeding, complaint, or other pleading (as may be mutually agreed to by the Loan

Parties and the Required Lenders) in the Bankruptcy Court for the purposes of collecting amounts owed to any of the Loan Parties or preventing any interference with property of the estates of the Loan Parties, in each case with respect to any third-party identified in such written request; provided that the Loan Parties shall not have to comply with such request if inconsistent with the Loan Parties' fiduciary duties or applicable law; and

(d) The Final Order shall be entered no later than the 30th calendar day following the Petition Date.

25. Perfection of the DIP Liens and Adequate Protection Liens.

(a) The DIP Agent and the Prepetition Agent are hereby authorized, but not required, to file or record (and to execute in the name of the Debtors, as their true and lawful attorneys, with full power of substitution, to the maximum extent permitted by law) financing statements, intellectual property filings, mortgages, depository account control agreements, notices of lien, or similar instruments in any jurisdiction to validate and perfect the liens and security interests granted hereunder. Whether or not the DIP Agent or the Prepetition Agent shall, in their sole discretion, choose to file such financing statements, intellectual property filings, mortgages, notices of lien, or similar instruments, such liens and security interests shall be deemed valid, automatically perfected, allowed, enforceable, unavoidable 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. Upon the request of the DIP Agent or the Prepetition Agent, as applicable, each of the Prepetition Secured Parties and the Debtors, without any further consent of any party, is authorized to take, execute, deliver, and file such instruments (in the case of the Prepetition Secured Parties, without recourse or representation or warranty of any kind) to enable the DIP Agent or the Prepetition Agent to further validate, perfect, preserve, and enforce the DIP

Liens and the applicable Adequate Protection Liens, respectively. All such documents will be deemed to have been recorded and filed as of the Petition Date.

(b) A certified copy of this Interim Order may, in the discretion of the DIP Agent or the Prepetition Agent, be filed with or recorded in filing or recording offices in addition to or in lieu of such financing statements, mortgages, notices of lien or similar instruments, and all filing offices are hereby authorized to accept such certified copy of this Interim Order for filing and recording; provided, however, that notwithstanding the date of any such filing, the date of such perfection shall be the date of this Interim Order.

26. Preservation of Rights Granted under Interim Order.

(a) If this Interim Order or any provision hereof is vacated, reversed, or modified on appeal or otherwise, any liens or claims granted to the Prepetition Secured Parties hereunder arising before the effective date of any such vacatur, reversal, or modification of this Interim Order shall be governed in all respects by the original provisions of this Interim Order, including entitlement to all rights, remedies, privileges, and benefits granted herein, and the Prepetition Secured Parties shall be entitled to the protections afforded in section 363(m) of the Bankruptcy Code with respect to all uses of the Prepetition Collateral (including the Cash Collateral) and all Adequate Protection Obligations.

(b) Unless and until all DIP Obligations, Prepetition Obligations, and Adequate Protection Obligations are indefeasibly paid in full, in cash, and all commitments to extend credit under the DIP Facility are terminated, the Debtors irrevocably waive the right to seek and shall not seek or consent to, directly or indirectly (i) except as permitted under the DIP Documents and with the prior written consent of the DIP Agent (x) any modification, stay, vacatur, or amendment of this Interim Order, (y) a priority claim for any administrative expense, secured claim or unsecured

claim against any of the Debtors (now existing or hereafter arising of any kind or nature whatsoever, including any administrative expense of the kind specified in sections 503(b), 507(a) or 507(b) of the Bankruptcy Code) in any of these chapter 11 cases, equal or superior to the DIP Superpriority Claims, the Adequate Protection Superpriority Claims, and the Prepetition Obligations (or the liens and security interests securing such claims and obligations), or (z) any other order allowing use of the DIP Collateral; (ii) except as permitted under the DIP Documents, any lien on any of the DIP Collateral or the Prepetition Collateral with priority equal or superior to the DIP Liens, the Adequate Protection Liens, or the Prepetition Liens, as the case may be; (iii) the use of Cash Collateral for any purpose other than as permitted in the DIP Documents and this Interim Order; (iv) except as set forth in the DIP Documents, the return of goods pursuant to section 546(h) of the Bankruptcy Code (or other return of goods on account of any prepetition indebtedness) to any creditor of any Debtor; (v) an order converting or dismissing any of these chapter 11 cases; (vi) an order appointing a chapter 11 trustee in any of these chapter 11 cases; or (vii) an order appointing an examiner with enlarged powers in any of these chapter 11 cases.

(c) 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 Adequate Protection Superpriority Claims, and all other rights and remedies of the DIP Secured Parties and the Prepetition Secured Parties granted by the provisions of this Interim Order and the DIP Documents shall survive, maintain their priority as provided in this Interim Order, and not be modified, impaired or discharged by (i) the entry of an order converting any of these chapter 11 cases to a case under chapter 7, dismissing any of these chapter 11 cases, terminating the joint administration of these chapter 11 cases or by any other act or omission, (ii) the entry of an order approving the sale of any Prepetition Collateral or DIP Collateral pursuant to section 363(b) of the Bankruptcy

Code or (iii) the entry of an order confirming a plan of reorganization or plan of liquidation in any of these chapter 11 cases and, pursuant to section 1141(d)(4) of the Bankruptcy Code, the Debtors have waived any discharge as to any remaining DIP Obligations or Adequate Protection Obligations. The DIP Liens, the DIP Superpriority Claims, the Adequate Protection Liens and Adequate Protection Superpriority Claims and all other rights and remedies of the DIP Secured Parties and the Prepetition Secured Parties granted by the provisions of this Interim Order shall continue in full force and effect until the DIP Obligations and the Adequate Protection Obligations are indefeasibly paid in full, in cash (or, with respect to the DIP Obligations, otherwise satisfied in a manner agreed to by the Required DIP Lenders).

27. Expenses and Indemnification.

(a) All (i) reasonable and documented out-of-pocket fees and expenses incurred by professionals or consultants retained by the DIP Agent and the DIP Lenders (collectively, the “DIP Professionals”), incurred in connection with these chapter 11 cases (in any capacity) and the DIP Facility, whether or not the DIP Facility is successfully consummated (including for the avoidance of doubt Latham & Watkins LLP, Hunton Andrews Kurth LLP, and Huron Consulting Group), and (ii) reasonable and documented out-of-pocket expenses (including fees, disbursements and other charges of DIP Professionals) of the DIP Agent and the DIP Lenders, for administration and enforcement costs and documentary taxes associated with the DIP Facility and the transactions contemplated thereby, are to be paid by the Debtors. All fees and expenses described above shall be payable by the Debtors (whether accrued or incurred before, on, or after the Petition Date) within ten calendar days after the delivery of invoices (which invoices shall not be required to comply with any particular format and may be in summary form only and may be in redacted form to protect privileged and confidential information) to the Debtors, the U.S. Trustee, and any

Creditors' Committee, without the necessity of filing motions or fee applications and such fees and expenses shall not be subject to any further review, challenge, or disgorgement after the expiration of such period.

(b) As set forth in the DIP Documents, the Debtors will, jointly and severally, indemnify the DIP Secured Parties and their respective Related Parties (as defined below) (each, in their capacity as such, an "Indemnified Person"), and hold them harmless from and against any and all losses, claims, damages (including any special, indirect, or consequential damages), costs, expenses (including reasonable and documented legal fees and expenses), and liabilities arising out of or relating to the execution or delivery of the DIP Documents, transactions contemplated hereby and thereby, and any actual or proposed use of the proceeds of any loans made under the DIP Facility in accordance with the terms of the DIP Credit Agreement; provided that no such person will be indemnified for costs, expenses, or liabilities to the extent determined by a final, non-appealable judgment of a court of competent jurisdiction to have been incurred solely by reason of the actual fraud, gross negligence, or willful misconduct of such person.

28. Limitation on Use of DIP Facility Proceeds, DIP Collateral, and Cash Collateral.

(a) Notwithstanding anything to the contrary set forth in this Interim Order, none of the DIP Facility, the DIP Collateral, the Prepetition Collateral or the proceeds thereof, including Cash Collateral, or the Carve Out may be used: (i) to investigate (except as expressly provided herein), initiate, prosecute, join, or finance the initiation or prosecution of any claim, counterclaim, action, suit, arbitration, proceeding, application, motion, objection, defense, or other litigation of any type (A) against any of the DIP Secured Parties or the Prepetition Secured Parties (each in their capacities as such), or their respective Related Parties, or seeking relief that would impair the rights and remedies of the DIP Secured Parties or the Prepetition Secured Parties (each in their

capacities as such) under the DIP Documents, this Interim Order, or the Prepetition Credit Documents to the extent permitted or provided hereunder, including for the payment of any services rendered by the professionals retained by the Debtors or any Creditors' Committee in connection with the assertion of or joinder in any claim, counterclaim, action, proceeding, application, motion, objection, defense, or other contested matter, the purpose of which is to seek, or the result of which would be to obtain, any order, judgment, determination, declaration, or similar relief that would impair the ability of any of the DIP Secured Parties or the Prepetition Secured Parties to recover on the DIP Collateral or the Prepetition Collateral, as provided for herein, or seeking affirmative relief against any of the DIP Secured Parties or the Prepetition Secured Parties related to the DIP Obligations or the Prepetition Obligations, (B) seeking to invalidate, set aside, avoid, or subordinate, in whole or in part, the DIP Obligations, the DIP Superpriority Claims, or the DIP Secured Parties' liens or security interests in the DIP Collateral, the Adequate Protection Liens, the Adequate Protection Superpriority Claims, the Prepetition Obligations or the Prepetition Liens, or (C) for monetary, injunctive, or other affirmative relief against the DIP Secured Parties or the Prepetition Secured Parties (each in their capacities as such), or their respective liens on or security interests in the DIP Collateral or the Prepetition Collateral, or the DIP Superpriority Claims or the Adequate Protection Superpriority Claims, that would impair the ability of any of the DIP Secured Parties or the Prepetition Secured Parties to assert or enforce any lien, claim, right, or security interest or to realize or recover on the DIP Obligations or the Prepetition Obligations to the extent permitted or provided hereunder; (ii) for objecting to or challenging in any way the legality, validity, priority, perfection, or enforceability of the claims, liens, or interests (including the Prepetition Liens) held by or on behalf of each of the Prepetition Secured Parties related to the Prepetition Obligations, or by or on behalf of the DIP Secured Parties

related to the DIP Obligations; (iii) for asserting, commencing, or prosecuting any claims or causes of action whatsoever, including any Avoidance Actions related to the DIP Obligations, the DIP Superpriority Claims, the DIP Liens, the Adequate Protection Liens, the Adequate Protection Superpriority Claims, the Prepetition Obligations, or the Prepetition Liens; (iv) for prosecuting an objection to, contesting in any manner, or raising any defenses to, the validity, extent, amount, perfection, priority, or enforceability of (A) any of the DIP Liens, the DIP Superpriority Claims, or any other rights or interests of the DIP Secured Parties related to the DIP Obligations or the DIP Liens, or (B) any of the Prepetition Liens or any other rights or interests of any of the Prepetition Secured Parties related to the Adequate Protection Liens, the Adequate Protection Superpriority Claims, Prepetition Obligations or the Prepetition Liens; and (v) assert any claims, defenses, or any other causes of action any non-Debtor affiliates with respect to prepetition relationships with the Debtors; provided that no more than \$25,000 of the proceeds of the DIP Facility, the DIP Collateral, or the Prepetition Collateral, including the Cash Collateral, in the aggregate, may be used by any Creditors' Committee solely to investigate the foregoing matters with respect to the Prepetition Obligations and the Prepetition Liens within the Challenge Period (as defined herein) (the "Challenge Budget").

(b) All fees and expenses of the Committee Professionals incurred in connection with the investigation of the matters described in paragraph 28(a) greater than the Challenge Budget shall not be entitled to administrative expense priority pursuant to section 503(b) of the Bankruptcy Code or otherwise.

29. Effect of Stipulations on Third Parties.

(a) The Debtors' stipulations and admissions set forth in this Interim Order shall be binding on the Debtors, their respective representatives, successors and assigns upon entry of this Interim Order.

(b) The Debtors' stipulations and admissions set forth in this Interim Order shall also be binding upon all creditors and other parties in interest, including any Creditors' Committee or any chapter 7 or chapter 11 trustee appointed or elected for any of the Debtors (a "Trustee"), unless (i) such party with requisite standing, has duly filed an adversary proceeding challenging the validity, perfection, priority, extent, or enforceability of the Prepetition Liens, or the Prepetition Obligations, or otherwise asserting or prosecuting any Avoidance Actions or any other claims, counterclaims or causes of action, objections, contests, or defenses (collectively, the "Claims and Defenses") against the Prepetition Secured Parties in connection with any matter related to the Prepetition Collateral, the Prepetition Liens or the Prepetition Obligations by the date that is (A) seventy five (75) days after the entry of this Interim Order, or (B) as to any Creditors' Committee, sixty (60) days from the appointment of such committee (but no later than ninety (90) days after the Petition Date) (such time period, the "Challenge Period") and (ii) an order is entered by a court of competent jurisdiction and becomes final and non-appealable in favor of the plaintiff sustaining any such challenge or claim in any such duly filed adversary proceeding; provided that any pleadings filed in connection with any such adversary proceeding shall set forth with specificity the basis for such challenge or claim, and any challenges or claims not so specified prior to the expiration of the Challenge Period shall be deemed forever waived, released and barred, including any amended or additional claims that may or could have been asserted thereafter through an amended complaint under Fed. R. Civ. P. 15 or otherwise; provided further that any party in

interest that fails to file an adversary proceeding within the Challenge Period shall be forever barred from asserting any claims against the Prepetition Secured Parties on behalf of any of the Debtors' estates, or challenging in any manner the Debtors' stipulations, admissions, agreements, and releases contained in this Interim Order.

(c) If no such adversary proceeding is timely filed before the expiration of the Challenge Period, without further order of this Court, (i) the Prepetition Obligations shall constitute allowed claims, not subject to any Claims and Defenses (whether characterized as a counterclaim, setoff, subordination, recharacterization, defense, avoidance, contest, attack, objection, recoupment, reclassification, reduction, disallowance, recovery, disgorgement, attachment, claim, impairment, subordination (whether equitable, contractual or otherwise), or other challenge of any kind pursuant to the Bankruptcy Code or applicable non-bankruptcy law), for all purposes in these chapter 11 cases and any subsequent chapter 7 cases, (ii) the Prepetition Liens shall be deemed to have been, as of the Petition Date, legal, valid, binding, perfected and of the priority specified in paragraph 5(b), not subject to setoff, subordination, defense, avoidance, impairment, disallowance, recharacterization, reduction, recoupment, or recovery, and (iii) the Prepetition Obligations, the Prepetition Liens on the Prepetition Collateral and the Prepetition Secured Parties (in their capacities as such) shall not be subject to any other or further challenge and any party in interest shall be forever enjoined and barred from seeking to exercise the rights of the Debtors' estates or taking any such action, including any successor thereto (including any estate representative or a Trustee, whether such Trustee is appointed or elected before or after the expiration of the Challenge Period).

(d) If any such adversary proceeding is timely filed before the expiration of the Challenge Period, (i) the stipulations and admissions contained in this Interim Order shall

nonetheless remain binding and preclusive on any Creditors' Committee and any other party in these chapter 11 cases, including any Trustee, except as to any stipulations or admissions that are specifically and expressly challenged in such adversary proceeding and (ii) any Claims and Defenses not brought in such adversary proceeding shall be forever barred; provided that, if any challenges to a particular stipulation or admission are withdrawn, denied or overruled by a final non-appealable order, such stipulation also shall be binding on the Debtors' estates and all parties in interest.

(e) Nothing in this Interim Order vests or confers on any person, including any Creditors' Committee, standing or authority to pursue any cause of action belonging to the Debtors or their estates, including any challenge with respect to the Prepetition Credit Documents or the Prepetition Obligations. The filing of a motion seeking standing to file a Challenge before the termination of the Challenge Period, which attaches a proposed Challenge, shall extend the Challenge Period with respect to that party until two business days after the Court rules on the standing motion, or such other time period ordered by the Court in approving the standing motion.

30. Release.

(a) Subject to the Challenge Period, each of the Debtors (in their own right and on behalf of their estates and their current and former direct and indirect subsidiaries, the predecessors, successors, and assigns of each such entity, and the Related Parties of each such entity, in each case to the extent permitted by applicable law and solely in such parties capacity as such) shall to the maximum extent permitted by applicable law, unconditionally, irrevocably and fully forever release, remise, acquit, relinquish, irrevocably waive and discharge each of the DIP Secured Parties and the Prepetition Secured Parties, and each of their respective former, current or future officers, employees, directors, agents, representatives, owners, members,

partners, affiliated investment funds or investment vehicles, managed, advised or sub-advised accounts, funds or other entities, investment advisors, sub-advisors or managers, financial advisors, legal advisors, shareholders, managers, consultants, accountants, attorneys, affiliates, and predecessors in interest, each in their capacity as such (collectively, the “Related Parties”), of and from any and all claims, demands, liabilities, responsibilities, disputes, remedies, causes of action, indebtedness and obligations, rights, assertions, allegations, actions, suits, controversies, proceedings, losses, damages, injuries, attorneys’ fees, costs, expenses, or judgments of every type, whether known, unknown, asserted, unasserted, suspected, unsuspected, accrued, unaccrued, fixed, contingent, pending, or threatened including all legal and equitable theories of recovery, arising under common law, statute or regulation or by contract, of every nature and description that exist on the date hereof with respect to or relating to the DIP Obligations, the DIP Superpriority Claims, the DIP Liens, the DIP Documents, the Prepetition Obligations, the Prepetition Liens, or the Prepetition Credit Documents, as applicable, including (i) any so-called “lender liability” or equitable subordination claims or defenses, (ii) any and all claims and causes of action arising under the Bankruptcy Code, and (iii) any and all claims and causes of action regarding the validity, priority, extent, enforceability, perfection or avoidability of the liens or claims of the DIP Secured Parties and the Prepetition Secured Parties.

(b) Effective immediately upon the entry of the Final Order, and not subject to the Challenge Period, the Debtors waive and release any defense, right of counterclaim, right of setoff or deduction to the payment of the DIP Obligations that the Debtors now have or may claim to have against the Released Parties, arising out of, connected with or relating to any and all acts, omissions or events occurring prior to the Court entering the Final Order.

31. Credit Bidding. (a) The DIP Agent, or any assignee or designee of the DIP Agent, acting on behalf of the DIP Secured Parties, shall have the exclusive and unqualified right to credit bid up to the full amount of any DIP Obligations in the sale of any of the DIP Collateral, including pursuant to (i) section 363 of the Bankruptcy Code, (ii) a plan of reorganization or a plan of liquidation under section 1129 of the Bankruptcy Code, or (iii) a sale or disposition by a chapter 7 trustee for any Debtor under section 725 of the Bankruptcy Code, and (b) subject to the satisfaction of the DIP Obligations, or as otherwise consented to by the DIP Agent (on behalf of the DIP Lenders), the Prepetition Agent (on behalf of the Prepetition Lenders) shall have the right to credit bid (x) up to the full amount of their respective Prepetition Obligations and (y) their respective Adequate Protection Obligations in the sale of any of the Prepetition Collateral, including pursuant to (i) section 363 of the Bankruptcy Code, (ii) a plan of reorganization or a plan of liquidation under section 1129 of the Bankruptcy Code, or (iii) a sale or disposition by a chapter 7 trustee for any Debtor under section 725 of the Bankruptcy Code. The DIP Agent, on behalf of the DIP Lenders, shall have the absolute right to assign, sell, or otherwise dispose of its right to credit bid (or the assets to be acquired pursuant to such credit bid) in connection with any credit bid by or on behalf of the DIP Secured Parties to any acquisition entity or joint venture formed in connection with such bid. Nothing herein shall prejudice the rights of any party in interest (other than the Debtors) from seeking to exercise any rights pursuant to section 363(k) of the Bankruptcy Code and the DIP Secured Parties' rights to oppose such relief.

32. Interim Order Governs. In the event of any inconsistency between the provisions of this Interim Order and the DIP Documents or the Prepetition Credit Agreements, the provisions of this Interim Order shall govern.

33. 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 the DIP Secured Parties, the Prepetition Secured Parties, any Creditors' Committee appointed in these chapter 11 cases, and the Debtors and their respective successors and assigns (including any Trustee hereinafter appointed or elected for the estate of any of the Debtors, an examiner appointed pursuant to section 1104 of the Bankruptcy Code, or any other fiduciary appointed as a legal representative of any of the Debtors or with respect to the property of the estate of any of the Debtors) and shall inure to the benefit of the Debtors, the DIP Secured Parties and the Prepetition Secured Parties, provided that, except to the extent expressly set forth in this Interim Order, the Prepetition Secured Parties shall have no obligation to permit the use of Cash Collateral or to extend any financing to any Trustee or similar responsible person appointed for the estates of the Debtors.

34. Limitation of Liability. In determining to make any loan under the DIP Documents, permitting the use of Cash Collateral, or exercising any rights or remedies as and when permitted pursuant to this Interim Order, the DIP Documents, or the Prepetition Credit Documents, the DIP Secured Parties and the Prepetition Secured Parties shall not be deemed to be in control of the operations of the Debtors or to be acting as a "responsible person" or "owner or operator" with respect to the operation or management of the Debtors or their respective business (as such terms, or any similar terms, are used in the United States Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§ 9601 *et seq.* as amended, or any similar federal or state statute), nor shall they owe any fiduciary duty to any of the Debtors, their creditors or estates, or constitute or be deemed to constitute a joint venture or partnership with any of the Debtors. Furthermore, nothing in this Interim Order, the DIP Documents or the Prepetition Credit

Documents shall in any way be construed or interpreted to impose or allow the imposition upon the DIP Secured Parties or the Prepetition Secured Parties of any liability for any claims arising from the prepetition or postpetition activities of any of the Debtors and their respective affiliates (as defined in the Bankruptcy Code).

35. Effectiveness. This Interim Order shall constitute findings of fact and conclusions of law and shall take effect and be fully enforceable effective as of the Petition Date immediately upon entry hereof. Notwithstanding Bankruptcy Rules 4001(a)(3), 6004(h), 6006(d), 7062 or 9024 or any other Bankruptcy Rule, or Rule 62(a) of the Federal Rules of Civil Procedure, this Interim Order shall be immediately effective and enforceable and there shall be no stay of execution or effectiveness 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 (a) the entry of an order converting any of these chapter 11 cases to a case under chapter 7, dismissing any of these chapter 11 cases, terminating the joint administration of these chapter 11 cases or by any other act or omission, (b) the entry of an order approving the sale of any Prepetition Collateral or DIP Collateral pursuant to section 363(b) of the Bankruptcy Code or (c) the entry of an order confirming a plan of reorganization or liquidation in any of these chapter 11 cases.

37. Sherwood Food Distributors. The relief requested in the Motion and granted by this Interim Order shall not apply to Debtor Sherwood Food Distributors, L.L.C., until such time as the involuntary chapter 7 case styled In re Sherwood Food Distributors, L.L.C. (Case No. 25-44044) filed in the United States Bankruptcy Court for the Eastern District of Michigan on April 18, 2025 (the “Involuntary Proceeding”) is dismissed, closed, or otherwise resolved in such a way that the automatic stay imposed on Sherwood Food Distributors, L.L.C. by virtue of the

Involuntary Proceeding does not impede the ability of Sherwood Food Distributors, L.L.C. to obtain relief in its voluntary chapter 11 proceeding in this Court.

39. Final Hearing. The Final Hearing is scheduled for [•] at [•] p.m. (prevailing Central Time), before the Honorable United States Bankruptcy Judge Stacey G. Jernigan, at the United States Bankruptcy Court for the Northern District of Texas. The Debtors shall promptly transmit copies of this Interim Order (which shall constitute adequate notice of the Final Hearing) to the parties having been given notice of the Interim Hearing, to any party that has filed a request for notices with this Court and to any Creditors' Committee after the same has been appointed, or any Creditors' Committee counsel. Any party in interest objecting to the relief sought at the Final Hearing shall serve and file a written objection thereto, which shall be served upon the Notice Parties, and shall also be filed with the Clerk of the Court, in each case to allow actual receipt by the foregoing no later than [•] at 4:00 p.m. (prevailing Central Time).

40. No later than two business days after the date of this Interim Order, the Debtors shall serve on the Notice Parties a copy of the Interim Order and shall file a certificate of service no later than 24 hours after service.

End of Order

Exhibit 1

Long-Term DIP Budget

1. All Other Receipts consists of reimbursements for Anti-Trust Litigation expense and deferred compensation plan overfunding. These estimates will be refined at a later date with the necessary stakeholders (i.e. CWT).

Exhibit 2

Initial Short-Term DIP Budget

Harvest Sherwood

DRAFT - 13 Week Summary; assumes chapter 11 filing on May 5.
(\$000s)

5/9/25

DRAFT - SUBJECT TO MATERIAL CHANGE

		Weeks:																
		Week Ending:																
		1	2	3	4	5	6	7	8	9	10	11	12	13	13 Week			
		5/9	5/16	5/23	5/30	6/6	6/13	6/20	6/27	7/4	7/11	7/18	7/25	8/1	Total			
Receipts																		
1	Collections - Static AR	-	-	-	1,400	-	-	-	1,400	-	-	-	-	2,400	-	5,200		
2	Collections - Sprouts	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-		
3	Collections - ACME	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-		
4	Collections - Sold Inventory	-	-	-	2,900	-	-	-	2,900	-	-	-	-	2,900	-	8,700		
5	JBS Settlement	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-		
6	Litigation - Beef	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-		
7	Litigation - Pork	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-		
8	Litigation - Poultry	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-		
9	TSA Reimbursements - Timing TBD	-	-	-	577	-	-	-	-	-	-	-	-	-	-	577		
10	Insurance Claim for W. Box Ceiling	-	-	-	550	-	-	-	-	-	-	-	-	-	-	550		
11	All Other Receipts	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-		
12	Total Receipts	-	-	-	\$5,427	-	-	-	\$4,300	-	-	-	-	\$5,300	-	\$15,027		
13	Operating - Personnel	-	(94)	-	(94)	-	(65)	-	(60)	-	(24)	-	(24)	-	-	(362)		
14	Operating - Other	(81)	(81)	(81)	(81)	(36)	(36)	(36)	(36)	(34)	(34)	(34)	(34)	(34)	-	(639)		
15	Total Operating	(\$81)	(\$175)	(\$81)	(\$175)	(\$36)	(\$102)	(\$36)	(\$96)	(\$34)	(\$58)	(\$34)	(\$58)	(\$34)	-	(\$1,000)		
16	Debtor - FA (MERU)	(88)	(88)	(88)	(88)	(88)	(88)	(88)	(88)	(40)	(40)	(40)	(40)	(40)	-	(900)		
17	Debtor - CRO (Wilco)	(10)	(10)	(10)	(10)	(10)	(10)	(10)	(10)	(8)	(8)	(8)	(8)	(8)	-	(120)		
18	Debtor - Counsel (Sidley Austin)	(100)	(100)	(100)	(100)	(100)	(100)	(100)	(100)	(40)	(40)	(40)	(40)	(40)	-	(1,000)		
19	Debtor - Claims Agent (Epic)	(53)	(53)	(53)	(53)	(49)	(49)	(49)	(49)	(48)	(48)	(48)	(48)	(48)	-	(645)		
20	Debtor - Ind. Director (Fitzley)	-	-	-	-	(10)	(10)	(10)	(10)	(8)	(8)	(8)	(8)	(8)	-	(80)		
21	DIP Lender - FA (Huron)	(25)	(25)	(25)	(25)	(25)	(25)	(25)	(25)	(10)	(10)	(10)	(10)	(10)	-	(250)		
22	DIP Lender - Counsel (Latham)	(25)	(25)	(25)	(25)	(25)	(25)	(25)	(25)	(10)	(10)	(10)	(10)	(10)	-	(250)		
23	UCC - Legal and FA	(25)	(25)	(25)	(25)	(25)	(25)	(25)	(25)	(20)	(20)	(20)	(20)	(20)	-	(300)		
24	Sprouts Litigation	(41)	(41)	(41)	(41)	(41)	(41)	(41)	(41)	(33)	(33)	(33)	(33)	(33)	-	(495)		
25	Sale Transaction Fees (Houlihan)	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-		
26	Liquidation Commissions	(260)	-	-	-	(215)	-	-	-	-	-	-	-	-	-	(475)		
27	Cash Interest (9%)	-	-	-	-	-	-	-	-	(1,171)	-	-	-	-	-	(1,171)		
28	Bk related fees	(442)	(10)	(10)	(225)	(300)	(4)	(4)	(4)	(25)	(0)	(0)	(0)	(0)	-	(1,025)		
29	UST Fees	-	-	-	-	-	-	-	-	(42)	-	-	-	-	-	(42)		
30	Total Other Disbursements	(\$1,067)	(\$376)	(\$376)	(\$591)	(\$887)	(\$377)	(\$377)	(\$377)	(\$1,455)	(\$217)	(\$217)	(\$217)	(\$217)	-	(\$6,753)		
31	Summary Cash Flow																	
32	Receipts	-	-	-	5,427	-	-	-	4,300	-	-	-	-	5,300	-	15,027		
33	Operating	(81)	(175)	(81)	(175)	(36)	(102)	(36)	(96)	(34)	(58)	(34)	(58)	(34)	-	(1,000)		
34	Other Disbursements	(1,067)	(376)	(376)	(591)	(887)	(377)	(377)	(377)	(1,455)	(217)	(217)	(217)	(217)	-	(6,753)		
35	Cash Flow	(\$1,148)	(\$551)	(\$457)	\$4,661	(\$924)	(\$479)	(\$413)	\$3,827	(\$1,489)	(\$276)	(\$251)	(\$276)	-	\$5,049	\$7,274		
36	Beginning Loan	79,104	80,252	80,803	81,260	76,599	77,523	78,001	78,414	74,587	76,076	76,352	76,603	76,879	79,104			
37	Cash (Source) / Need	1,148	551	457	(4,661)	924	479	413	(3,827)	1,489	276	251	276	(5,049)	(7,274)			
38	Amendment Fee	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-		
39	\$1.5 million DIP Fee	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-		
40	PIK Interest (6.0%)	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-		
41	Net Secured Exposure	\$80,252	\$80,803	\$81,260	\$76,599	\$77,523	\$78,001	\$78,414	\$74,587	\$76,076	\$76,352	\$76,603	\$76,879	\$71,830	-	\$71,830		

Exhibit 3

DIP Credit Agreement



SENIOR SECURED SUPERPRIORITY DEBTOR-IN-POSSESSION CREDIT AGREEMENT

dated as of May 5, 2025

among

SURFLINER HOLDINGS, INC.,
as Holdings

HARVEST SHERWOOD FOOD DISTRIBUTORS, INC.
HARVEST MEAT COMPANY, INC.,
HAMILTON MEAT, LLC,
WESTERN BOXED MEATS DISTRIBUTORS, INC.,
SFD ACQUISITION LLC,
SFD COMPANY LLC and
SHERWOOD FOOD DISTRIBUTORS, L.L.C.

The Lenders Party Hereto

and

JPMORGAN CHASE BANK, N.A.,
as Administrative Agent

JPMORGAN CHASE BANK, N.A.,
as Sole Bookrunner and Sole Lead Arranger

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Exhibit B	--	[Reserved]

Exhibit C	--	Form of Compliance Certificate
Exhibit D	--	Form of Joinder Agreement
Exhibit E-1	--	U.S. Tax Certificate (For Foreign Lenders that are <u>not</u> treated as Partnerships for U.S. Federal Income Tax Purposes)
Exhibit E-2	--	U.S. Tax Certificate (For Foreign Lenders that <u>are</u> treated as Partnerships for U.S. Federal Income Tax Purposes)
Exhibit E-3	--	U.S. Tax Certificate (For Foreign Participants that are <u>not</u> treated as Partnerships for U.S. Federal Income Tax Purposes)
Exhibit E-4	--	U.S. Tax Certificate (For Foreign Participants that <u>are</u> treated as Partnerships for U.S. Federal Income Tax Purposes)
Exhibit F	--	Form of Borrower Joinder Agreement

SENIOR SECURED SUPERPRIORITY DEBTOR-IN-POSSESSION CREDIT AGREEMENT dated as of May 5, 2025 (as it may be amended, restated, amended and restated, supplemented or otherwise modified from time to time, this “Agreement”) among SURFLINER HOLDINGS, INC., a Delaware corporation (“Holdings”), HARVEST SHERWOOD FOOD DISTRIBUTORS, INC., a Delaware corporation (“Harvest Sherwood”), HARVEST MEAT COMPANY, INC., a Delaware corporation (“Harvest”), HAMILTON MEAT, LLC, a California limited liability company (“Hamilton”), WESTERN BOXED MEATS DISTRIBUTORS, INC., an Oregon corporation (“Western”), SFD ACQUISITION LLC, a Delaware limited liability company (“SFD Acquisition”), SFD COMPANY LLC, a Michigan limited liability company (“SFD”), SHERWOOD FOOD DISTRIBUTORS, L.L.C., a Michigan limited liability company (“Sherwood”, and together with Harvest Sherwood, Harvest, Hamilton, Western, SFD Acquisition and SFD, collectively, the “Borrowers” and each, a “Borrower”), the other Loan Parties party hereto, the Lenders party hereto, the Issuing Banks party hereto, and JPMORGAN CHASE BANK, N.A., as Administrative Agent.

The parties hereto agree as follows:

ARTICLE I

Definitions

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

“Adjusted Daily Simple SOFR” means an interest rate per annum equal to (a) the Daily Simple SOFR, plus (b) 0.10%; provided that if the Adjusted Daily Simple SOFR as so determined would be less than the Floor, such rate shall be deemed to be equal to the Floor for the purposes of this Agreement.

“Adjusted Term SOFR Rate” means, for any Interest Period, an interest rate per annum equal to (a) the Term SOFR Rate for such Interest Period, *plus* (b) 0.10%; provided that if the Adjusted Term SOFR Rate as so determined would be less than the Floor, such rate shall be deemed to be equal to the Floor for the purposes of this Agreement.

“Administrative Agent” means JPMorgan Chase Bank, N.A. (or any of its designated branch offices or affiliates), in its capacity as administrative agent for the Lenders hereunder.

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

“Agent-Related Person” has the meaning assigned to it in Section 9.03(d).

“Aggregate Revolving Commitment” means, at any time, the aggregate of the Revolving Commitments of all of the Revolving Lenders, as increased or reduced from time to time pursuant to the terms and conditions hereof. As set forth in the Commitment Schedule, as of the Effective Date, the Aggregate Revolving Commitment is \$105,000,000.

“Aggregate Revolving Exposure” means, at any time, the aggregate Revolving Exposure of all the Revolving Lenders at such time.

“Agreement” has the meaning specified in the introductory paragraph hereof.

“Allowed Professional Fees” shall have the meaning specified in the Financing Orders.

“Ancillary Document” has the meaning assigned to it in Section 9.06(b).

“Anti-Corruption Laws” means all laws, rules, and regulations of any jurisdiction applicable to Holdings, any Borrower or any of their respective subsidiaries from time to time concerning or relating to bribery or corruption.

“Applicable Parties” has the meaning assigned to it in Section 8.03(c).

“Applicable Percentage” means, with respect to any Revolving Lender, the percentage of the Revolving Commitment represented by such Revolving Lender’s Revolving Commitment at such time or, if the Revolving Commitments have terminated or expired, such Revolving Lender’s share of the Aggregate Revolving Exposure at such time; provided that, in accordance with Section 2.20, so long as any Lender shall be a Defaulting Lender, such Defaulting Lender’s Commitment shall be disregarded in the calculations above.

“Applicable Rate” means, for any day, with respect to (i) CBFR Loans, 1.50%, (ii) Term Benchmark Loans or RFR Loans, 4.00% and (iii) commitment fees, 0.50%.

“Approved Electronic Platform” has the meaning assigned to it in Section 8.03(a).

“Approved Fund” has the meaning assigned to such term in Section 9.04.

“Arranger” means JPMorgan Chase Bank, N.A. in its capacity as sole bookrunner and sole lead arranger hereunder.

“Assignment and Assumption” means an assignment and assumption agreement entered into by a Lender and an assignee (with the consent of any party whose consent is required by Section 9.04), and accepted by the Administrative Agent, in the form of Exhibit A or any other form (including electronic records generated by the use of an electronic platform) approved by the Administrative Agent.

“Automatic Stay Motion” has the meaning assigned to such term in the definition of Milestones.

“Availability Period” means the period from and including the Effective Date to but excluding the Maturity Date.

“Available Revolving Commitment” means, at any time, the Aggregate Revolving Commitment minus the Aggregate Revolving Exposure.

“Available Tenor” means, as of any date of determination and with respect to the then-current Benchmark, as applicable, any tenor for such Benchmark (or component thereof) or payment period for interest calculated with reference to such Benchmark (or component thereof), as applicable, that is or may be used for determining the length of an Interest Period for any term rate or otherwise, for determining any frequency of making payments of interest calculated pursuant to this Agreement as of such date and not

including, for the avoidance of doubt, any tenor for such Benchmark that is then-removed from the definition of “Interest Period” pursuant to clause (e) of Section 2.14.

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

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

“Banking Services” means each and any of the following bank services provided to any Loan Party or its Subsidiaries by JPMCB or any of its Affiliates or any Qualified Counterparty: (a) credit cards for commercial customers (including, without limitation, “commercial credit cards” and purchasing cards), (b) stored value cards, (c) merchant processing services, (d) treasury management services (including, without limitation, controlled disbursement, automated clearinghouse transactions, return items, any direct debit scheme or arrangement, overdrafts, cash pooling services, and interstate depository network services) and (e) foreign exchange and currency management services.

“Banking Services Obligations” means any and all obligations of the Loan Parties and their Subsidiaries, whether absolute or contingent and howsoever and whensoever created, arising, evidenced or acquired (including all renewals, extensions and modifications thereof and substitutions therefor) in connection with Banking Services.

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

“Bankruptcy Court” means the United States Bankruptcy Court for the Northern District of Texas Dallas Division.

“Bankruptcy Event” means, with respect to any Person or its parent entity, when such Person becomes the subject of a voluntary or involuntary bankruptcy or insolvency proceeding, or has had a receiver, conservator, trustee, administrator, custodian, assignee for the benefit of creditors or similar Person charged with the reorganization or liquidation of its business, appointed for it, or, in the good faith determination of the Administrative Agent, has taken any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any such proceeding or appointment or has had any order for relief in such proceeding entered in respect thereof, provided that a Bankruptcy Event shall not result solely by virtue of any ownership interest, or the acquisition of any ownership interest, in such Person by a Governmental Authority or instrumentality thereof, unless such ownership interest results in or provides such Person with immunity from the jurisdiction of courts within the U.S. or from the enforcement of judgments or writs of attachment on its assets or permits such Person (or such Governmental Authority or instrumentality) to reject, repudiate, disavow or disaffirm any contracts or agreements made by such Person or its parent entity.

“Benchmark” means, initially, with respect to any (i) RFR Loan, the Daily Simple SOFR or (ii) Term Benchmark Loan, the Term SOFR Rate; provided that if a Benchmark Transition Event and the related Benchmark Replacement Date have occurred with respect to the Daily Simple SOFR or Term SOFR

Rate or the then-current Benchmark, then “Benchmark” means the applicable Benchmark Replacement to the extent that such Benchmark Replacement has replaced such prior benchmark rate pursuant to clause (b) of Section 2.14.

“Benchmark Replacement” means, for any Available Tenor, the first alternative set forth in the order below that can be determined by the Administrative Agent for the applicable Benchmark Replacement Date:

(1) the Adjusted Daily Simple SOFR; or

(2) the sum of: (a) the alternate benchmark rate that has been selected by the Administrative Agent and the Borrower Representative as the replacement for the then-current Benchmark for the applicable Corresponding Tenor giving due consideration to (i) any selection or recommendation of a replacement benchmark rate or the mechanism for determining such a rate by the Relevant Governmental Body or (ii) any evolving or then-prevailing market convention for determining a benchmark rate as a replacement for the then-current Benchmark for dollar-denominated syndicated credit facilities at such time in the United States and (b) the related Benchmark Replacement Adjustment.

If the Benchmark Replacement as determined pursuant to clause (1) or (2) above would be less than the Floor, the Benchmark Replacement will be deemed to be the Floor for the purposes of this Agreement and the other Loan Documents

“Benchmark Replacement Adjustment” means, with respect to any replacement of the then-current Benchmark with an Unadjusted Benchmark Replacement for any applicable Interest Period and Available Tenor for any setting of such Unadjusted Benchmark Replacement, the spread adjustment, or method for calculating or determining such spread adjustment, (which may be a positive or negative value or zero) that has been selected by the Administrative Agent and the Borrower Representative for the applicable Corresponding Tenor giving due consideration to (i) any selection or recommendation of a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement by the Relevant Governmental Body on the applicable Benchmark Replacement Date and/or (ii) any evolving or then-prevailing market convention for determining a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement for dollar-denominated syndicated credit facilities at such time.

“Benchmark Replacement Conforming Changes” means, with respect to any Benchmark Replacement and/or any Term Benchmark Loan, any technical, administrative or operational changes (including changes to the definition of “Business Day,” the definition of “U.S. Government Securities 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, length of lookback periods, the applicability of breakage provisions, and other technical, administrative or operational matters) that the Administrative Agent reasonably decides (in consultation with the Borrower) are appropriate to reflect the adoption and implementation of such Benchmark 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 that no market practice for the administration of such Benchmark exists, in such other manner of administration as the Administrative Agent (in consultation with the Borrower Representative) decides is reasonably necessary in connection with the administration of this Agreement and the other Loan Documents).

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

(1) in the case of clause (1) or (2) of the definition of “Benchmark Transition Event,” the later of (a) the date of the public statement or publication of information referenced therein and (b) the date on which the administrator of such Benchmark (or the published component used in the calculation thereof) permanently or indefinitely ceases to provide all Available Tenors of such Benchmark (or such component thereof); or

(2) in the case of clause (3) of the definition of “Benchmark Transition Event,” the first date on which such Benchmark (or the published component used in the calculation thereof) has been determined and announced by the regulatory supervisor for the administrator of such Benchmark (or such component thereof) to be no longer representative; provided, that such non-representativeness will be determined by reference to the most recent statement or publication referenced in such clause (3) and even if any Available Tenor of such Benchmark (or such component thereof) continues to be provided on such date.

For the avoidance of doubt, (i) if the event giving rise to the Benchmark Replacement Date occurs on the same day as, but earlier than, the Reference Time in respect of any determination, the Benchmark Replacement Date will be deemed to have occurred prior to the Reference Time for such determination and (ii) the “Benchmark Replacement Date” will be deemed to have occurred in the case of clause (1) or (2) with respect to any Benchmark upon the occurrence of the applicable event or events set forth therein with respect to all then-current Available Tenors of such Benchmark (or the published component used in the calculation thereof).

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

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

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

(3) a public statement or publication of information by the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof) announcing that all Available Tenors of such Benchmark (or such component thereof) are no longer, or as of a specified future date will no longer be, representative.

For the avoidance of doubt, a “Benchmark Transition Event” will be deemed to have occurred with respect to any Benchmark if a public statement or publication of information set forth above has occurred with respect to each then-current Available Tenor of such Benchmark (or the published component used in the calculation thereof).

“Benchmark Unavailability Period” means, with respect to any Benchmark, the period (if any) (x) beginning at the time that a Benchmark Replacement Date pursuant to clauses (1) or (2) of that definition has occurred if, at such time, no Benchmark Replacement has replaced such then-current Benchmark for all purposes hereunder and under any Loan Document in accordance with Section 2.14 and (y) ending at the time that a Benchmark Replacement has replaced such then-current Benchmark for all purposes hereunder and under any Loan Document in accordance with Section 2.14.

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

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

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

“Benefit Plan Asset Regulations” means 29 CFR § 2510.3-101 et seq., as modified by Section 3(42) of ERISA, as amended from time to time.”

“BHC Act Affiliate” of a party means an “affiliate” (as such term is defined under, and interpreted in accordance with, 12 U.S.C. 1841(k)) of such party.

“Borrower” or “Borrowers” has the meaning specified in the introductory paragraph hereof.

“Borrower Joinder Agreement” means a Borrower Joinder Agreement set forth as Exhibit F hereto or such other form as is reasonably satisfactory to the Administrative Agent.

“Borrower Representative” has the meaning assigned to such term in Section 11.01.

“Borrowing” means (a) Loans of the same Type, made, converted or continued on the same date and, in the case of Term Benchmark Loans, as to which a single Interest Period is in effect and/or (b) a Swingline Loan.

“Borrowing Request” means a request by the Borrower Representative for a Borrowing in accordance with Section 2.03.

“Business Day” means any day (other than a Saturday or a Sunday) on which banks are open for business in New York City or Chicago; provided that, in relation to RFR Loans and any interest rate settings, fundings, disbursements, settlements or payments of any such RFR Loan, or any other dealings of such RFR Loan, any such day that is only a U.S. Government Securities Business Day.

“Capital Lease Obligations” of any Person means the obligations of such Person to pay rent or other amounts under any lease of (or other arrangement conveying the right to use) real or personal property, or a combination thereof, which obligations are required to be classified and accounted for as capital leases or

financing leases on a balance sheet of such Person under GAAP, and the amount of such obligations shall be the capitalized amount thereof determined in accordance with GAAP; provided that “Capital Lease Obligations” shall be subject to Section 1.04(b).

“Carve Out” shall have the meaning set forth in the Financing Orders.

“Cash Collateral” shall have the meaning set forth in the Financing Orders.

“Cash Equivalents” means:

- (a) Dollars;
- (b) securities issued or directly and fully and unconditionally guaranteed or insured by the government of the United States of America or any country that is a member of the European Union 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 12 months or less from the date of acquisition;
- (d) certificates of deposit, time deposits, bankers acceptances and eurodollar time deposits with maturities of one year or less from the date of acquisition, bankers’ acceptances with maturities not exceeding one year and overnight bank deposits, in each case with any commercial bank having, at the time of acquisition thereof, capital and surplus in excess of \$250,000,000, or the foreign currency equivalent thereof;
- (e) repurchase obligations for underlying securities of the types described in clauses (c) and (d) above entered into with any financial institution, at the time of acquisition thereof, meeting the qualifications specified in clause (d) above;
- (f) commercial paper rated, at the time of acquisition thereof, at least “P-2” by Moody’s or at least “A-2” by S&P and in each case maturing within 12 months after the date of issuance thereof;
- (g) readily marketable direct obligations issued by any state of the United States of America or any political subdivision thereof having one of the two highest rating categories obtainable from either Moody’s or S&P with maturities of 24 months or less from the date of acquisition;
- (h) Indebtedness or preferred stock issued by persons with a rating, at the time of acquisition thereof, of “A” or higher from S&P or “A2” or higher from Moody’s with maturities of 24 months or less from the date of acquisition; and
- (i) investment funds investing at least 95% of their assets in securities of the types described in clauses (a) through (h) above.

“CB Floating Rate” means the greater of the Prime Rate or 2.5%. Any change in the CB Floating Rate due to a change in the Prime Rate shall be effective from and including the effective date of such change in the Prime Rate.

“CBFR”, when used in reference to: (a) a rate of interest, refers to the CB Floating Rate, and (b) any Loan or Borrowing, refers to whether such Loan, or the Loans comprising such Borrowing, bear interest at a rate determined by reference to the CB Floating Rate.

“CFC” means a “controlled foreign corporation” within the meaning of Section 957 of the Code.

“Change in Control” shall be deemed to have occurred if at any time (a) the Investors shall cease to own, in the aggregate, directly or indirectly, beneficially and of record, at least a majority of the aggregate ordinary voting power represented by the issued and outstanding shares of Equity Interest of Holdings or (b) Holdings shall cease to beneficially own, directly or indirectly, 100% of the issued and outstanding Equity Interests of the Company.

“Change in Law” means the occurrence after the date of this Agreement of any of the following: (a) the adoption of or taking effect of any law, rule, regulation or treaty; (b) any change in any law, rule, regulation or treaty or in the administration, interpretation, implementation or application thereof by any Governmental Authority; or (c) compliance by any Lender or the Issuing Bank (or, for purposes of Section 2.15(b), by any lending office of such Lender or by such Lender’s or the Issuing Bank’s holding company, if any) with any request, guideline, requirement or directive (whether or not having the force of law) of any Governmental Authority made or issued after the date of this Agreement; provided that notwithstanding anything herein to the contrary, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines, requirements or directives thereunder or issued in connection therewith or in the implementation thereof, and (y) all requests, rules, guidelines, requirements or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a “Change in Law”, regardless of the date enacted, adopted, issued or implemented.

“Chapter 11 Cases” means the voluntary petition for relief under the Bankruptcy Code filed by the Loan Parties commencing Chapter 11 proceedings.

“Charges” has the meaning assigned to such term in Section 9.17.

“Chief Restructuring Officer” means Eric Kaup and any restructuring officer appointed for the Loan Parties that is acceptable to the Required Lenders.

“Class”, when used in reference to any Loan or Borrowing, refers to whether such Loan, or the Loans comprising such Borrowing, are Revolving Loans or Swingline Loans.

“CME Term SOFR Administrator” means CME Group Benchmark Administration Limited as administrator of the forward-looking term SOFR (or a successor administrator).

“Code” means the Internal Revenue Code of 1986, as amended from time to time.

“Collateral” means the “DIP Collateral” as defined in the Financing Orders.

“Commitment” means, with respect to each Lender, such Lender’s Revolving Commitment. The initial amount of each Lender’s Commitment is set forth on the Commitment Schedule, or in the Assignment and Assumption or other documentation or record (as such term is defined in Section 9-102(a)(70) of the New York Uniform Commercial Code) as provided in Section 9.04(b)(ii)(C), pursuant to which such Lender shall have assumed its Commitment, as applicable.

“Commitment Schedule” means the Schedule attached hereto identified as such.

“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.

“Communications” has the meaning assigned to such term in Section 8.03(c).

“Company” means Harvest Sherwood Food Distributors, Inc. a Delaware corporation.

“Compliance Certificate” means a certificate of the Chief Restructuring Officer in substantially the form of Exhibit C.

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

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

“Controlled Disbursement Account” means the account of the Borrowers maintained with the Administrative Agent as a cash management account with a unique ABA routing number which effectively limits the number and frequency of daily check presentments pursuant to and under any agreement between a Borrower and the Administrative Agent, as modified and amended from time to time, and through which all or substantially all check disbursements of a Borrower, any other Loan Party and any designated Subsidiary of a Borrower are made and settled on a daily basis with no uninvested balance remaining overnight.

“Corresponding Tenor” with respect to any Available Tenor means, as applicable, either a tenor (including overnight) or an interest payment period having approximately the same length (disregarding business day adjustment) as such Available Tenor.

“Covered Entity” means any of the following:

(i) a “covered entity” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 252.82(b);

(ii) a “covered bank” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 47.3(b); or

(iii) a “covered FSI” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 382.2(b).

“Covered Party” has the meaning assigned to it in Section 9.21.

“Credit Event” has the meaning assigned to it in Section 4.02.

“Credit Party” means the Administrative Agent, the Issuing Bank, the Swingline Lender or any other Lender.

“Daily Simple SOFR” means, for any day (a “SOFR Rate Day”), a rate per annum equal to SOFR for the day (such day “SOFR Determination Date”) that is five (5) U.S. Government Securities Business Days prior to (i) if such SOFR Rate Day is a U.S. Government Securities Business Day, such SOFR Rate Day or (ii) if such SOFR Rate Day is not a U.S. Government Securities Business Day, the U.S. Government Securities Business Day immediately preceding such SOFR Rate Day, in each case, as such SOFR is published by the SOFR Administrator on the SOFR Administrator’s Website. Any change in Daily Simple

SOFR due to a change in SOFR shall be effective from and including the effective date of such change in SOFR without notice to the Borrowers.

“DDA Access Product” means the bank service provided to any Loan Party by JPMCB in its sole discretion consisting of direct access to schedule payments from the funding account by electronic, internet or other access mechanisms that may be agreed upon from time to time by JPMCB and the funding of such payments under the Loan Borrowing Option in the DDA Access Product Agreement.

“DDA Access Product Agreement” means JPMCB’s Treasury Services End of Day Investment & Loan Sweep Service Terms, as in effect on the date of this Agreement, as the same may be amended from time to time.

“Default” means any event or condition which constitutes an Event of Default or which upon notice, lapse of time or both would, unless cured or waived, become an Event of Default.

“Default Right” has the meaning assigned to that term in, and shall be interpreted in accordance with, 12 C.F.R. §§ 252.81, 47.2 or 382.1, as applicable.

“Defaulting Lender” means any Lender that (a) has failed, within two Business Days of the date required to be funded or paid, to (i) fund any portion of its Loans, (ii) fund any portion of its participations in Letters of Credit or Swingline Loans or (iii) pay over to any Credit Party any other amount required to be paid by it hereunder, unless, in the case of clause (i) above, such Lender notifies the Administrative Agent in writing that such failure is the result of such Lender’s good faith determination that a condition precedent to funding (specifically identified and including the particular Default, if any) has not been satisfied; (b) has notified any Borrower or any Credit Party in writing, or has made a public statement, to the effect that it does not intend or expect to comply with any of its funding obligations under this Agreement (unless such writing or public statement indicates that such position is based on such Lender’s good faith determination that a condition precedent (specifically identified and including the particular Default, if any) to funding a Loan under this Agreement cannot be satisfied) or generally under other agreements in which it commits to extend credit, (c) has failed, within two (2) Business Days after request by a Credit Party, acting in good faith, to provide a certification in writing from an authorized officer of such Lender that it will comply with its obligations (and is financially able to meet such obligations as of the date of certification) to fund prospective Loans and participations in then outstanding Letters of Credit and Swingline Loans under this Agreement, provided that such Lender shall cease to be a Defaulting Lender pursuant to this clause (c) upon such Credit Party’s receipt of such certification in form and substance satisfactory to it and the Administrative Agent, or (d) has become the subject of (i) a Bankruptcy Event or (ii) a Bail-In Action.

“Deficiency Funding Date” has the meaning assigned to such term in Section 2.05(a).

“DIP Budgets” has the meaning set forth in the Financing Orders.

“Disclosed Matters” means any matters, facts or circumstances (including without limitation, actions, suits, proceedings or environmental matters and/or Indebtedness, Liens, Investments or Transactions with Affiliates) disclosed to the Administrative Agent and the Lenders by the Loan Parties prior to the Effective Date.

“Disposition” or “Dispose” means the sale, transfer, license, lease or other disposition (in one transaction or in a series of related transactions and whether effected pursuant to a Division or otherwise) of any property by any Person (including any sale and leaseback transaction and any issuance of Equity Interests by a Subsidiary of such Person), including, without limitation (i) any settlement of any litigation

claims made by any Loan Party, (ii) any compromise of any account receivable and (iii) any sale, assignment, transfer or other disposal, with or without recourse, of any notes or accounts receivable or any rights and claims associated therewith.

“Disqualified Equity Interests” means any Equity Interest which, by its terms (or by the terms of any security or other Equity Interests into which it is convertible or for which it is exchangeable), or upon the happening of any event or condition (a) matures or is mandatorily redeemable (other than solely for Qualified Equity Interests), pursuant to a sinking fund obligation or otherwise (except as a result of a change in control or asset sale so long as any right of the holders thereof upon the occurrence of a change in control or asset sale event shall be subject to the prior repayment in full of the Loans and all other Obligations (other than Unliquidated Obligations, Banking Services Obligations and Swap Obligations) that are then accrued and payable and the termination of the Commitments), in each case, prior to the date that is ninety-one (91) days after the Maturity Date, (b) is redeemable at the option of the holder thereof (other than solely for Qualified Equity Interests), in whole or in part except as a result of a change in control or asset sale or the death, disability, retirement, severance or termination of employment or service of a holder who is an employee or director of Holdings, any Borrower or a Subsidiary, in each case so long as any such right of the holder (1) is not effective during the continuance of an Event of Default and is not effective to the extent that such redemption would result in a Default or an Event of Default or (2) is subject to the prior repayment in full of the Loans and all other Obligations (other than Unliquidated Obligations, Banking Services Obligations and Swap Obligations) that are then accrued and payable and the termination of the Commitments, in each case, prior to the date that is ninety-one (91) days after the Maturity Date, (c) requires the payment of any cash dividend or any other scheduled cash payment constituting a return of capital, in each case, prior to the date that is ninety-one (91) days after the Maturity Date, or (d) is or becomes convertible into or exchangeable for Indebtedness or any other Equity Interests that would constitute Disqualified Equity Interests, in each case, prior to the date that is ninety-one (91) days after the Maturity Date; provided that if such Equity Interest is issued to any plan for the benefit of employees of Holdings or its subsidiaries or by any such plan to such employees, such Equity Interest shall not constitute a Disqualified Equity Interest solely because it may be required to be repurchased by Holdings or its subsidiaries in order to satisfy applicable statutory or regulatory obligations.

“Dividing Person” has the meaning assigned to it in the definition of “Division.”

“Division” means the division of the assets, liabilities and/or obligations of a Person (the “Dividing Person”) among two or more Persons (whether pursuant to a “plan of division” or similar arrangement), which may or may not include the Dividing Person and pursuant to which the Dividing Person may or may not survive.

“Division Successor” means any Person that, upon the consummation of a Division of a Dividing Person, holds all or any portion of the assets, liabilities and/or obligations previously held by such Dividing Person immediately prior to the consummation of such Division. A Dividing Person which retains any of its assets, liabilities and/or obligations after a Division shall be deemed a Division Successor upon the occurrence of such Division.

“Dollars”, “dollars” or “\$” refers to lawful money of the U.S.

“Domestic Subsidiary” means a subsidiary organized under the laws of the U.S., any state thereof or the District of Columbia.

“ECP” means an “eligible contract participant” as defined in Section 1(a)(18) of the Commodity Exchange Act or any regulations promulgated thereunder and the applicable rules issued by the Commodity Futures Trading Commission and/or the SEC.

“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 clause (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.

“Effective Date” means the date on which the conditions specified in Section 4.01 are satisfied (or waived in accordance with Section 9.02).

“Electronic Signature” means an electronic sound, symbol, or process attached to, or associated with, a contract or other record and adopted by a Person with the intent to sign, authenticate or accept such contract or record.

“Electronic System” means any electronic system, including e-fax, web portal access for such Borrower and any other Internet or extranet-based site, whether such electronic system is owned, operated or hosted by the Administrative Agent or any Issuing Bank and any of its respective Related Parties or any other Person, providing for access to data protected by passcodes or other security system.

“Employee Benefit Plan” means any employee pension benefit plan (other than a Multiemployer Benefit Plan) subject to the provisions of Title IV of ERISA or Section 412 of the Code or Section 302 of ERISA, and in respect of which any Borrower or any ERISA Affiliate is (or, if such plan were terminated, would under Section 4069 of ERISA be deemed to be) an “employer” as defined in Section 3(5) of ERISA.

“Environmental Laws” means all laws, rules, regulations, codes, ordinances, orders, decrees, judgments, injunctions, notices or binding agreements issued, promulgated or entered into by any Governmental Authority, relating in any way to (a) the environment, (b) preservation or reclamation of natural resources, (c) the management, Release or threatened Release of any Hazardous Material or (d) health and safety matters (in respect of exposure to Hazardous Materials).

“Environmental Liability” means any liability, contingent or otherwise (including any liability for damages, costs of environmental remediation, fines, penalties or indemnities), of any Borrower or Subsidiary directly or indirectly resulting from or based upon (a) any violation of any Environmental Law, (b) the generation, use, handling, transportation, storage, treatment or disposal of any Hazardous Materials, (c) any exposure to any Hazardous Materials, (d) the Release or threatened Release of any Hazardous Materials into the environment or (e) any contract, agreement or other consensual arrangement pursuant to which liability is assumed or imposed with respect to any of the foregoing.

“Equity Interests” means shares of capital stock, partnership interests, membership interests in a limited liability company, beneficial interests in a trust or other equity ownership interests in a Person, and any warrants, options or other rights entitling the holder thereof to purchase or acquire any of the foregoing, but excluding any debt securities convertible into any of the foregoing.

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

“ERISA Affiliate” means any trade or business (whether or not incorporated) that, together with a Borrower, is treated as a single employer under Section 414(b) or (c) of the Code or Section 4001(a)(14) of ERISA or, solely for purposes of Section 302 of ERISA and Section 412 of the Code, is treated as a single employer under Section 414 of the Code.

“ERISA Event” means (a) any “reportable event”, as defined in Section 4043 of ERISA or the regulations issued thereunder, with respect to a Employee Benefit Plan (other than an event for which the 30-day notice period is waived); (b) the failure to satisfy the “minimum funding standard” (as defined in Section 412 of the Code or Section 302 of ERISA), whether or not waived; (c) the filing pursuant to Section 412(c) of the Code or Section 302(c) of ERISA of an application for a waiver of the minimum funding standard with respect to any Employee Benefit Plan; (d) the incurrence by any Borrower or any ERISA Affiliate of any liability under Title IV of ERISA with respect to the termination of any Employee Benefit Plan; (e) the receipt by any Borrower or any ERISA Affiliate from the PBGC or a plan administrator of any notice relating to an intention to terminate any Employee Benefit Plan or Employee Benefit Plans or to appoint a trustee to administer any Employee Benefit Plan; (f) the incurrence by any Borrower or any ERISA Affiliate of any liability with respect to the withdrawal or partial withdrawal (including under Section 4062(e) of ERISA) of any Borrower or any ERISA Affiliate from any Employee Benefit Plan or Multiemployer Employee Benefit Plan; or (g) the receipt by any Borrower or any ERISA Affiliate of any notice, or the receipt by any Multiemployer Employee Benefit Plan from any Borrower or any ERISA Affiliate of any notice, concerning the imposition upon any Borrower or any ERISA Affiliate of Withdrawal Liability or a determination that a Multiemployer Employee Benefit Plan is, or is expected to be, insolvent (within the meaning of Title IV of ERISA) or in “endangered” or “critical” status (within the meaning of Section 432 of the Code or Section 305 of ERISA) or a failure by any Borrower or any ERISA Affiliate to pay when due (after expiration of any applicable grace period) any installment payment with respect to Withdrawal Liability.

“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.

“Events of Default” has the meaning assigned to such term in Article VII.

“Excluded Matters” means any action or inaction in the Chapter 11 Cases to which the Required Lenders have consented in writing.

“Excluded Subsidiary” means (a) [reserved], (b) (i) any Foreign Subsidiary of Holdings, (ii) any FSHCO or (iii) any Domestic Subsidiary that is a direct or indirect Subsidiary of a Foreign Subsidiary of Holdings that is a CFC, (c) any Subsidiary that is prohibited or restricted by applicable Law from providing a Guarantee of the Guaranteed Obligations or if such Guarantee would require (i) governmental (including regulatory) consent, approval, license or authorization unless such consent, approval, license or authorization has been received or (ii) would result in material adverse tax consequences to the Company or one of its Subsidiaries as reasonably determined by the Company in consultation with the Administrative Agent, (d) any special purpose securitization vehicle (or similar entity), (e) any Subsidiary that is a not-for-profit organization, (f) [reserved], (g) [reserved], (h) any captive insurance company and (i) any other Subsidiary with respect to which, in the reasonable judgment of the Administrative Agent (confirmed in writing by notice to the Company), the cost or other consequences of becoming a Guarantor (including any adverse tax consequences) shall be excessive in view of the benefits to be obtained by the Lenders therefrom.

“Excluded Taxes” means any of the following Taxes imposed on or with respect to a Recipient or required to be withheld or deducted from a payment to a Recipient: (a) Taxes imposed on or measured by net income (however denominated), franchise Taxes, and branch profits Taxes, in each case, (i) imposed as a result of such Recipient being organized under the laws of, or having its principal office or, in the case of any Lender, its applicable lending office located in, the jurisdiction imposing such Tax (or any political subdivision thereof) or (ii) that are Other Connection Taxes; (b) in the case of a Lender, U.S. Federal withholding Taxes imposed on amounts payable to or for the account of such Lender with respect to an applicable interest in a Loan or Commitment pursuant to a law in effect on the date on which (i) such Lender acquires such interest in the applicable Commitment (or, in the case of a Loan not funded pursuant to a prior Commitment, such Lender acquires such interest in such Loan), in each case, other than pursuant to an assignment request by the Borrowers under Section 2.19(b) or (ii) such Lender changes its lending office, except in each case to the extent that, pursuant to Section 2.17, amounts with respect to such Taxes were payable either to such Lender’s assignor immediately before such Lender acquired the applicable interest in a Loan or Commitment or to such Lender immediately before it changed its lending office; (c) Taxes attributable to such Recipient’s failure to comply with Section 2.17(f) or (g); and (d) any withholding Taxes imposed under FATCA.

“Extenuating Circumstance” means any period during which the Administrative Agent has determined in its sole discretion (a) that due to unforeseen and/or nonrecurring circumstances, it is impractical and/or not feasible to submit or receive a Borrowing Request or Interest Election Request by email or fax or through Electronic System, and (b) to accept a Borrowing Request or Interest Election Request telephonically.

“FATCA” means Sections 1471 through 1474 of the Code, as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), any current or future regulations or official interpretations thereof and any agreement entered into pursuant to current Section 1471(b)(1) of the Code (or any amended or successor version described above) and any intergovernmental agreement, treaty or convention among Governmental Authorities (and related legislation, rules or official administrative guidance) implementing the foregoing.

“Federal Funds Effective Rate” means, for any day, the rate calculated by the NYFRB based on such day’s federal funds transactions by depository institutions (as determined in such manner as shall be set forth on the NYFRB’s Website from time to time) and published on the next succeeding Business Day by the NYFRB as the effective federal funds rate, provided that, if the Federal Funds Effective Rate as so determined would be less than 0%, such rate shall be deemed to be 0% for the purposes of this Agreement.

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

“Financial Advisor” means Huron Consulting Group Inc., in its capacity as financial advisor to the lenders, together with any successor financial advisor appointed by the Administrative Agent.

“Final Order” means an order of the Bankruptcy Court in the Chapter 11 Cases authorizing and approving on a final basis the Loan Parties’ entry into this Agreement and the other Loan Documents and the Roll-Up, among other things, in form and substance satisfactory to the Required Lenders.

“Final Order Date” means the date on which the Final Order is approved and entered by the Bankruptcy Court.

“Financial Officer” means the chief financial officer, principal accounting officer, vice president of finance, treasurer, assistant treasurer, or controller of a Borrower or any person performing equivalent duties of the foregoing, including, for the avoidance of doubt, the Chief Restructuring Officer.

“Financing Orders” means, together or individually, as applicable, the Interim Order and the Final Order.

“Flood Laws” has the meaning assigned to such term in Section 8.10.

“Floor” means the benchmark rate floor, if any, provided in this Agreement initially (as of the execution of this Agreement, the modification, amendment or renewal of this Agreement or otherwise) with respect to the Adjusted Term SOFR Rate or the Adjusted Daily Simple SOFR, as applicable. For the avoidance of doubt, the initial Floor for each of the Adjusted Term SOFR Rate or the Adjusted Daily Simple SOFR shall be 0%.

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

“Foreign Subsidiary” means any subsidiary which is not a Domestic Subsidiary.

“FSHCO” means any Domestic Subsidiary that has no material assets other than Equity Interests of one or more Foreign Subsidiaries of Holdings that are CFCs or other FSHCOs.

“GAAP” means generally accepted accounting principles in the U.S.

“Governmental Authority” means the government of the U.S., any other nation or 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.

“Guarantee” of or by any Person (the “guarantor”) means any obligation, contingent or otherwise, of the guarantor guaranteeing or having the economic effect of guaranteeing any Indebtedness or other monetary obligation of any other Person (the “primary obligor”) in any manner, whether directly or indirectly, and including any obligation of the guarantor, direct or indirect, (a) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or other monetary obligation or to purchase (or to advance or supply funds for the purchase of) any security for the payment thereof, (b) to purchase or lease property, securities or services for the purpose of assuring the owner of such Indebtedness or other monetary obligation of the payment thereof, (c) to maintain working capital, equity capital or any other financial statement condition or liquidity of the primary obligor so as to enable the primary obligor to pay such Indebtedness or other monetary obligation or (d) as an account party in respect of any letter of credit or letter of guaranty issued to support such Indebtedness or other monetary obligation; provided, that the term Guarantee shall not include endorsements for collection or deposit in the ordinary course of business. The amount of any Guarantee of any guaranteeing person shall be deemed to be the lower of (a) an amount equal to the stated or determinable amount of the primary obligation in respect of which such Guarantee is made and (b) the maximum amount for which such guaranteeing person may be liable pursuant to the terms of the instrument embodying such Guarantee, unless such primary obligation and the maximum amount for which such guaranteeing person may be liable are not stated or determinable, in which case the amount of such Guarantee shall be such guaranteeing person’s maximum reasonably anticipated liability in respect thereof as determined by the Company in good faith.

“Guaranteed Obligations” has the meaning assigned to such term in Section 10.01.

“Guarantor Payment” has the meaning assigned to such term in Section 10.11(a).

“Guarantors” means all Loan Parties, and the term “Guarantor” means each or any one of them individually.

“Hamilton” has the meaning assigned to such term in the introductory paragraph hereto.

“Harvest” and “Harvest Sherwood” have their meanings specified in the introductory paragraph hereto.

“Hazardous Materials” means: (a) any substance, material, or waste that is included within the definitions of “hazardous substances,” “hazardous materials,” “hazardous waste,” “toxic substances,” “toxic materials,” “toxic waste,” or words of similar import in any Environmental Law; (b) those substances listed as hazardous substances by the United States Department of Transportation (or any successor agency) (49 C.F.R. 172.101 and amendments thereto) or by the Environmental Protection Agency (or any successor agency) (40 C.F.R. Part 302 and amendments thereto); and (c) any substance, material, or waste that is petroleum, petroleum-related, or a petroleum by-product, asbestos or asbestos-containing material, polychlorinated biphenyls, flammable, explosive, radioactive, freon gas, radon, or a pesticide, herbicide, or any other agricultural chemical.

“Holdings” has the meaning specified in the introductory paragraph hereof.

“Indebtedness” of any Person means, without duplication, (a) any indebtedness (including principal and premium) of such Person, whether or not contingent (i) in respect of borrowed money, (ii) evidenced by bonds, notes, debentures or similar instruments or letters of credit or bankers’ acceptances (or, without duplication, reimbursement agreements in respect thereof), (iii) representing the balance deferred and unpaid of the purchase price of any property (including Capital Lease Obligations), except (x) any such balance that constitutes a trade payable, accrued liability or similar obligation to a trade creditor, in each case accrued in the ordinary course of business, or (y) any earn-out obligation until such obligation becomes a liability on the balance sheet of such Person in accordance with GAAP and if not paid within 90 days after becoming due and payable, or (iv) representing the Swap Termination Value in respect of Swap Agreements; (b) to the extent not otherwise included, any Guarantee by such Person in respect of Indebtedness of the type referred to in clause (a) of another Person; (c) to the extent not otherwise included, any obligation of the type referred to in clause (a) or (b) of another Person secured by a Lien on any asset owned by such Person, whether or not such obligations are assumed by such Person and whether or not such obligations would appear upon the balance sheet of such Person; provided that the amount of any such Indebtedness will be the lesser of the fair market value of such asset at the date of determination and the amount of Indebtedness so secured; and (d) Synthetic Lease Obligations; provided that notwithstanding the foregoing, Indebtedness will be deemed not to include contingent obligations incurred in the ordinary course of business. Notwithstanding the foregoing, Indebtedness shall not include (x) unsecured trade payables that are paid to banks financing vendor receivables in the ordinary course of business of the Borrowers to the extent any such trade payables are deemed to be indebtedness solely as a result of requirements under GAAP, and (y) operating leases as defined under GAAP as of December 31, 2015 to the extent that such leases are deemed to be Indebtedness solely as a result of any change in the requirements under GAAP after December 31, 2015.

“Indemnified Taxes” means (a) 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 and (b) to the extent not otherwise described in the foregoing clause (a) hereof, Other Taxes.

“Indemnitee” has the meaning assigned to such term in Section 9.03(c).

“Ineligible Institution” has the meaning assigned to such term in Section 9.04(b).

“Information” has the meaning assigned to such term in Section 9.12.

“Interest Election Request” means a request by the Borrower Representative to convert or continue a Borrowing in accordance with Section 2.08.

“Interest Payment Date” means (a) with respect to any CBFR Loan (other than a Swingline Loan), (1) the first Business Day of each calendar quarter and (2) the Maturity Date, (b) with respect to any RFR Loan, (1) each date that is on the numerically corresponding day in each calendar month that is one month after the Borrowing of such Loan (or, if there is no such numerically corresponding day in such month, then the last day of such month) and (2) the Maturity Date, (c) with respect to any Term Benchmark Loan, (1) the last day of each Interest Period applicable to the Borrowing of which such Loan is a part (and, in the case of a Term Benchmark Borrowing with an Interest Period of more than three months’ duration, each day prior to the last day of such Interest Period that occurs at intervals of three months’ duration after the first day of such Interest Period) and (2) the Maturity Date, and (d) with respect to any Swingline Loan, (1) the day that such Swingline Loan is required to be repaid and (2) the Maturity Date.

“Interest Period” means, with respect to any Term Benchmark Borrowing, the period commencing on the date of such Borrowing and ending on the numerically corresponding day in the calendar month that is one, three or six months thereafter (in each case, subject to the availability for the Benchmark applicable to the relevant Loan or Commitment), as the Borrower Representative may elect; provided, that (a) if any Interest Period would end on a day other than a Business Day, such Interest Period shall be extended to the next succeeding Business Day unless, such next succeeding Business Day would fall in the next calendar month, in which case such Interest Period shall end on the next preceding Business Day, (b) any Interest Period that commences on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the last calendar month of such Interest Period) shall end on the last Business Day of the last calendar month of such Interest Period, and (c) no tenor that has been removed from this definition pursuant to Section 2.14(e) shall be available for specification in such Borrowing Request or Interest Election Request. For purposes hereof, the date of a Borrowing initially shall be the date on which such Borrowing is made and thereafter shall be the effective date of the most recent conversion or continuation of such Borrowing.

“Interim Order” means an order of the Bankruptcy Court in the Chapter 11 Cases authorizing and approving on an interim basis the Loan Parties’ entry into this Agreement and the other Loan Documents and the Roll-Up, among other things, in form and substance satisfactory to the Required Lenders.

“Interim Order Date” means the date on which the Interim Order is approved and entered by the Bankruptcy Court.

“Investment” has the meaning assigned to such term in Section 6.04.

“Investor” means, collectively, HPS Investment Partners, LLC, Twin Ridge Capital Management, LLC and their respective Affiliates.

“IRS” means the United States Internal Revenue Service.

“Issuing Bank” means, individually and collectively, each of JPMCB, in its capacity as the issuer of Letters of Credit hereunder and any other Revolving Lender from time to time designated by the Borrower Representative as an Issuing Bank (in each case, through itself or through one of its designated affiliates or branch offices), with the consent of such Revolving Lender and the Administrative Agent, and

their respective successors in such capacity as provided in Section 2.06(i). Any Issuing Bank may, in its discretion, arrange for one or more Letters of Credit to be issued by its Affiliates, in which case the term “Issuing Bank” shall include any such Affiliate with respect to Letters of Credit issued by such Affiliate (it being agreed that such Issuing Bank shall, or shall cause such Affiliate to, comply with the requirements of Section 2.06 with respect to such Letters of Credit). At any time there is more than one Issuing Bank, all singular references to the Issuing Bank shall mean any Issuing Bank, either Issuing Bank, each Issuing Bank, the Issuing Bank that has issued the applicable Letter of Credit, or both (or all) Issuing Banks, as the context may require.

“Joinder Agreement” means a Joinder Agreement in substantially the form of Exhibit D.

“Joining Borrower” has the meaning assigned to such term in Section 2.21

“JPMCB” means JPMorgan Chase Bank, N.A., a national banking association, in its individual capacity, and its successors.

“LC Collateral Account” has the meaning assigned to such term in Section 2.06(j).

“LC Disbursement” means any payment made by an Issuing Bank pursuant to a Letter of Credit.

“LC Exposure” means, at any time, the sum of (a) the aggregate undrawn amount of all Letters of Credit outstanding at such time *plus* (b) the aggregate amount of all LC Disbursements that have not yet been reimbursed by or on behalf of the Borrowers at such time. The LC Exposure of any Revolving Lender at any time shall be its Applicable Percentage of the aggregate LC Exposure at such time.

“LC Roll-Up” has the meaning assigned to such term in Section 2.06.

“LC Sublimit” means the lesser of (i) the Aggregate Revolving Commitments and (ii) \$600,000.

“Lender Parent” means, with respect to any Lender, any Person as to which such Lender is, directly or indirectly, a subsidiary.

“Lender-Related Person” has the meaning assigned to such term in Section 9.03(b).

“Lenders” means the Persons listed on the Commitment Schedule and any other Person that shall have become a Lender hereunder pursuant to Section 2.09 or an Assignment and Assumption or otherwise, other than any such Person that ceases to be a Lender hereunder pursuant to an Assignment and Assumption or otherwise. Unless the context otherwise requires, the term “Lenders” includes the Swingline Lender and the Issuing Bank.

“Letters of Credit” means the Roll-Up Letters of Credit, each of which shall be deemed to be a Letter of Credit issued pursuant to this Agreement on the Effective Date, and the term “Letter of Credit” means any one of them or each of them singularly, as the context may require.

“Liabilities” means any losses, claims (including intraparty claims), demands, damages or liabilities of any kind.

“Lien” means, with respect to any asset, (a) any mortgage, deed of trust, lien, pledge, hypothecation, encumbrance, charge or security interest in, on or of such asset, (b) the interest of a vendor or a lessor under any conditional sale agreement, capital lease or title retention agreement (or any financing lease having substantially the same economic effect as any of the foregoing) relating to such asset; provided

that in no event shall an operating lease (or any lease that is not a Capitalized Lease Obligation pursuant to the definition thereof) be deemed to constitute a Lien.

“Loan Borrowing Option” has the meaning assigned to such term in the DDA Access Product Agreement.

“Loan Documents” means, collectively, this Agreement and any promissory notes issued pursuant to this Agreement. For the avoidance of doubt, the Swap Agreements and the agreements pursuant to which Banking Services are provided shall not constitute Loan Documents.

“Loan Guaranty” means Article X of this Agreement.

“Loan Parties” means, collectively, Holdings, the Borrowers, the Borrowers’ Domestic Subsidiaries (other than Excluded Subsidiaries) and any other Person who becomes a party to this Agreement pursuant to a Joinder Agreement and their respective successors and assigns, and the term “Loan Party” means any one of them or all of them individually, as the context may require.

“Loan Roll-Up” has the meaning set forth in Section 2.01.

“Loans” means the loans and advances made by the Lenders pursuant to this Agreement, including Swingline Loans.

“Long-Term DIP Budget” has the meaning set forth in the Financing Orders, and shall include any amendment thereto that is acceptable to each of the Lenders.

“Margin Stock” means margin stock within the meaning of Regulations T, U and X, as applicable.

“Material Adverse Effect” means a material adverse effect on (a) the business, assets, operations, or financial condition, of Holdings and its Subsidiaries taken as a whole other than as a result of any Excluded Matters, (b) the ability of any Loan Party to perform any of their material obligations (including, without limitation, payment obligations) under the Loan Documents to which it is a party or (c) the rights of or benefits available to the Administrative Agent, the Issuing Bank or the Lenders under any of the Loan Documents.

“Maturity Date” means the earlier of (i) April 30, 2027 and (ii) the date on which the Revolving Commitments are otherwise reduced to \$0 pursuant to the terms of this Agreement (whether voluntarily, mandatorily or by enforcement of remedies).

“Maximum Rate” has the meaning assigned to such term in Section 9.17.

“Milestones” shall be deemed to be satisfied only if:

- (a) The Petition Date shall be no later than 11:59 p.m., Dallas, Texas time, on May 5, 2025;
- (b) The Interim Order Date shall be no later than the fifth (5th) calendar day following the Petition Date;
- (c) The Loan Parties shall file with the Bankruptcy Court by not later than the fifth (5th) Business Day following a written request by the Administrative Agent, on behalf of the Required Lenders (email being sufficient) (i) a motion for an order from the Bankruptcy Court enforcing the automatic stay (the “Automatic Stay Motion”), (ii) an adversary proceeding, complaint, or other pleading (as may be

mutually agreed to by the Loan Parties and the Required Lenders) to remove to the Bankruptcy Court any pending litigation in which the Loan Parties are involved, or (iii) an adversary proceeding, complaint, or other pleading (as may be mutually agreed to by the Loan Parties and the Required Lenders) in the Bankruptcy Court for the purposes of collecting amounts owed to any of the Loan Parties or preventing any interference with property of the estates of the Loan Parties, in each case with respect to any third-party identified in such written request; provided that the Loan Parties shall not have to comply with such request if inconsistent with the Loan Parties' fiduciary duties or applicable law; and

(d) The Final Order Date shall occur no later than the 30th calendar day following the Petition Date.

"Moody's" means Moody's Investors Service, Inc.

"Multiemployer Benefit Plan" means a multiemployer plan as defined in Section 4001(a)(3) of ERISA.

"Non-Consenting Lender" has the meaning assigned to such term in Section 9.02(d).

"NYFRB" means the Federal Reserve Bank of New York.

"NYFRB Rate" means, for any day, the greater of (a) the Federal Funds Effective Rate in effect on such day and (b) the Overnight Bank Funding Rate in effect on such day (or for any day that is not a Business Day, for the immediately preceding Business Day); provided that if none of such rates are published for any day that is a Business Day, the term "NYFRB Rate" means the rate for a federal funds transaction quoted at 11:00 a.m. on such day received by the Administrative Agent from a federal funds broker of recognized standing selected by it; provided, further, that if any of the aforesaid rates as so determined would be less than 0%, such rate shall be deemed to be 0% for purposes of this Agreement.

"NYFRB's Website" means the website of the NYFRB at <http://www.newyorkfed.org>, or any successor source.

"Obligated Party" has the meaning assigned to such term in Section 10.02.

"Obligations" means all unpaid principal of and accrued and unpaid interest on the Loans, all LC Exposure, all Banking Services Obligations, all accrued and unpaid fees and all expenses, reimbursements, indemnities and other obligations and indebtedness (including interest and fees accruing during the pendency of any bankruptcy, insolvency, receivership or other similar proceeding, regardless of whether allowed or allowable in such proceeding), obligations and liabilities, in each case, of any of the Loan Parties to any of the Lenders, the Administrative Agent, the Issuing Bank, the Qualified Counterparties or any indemnified party, individually or collectively, existing on the Effective Date or arising thereafter, direct or indirect, joint or several, absolute or contingent, matured or unmatured, liquidated or unliquidated, secured or unsecured, arising by contract, operation of law or otherwise, arising or incurred under this Agreement or any of the other Loan Documents or the Financing Orders or in respect of any of the Loans made or reimbursement or other obligations incurred or any of the Letters of Credit or other instruments at any time evidencing any thereof or under the definitive documentation with respect to any Banking Services.

"Other Connection Taxes" means, with respect to any Recipient, Taxes imposed as a result of a present or former connection between such Recipient and the jurisdiction imposing such Taxes (other than a connection arising from such Recipient having executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, engaged in any

other transaction pursuant to, or enforced, any Loan Document, or sold or assigned an interest in any Loan, Letter of Credit or any Loan Document).

“Other Taxes” means all present or future stamp, court or documentary, intangible, recording, filing or similar Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Loan Document, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment (other than an assignment made pursuant to Section 2.19).

“Overnight Bank Funding Rate” means, for any day, the rate comprised of both overnight federal funds and overnight eurodollar transactions denominated in Dollars by U.S.-managed banking offices of depository institutions (as such composite rate shall be determined by the NYFRB as set forth on the NYFRB’s Website from time to time) and published on the next succeeding Business Day by the NYFRB as an overnight bank funding rate.

“Paid in Full” or “Payment in Full” means, (a) the payment in full in cash of all outstanding Loans and LC Disbursements, together with accrued and unpaid interest thereon, (b) the termination, expiration, or cancellation and return of all outstanding Letters of Credit (or alternatively, with respect to each such Letter of Credit, the furnishing to the Administrative Agent of a cash deposit, or at the discretion of the Administrative Agent or the applicable Issuing Bank a backup standby letter of credit satisfactory to the Administrative Agent and the Issuing Bank, in an amount equal to 103% of the LC Exposure as of the date of such payment), (c) the payment in full in cash of the accrued and unpaid fees, (d) the payment in full in cash of all reimbursable expenses and other Obligations (other than Unliquidated Obligations for which no claim has been made and other obligations expressly stated to survive such payment and termination of this Agreement), together with accrued and unpaid interest thereon, and (e) the termination of all Commitments.

“parent” has the meaning assigned to such term in the definition of “subsidiary.”

“Participant” has the meaning assigned to such term in Section 9.04(c).

“Participant Register” has the meaning assigned to such term in Section 9.04(c).

“Payment” has the meaning assigned to such term in Section 8.06(d)(i).

“Payment Notice” has the meaning assigned to such term in Section 8.06(d)(ii).

“PBGC” means the Pension Benefit Guaranty Corporation referred to and defined in ERISA and any successor entity performing similar functions.

“Permitted Encumbrances” means:

(a) Liens imposed by law for Taxes that are not yet due or are being contested in good faith and by appropriate proceedings that stay the enforcement of such claim, if adequate reserves with respect thereto are maintained on the books of the applicable Person in accordance with GAAP; and

(b) pledges and deposits made in the ordinary course of business in compliance with workers’ compensation laws, unemployment, general liability and other insurance and other social security laws or similar laws or regulations;

provided that the term “Permitted Encumbrances” shall not include any Lien securing Indebtedness.

“Permitted Lien” means any Lien permitted under Section 6.02.

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

“Petition Date” the date on which a voluntary petition for relief under chapter 11 of title 11 of the Bankruptcy Code is filed with the Bankruptcy Court by the Loan Parties commencing the Chapter 11 Cases.

“PIK Interest Amount” means, for any Lender, an amount equal to 6% per annum (calculated without compounding) of the average daily amount of such Lender’s Revolving Exposure during the period commencing on the Effective Date and ending on the date of termination in full of the Revolving Commitments.

“Prepetition Credit Agreement” means that certain Credit Agreement, dated June 17, 2022, as amended on October 10, 2024, and March 18, 2025, and as may be further amended, restated, amended and restated, supplemented or otherwise modified prior to the Petition Date, by and among JPMorgan Chase Bank, N.A., as administrative agent, the Loan Parties and the issuing banks and lenders party thereto.

“Prime Rate” means the rate of interest last quoted by The Wall Street Journal as the “Prime Rate” in the U.S. or, if The Wall Street Journal ceases to quote such rate, the highest per annum interest rate published by the Federal Reserve Board in Federal Reserve Statistical Release H.15 (519) (Selected Interest Rates) as the “bank prime loan” rate or, if such rate is no longer quoted therein, any similar rate quoted therein (as determined by the Administrative Agent) or any similar release by the Federal Reserve Board (as determined by the Administrative Agent). Each change in the Prime Rate shall be effective from and including the date such change is publicly announced or quoted as being effective.

“Proceeding” means any claim, litigation, investigation, action, suit, arbitration or administrative, judicial or regulatory action or proceeding in any jurisdiction.

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

“QFC” has the meaning assigned to the term “qualified financial contract” in, and shall be interpreted in accordance with, 12 U.S.C. 5390(c)(8)(D).

“QFC Credit Support” has the meaning assigned to it in Section 9.21.

“Qualified Counterparty” means, with respect to any Banking Services, any counterparty thereto that, at the time such Banking Services was entered into or as of the Effective Date, was an Administrative Agent or a Lender or an Affiliate or branch of such Person.

“Qualified Equity Interests” means any Equity Interests of Holdings or the Company that are not Disqualified Equity Interests.

“Recipient” means, as applicable, (a) the Administrative Agent, (b) any Lender and (c) any Issuing Bank, or any combination thereof (as the context requires).

“Reference Time” with respect to any setting of the then-current Benchmark means (1) if such Benchmark is the Term SOFR Rate, 5:00 a.m. (Chicago time) on the day that is two (2) Business Days preceding the date of such setting, (2) if the RFR for such Benchmark is Daily Simple SOFR, then four (4)

Business Days prior to such setting or (3) if such Benchmark is none of the Term SOFR Rate or Daily Simple SOFR, the time determined by the Administrative Agent in its reasonable discretion.

“Register” has the meaning assigned to such term in Section 9.04(b)(iv).

“Regulation D” means Regulation D of the Federal Reserve Board, as in effect from time to time and all official rulings and interpretations thereunder or thereof.

“Regulation T” means Regulation T of the Federal Reserve Board, as in effect from time to time and all official rulings and interpretations thereunder or thereof.

“Regulation U” means Regulation U of the Federal Reserve Board, as in effect from time to time and all official rulings and interpretations thereunder or thereof.

“Regulation X” means Regulation X of the Federal Reserve Board, as in effect from time to time and all official rulings and interpretations thereunder or thereof.

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

“Release” means any releasing, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, migrating, disposing or dumping of any substance into the environment.

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

“Relevant Rate” means (i) with respect to any Term Benchmark Borrowing, the Adjusted Term SOFR Rate or (ii) with respect to any RFR Borrowing, the Adjusted Daily Simple SOFR, as applicable.

“Required Lenders” means, at any time, Lenders (other than Defaulting Lenders) having Aggregate Revolving Exposure and unused Commitments representing greater than 50% of the sum of the Aggregate Revolving Exposure and unused Revolving Commitments of all Lenders that are not Defaulting Lenders at such time; provided that, as long as there are two or more unaffiliated Lenders, Required Lenders shall include two unaffiliated Lenders.

“Requirement of Law” means, with respect to any Person, (a) the charter, articles or certificate of organization or incorporation, bylaws, or operating, management or partnership agreement, or other organizational or governing documents of such Person and (b) any statute, law (including common law), treaty, rule, regulation, code, ordinance, order, decree, writ, judgment, injunction, official administrative pronouncement or determination of any arbitrator or court or other Governmental Authority (including Environmental Laws), in each case applicable to or binding upon such Person or any of its property or to which such Person or any of its property is subject.

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

“Responsible Officer” means the president, Financial Officer, any vice president, general counsel, secretary or any executive officer of a Borrower.

“Restricted Payment” means any dividend or other distribution (whether in cash, securities or other property) with respect to any Equity Interests in Holdings, the Company or any Subsidiary, or any payment (whether in cash, securities or other property), including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, acquisition, cancellation or termination of any such Equity Interests or any option, warrant or other right to acquire any such Equity Interests (including, for the avoidance of doubt, Permitted Investor Payments).

“Revolving Borrowing” means Revolving Loans of the same Type, made, converted or continued on the same date and, in the case of Term Benchmark Loans, as to which a single Interest Period is in effect.

“Revolving Commitment” means, with respect to each Lender, the amount set forth on the Commitment Schedule opposite such Lender’s name, or in the Assignment and Assumption or other documentation or record (as such term is defined in Section 9-102(a)(70) of the New York Uniform Commercial Code) as provided in Section 9.04(b)(ii)(C) pursuant to which such Lender shall have assumed its Revolving Commitment, as applicable, as such Revolving Commitment may be reduced or increased from time to time pursuant to (a) Section 2.09 and (b) assignments by or to such Lender pursuant to Section 9.04; provided, that at no time shall the Revolving Exposure of any Lender exceed its Revolving Commitment. The aggregate amount of the Lenders’ Revolving Commitments on the Effective Date is \$105,000,000.

“Revolving Exposure” means, with respect to any Lender at any time, the sum of the outstanding principal amount of such Lender’s Revolving Loans, its LC Exposure and its Swingline Exposure at such time.

“Revolving Lender” means, as of any date of determination, a Lender with a Revolving Commitment or, if the Revolving Commitments have terminated or expired, a Lender with Revolving Exposure.

“Revolving Loan” means a Loan made pursuant to Section 2.01 (including each Roll-Up Loan).

“RFR Borrowing” means, as to any Borrowing, the RFR Loans comprising such Borrowing.

“RFR Loan” means a Loan that bears interest at a rate based on the Adjusted Daily Simple SOFR.

“Roll-Up” has the meaning set forth in Section 2.06.

“Roll-Up Amount” means, with respect to any Lender, the principal amount of Loans (as defined in the Prepetition Credit Agreement) held by such Lender plus the amount of accrued interest and fees owing to such Lender, in each case, on the Effective Date, immediately prior to the establishment of the Roll-Up Loans pursuant to Section 2.01(b) on such date.

“Roll-Up Letters of Credit” means those letters of credit originally issued under the Prepetition Credit Agreement and identified on Schedule 1.01.

“Roll-Up Loan” has the meaning set forth in Section 2.01(b).

“S&P” means Standard & Poor’s Ratings Services, a Standard & Poor’s Financial Services LLC business.

“Sale and Leaseback Transaction” has the meaning assigned to such term in Section 6.06.

“Sanctioned Country” means, at any time, a country, region or territory which is itself the subject or target of any comprehensive Sanctions (at the time of this Agreement, the so - called Donetsk People’s Republic, the so- called Luhansk People’s Republic, the Crimea Region of Ukraine, Cuba, Iran, North Korea and Syria).

“Sanctioned Entity” means (a) a Sanctioned Country or a government of a Sanctioned Country, (b) an agency of the government of a Sanctioned Country, or (c) an organization directly or indirectly controlled by a Sanctioned Country or its government.

“Sanctioned Person” means, at any time, (a) any Person listed in any Sanctions-related list of designated Persons maintained by the Office of Foreign Assets Control of the U.S. Department of the Treasury or the U.S. Department of State, (b) any Person located, organized or resident in a Sanctioned Country, (c) any Person majority owned or controlled by any such Person or Persons described in the foregoing clause (a), or (d) any Person otherwise the target of any Sanctions.

“Sanctions” means all economic or financial sanctions or trade embargoes imposed, administered or enforced from time to time by the U.S. government, including those administered by the Office of Foreign Assets Control of the U.S. Department of the Treasury or the U.S. Department of State.

“Secured Parties” means (a) the Administrative Agent, (b) the Lenders, (c) each Issuing Bank, (d) the beneficiaries of each indemnification obligation undertaken by any Loan Party under any Loan Document, (e) the Qualified Counterparties and (f) the successors and assigns of each of the foregoing.

“Settlement” has the meaning assigned to such term in Section 2.05(d).

“Settlement Date” has the meaning assigned to such term in Section 2.05(d).

“SFD Acquisition” has the meaning assigned to such term in the introductory paragraph hereof.

“Sherwood” has the meaning assigned to such term in the introductory paragraph hereof.

“Short-Term DIP Budget” has the meaning assigned to such term in the Financing Orders, and shall include any amendment thereto that is acceptable to the Required Lenders.

“SOFR” means a rate per annum equal to the secured overnight financing rate as administered by the SOFR Administrator.

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

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

“SOFR Determination Date” has the meaning specified in the definition of “Daily Simple SOFR”.

“SOFR Rate Day” has the meaning specified in the definition of “Daily Simple SOFR”.

“Statements” has the meaning assigned to such term in Section 2.18(f).

“Subordinated Indebtedness” of a Person means any Indebtedness of such Person the payment of which is subordinated in writing to payment of the Obligations.

“subsidiary” means, with respect to any Person (the “parent”) at any date, any corporation, limited liability company, partnership, association or other entity the accounts of which would be consolidated with those of the parent in the parent’s consolidated financial statements if such financial statements were prepared in accordance with GAAP as of such date, as well as any other corporation, limited liability company, partnership, association or other entity (a) of which securities or other ownership interests representing more than 50% of the equity or more than 50% of the ordinary voting power or, in the case of a partnership, more than 50% of the general partnership interests are, as of such date, owned, controlled or held, or (b) that is, as of such date, otherwise Controlled, by the parent and/or one or more subsidiaries of the parent.

“Subsidiary” means any direct or indirect subsidiary of Holdings or a Loan Party, as applicable.

“Superpriority Claims” has the meaning set forth in Section 3.16(b).

“Supported QFC” has the meaning assigned to it in Section 9.21.

“Swap Agreement” means any agreement with respect to any swap, cap, collar, hedge, forward, spot, future, credit default or derivative transaction or option or similar agreement involving, or settled by reference to, one or more rates, currencies, commodities, equity or debt instruments or securities, or economic, financial or pricing indices or measures of economic, financial or pricing risk or value or any similar transaction or any combination of these transactions; provided that no phantom stock or similar plan providing for payments only on account of services provided by current or former directors, officers, employees or consultants of the Borrowers or the Subsidiaries shall be a Swap Agreement.

“Swap Obligation” means, with respect to any Guarantor, any obligation to pay or perform under any agreement, contract or transaction that constitutes a “swap” within the meaning of section 1a(47) of the Commodity Exchange Act or any rules or regulations promulgated thereunder.

“Swap Termination Value” means, in respect of any one or more Swap Agreements, after taking into account the effect of any legally enforceable netting agreement relating to such Swap Agreements, (a) for any date on or after the date such Swap Agreements have been closed out and termination value(s) determined in accordance therewith, such termination value(s), and (b) for any date prior to the date referenced in clause (a), the amount(s) determined as the mark to market value(s) for such Swap Agreements, as determined by the counterparty to such Swap Agreement with a Loan Party or any Subsidiary (or any Borrower, if no counterparty is party to such Swap Agreement) in accordance with the terms thereof and in accordance with customary methods for calculating mark-to-market values under similar arrangements by such counterparty (or any Borrower, if no counterparty is party to such Swap Agreement).

“Swingline Exposure” means, at any time, the aggregate principal amount of all Swingline Loans outstanding at such time. The Swingline Exposure of any Revolving Lender at any time shall be its Applicable Percentage of the total Swingline Exposure at such time.

“Swingline Lender” means JPMCB (or any of its designated branch offices or affiliates), in its capacity as lender of Swingline Loans hereunder. Any consent required of the Administrative Agent or the Issuing Bank shall be deemed to be required of the Swingline Lender and any consent given by JPMCB in its capacity as Administrative Agent or Issuing Bank shall be deemed given by JPMCB in its capacity as Swingline Lender.

“Swingline Loan” has the meaning assigned to such term in Section 2.05(a).

“Synthetic Lease” means, as to any Person, any lease (including leases that may be terminated by the lessee at any time) of any property (whether real, personal or mixed) (a) that is accounted for as an operating lease under GAAP and (b) in respect of which the lessee retains or obtains ownership of the property so leased for U.S. Federal or other applicable income tax purposes, other than any such lease under which such Person is the lessor.

“Synthetic Lease Obligations” means, as to any Person, an amount equal to the capitalized amount of the remaining lease payments under any Synthetic Lease that would appear on a balance sheet of such Person in accordance with GAAP if such obligations were accounted for as Capital Lease Obligations.

“Target Balance” has the meaning assigned to such term in the DDA Access Product Agreement.

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

“Term Benchmark” when used in reference to any Loan or Borrowing, refers to whether such Loan, or the Loans comprising such Borrowing, are bearing interest at a rate determined by reference to the Adjusted Term SOFR Rate.

“Term SOFR Determination Day” has the meaning assigned to it under the definition of “Term SOFR Reference Rate.”

“Term SOFR Rate” means, with respect to any Term Benchmark Borrowing and for any tenor comparable to the applicable Interest Period, the Term SOFR Reference Rate at approximately 5:00 a.m., Chicago time, two (2) U.S. Government Securities Business Days prior to the commencement of such tenor comparable to the applicable Interest Period, as such rate is published by the CME Term SOFR Administrator.

“Term SOFR Reference Rate” means, for any day and time (such day, the “Term SOFR Determination Day”), and for any tenor comparable to the applicable Interest Period, the rate per annum determined by the Administrative Agent as the forward-looking term rate based on SOFR. If by 5:00 pm (New York City time) on such Term SOFR Determination Day, the “Term SOFR Reference Rate” for the applicable tenor has not been published by the CME Term SOFR Administrator and a Benchmark Replacement Date with respect to the Term SOFR Rate has not occurred, then the Term SOFR Reference Rate for such Term SOFR Determination Day will be the Term SOFR Reference Rate as published in respect of the first preceding U.S. Government Securities Business Day for which such Term SOFR Reference Rate was published by the CME Term SOFR Administrator, so long as such first preceding Business Day is not more than five (5) Business Days prior to such Term SOFR Determination Day.

“Transactions” means the execution, delivery and performance by the Borrowers of this Agreement and the other Loan Documents, the borrowing of Loans and other credit extensions, the use of the proceeds thereof including the Roll-Up.

“Type”, when used in reference to any Loan or Borrowing, refers to whether the rate of interest on such Loan, or on the Loans comprising such Borrowing, is determined by reference to the Adjusted Term SOFR Rate, the Adjusted Daily Simple SOFR or the CBFR.

“UCC” means the Uniform Commercial Code as in effect from time to time in the State of New York or in any other state the laws of which are required to be applied in connection with the security interests.

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

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

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

“Unliquidated Obligations” means, at any time, any Obligations (or portion thereof) that are contingent in nature or unliquidated at such time, including any Secured Obligation that is: (a) an obligation to reimburse a bank for drawings not yet made under a letter of credit issued by it; (b) any other obligation (including any guarantee) that is contingent in nature at such time; or (c) an obligation to provide collateral to secure any of the foregoing types of obligations.

“U.S.” means the United States of America.

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

“U.S. Person” means a “United States person” within the meaning of Section 7701(a)(30) of the Code.

“U.S. Special Resolution Regimes” has the meaning assigned to it in Section 9.21.

“U.S. Tax Compliance Certificate” has the meaning assigned to such term in Section 2.17(f)(ii)(B)(3).

“USA PATRIOT Act” means the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001.

“WARN Act” means the Workers Adjustment and Retraining Notification Act of 1988.

“Western” has the meaning assigned to such term in the introductory paragraph hereto.

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

“Write-Down and Conversion Powers” means, (a) with respect to any EEA Resolution Authority, the write-down and conversion powers of such EEA Resolution Authority from time to time under the Bail-In Legislation for the applicable EEA Member Country, which write-down and conversion powers are

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

SECTION 1.02. Classification of Loans and Borrowings. For purposes of this Agreement, Loans may be classified and referred to by Class (e.g., a “Revolving Loan”) or by Type (e.g., a “Term Benchmark Loan” or an “RFR Loan”) or by Class and Type (e.g., a “Term Benchmark Revolving Loan” or an “RFR Revolving Loan”). Borrowings also may be classified and referred to by Class (e.g., a “Revolving Borrowing”) or by Type (e.g., a “Term Benchmark Borrowing” or an “RFR Borrowing”) or by Class and Type (e.g., a “Term Benchmark Revolving Borrowing” or an “RFR Revolving Borrowing”).

SECTION 1.03. Terms Generally. The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words “include”, “includes” and “including” shall be deemed to be followed by the phrase “without limitation”. The word “law” shall be construed as referring to all statutes, rules, regulations, codes and other laws (including official rulings and interpretations thereunder having the force of law or with which affected Persons customarily comply) and all judgments, orders and decrees of all Governmental Authorities. The word “will” shall be construed to have the same meaning and effect as the word “shall”. Unless the context requires otherwise (a) any definition of or reference to any agreement, instrument or other document herein shall be construed as referring to such agreement, instrument or other document as from time to time amended, restated, supplemented or otherwise modified (subject to any restrictions on such amendments, restatements, supplements or modifications set forth herein), (b) any definition of or reference to any statute, rule or regulation shall be construed as referring thereto as from time to time amended, supplemented or otherwise modified (including by succession of comparable successor laws), (c) any reference herein to any Person shall be construed to include such Person’s successors and assigns (subject to any restrictions on assignments set forth herein) and, in the case of any Governmental Authority, any other Governmental Authority that shall have succeeded to any or all functions thereof, (d) the words “herein”, “hereof” and “hereunder”, and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof, (e) all references herein to Articles, Sections, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Exhibits and Schedules to, this Agreement, (f) any reference in any definition to the phrase “at any time” or “for any period” shall refer to the same time or period for all calculations or determinations within such definition, and (g) the words “asset” and “property” shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights.

SECTION 1.04. Accounting Terms; GAAP.

(a) Except as otherwise expressly provided herein, all terms of an accounting or financial nature shall be construed in accordance with GAAP, as in effect from time to time; provided that, if after the date hereof there occurs any change in GAAP or in the application thereof on the operation of any provision hereof and the Borrower Representative notifies the Administrative Agent that the Borrowers request an amendment to any provision hereof to eliminate the effect of such change in GAAP or in the application thereof (or if the Administrative Agent notifies the Borrower Representative that the Required Lenders request an amendment to any provision hereof for such purpose), regardless of whether any such notice is given before or after such change in GAAP or in the application thereof, then such provision shall be interpreted on the basis of GAAP as in effect and applied immediately before such change shall have

become effective until such notice shall have been withdrawn or such provision amended in accordance herewith.

(b) Notwithstanding anything to the contrary contained in Section 1.04(a) or in the definition of “Capital Lease Obligations,” any change in accounting for leases pursuant to GAAP resulting from the adoption of Financial Accounting Standards Board Accounting Standards Update No. 2016-02, Leases (Topic 842), to the extent such adoption would require treating any lease (or similar arrangement conveying the right to use) as a capital lease where such lease (or similar arrangement) would not have been required to be so treated under GAAP as in effect on December 31, 2015, such lease shall not be considered a capital lease and any obligations in respect thereof shall not be “Capital Lease Obligations”, and all calculations and deliverables under this Agreement or any other Loan Document shall be made or delivered, as applicable, in accordance therewith.

SECTION 1.05. Interest Rates; Benchmark Notifications. The interest rate on a Loan denominated in dollars may be derived from an interest rate benchmark that may be discontinued or is, or may in the future become, the subject of regulatory reform. Upon the occurrence of a Benchmark Transition Event, Section 2.14(b) provides a mechanism for determining an alternative rate of interest. The Administrative Agent does not warrant or accept any responsibility for, and shall not have any liability with respect to, the administration, submission, performance or any other matter related to any interest rate used in this Agreement, or with respect to any alternative or successor rate thereto, or replacement rate thereof, including without limitation, whether the composition or characteristics of any such alternative, successor or replacement reference rate will be similar to, or produce the same value or economic equivalence of, the existing interest rate being replaced or have the same volume or liquidity as did any existing interest rate prior to its discontinuance or unavailability. The Administrative Agent and its affiliates and/or other related entities may engage in transactions that affect the calculation of any interest rate used in this Agreement or any alternative, successor or alternative rate (including any Benchmark Replacement) and/or any relevant adjustments thereto, in each case, in a manner adverse to the Borrowers. The Administrative Agent may select information sources or services in its reasonable discretion to ascertain any interest rate used in this Agreement, any component thereof, or rates referenced in the definition thereof, in each case pursuant to the terms of this Agreement, and shall have no liability to the Borrowers, any Lender or any other person or entity for damages of any kind, including direct or indirect, special, punitive, incidental or consequential damages, costs, losses or expenses (whether in tort, contract or otherwise and whether at law or in equity), for any error or calculation of any such rate (or component thereof) provided by any such information source or service.

SECTION 1.06. No Novation. This Agreement shall not constitute a novation of any obligation of any Loan Parties under the Loan Documents (as defined in the Prepetition Credit Agreement) and any obligation of any Loan Party under the terms of such documentation that is not specifically “rolled-up” pursuant to the terms of this Agreement shall constitute an Obligation hereunder payable at the time that such amount would have been payable pursuant to the terms of the Prepetition Credit Agreement and such other documentation.

SECTION 1.07. [Reserved].

SECTION 1.08. Letters of Credit. Unless otherwise specified herein, the amount of a Letter of Credit at any time shall be deemed to be the stated amount of such Letter of Credit available to be drawn at such time; provided that with respect to any Letter of Credit that, by its terms or the terms of any agreement with the Issuing Bank related thereto, provides for one or more automatic increases in the available amount thereof, the amount of such Letter of Credit shall be deemed to be the maximum amount of such Letter of Credit after giving effect to all such increases, whether or not such maximum amount is available to be drawn at such time. For all purposes of this Agreement, if on any date of determination a Letter of Credit

has expired by its terms but any amount may still be drawn thereunder by reason of the operation of Article 29(a) of the Uniform Customs and Practice for Documentary Credits, International Chamber of Commerce Publication No. 600 (or such later version thereof as may be in effect at the applicable time) or Rule 3.13 or Rule 3.14 of the International Standby Practices, International Chamber of Commerce Publication No. 590 (or such later version thereof as may be in effect at the applicable time) or similar terms of the Letter of Credit itself, or if compliant documents have been presented but not yet honored, such Letter of Credit shall be deemed to be “outstanding” and “undrawn” in the amount so remaining available to be paid, and the obligations of the Borrowers and each Lender shall remain in full force and effect until the Issuing Bank and the Lenders shall have no further obligations to make any payments or disbursements under any circumstances with respect to any Letter of Credit.

SECTION 1.09. Divisions. For all purposes under the Loan Documents, in connection with any Division or plan of division under Delaware law (or any comparable event under a different jurisdiction’s laws): (a) if any asset, right, obligation or liability of any Person becomes the asset, right, obligation or liability of a different Person, then it shall be deemed to have been transferred from the original Person to the subsequent Person, and (b) if any new Person comes into existence, such new Person shall be deemed to have been organized and acquired on the first date of its existence by the holders of its Equity Interests at such time.

ARTICLE II

The Credits

SECTION 2.01. Commitments and Roll-Up Loans.

(a) Subject to the terms and conditions set forth herein, each Revolving Lender severally (and not jointly) agrees to make Revolving Loans in dollars to the Borrowers, from time to time during the Availability Period if in each case after giving effect thereto:

(i) the Revolving Exposure of each Revolving Lender would not exceed such Lender’s Revolving Commitment; and

(ii) the Aggregate Revolving Exposure would not exceed the Aggregate Revolving Commitment;

Within the foregoing limits and subject to the terms and conditions set forth herein, the Borrowers may borrow, prepay and reborrow Loans.

(b) Effective immediately and automatically upon the occurrence of the Interim Order Date, each Lender shall hereby be deemed to have made a revolving loan to the Borrowers pursuant to this Section 2.01(b) in an aggregate principal amount equal to the Roll-Up Amount (each a “Roll-Up Loan”). The Roll-Up Loan of each Lender shall be deemed to refinance, on a cashless basis, the Roll-Up Amount of Obligations of each Lender under the Prepetition Credit Agreement, pursuant to the Interim Order (the foregoing, including the incurrence of the Roll-Up Loans, the “Loan Roll-Up”).

SECTION 2.02. Loans and Borrowings.

(a) Each Revolving Loan shall be made as part of a Borrowing consisting of Loans of the same Type made by the Lenders ratably in accordance with their respective Commitments of the applicable Class. The failure of any Lender to make any Loan required to be made by it shall not relieve any other Lender of its obligations hereunder; provided that the Commitments of the Lenders are several and no Lender shall

be responsible for any other Lender's failure to make Loans as required. Any Swingline Loan shall be made in accordance with the procedures set forth in Sections 2.04 and 2.05.

(b) Subject to Section 2.14, each Borrowing shall be comprised entirely of CBFR Loans, Term Benchmark Loans or, subject to the last sentence of this clause (b), RFR Loans, as the Borrower Representative may request in accordance herewith; provided that, without the consent of the Required Lenders, no Borrowing may consist of Term Benchmark Loans. Each Swingline Loan shall be an CBFR Loan. Each Lender at its option may make any Loan by causing any domestic or foreign branch or Affiliate of such Lender to make such Loan (and in the case of an Affiliate, the provisions of Sections 2.14, 2.15, 2.16 and 2.17 shall apply to such Affiliate to the same extent as to such Lender); provided that any exercise of such option shall not affect the obligation of the Borrowers to repay such Loan in accordance with the terms of this Agreement. For the avoidance of doubt, no RFR Borrowings will be permitted hereunder unless and until it has been implemented as a Benchmark Replacement pursuant to Section 2.14.

(c) At the commencement of each Interest Period for any Term Benchmark Borrowing, such Borrowing shall be in an aggregate amount that is an integral multiple of \$1,000,000 and not less than \$1,000,000. At the time that each RFR Borrowing is made, such Borrowing shall be in an aggregate amount that is an integral multiple of \$1,000,000 and not less than \$1,000,000. CBFR Borrowings may be in any amount. Borrowings of more than one Type and Class may be outstanding at the same time; provided that there shall not at any time be more than a total of ten (10) Term Benchmark Borrowings or RFR Borrowings outstanding.

(d) Notwithstanding any other provision of this Agreement, the Borrower Representative shall not be entitled to request, or to elect to convert or continue, any Borrowing if the Interest Period requested with respect thereto would end after the Maturity Date.

SECTION 2.03. Requests for Borrowings. To request a Borrowing of Revolving Loans, the Borrower Representative shall notify the Administrative Agent of such request either in writing (delivered by hand, facsimile or via pdf or similar file attached to an email) by delivering a Borrowing Request signed by a Responsible Officer of the Borrower Representative or through Electronic System if arrangements for doing so have been approved by the Administrative Agent (or if an Extenuating Circumstance shall exist, by telephone) not later than (a)(i) in the case of a Term Benchmark Borrowing, 10:00 a.m., Chicago time, three (3) Business Days before the date of the proposed Borrowing or (ii) in the case of an RFR Borrowing, not later than 10:00 a.m., Chicago time, five (5) Business Days before the date of the proposed Borrowing or (b) in the case of a CBFR Borrowing, noon, Chicago time, on the date of the proposed Borrowing; provided that any such notice of a CBFR Borrowing to finance the reimbursement of an LC Disbursement as contemplated by Section 2.06(e) may be given not later than 9:00 a.m., Chicago time, on the date of such proposed Borrowing. Each such Borrowing Request shall be irrevocable and each such telephonic Borrowing Request, if permitted, shall be confirmed immediately upon the cessation of the Extenuating Circumstance by hand delivery, facsimile, via pdf or similar file attached to an email, or a communication through Electronic System to the Administrative Agent of a written Borrowing Request in a form approved by the Administrative Agent and signed by a Responsible Officer of the Borrower Representative. Each such written (or if permitted, telephonic) Borrowing Request shall specify the following information:

- (i) the name of the applicable Borrower(s);
- (ii) the aggregate amount of the requested Borrowing and a breakdown of the separate wires comprising such Borrowing;
- (iii) the date of such Borrowing, which shall be a Business Day;

- (iv) whether such Borrowing is to be a CBFR Borrowing, a Term Benchmark Borrowing or an RFR Borrowing;
- (v) [reserved];
- (vi) the funding account to which the funds are to be disbursed; and
- (vii) in the case of a Term Benchmark Borrowing, the initial Interest Period to be applicable thereto, which shall be a period contemplated by the definition of the term “Interest Period.”

If no election as to the Type of Borrowing is specified, then the requested Borrowing shall be an CBFR Borrowing. If no Interest Period is specified with respect to any requested Term Benchmark Borrowing, then the applicable Borrower(s) shall be deemed to have selected an Interest Period of one month’s duration. Promptly following receipt of a Borrowing Request in accordance with this Section, the Administrative Agent shall advise each Lender of the details thereof and of the amount of such Lender’s Loan to be made as part of the requested Borrowing.

SECTION 2.04. [reserved].

SECTION 2.05. Swingline Loans.

(a) The Administrative Agent, the Swingline Lender and the Revolving Lenders agree that in order to facilitate the administration of this Agreement and the other Loan Documents, promptly after the Borrower Representative requests an CBFR Borrowing, the Swingline Lender may elect to have the terms of this Section 2.05(a) apply to such Borrowing Request by advancing, on behalf of the Revolving Lenders and in the amount requested, same day funds to the Borrowers, on the date of the applicable Borrowing to the funding account (each such Loan made solely by the Swingline Lender pursuant to this Section 2.05(a) is referred to in this Agreement as a “Swingline Loan”), with settlement among them as to the Swingline Loans to take place on a periodic basis as set forth in Section 2.05(d). Each Swingline Loan shall be subject to all the terms and conditions applicable to other CBFR Loans funded by the Revolving Lenders, except that all payments thereon shall be payable to the Swingline Lender solely for its own account. In addition, the Borrowers hereby authorize the Swingline Lender to, and the Swingline Lender may, subject to the terms and conditions set forth herein (but without any further written notice required), not later than 1:00 p.m., Chicago time, on each Business Day, make available to the Borrowers by means of a credit to any funding account or the Controlled Disbursement Account, the proceeds of a Swingline Loan to the extent necessary to pay items to be drawn on any Controlled Disbursement Account that Business Day subject to the Administrative Agent’s standard procedures for calculating clearing totals each morning; provided that, if on any Business Day there is insufficient borrowing capacity to permit the Swingline Lender to make available to the Borrowers a Swingline Loan in the amount necessary to pay all items to be so drawn on any such Controlled Disbursement Account on such Business Day, then the Borrowers shall be deemed to have requested a CBFR Borrowing pursuant to Section 2.03 in the amount of such deficiency to be made on such Business Day. In addition, the Borrowers hereby authorize the Swingline Lender to, and the Swingline Lender may, subject to the terms and conditions set forth herein (but without any further written notice required), to the extent that from time to time on any Business Day funds are required under the DDA Access Product to reach the Target Balance (a “Deficiency Funding Date”), make available to the applicable Borrower the proceeds of a Swingline Loan in the amount of such deficiency up to the Target Balance, by means of a credit to the applicable funding account on or before the start of business on the next succeeding Business Day, and such Swingline Loan shall be deemed made on such Deficiency Funding Date. The aggregate amount of Swingline Loans outstanding at any time shall not exceed \$5,000,000. The

Swingline Lender shall not make any Swingline Loan if, after giving effect thereto, the Borrowers would not be in compliance with the Exposure Limitations. All Swingline Loans shall be CBFR Borrowings.

(b) [reserved]

(c) Upon the making of a Swingline Loan (whether before or after the occurrence of a Default and regardless of whether a Settlement has been requested with respect to such Swingline Loan), each Revolving Lender shall be deemed, without further action by any party hereto, to have unconditionally and irrevocably purchased from the Swingline Lender, without recourse or warranty, an undivided interest and participation in such Swingline Loan in proportion to its Applicable Percentage of the Aggregate Revolving Commitment. The Swingline Lender or the Administrative Agent may, at any time, require the Revolving Lenders to fund their participations. From and after the date, if any, on which any Revolving Lender is required to fund its participation in any Swingline Loan purchased hereunder, the Administrative Agent shall promptly distribute to such Lender, such Lender's Applicable Percentage of all payments of principal and interest received by the Administrative Agent in respect of such Swingline Loan.

(d) The Administrative Agent, on behalf of the Swingline Lender with respect to any Swingline Loan, shall request settlement (a "Settlement") with the Revolving Lenders on at least a weekly basis or on any date that the Administrative Agent elects, by notifying the Revolving Lenders of such requested Settlement by facsimile, telephone, or e-mail no later than 12:00 noon Chicago time on the date of such requested Settlement (the "Settlement Date"). Each Revolving Lender (other than the Swingline Lender) shall transfer the amount of such Revolving Lender's Applicable Percentage of the outstanding principal amount of the applicable Loan with respect to which Settlement is requested to the Administrative Agent, to such account of the Administrative Agent as the Administrative Agent may designate, not later than 2:00 p.m., Chicago time, on such Settlement Date. Settlements may occur during the existence of a Default and whether or not the applicable conditions precedent set forth in Section 4.02 have then been satisfied. Such amounts transferred to the Administrative Agent with respect to Swingline Loans shall be applied against the amounts of the Swingline Lender's Swingline Loans and, together with Swingline Lender's Applicable Percentage of such Swingline Loan, shall constitute Revolving Loans of such Revolving Lenders, respectively. If any such amount is not transferred to the Administrative Agent by any Revolving Lender on such Settlement Date, the Swingline Lender or the Administrative Agent shall be entitled to recover from such Lender on demand such amount, together with interest thereon, as specified in Section 2.07.

SECTION 2.06. Letters of Credit.

(a) General. The Roll-Up Letters of Credit shall be deemed to have been issued under this Agreement on the Effective Date (the "LC Roll-Up" and, together with the Loan Roll-Up, the "Roll-Up"). For the avoidance of doubt, the aggregate face amount of Letters of Credit shall at no time exceed \$600,000 and, except for the deemed issuance of the Roll-Up Letters as provided above, no Letter of Credit (including any Roll-Up Letter of Credit) may be issued, extended or amended to increase the amount available to be drawn thereunder without the consent of the Issuing Bank and the Required Lenders.

(b) [reserved].

(c) [reserved].

(d) Participations. By the deemed issuance of the Roll-Up Letter of Credit and without any further action on the part of the applicable Issuing Bank or the Revolving Lenders, such Issuing Bank hereby grants to each Revolving Lender, and each Revolving Lender hereby acquires from such Issuing Bank, a participation in such Letter of Credit equal to such Lender's Applicable Percentage of the aggregate amount available to be drawn under such Letter of Credit. In consideration and in furtherance of the

foregoing, each Revolving Lender hereby absolutely and unconditionally agrees to pay to the Administrative Agent, for the account of the respective Issuing Bank, such Lender's Applicable Percentage of each LC Disbursement made by such Issuing Bank and not reimbursed by the Borrowers on the date due as provided in paragraph (e) of this Section 2.06, or of any reimbursement payment required to be refunded to the Borrowers for any reason, including after the Maturity Date. Each such payment shall be made without any offset, abatement, withholding or reduction whatsoever. Each Revolving Lender acknowledges and agrees that its obligation to acquire participations pursuant to this paragraph in respect of Letters of Credit is absolute and unconditional and shall not be affected by any circumstance whatsoever, including the occurrence and continuance of a Default or reduction or termination of the Revolving Commitments.

(e) Reimbursement. If an Issuing Bank shall make any LC Disbursement in respect of a Letter of Credit, the Borrowers shall reimburse such LC Disbursement by paying to the Administrative Agent an amount equal to such LC Disbursement not later than 11:00 a.m., Chicago time, on (i) the Business Day immediately following the day that the Borrower Representative receives notice of such LC Disbursement (or, if notice of the applicable LC Disbursement (including the date thereof)) is given at least one Business Day in advance of the date of the LC Disbursement, the Business Day immediately following the day such LC Disbursement is made), if such notice is received prior to 9:00 a.m., Chicago time or (ii) the Second Business Day following the day that the Borrower Representative receives such notice (or, if notice (or, if notice of the applicable LC Disbursement (including the date thereof)) is given at least one Business Day in advance of the date of LC Disbursement, the Business Day immediately following the day such LC Disbursement is made), if such notice was received after 9:00 a.m. Chicago time on the day of receipt; provided that, the Borrowers may, subject to the conditions to borrowing set forth herein, request (and unless otherwise elected in a notice to the Administrative Agent be deemed to have requested), in accordance with Section 2.03 or 2.05 that such payment be financed with an CBFR Revolving Borrowing or Swingline Loan in an equivalent amount and, to the extent so financed, the Borrowers' obligation to make such payment shall be discharged and replaced by the resulting CBFR Revolving Borrowing or Swingline Loan, as applicable. If the Borrowers fail to make such payment when due (whether through an automatic Borrowing or otherwise), the Administrative Agent shall notify each Revolving Lender of the applicable LC Disbursement, the payment then due from the Borrowers in respect thereof and such Lender's Applicable Percentage thereof. Promptly following receipt of such notice, each Revolving Lender shall pay to the Administrative Agent its Applicable Percentage of the payment then due from the Borrowers, in the same manner as provided in Section 2.07 with respect to Loans made by such Lender (and Section 2.07 shall apply, mutatis mutandis, to the payment obligations of the Revolving Lenders), and the Administrative Agent shall promptly pay to the respective Issuing Bank the amounts so received by it from the Revolving Lenders. Promptly following receipt by the Administrative Agent of any payment from the Borrowers pursuant to this paragraph, the Administrative Agent shall distribute such payment to the respective Issuing Bank or, to the extent that Revolving Lenders have made payments pursuant to this paragraph to reimburse such Issuing Bank, then to such Lenders and such Issuing Bank, as their interests may appear. Any payment made by a Revolving Lender pursuant to this paragraph to reimburse an Issuing Bank for any LC Disbursement (other than the funding of CBFR Revolving Loans or a Swingline Loan as contemplated above) shall not constitute a Loan and shall not relieve the Borrowers of their obligation to reimburse such LC Disbursement.

(f) Obligations Absolute. The Borrowers' joint and several obligation to reimburse LC Disbursements as provided in paragraph (e) of this Section shall be absolute, unconditional and irrevocable, and shall be performed strictly in accordance with the terms of this Agreement under any and all circumstances whatsoever and irrespective of (i) any lack of validity or enforceability of any Letter of Credit, any agreement with the applicable Issuing Bank with respect to any Letter of Credit or this Agreement, or any term or provision therein or herein, (ii) any draft or other document presented under a Letter of Credit proving to be forged, fraudulent or invalid in any respect or any statement therein being untrue or inaccurate in any respect, (iii) any payment by the respective Issuing Bank under a Letter of Credit

against presentation of a draft or other document that does not comply with the terms of such Letter of Credit, or (iv) any other event or circumstance whatsoever, whether or not similar to any of the foregoing, that might, but for the provisions of this Section 2.06, constitute a legal or equitable discharge of, or provide a right of setoff against, the Borrowers' obligations hereunder. Neither the Administrative Agent, the Revolving Lenders, nor any Issuing Bank or any of their respective Related Parties, shall have any liability or responsibility by reason of or in connection with the issuance or transfer of any Letter of Credit or any payment or failure to make any payment thereunder (irrespective of any of the circumstances referred to in the preceding sentence), or any error, omission, interruption, loss or delay in transmission or delivery of any draft, notice or other communication under or relating to any Letter of Credit (including any document required to make a drawing thereunder), any error in interpretation of technical terms, any error in translation or any consequence arising from causes beyond the control of the respective Issuing Bank; provided that the foregoing shall not be construed to excuse an Issuing Bank from liability to the Borrowers to the extent of any direct damages (as opposed to special, indirect, consequential or punitive damages, claims in respect of which are hereby waived by the Borrowers to the extent permitted by applicable law) suffered by any Borrower that are caused by such Issuing Bank's failure to exercise care when determining whether drafts and other documents presented under a Letter of Credit comply with the terms thereof. The parties hereto expressly agree that, in the absence of gross negligence or willful misconduct on the part of an Issuing Bank (as finally determined by a court of competent jurisdiction), such Issuing Bank shall be deemed to have exercised care in each such determination. In furtherance of the foregoing and without limiting the generality thereof, the parties agree that, with respect to documents presented which appear on their face to be in substantial compliance with the terms of a Letter of Credit, an Issuing Bank may, in its sole discretion, either accept and make payment upon such documents without responsibility for further investigation, regardless of any notice or information to the contrary, or refuse to accept and make payment upon such documents if such documents are not in strict compliance with the terms of such Letter of Credit.

(g) Disbursement Procedures. The Issuing Bank for any Letter of Credit shall, within the time allowed by applicable law or the specific terms of the Letter of Credit following its receipt thereof, examine all documents purporting to represent a demand for payment under such Letter of Credit. Such Issuing Bank shall promptly after such examination notify the Administrative Agent and the applicable Borrower by telephone (confirmed by fax, email or through Electronic Systems) of such demand for payment and whether such Issuing Bank has made or will make an LC Disbursement thereunder; provided that any failure to give or delay in giving such notice shall not relieve the Borrowers of their obligation to reimburse such Issuing Bank and the Revolving Lenders with respect to any such LC Disbursement.

(h) Interim Interest. If the Issuing Bank for any Letter of Credit shall make any LC Disbursement, then, unless the Borrowers shall reimburse such LC Disbursement in full on the date such LC Disbursement is made, the unpaid amount thereof shall bear interest, for each day from and including the date such LC Disbursement is made to but excluding the date that the Borrowers reimburse such LC Disbursement, at the rate per annum then applicable to CBFR Revolving Loans and such interest shall be due and payable on the date when such reimbursement is payable; provided that, if the Borrowers fail to reimburse such LC Disbursement when due pursuant to paragraph (e) of this Section 2.06, then Section 2.13(d) shall apply. Interest accrued pursuant to this paragraph shall be for the account of such Issuing Bank, except that interest accrued on and after the date of payment by any Revolving Lender pursuant to paragraph (e) of this Section 2.06 to reimburse such Issuing Bank for such LC Disbursement shall be for the account of such Lender to the extent of such payment.

(i) [Reserved].

(j) Cash Collateralization. If any Event of Default shall occur and be continuing, on the Business Day that the Borrower Representative receives notice from the Administrative Agent or the Required Lenders demanding the deposit of cash collateral pursuant to this paragraph, the Borrowers shall

deposit in an account or accounts with the Administrative Agent, in the name of the Administrative Agent and for the benefit of the Revolving Lenders (the “LC Collateral Account”), an amount in cash equal to 103% of the amount of the LC Exposure as of such date plus accrued and unpaid interest thereon; provided that the obligation to deposit such cash collateral shall become effective immediately, and such deposit shall become immediately due and payable, without demand or other notice of any kind, upon the occurrence of any Event of Default with respect to any Borrower described in clause (h) or (i) of Article VII. Such Borrower also shall deposit cash collateral in accordance with this paragraph as and to the extent required by Sections 2.10(b), 2.11(b) or 2.20. Each such deposit shall be held by the Administrative Agent as collateral for the payment and performance of the Obligations. In addition, and without limiting the foregoing or paragraph (c) of this Section, if any LC Exposure remains outstanding after the expiration date specified in said paragraph (c), the Borrowers shall immediately deposit in the LC Collateral Account an amount in cash equal to 103% of such LC Exposure as of such date plus any accrued and unpaid interest thereon. The Administrative Agent shall have exclusive dominion and control, including the exclusive right of withdrawal, over the LC Collateral Account and the Borrowers hereby grant the Administrative Agent a security interest in the LC Collateral Account and all money or other assets on deposit therein or credited thereto. Other than any interest earned on the investment of such deposits, which investments shall be made at the option and sole discretion of the Administrative Agent and at the Borrowers’ risk and expense, such deposits shall not bear interest. Interest or profits, if any, on such investments shall accumulate in the LC Collateral Account. Moneys in the LC Collateral Account shall be applied by the Administrative Agent to reimburse each Issuing Bank for LC Disbursements for which it has not been reimbursed, together with related fees, costs, and customary processing charges payable hereunder, and, to the extent not so applied, shall be held for the satisfaction of the reimbursement obligations of the Borrowers for the LC Exposure at such time or, if the maturity of the Loans has been accelerated, be applied to satisfy other Obligations. If the Borrowers are required to provide an amount of cash collateral hereunder as a result of the occurrence of an Event of Default, such amount (to the extent not applied as aforesaid) shall be returned to the Borrowers within three (3) Business Days after all such Events of Defaults have been cured or waived as confirmed in writing by the Administrative Agent.

(k) [Reserved].

(l) Letters of Credit Issued for Account of Subsidiaries. If applicable, notwithstanding that a Letter of Credit issued or outstanding hereunder supports any obligations of, or is for the account of, a Subsidiary, or states that a Subsidiary is the “account party,” “applicant,” “customer,” “instructing party,” or the like of or for such Letter of Credit, and without derogating from any rights of the Issuing Bank (whether arising by contract, at law, in equity or otherwise) against such Subsidiary in respect of such Letter of Credit, the Borrowers (i) shall reimburse, indemnify and compensate the Issuing Bank hereunder for such Letter of Credit (including to reimburse any and all drawings thereunder) as if such Letter of Credit had been issued solely for the account of a Borrower and (ii) irrevocably waives any and all defenses that might otherwise be available to it as a guarantor or surety of any or all of the obligations of such Subsidiary in respect of such Letter of Credit. Each Borrower hereby acknowledges that the issuance of such Letters of Credit for its Subsidiaries inures to the benefit of the Borrowers, and that each Borrower’s business derives substantial benefits from the businesses of such Subsidiaries.

SECTION 2.07. Funding of Borrowings.

(a) Each Lender shall make each Loan to be made by such Lender hereunder on the proposed date thereof solely by wire transfer of immediately available funds by 2:00 p.m., Chicago time, to the account of the Administrative Agent most recently designated by it for such purpose by notice to the Lenders in an amount equal to such Lender’s Applicable Percentage; provided that, Swingline Loans shall be made as provided in Section 2.05. The Administrative Agent will make such Loans available to the applicable Borrower by promptly crediting the funds so received in the aforesaid account of the

Administrative Agent to the funding account; provided that CBFR Loans made to finance the reimbursement of an LC Disbursement as provided in Section 2.06(e) shall be remitted by the Administrative Agent to the Issuing Bank.

(b) Unless the Administrative Agent shall have received notice from a Lender prior to the proposed date of any Borrowing that such Lender will not make available to the Administrative Agent such Lender's share of such Borrowing, the Administrative Agent may assume that such Lender has made such share available on such date in accordance with paragraph (a) of this Section 2.07 and may, in reliance upon such assumption, make available to the applicable Borrower a corresponding amount. In such event, if a Lender has not in fact made its share of the applicable Borrowing available to the Administrative Agent, then the applicable Lender and the Borrowers each severally agree to pay (without duplication) to the Administrative Agent forthwith on demand such corresponding amount with interest thereon, for each day from and including the date such amount is made available to the applicable Borrower to but excluding the date of payment to the Administrative Agent, at (i) in the case of such Lender, the greater of the NYFRB Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation and (ii) in the case of the Borrowers, the interest rate applicable to CBFR Loans. If such Lender pays such amount to the Administrative Agent, then such amount shall constitute such Lender's Loan included in such Borrowing, provided, that any interest received from a Borrower by the Administrative Agent during the period beginning when Administrative Agent funded the Borrowing until such Lender pays such amount shall be solely for the account of the Administrative Agent.

SECTION 2.08. Interest Elections.

(a) Each Borrowing initially shall be of the Type specified in the applicable Borrowing Request and, in the case of a Term Benchmark Borrowing, shall have an initial Interest Period as specified in such Borrowing Request. Thereafter, the Borrower Representative may elect to convert such Borrowing to a different Type or to continue such Borrowing and, in the case of a Term Benchmark Borrowing, may elect Interest Periods therefor, all as provided in this Section 2.08. The Borrower Representative may elect different options with respect to different portions of the affected Borrowing, in which case each such portion shall be allocated ratably among the Lenders holding the Loans comprising such Borrowing, and the Loans comprising each such portion shall be considered a separate Borrowing. This Section shall not apply to Swingline Borrowings, which may not be converted or continued.

(b) To make an election pursuant to this Section 2.08, the Borrower Representative shall notify the Administrative Agent of such election either in writing (delivered by hand, email or fax) by delivering an Interest Election Request signed by a Responsible Officer of the Borrower Representative or through Electronic System if arrangements for doing so have been approved by the Administrative Agent (or if an Extenuating Circumstance shall exist, by telephone) by the time that a Borrowing Request would be required under Section 2.03 if the Borrowers were requesting a Borrowing of the Type resulting from such election to be made on the effective date of such election. Each such Interest Election Request shall be irrevocable and each such telephonic Interest Election Request, if permitted, shall be confirmed immediately upon the cessation of the Extenuating Circumstance by hand delivery, email, Electronic System or facsimile to the Administrative Agent of a written Interest Election Request in a form approved by the Administrative Agent and signed by a Responsible Officer of the Borrower Representative.

(c) Each written (or if permitted, telephonic) Interest Election Request (including requests submitted through Electronic System) shall specify the following information in compliance with Section 2.02:

(i) the name of the applicable Borrower and the Borrowing to which such Interest Election Request applies and, if different options are being elected with respect to different portions

thereof, the portions thereof to be allocated to each resulting Borrowing (in which case the information to be specified pursuant to clauses (iii) and (iv) below shall be specified for each resulting Borrowing);

(ii) the effective date of the election made pursuant to such Interest Election Request, which shall be a Business Day;

(iii) whether the resulting Borrowing is to be an CBFR Borrowing, a Term Benchmark Borrowing or an RFR Borrowing; and

(iv) if the resulting Borrowing is a Term Benchmark Borrowing, the Interest Period to be applicable thereto after giving effect to such election, which shall be a period contemplated by the definition of the term "Interest Period."

If any such Interest Election Request requests a Term Benchmark Borrowing but does not specify an Interest Period, then the Borrowers shall be deemed to have selected an Interest Period of one month's duration.

(d) Promptly following receipt of an Interest Election Request, the Administrative Agent shall advise each Lender of the details thereof and of such Lender's portion of each resulting Borrowing.

(e) If the Borrower Representative fails to deliver a timely Interest Election Request with respect to a Term Benchmark Borrowing prior to the end of the Interest Period applicable thereto, then, unless such Borrowing is repaid as provided herein, at the end of such Interest Period such Borrowing shall be converted to a CBFR Borrowing. Notwithstanding any contrary provision hereof, if an Event of Default has occurred and is continuing and the Administrative Agent, at the request of the Required Lenders, so notifies the Borrower Representative, then, so long as an Event of Default is continuing (i) no outstanding Borrowing may be converted to or continued as a Term Benchmark Borrowing and (ii) unless repaid, each Term Benchmark Borrowing and RFR Borrowing shall be converted to an CBFR Borrowing at the end of the Interest Period applicable thereto.

SECTION 2.09. Termination and Reduction of Commitments.

(a) Unless previously terminated, the Revolving Commitments shall terminate on the Maturity Date.

(b) The Borrowers may at any time terminate the Revolving Commitments upon Payment in Full of the Obligations.

(c) The Borrowers may from time to time reduce the Commitments; provided that (i) each reduction of such Commitments shall be in an amount that is an integral multiple of \$1,000,000 and not less than \$5,000,000 (or, if less, the aggregate remaining Commitments) and (ii) the Borrowers shall not terminate or reduce any Commitments if, after giving effect to any concurrent prepayment of the applicable Loans in accordance with Section 2.11, the Borrowers would not be in compliance with the Exposure Limitations.

(d) The Borrower Representative shall notify the Administrative Agent of any election to terminate or reduce the Commitments under paragraph (b) or (c) of this Section 2.09 at least three (3) Business Days prior to the effective date of such termination or reduction, specifying such election and the effective date thereof. Promptly following receipt of any notice, the Administrative Agent shall advise the applicable Lenders of the contents thereof. Each notice delivered by the Borrower Representative pursuant to this Section shall be irrevocable; provided that a notice of termination of any Commitments delivered by

the Borrower Representative may state that such notice is conditioned upon the effectiveness of other credit facilities, in which case such notice may be delayed or revoked by the Borrower Representative (by notice to the Administrative Agent on or prior to the specified effective date) if such condition is not satisfied. Any termination or reduction of any Commitments shall be permanent. Each reduction of any Commitments shall be made ratably among the Lenders in the applicable Class in accordance with their respective Commitments.

(e) The Borrowers agree to pay to the Administrative Agent a fee equal to the sum of (i) \$3,375,000 (the “Prepetition Lender Amendment Fee”), (ii) \$1,500,000 (the “DIP Upfront Fee”), (iii) the PIK Interest Amount and (iv) \$1,625,000 (the “Prepetition Agent Amendment Fee”) which fees shall be earned on the Effective Date and due and payable on the termination in full of the Commitments (whether pursuant to this Section 2.09 or Article VII). The payment in full of the Prepetition Lender Amendment Fee shall satisfy the Borrowers’ obligations to pay the fee set forth in Section 2.09 of the Prepetition Credit Agreement. The payment in full of the Prepetition Agent Amendment Fee shall satisfy in full the Borrowers’ obligations to pay the fee contemplated by that certain fee letter, dated as of October 10, 2024, by and among Holdings, the Company and JPMorgan Chase Bank, N.A. The Prepetition Lender Amendment Fee shall be divided among the lenders under the Prepetition Credit Agreement on a pro rata basis based on their respective commitments under the Prepetition Credit Agreement on October 10, 2024. The DIP Upfront Fee shall be divided among the Lenders on the Effective Date on a pro rata basis based on their respective Revolving Commitments on the Effective Date. Each Lender shall receive its pro rata share of the PIK Interest Amount in accordance with the calculation of the PIK Interest Amount. The Prepetition Agent Amendment Fee shall be solely for the account of JPMorgan Chase Bank, N.A.

(f) In addition to any termination provided for elsewhere in this Agreement, the Administrative Agent may from time to time, and in its sole discretion, reduce the Commitments by providing written notice to the Loan Parties and the Lenders of such reduction; provided that in no event shall the Commitments be reduced pursuant to this clause (f) to less than the amount of the aggregate Revolving Exposure outstanding under this Agreement on such date plus remaining amounts to be funded under the Long-Term DIP Budget (net of cash and Cash Equivalents of the Loan Parties at such time).

(g) [reserved].

(h) [reserved].

(i) [reserved].

SECTION 2.10. Repayment and Amortization of Loans; Evidence of Debt.

(a) The Borrowers hereby unconditionally promise to pay to the Administrative Agent for the account of each Lender the then unpaid principal amount of each Loan on the Maturity Date.

(b) [reserved].

(c) Each Lender shall maintain in accordance with its usual practice an account or accounts evidencing the Indebtedness of the Borrowers to such Lender resulting from each Loan made by such Lender, including the amounts of principal and interest payable and paid to such Lender from time to time hereunder.

(d) The Administrative Agent shall maintain accounts in which it shall record (i) the amount of each Loan made hereunder, the Class and Type thereof and the Interest Period applicable thereto, (ii) the amount of any principal or interest due and payable or to become due and payable from the Borrowers to

each Lender hereunder and (iii) the amount of any sum received by the Administrative Agent hereunder for the account of the Lenders and each Lender's share thereof.

(e) The entries made in the accounts maintained pursuant to paragraph (c) or (d) of this Section shall be prima facie evidence of the existence and amounts of the obligations recorded therein; provided that the failure of any Lender or the Administrative Agent to maintain such accounts or any error therein shall not in any manner affect the obligation of the Borrowers to repay the Loans in accordance with the terms of this Agreement.

(f) Any Lender may request that Loans made by it be evidenced by a promissory note. In such event, the Borrowers shall prepare, execute and deliver to such Lender a promissory note payable to such Lender (or, if requested by such Lender, to such Lender and its registered assigns) and in a form approved by the Administrative Agent. Thereafter, the Loans evidenced by such promissory note and interest thereon shall at all times (including after assignment pursuant to Section 9.04) be represented by one or more promissory notes in such form.

SECTION 2.11. Prepayment of Loans.

(a) The Borrowers shall have the right at any time and from time to time to prepay any Borrowing in whole or in part, subject to prior notice in accordance with paragraph (d) of this Section 2.11 and, if applicable, payment of any break funding expenses under Section 2.16.

(b) In the event and on such occasion that the Revolving Exposure of any Lender would exceed its Revolving Commitment, the Borrowers shall, within one Business Day, prepay the Revolving Loans or Swingline Loans and/or provide cash collateral for LC Exposure as specified in Section 2.06(j) in an aggregate amount necessary to eliminate such excess. In the event and on each occasion that the Borrowers receive any cash receipts or fund transfers (other than proceeds of Loans), the Borrowers shall, within one Business Day, prepay the Revolving Loans or Swingline Loans and/or provide cash collateral for LC Exposure as specified in Section 2.06(j) in an aggregate amount equal to the amount so received.

(c) (i) All prepayments made pursuant to Section 2.11(a) shall be applied to prepay such Loans in accordance with the Lenders' respective Applicable Percentages without a corresponding reduction in the applicable Commitments.

(d) The Borrower Representative shall notify the Administrative Agent (and, in the case of prepayment of a Swingline Loan, the Swingline Lender) by telephone (confirmed by fax or email) or through Electronic System, if arrangements for doing so have been approved by the Administrative Agent, of any prepayment hereunder not later than 10:00 a.m., Chicago time, (A) in the case of prepayment of a Term Benchmark Borrowing, three (3) Business Days before the date of prepayment, (B) in the case of prepayment of an RFR Revolving Borrowing, not later than five (5) Business Days before the date of prepayment or (C) in the case of prepayment of a CBFR Borrowing on the date of prepayment. Each such notice shall be irrevocable and shall specify the prepayment date and the principal amount of each Borrowing or portion thereof to be prepaid; provided that, if a notice of prepayment is given in connection with a conditional notice of termination any Commitments as contemplated by Section 2.09, then such notice of prepayment may be revoked or delayed if such notice of termination is revoked or delayed in accordance with Section 2.09. Promptly following receipt of any such notice relating to a Borrowing, the Administrative Agent shall advise the Lenders of the contents thereof. Each partial prepayment of any Borrowing shall be in an amount that would be permitted in the case of an advance of a Borrowing of the same Type as provided in Section 2.02. Each prepayment of a Borrowing shall be applied ratably to the Loans included in the prepaid Borrowing. Prepayments shall be accompanied by (i) accrued interest to the

extent required by Section 2.13 and (ii) break funding payments to the extent required pursuant to Section 2.16.

SECTION 2.12. Fees.

(a) The Borrowers agree to pay to the Administrative Agent for the account of each Lender a commitment fee, which shall accrue at the Applicable Rate on the average daily amount of the Available Aggregate Commitment of such Lender during the period from and including the Effective Date to but excluding the date on which the applicable Commitments terminate. Commitment fees accrued through and including the first Business Day of each January, April, July and October shall be payable in arrears on such Business Day and on the date on which the applicable Commitments terminate, commencing on the first such date to occur after the date hereof; provided that any commitment fees accruing after the date on which the applicable Commitments terminate shall be payable on demand. All commitment fees shall be computed on the basis of a year of 360 days and shall be payable for the actual number of days elapsed (including the first day but excluding the last date of each period).

(b) The Borrowers agree to pay (i) to the Administrative Agent for the account of each Revolving Lender a participation fee with respect to its participations in each outstanding Letter of Credit, which shall accrue on the daily maximum stated amount then available to be drawn under such Letter of Credit at the same Applicable Rate used to determine the interest rate applicable to Term Benchmark Loans during the period from and including the Effective Date to but excluding the later of the date on which such Lender's Revolving Commitment terminates and the date on which such Lender ceases to have any LC Exposure, and (ii) to each Issuing Bank for its own account a fronting fee with respect to each Letter of Credit issued by such Issuing Bank, which shall accrue at the rate of 0.125% per annum on the daily maximum stated amount then available to be drawn under such Letter of Credit, during the period from and including the Effective Date to but excluding the later of the date of termination of the Revolving Commitments and the date on which there ceases to be any LC Exposure with respect to Letters of Credit issued by such Issuing Bank, as well as such Issuing Bank's standard fees and commissions with respect to the issuance, amendment or extension of any Letter of Credit and other reasonable processing fees. Participation fees and fronting fees accrued through and including the last day of each calendar quarter shall be payable on the first Business Day of each January, April, July and October of each year in arrears, commencing on the first such date to occur after the Effective Date; provided that all such fees shall be payable on the date on which the Revolving Commitments terminate and any such fees accruing after the date on which the Revolving Commitments terminate shall be payable on demand. Any other fees payable to an Issuing Bank pursuant to this paragraph shall be payable within ten (10) days after demand. All participation fees and fronting fees shall be computed on the basis of a year of 360 days and shall be payable for the actual number of days elapsed (including the first day but excluding the last day).

(c) The Borrowers agree to pay to the Administrative Agent, for its own account, fees payable in the amounts and at the times separately agreed upon between Holdings, the Company and the Administrative Agent.

(d) All fees payable hereunder shall be paid on the dates due, in dollars in immediately available funds, to the Administrative Agent (or to an Issuing Bank, in the case of fees payable to it) for distribution, in the case of commitment fees and participation fees, to the Lenders. Fees paid shall not be refundable under any circumstances.

SECTION 2.13. Interest.

(a) The Loans comprising CBFR Borrowings (including all Swingline Loans) shall bear interest at the CBFR plus the Applicable Rate.

(b) The Loans comprising each Term Benchmark Borrowing shall bear interest at the Adjusted Term SOFR Rate for the Interest Period in effect for such Borrowing plus the Applicable Rate. Each RFR Loan shall bear interest at a rate per annum equal to the Adjusted Daily Simple SOFR plus the Applicable Rate.

(c) [reserved].

(d) Notwithstanding the foregoing, if any principal of or interest on any Loan or any fee or other amount payable by the Borrowers hereunder is not paid when due, whether at stated maturity, upon acceleration or otherwise, such overdue amount shall bear interest, after as well as before judgment, at a rate per annum equal to (i) in the case of overdue principal of any Loan, 2% plus the rate otherwise applicable to such Loan as provided in the preceding paragraphs of this Section or (ii) in the case of any other past due amount from, and after notice by the Administrative Agent on behalf of the Required Lenders, 2% plus the rate applicable to CBFR Loans as provided in paragraph (a) of this Section.

(e) Accrued interest on each Loan shall be payable in arrears on each Interest Payment Date for such Loan and upon termination of the Commitments; provided that (i) interest accrued pursuant to paragraph (d) of this Section shall be payable on demand, (ii) in the event of any repayment or prepayment of any Loan (other than a prepayment of a CBFR Loan prior to the end of the Availability Period), accrued interest on the principal amount repaid or prepaid shall be payable on the date of such repayment or prepayment and (iii) in the event of any conversion of any Term Benchmark Loan prior to the end of the current Interest Period therefor, accrued interest on such Loan shall be payable on the effective date of such conversion.

(f) Interest computed by reference to the Term SOFR Rate shall be computed on the basis of a year of 360 days. Interest computed by reference to the CB Floating Rate shall be computed on the basis of a year of 365 days (or 366 days in a leap year). In each case interest shall be payable for the actual number of days elapsed (including the first day but excluding the last day). All interest hereunder on any Loan shall be computed on a daily basis based upon the outstanding principal amount of such Loan as of the applicable date of determination. The applicable CB Floating Rate, Adjusted Daily Simple SOFR, Daily Simple SOFR, Adjusted Term SOFR Rate or Term SOFR Rate shall be determined by the Administrative Agent, and such determination shall be conclusive absent manifest error.

SECTION 2.14. Alternate Rate of Interest; Illegality.

(a) Subject to clauses (b), (c), (d), (e), and (f) of this Section 2.14, if:

(i) the Administrative Agent determines (which determination shall be conclusive and binding absent manifest error) (A) prior to commencement of any Interest Period for a Term Benchmark Borrowing, that adequate and reasonable means do not exist for ascertaining the Adjusted Term SOFR Rate or the Term SOFR Rate (including because the Term SOFR Reference Rate is not available or published on a current basis), for such Interest Period or (B) at any time following a Benchmark Replacement of the Term Benchmark Rate, that adequate and reasonable means do not exist for ascertaining the applicable Adjusted Daily Simple SOFR or Daily Simple SOFR; or

(ii) the Administrative Agent is advised by the Required Lenders that (A) prior to the commencement of any Interest Period for a Term Benchmark Borrowing, the Adjusted Term SOFR Rate for such Interest Period will not adequately and fairly reflect the cost to such Lenders (or Lender) of making or maintaining their Loans (or its Loan) included in such Borrowing for such Interest Period or (B) at any time following a Benchmark Replacement of the Term Benchmark

Rate, the Adjusted Daily Simple SOFR will not adequately and fairly reflect the cost to such Lenders (or Lender) of making or maintaining their Loans (or Loan) included in such Borrowing;

then the Administrative Agent shall give notice thereof to the Borrower Representative and the Lenders through Electronic System as provided in Section 9.01 as promptly as practicable thereafter and, until (x) the Administrative Agent notifies the Borrower Representative and the Lenders that the circumstances giving rise to such notice no longer exist with respect to the relevant Benchmark and (y) the Borrowers deliver a new Interest Election Request in accordance with the terms of Section 2.08 or a new Borrowing Request in accordance with the terms of Section 2.03, (1) any Interest Election Request that requests the conversion of any Borrowing to, or continuation of any Borrowing as, a Term Benchmark Borrowing and any Borrowing Request that requests a Term Benchmark Borrowing shall instead be deemed to be an Interest Election Request or a Borrowing Request, as applicable, for (x) an RFR Borrowing so long as the Adjusted Daily Simple SOFR is not also the subject of Section 2.14(a)(i) or (ii) above or (y) a CBFR Borrowing if the Adjusted Daily Simple SOFR also is the subject of Section 2.14(a)(i) or (ii) above and (2) any Borrowing Request that requests an RFR Borrowing following a Benchmark Replacement of the Term Benchmark Rate shall instead be deemed to be a Borrowing Request, as applicable, for a CBFR Borrowing; provided that if the circumstances giving rise to such notice affect only one Type of Borrowings, then all other Types of Borrowings shall be permitted. Furthermore, if any Term Benchmark Loan or RFR Loan is outstanding on the date of the Borrower Representative's receipt of the notice from the Administrative Agent referred to in this Section 2.14 with respect to a Relevant Rate applicable to such Term Benchmark Loan or RFR Loan, then until (x) the Administrative Agent notifies the Borrower Representative and the Lenders that the circumstances giving rise to such notice no longer exist with respect to the relevant Benchmark and (y) the Borrowers deliver a new Interest Election Request in accordance with the terms of Section 2.08 or a new Borrowing Request in accordance with the terms of Section 2.03, (1) any Term Benchmark Loan shall on the last day of the Interest Period applicable to such Loan (or the next succeeding Business Day if such day is not a Business Day), be converted by the Administrative Agent to, and shall constitute, (x) an RFR Borrowing so long as the Adjusted Daily Simple SOFR is not also the subject of Section 2.14(a)(i) or (ii) above or (y) a CBFR Loan if the Adjusted Daily Simple SOFR also is the subject of Section 2.14(a)(i) or (ii) above, on such day, and (2) any RFR Loan shall on and from such day be converted by the Administrative Agent to, and shall constitute a CBFR Loan.

(b) Notwithstanding anything to the contrary herein or in any other Loan Document, if a Benchmark Transition Event and its related Benchmark Replacement Date have occurred prior to the Reference Time in respect of any setting of the then-current Benchmark, then (x) if a Benchmark Replacement is determined in accordance with clause (1) of the definition of "Benchmark Replacement" for such Benchmark Replacement Date, such Benchmark Replacement will replace such Benchmark for all purposes hereunder and under any Loan Document in respect of such Benchmark setting and subsequent Benchmark settings without any amendment to, or further action or consent of any other party to, this Agreement or any other Loan Document and (y) if a Benchmark Replacement is determined in accordance with clause (2) of the definition of "Benchmark Replacement" for such Benchmark Replacement Date, such Benchmark Replacement will replace such Benchmark for all purposes hereunder and under any Loan Document in respect of any Benchmark setting at or after 5:00 p.m. (New York City time) on the fifth (5th) Business Day after the date notice of such Benchmark Replacement is provided to the Lenders without any amendment to, or further action or consent of any other party to, this Agreement or any other Loan Document so long as the Administrative Agent has not received, by such time, written notice of objection to such Benchmark Replacement from Lenders comprising the Required Lenders.

(c) Notwithstanding anything to the contrary herein or in any other Loan Document, the Administrative Agent will have the right to make Benchmark Replacement Conforming Changes in consultation with the Borrower Representative from time to time and, notwithstanding anything to the contrary herein or in any other Loan Document, any amendments implementing such Benchmark

Replacement Conforming Changes will become effective without any further action or consent of any other party to this Agreement or any other Loan Document.

(d) The Administrative Agent will promptly notify the Borrower Representative and the Lenders of (i) any occurrence of a Benchmark Transition Event, (ii) the implementation of any Benchmark Replacement, (iii) the effectiveness of any Benchmark Replacement Conforming Changes, (iv) the removal or reinstatement of any tenor of a Benchmark pursuant to clause (f) below and (v) the commencement or conclusion of any Benchmark Unavailability Period. Any determination, decision or election that may be made by the Administrative Agent or, if applicable, any Lender (or group of Lenders) pursuant to this Section 2.14, including any determination with respect to a tenor, rate or adjustment or of the occurrence or non-occurrence of an event, circumstance or date and any decision to take or refrain from taking any action or any selection, will be conclusive and binding absent manifest error and may be made in its or their sole discretion and without consent from any other party to this Agreement or any other Loan Document, except, in each case, as expressly required pursuant to this Section 2.14.

(e) Notwithstanding anything to the contrary herein or in any other Loan Document, at any time (including in connection with the implementation of a Benchmark Replacement), (i) if the then-current Benchmark is a term rate (such as the Term SOFR Rate) and either (A) any tenor for such Benchmark is not displayed on a screen or other information service that publishes such rate from time to time as selected by the Administrative Agent in its reasonable discretion or (B) the regulatory supervisor for the administrator of such Benchmark has provided a public statement or publication of information announcing that any tenor for such Benchmark is or will be no longer representative, then the Administrative Agent may modify the definition of "Interest Period" for any Benchmark settings at or after such time to remove such unavailable or non-representative tenor and (ii) if a tenor that was removed pursuant to clause (i) above either (A) is subsequently displayed on a screen or information service for a Benchmark (including a Benchmark Replacement) or (B) is not, or is no longer, subject to an announcement that it is or will no longer be representative for a Benchmark (including a Benchmark Replacement), then the Administrative Agent may modify the definition of "Interest Period" for all Benchmark settings at or after such time to reinstate such previously removed tenor.

(f) Upon the Borrower Representative's receipt of notice of the commencement of a Benchmark Unavailability Period, the Borrowers may revoke any request for a Term Benchmark Borrowing or RFR Borrowing of, conversion to or continuation of Term Benchmark Loans to be made, converted or continued during any Benchmark Unavailability Period and, failing that, the Borrowers will be deemed to have converted (1) any such request for a Term Benchmark Borrowing into a request for a Borrowing of or conversion to (A) an RFR Borrowing so long as the Adjusted Daily Simple SOFR is not the subject of a Benchmark Transition Event or (B) a CBFR Borrowing if the Adjusted Daily Simple SOFR is the subject of a Benchmark Transition Event or (2) any such request for an RFR Borrowing into a request for a CBFR Borrowing. Furthermore, if any Term Benchmark Loan or RFR Loan is outstanding on the date of the Borrower Representative's receipt of notice of the commencement of a Benchmark Unavailability Period with respect to a Relevant Rate applicable to such Term Benchmark Loan or RFR Loan, then until such time as a Benchmark Replacement is implemented pursuant to this Section 2.14, (1) any Term Benchmark Loan shall on the last day of the Interest Period applicable to such Loan (or the next succeeding Business Day if such day is not a Business Day), be converted by the Administrative Agent to, and shall constitute, (x) an RFR Loan so long as the Adjusted Daily Simple SOFR is not the subject of a Benchmark Transition Event or (y) a CBFR Loan if the Adjusted Daily Simple SOFR is the subject of a Benchmark Transition Event, on such day and (2) any RFR Loan shall on and from such day be converted by the Administrative Agent to, and shall constitute a CBFR Loan.

SECTION 2.15. Increased Costs.

(a) If any Change in Law shall:

(i) impose, modify or deem applicable any reserve, special deposit, liquidity or similar requirement (including any compulsory loan requirement, insurance charge or other assessment, but excluding any Taxes) against assets of, deposits with or for the account of, or credit extended by, any Lender (except any such reserve requirement reflected in the Adjusted Term SOFR Rate) or the Issuing Bank;

(ii) impose on any Lender or the Issuing Bank or the applicable offshore interbank market any other condition, cost or expense (other than Taxes) affecting this Agreement or Loans made by such Lender or any Letter of Credit or participation therein; or

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

and the result of any of the foregoing shall be to increase the cost to such Lender or such other Recipient of making, continuing, converting into or maintaining any Loan (or of maintaining its obligation to make any such Loan) or to increase the cost to such Lender, the Issuing Bank or such other Recipient of participating in, issuing or maintaining any Letter of Credit or to reduce the amount of any sum received or receivable by such Lender, the Issuing Bank or such other Recipient hereunder (whether of principal, interest or otherwise), then the Borrowers will pay to such Lender, the Issuing Bank or such other Recipient, as the case may be, such additional amount or amounts as will compensate such Lender, the Issuing Bank or such other Recipient, as the case may be, for such additional costs incurred or reduction suffered.

(b) If any Lender or the Issuing Bank determines that any Change in Law regarding capital or liquidity requirements has or would have the effect of reducing the rate of return on such Lender's or the Issuing Bank's capital or on the capital of such Lender's or the Issuing Bank's holding company, if any, as a consequence of this Agreement, the Commitments of, or the Loans made by, or participations in Letters of Credit or Swingline Loans held by, such Lender, or the Letters of Credit issued by the Issuing Bank, to a level below that which such Lender or the Issuing Bank or such Lender's or the Issuing Bank's holding company could have achieved but for such Change in Law (taking into consideration such Lender's or the Issuing Bank's policies and the policies of such Lender's or the Issuing Bank's holding company with respect to capital adequacy and liquidity), then from time to time the Borrowers will pay to such Lender or the Issuing Bank, as the case may be, such additional amount or amounts as will compensate such Lender or the Issuing Bank or such Lender's or the Issuing Bank's holding company for any such reduction suffered.

(c) A certificate of a Lender or the Issuing Bank setting forth the amount or amounts necessary to compensate such Lender or the Issuing Bank or its holding company, as the case may be, as specified in paragraph (a) or (b) of this Section shall be delivered to the Borrower Representative and shall be conclusive absent manifest error. The Borrowers shall pay such Lender or the Issuing Bank, as the case may be, the amount shown as due on any such certificate within twenty (20) days after receipt thereof.

(d) Failure or delay on the part of any Lender or the Issuing Bank to demand compensation pursuant to this Section shall not constitute a waiver of such Lender's or the Issuing Bank's right to demand such compensation; provided that the Borrowers shall not be required to compensate a Lender or the Issuing Bank pursuant to this Section 2.15 for any increased costs or reductions incurred more than 180 days prior

to the date that such Lender or the Issuing Bank, as the case may be, notifies the Borrower Representative of the Change in Law giving rise to such increased costs or reductions and of such Lender's or the Issuing Bank's intention to claim compensation therefor; provided further that, if the Change in Law 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 2.16. Break Funding Payments. In the event of (i) the payment of any principal of any Term Benchmark Loan other than on the last day of an Interest Period applicable thereto (including as a result of an Event of Default or as a result of any prepayment pursuant to Section 2.11), (ii) the conversion of any Term Benchmark Loan other than on the last day of the Interest Period applicable thereto, (iii) the failure to borrow, convert, continue or prepay any Term Benchmark Loan on the date specified in any notice delivered pursuant hereto (regardless of whether such notice may be revoked under Section 2.09(d) and is revoked in accordance therewith), or (iv) the assignment of any Term Benchmark Loan other than on the last day of the Interest Period applicable thereto as a result of a request by the Borrower Representative pursuant to Section 2.19 or 9.02(d), then, in any such event, the Borrowers shall compensate each Lender for the loss, cost and expense attributable to such event; provided that the Borrowers shall not be required to compensate any Lender pursuant to this Section 2.16 unless such Lender requests compensation from the Borrowers. A certificate of any Lender setting forth any amount or amounts that such Lender is entitled to receive pursuant to this Section shall be delivered to the Borrower Representative and shall be conclusive absent manifest error. The Borrowers shall pay such Lender the amount shown as due on any such certificate within ten (10) days after receipt thereof.

SECTION 2.17. Withholding of Taxes; Gross-Up.

(a) Payments Free of Taxes. All payments by or on account of any obligation of any Loan Party under any Loan Document shall be made without deduction or withholding for any Taxes, except as required by applicable law. If any applicable law (as determined in the good faith discretion of an applicable withholding agent) requires the deduction or withholding of any Tax with respect to any such payment by any withholding agent, then the applicable withholding agent shall be entitled to make such deduction or withholding and shall timely pay the full amount deducted or withheld to the relevant Governmental Authority in accordance with applicable law and, if such Tax is an Indemnified Tax, then the sum payable by any Loan Party shall be increased as necessary so that after such deduction or withholding has been made by any applicable withholding agent (including such deductions and withholdings applicable to additional sums payable under this Section 2.17) the applicable Lender (or, in the case of payments made to the Administrative Agent for its own account, the Administrative Agent) receives an amount equal to the sum it would have received had no such deduction or withholding been made.

(b) Payment of Other Taxes by the Borrowers. The Borrowers shall timely pay to the relevant Governmental Authority in accordance with applicable law, or at the option of the Administrative Agent timely reimburse it for, all Other Taxes.

(c) Evidence of Payment. As soon as practicable after any payment of Taxes by any Loan Party to a Governmental Authority pursuant to this Section 2.17, such Borrower shall deliver to the Administrative Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Administrative Agent.

(d) Indemnification by the Borrowers. The Borrowers shall jointly and severally indemnify each Recipient, within ten (10) days after demand therefor, for the full amount of any Indemnified Taxes (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this Section 2.17) payable or paid by such Recipient or required to be withheld or deducted with respect to a payment

to such Recipient and any reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Borrower by a Lender (with a copy to the Administrative Agent), or by the Administrative Agent on its own behalf or on behalf of a Lender, shall be conclusive absent manifest error.

(e) Indemnification by the Lenders. Each Lender shall severally indemnify the Administrative Agent, within ten (10) days after demand therefor, for (i) any Indemnified Taxes attributable to such Lender (but only to the extent that any Loan Party has not already indemnified the Administrative Agent for such Indemnified Taxes and without limiting the obligation of any Loan Party to do so), (ii) any Taxes attributable to such Lender's failure to comply with the provisions of Section 9.04(c) 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 setoff and apply any and all amounts at any time owing to such Lender under any Loan Document or otherwise payable by the Administrative Agent to such Lender from any other source against any amount due to the Administrative Agent under this Section 2.17(e).

(f) Status of Lenders. (i) Any Lender that is entitled to an exemption from or reduction of withholding Tax with respect to any payment made under any Loan Document shall deliver to the Borrower Representative and the Administrative Agent, at the time or times reasonably requested by the Borrower Representative or the Administrative Agent, such properly completed and executed documentation reasonably requested by the Borrower Representative or the Administrative Agent as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender, if reasonably requested by the Borrower Representative or the Administrative Agent, shall deliver such other documentation prescribed by applicable law or reasonably requested by the Borrower Representative or the Administrative Agent as will enable the Borrowers or the Administrative Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements.

(ii) Without limiting the generality of the foregoing,

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

(B) any Foreign Lender shall, to the extent it is legally eligible to do so, deliver to the Borrower Representative and the Administrative Agent on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the request of the Borrower Representative or the Administrative Agent), two of whichever of the following is applicable:

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

(2) in the case of a Foreign Lender claiming that its extension of credit will generate U.S. effectively connected income, executed copies of IRS Form W-8ECI;

(3) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Code, (x) a certificate substantially in the form of Exhibit E-1 to the effect that such Foreign Lender is not a “bank” within the meaning of Section 881(c)(3)(A) of the Code, a “10 percent shareholder” of a Borrower within the meaning of Section 881(c)(3)(B) of the Code, or a “controlled foreign corporation” described in Section 881(c)(3)(C) of the Code and that no payments under any Loan Document are effectively connected with the Foreign Lender’s conduct of a U.S. trade or business (a “U.S. Tax Compliance Certificate”) and (y) executed copies of IRS Form W-8BEN or IRS Form W-8BEN-E, as applicable; or

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

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

(D) if a payment made to a Lender under any Loan Document would be subject to U.S. Federal withholding Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Lender shall deliver to the Borrower Representative and the Administrative Agent at the time or times prescribed by law and at such time or times reasonably requested by the Borrower Representative 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 Representative or the Administrative Agent as may be necessary for the Borrowers and the Administrative Agent to comply with their obligations under FATCA and to determine that such Lender has complied with such Lender’s obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of this Section 2.17(f)(ii)(D), “FATCA” shall include any amendments made to FATCA after the date of this Agreement.

Each Lender agrees that if any documentation it previously delivered expires or becomes obsolete or inaccurate in any respect, it shall promptly update such documentation or promptly notify the Borrower Representative and the Administrative Agent in writing of its legal ineligibility to do so.

Notwithstanding anything to the contrary in this Section 2.17(f), no Lender shall be required to deliver any documentation pursuant to this Section 2.17(f) that such Lender is not legally eligible to deliver. Each Lender hereby authorizes the Administrative Agent to deliver to the Borrowers and to any successor Administrative Agent any documentation provided by such Lender to the Administrative Agent pursuant to this Section 2.17(f).

(g) Forms of Administrative Agent. The Administrative Agent, and any successor or supplemental Administrative Agent, shall deliver to the Borrower Representative on or prior to the date on which the Administrative Agent becomes the administrative agent hereunder or under any other Loan Document (and from time to time thereafter upon the reasonable request of the Borrower Representative) properly completed and duly executed copies of either (i) if it is a “United States person” (as defined in Section 7701(a)(30) of the Code) IRS Form W-9 (or any successor form) or (ii) if it is not a “United States person” a U.S. branch withholding certificate on IRS Form W- 8IMY (or any successor form), together with any required accompanying documentation, evidencing its agreement with the Borrower Representative to be treated as a U.S. person for U.S. federal withholding tax purposes (with respect to amounts received on account of any Lender) and IRS Form W-8ECI (with respect to amounts received on its own account); provided that, notwithstanding anything to the contrary in this Section 2.17 (g), no Administrative Agent is not legally eligible to deliver as a result of a Change in Law after the Effective Date.

(h) Treatment of Certain Refunds. If any party determines, in its sole discretion exercised in good faith, that it has received a refund of any Taxes as to which it has been indemnified pursuant to this Section 2.17 (including by the payment of additional amounts pursuant to this Section 2.17), it shall pay to the indemnifying party an amount equal to such refund (but only to the extent of indemnity payments made under this Section 2.17 with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) of such indemnified party and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund). Such indemnifying party, upon the request of such indemnified party, shall repay to such indemnified party the amount paid over pursuant to this Section 2.17(h) (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) in the event that such indemnified party is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this Section 2.17(h), in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this Section 2.17(h) the payment of which would place the indemnified party in a less favorable net after-Tax position than the indemnified party 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 giving rise to such refund had never been paid. This Section 2.17(h) shall not be construed to require any indemnified party to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to the indemnifying party or any other Person.

(i) Survival. Each party’s obligations under this Section 2.17 shall survive the resignation or replacement of the Administrative Agent or any assignment of rights by, or the replacement of, a Lender, the termination of the Commitments and the repayment, satisfaction or discharge of all obligations under any Loan Document (including Payment in Full of the Obligations).

SECTION 2.18. Payments Generally; Allocation of Proceeds; Sharing of Setoffs.

(a) The Borrowers shall make each payment or prepayment required to be made by them hereunder (whether of principal, interest, fees or reimbursement of LC Disbursements, or of amounts payable under Section 2.15, 2.16 or 2.17, or otherwise) prior to 2:00 p.m., Chicago time, on the date when due or the date fixed for any prepayment hereunder, in immediately available funds, without setoff, recoupment or counterclaim. Any amounts received after such time on any date may, in the discretion of

the Administrative Agent, be deemed to have been received on the next succeeding Business Day for purposes of calculating interest thereon. All such payments shall be made to the Administrative Agent at its offices at 10 South Dearborn Street, Floor L2, Suite IL1-0480, Chicago, Illinois, except payments to be made directly to the Issuing Bank or Swingline Lender shall be paid as expressly provided herein and except that payments pursuant to Sections 2.15, 2.16, 2.17 and 9.03 shall be made directly to the Persons entitled thereto. The Administrative Agent shall distribute any such payments received by it for the account of any other Person to the appropriate recipient promptly following receipt thereof. Unless otherwise provided for herein, if any payment hereunder shall be due on a day that is not a Business Day, the date for payment shall be extended to the next succeeding Business Day, and, in the case of any payment accruing interest, interest thereon shall be payable for the period of such extension. All payments hereunder shall be made in dollars.

(b) All payments (unless otherwise permitted hereunder) and any proceeds of Collateral received by the Administrative Agent (i) not constituting either (A) a specific payment of principal, interest, fees or other sum payable under the Loan Documents (which shall be applied as specified by the Borrowers) or (B) a mandatory prepayment (which shall be applied in accordance with Section 2.11) or (ii) after an Event of Default has occurred and is continuing and the Administrative Agent so elects or the Required Lenders so direct, shall be applied ratably first, to pay any fees, indemnities, or expense reimbursements then due to the Administrative Agent and the Issuing Bank from the Borrowers (other than in connection with Banking Services Obligations), second, to pay any fees, indemnities, or expense reimbursements then due to the Revolving Lenders from the Borrowers (other than in connection with Banking Services Obligations), third, to pay interest then due and payable on the Revolving Loans ratably, fourth, to prepay principal on the Revolving Loans and unreimbursed LC Disbursements, to pay an amount to the Administrative Agent equal to one hundred three percent (103%) of the aggregate undrawn face amount of all outstanding Letters of Credit and the aggregate amount of any unpaid LC Disbursements, to be held as cash collateral for such Obligations, and to pay any amounts owing in respect of Banking Services Obligations, and fifth, to the payment of any other Secured Obligation due to the Administrative Agent or any Lender by the Borrowers. Notwithstanding anything to the contrary contained in this Agreement, unless so directed by the Borrower Representative, or unless a Default is in existence, neither the Administrative Agent nor any Lender shall apply any payment which it receives to any Term Benchmark Loan of a Class, except (a) on the expiration date of the Interest Period applicable thereto or (b) in the event, and only to the extent, that there are no outstanding CBFR Loans of the same Class and, in any such event, the Borrowers shall pay the break funding payment required, if any, in accordance with Section 2.16. The Administrative Agent and the Lenders shall have the continuing and exclusive right to apply and reverse and reapply any and all such proceeds and payments to any portion of the Obligations.

(c) At the election of the Administrative Agent, all payments of principal, interest, LC Disbursements, fees, premiums, reimbursable expenses (including, without limitation, all reimbursement for fees, costs and expenses pursuant to Section 9.03), and other sums payable under the Loan Documents, may be paid from the proceeds of Borrowings made hereunder whether made following a request by the Borrower Representative pursuant to Section 2.03 or a deemed request as provided in this Section or may be deducted from any deposit account of any Borrower maintained with the Administrative Agent. The Borrowers hereby irrevocably authorize (i) the Administrative Agent to make a Borrowing for the purpose of paying each payment of principal, interest and fees as it becomes due hereunder or any other amount due under the Loan Documents and agrees that all such amounts charged shall constitute Loans (including Swingline Loans) so long as the making of such Loans does not cause the Revolving Exposure of any Lender to exceed its Revolving Commitment and that all such Borrowings shall be deemed to have been requested pursuant to Section 2.03, 2.04 or 2.05, as applicable, and (ii) the Administrative Agent to charge any deposit account of any Borrower maintained with the Administrative Agent for each payment of principal, interest and fees as it becomes due hereunder or any other amount due under the Loan Documents.

(d) If, except as otherwise expressly provided herein, any Lender shall, by exercising any right of setoff or counterclaim or otherwise, obtain payment in respect of any principal of or interest on any of its Loans or participations in LC Disbursements resulting in such Lender receiving payment of a greater proportion of the aggregate amount of its Loans and participations in LC Disbursements and Swingline Loans and accrued interest thereon than the proportion received by any other similarly situated Lender, then the Lender receiving such greater proportion shall purchase (for cash at face value) participations in the Loans and participations in LC Disbursements and Swingline Loans of other Lenders to the extent necessary so that the benefit of all such payments shall be shared by all such Lenders ratably in accordance with the aggregate amount of principal of and accrued interest on their respective Loans and participations in LC Disbursements and Swingline Loans; provided that (i) if any such participations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations shall be rescinded and the purchase price restored to the extent of such recovery, without interest, and (ii) the provisions of this paragraph shall not be construed to apply to any payment made by the Borrowers pursuant to and in accordance with the express terms of this Agreement or any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans or participations in LC Disbursements or Swingline Loans to any assignee or participant, other than to the Borrowers or any Subsidiary or Affiliate thereof (as to which the provisions of this paragraph shall apply). Each Borrower consents to the foregoing and agrees, to the extent it may effectively do so under applicable law, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against such Borrower rights of setoff and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of such Borrower in the amount of such participation. For purposes of clause (b) of the definition of Excluded Taxes, a Lender that acquires a participation pursuant to this Section 2.18(d) shall be treated as having acquired an interest in such participation on the earlier date(s) on which it acquired an interest in the applicable Loan(s) or Commitment(s) to which such participation relates.

(e) Unless the Administrative Agent shall have received, prior to any date on which any payment is due to the Administrative Agent for the account of the Lenders or the Issuing Bank pursuant to the terms hereof or any other Loan Document, notice from the Borrower Representative that the Borrowers will not make such payment or prepayment, the Administrative Agent may assume that the Borrowers have made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to the Lenders or the Issuing Bank, as the case may be, the amount due. In such event, if the Borrowers have not in fact made such payment, then each of the Lenders or the Issuing Bank, as the case may be, severally agrees to repay to the Administrative Agent forthwith on demand the amount so distributed to such Lender or Issuing Bank with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to the Administrative Agent, at the NYFRB Rate.

(f) The Administrative Agent may from time to time provide the Borrowers with account statements or invoices with respect to any of the Obligations (the "Statements"). The Administrative Agent is under no duty or obligation to provide Statements, which, if provided, will be solely for the Borrowers' convenience. Statements may contain estimates of the amounts owed during the relevant billing period, whether of principal, interest, fees or other Obligations. If the Borrowers pay the full amount indicated on a Statement on or before the due date indicated on such Statement notwithstanding anything in this Agreement to the contrary, the Borrowers shall not be in Default of payment with respect to the billing period indicated on such Statement and no Event of Default shall result; provided, that acceptance by the Administrative Agent, on behalf of the Lenders, of any payment that is less than the total amount actually due at that time (including but not limited to any past due amounts) shall not constitute a waiver of the Administrative Agent's or the Lenders' right to receive payment in full at another time upon providing an updated and corrected Statement and at least five (5) Business Days advance notice to the Borrowers.

SECTION 2.19. Mitigation Obligations; Replacement of Lenders.

(a) If any Lender requests or Issuing Bank compensation under Section 2.15, or if the Borrowers are required to pay any Indemnified Taxes or additional amounts to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 2.17, then such Lender or Issuing Bank shall use reasonable efforts to designate a different lending office for funding or booking its Loans or Letters of Credit hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the judgment of such Lender or Issuing Bank, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Section 2.15 or 2.17, as the case may be, in the future and (ii) would not subject such Lender or Issuing Bank to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender. The Borrowers hereby agree to pay all reasonable costs and expenses incurred by any Lender or Issuing Bank in connection with any such designation or assignment.

(b) If any Lender requests compensation under Section 2.15, or if the Borrowers are required to pay any Indemnified Taxes or additional amounts to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 2.17, or if any Lender becomes a Defaulting Lender, then the Borrowers may, at their sole expense and effort, upon notice to such Lender and the Administrative Agent, require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in Section 9.04), all its interests, rights (other than its existing rights to payments pursuant to Section 2.15 or 2.17) and obligations under this Agreement and other Loan Documents to an assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment); provided that (i) in circumstances where its consent would be required under Section 9.04, the Borrowers shall have received the prior written consent of the Administrative Agent (and in circumstances where its consent would be required under Section 9.04, the Issuing Bank and the Swingline Lender), which consent shall not unreasonably be withheld, (ii) such Lender shall have received payment of an amount equal to the outstanding principal of its Loans and participations in LC Disbursements and Swingline Loans, accrued interest thereon, accrued fees and all other amounts payable to it hereunder, from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrowers (in the case of all other amounts) and (iii) in the case of any such assignment resulting from a claim for compensation under Section 2.15 or payments required to be made pursuant to Section 2.17, such assignment will result in a reduction in such compensation or payments. A Lender shall not be required to make any such assignment and delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling the Borrowers to require such assignment and delegation cease to apply. Each party hereto agrees that (x) an assignment required pursuant to this paragraph may be effected pursuant to an Assignment and Assumption executed by the Borrower Representative, the Administrative Agent and the assignee (or, to the extent applicable, an agreement incorporating an Assignment and Assumption by reference pursuant to an Approved Electronic Platform as to which the Administrative Agent and such parties are participants), and (y) the Lender required to make such assignment need not be a party thereto in order for such assignment to be effective and shall be deemed to have consented to an be bound by the terms thereof; provided that, following the effectiveness of any such assignment, the other parties to such assignment agree to execute and deliver such documents necessary to evidence such assignment as reasonably requested by the applicable Lender, provided that any such documents shall be without recourse to or warranty by the parties thereto.

SECTION 2.20. Defaulting Lenders. Notwithstanding any provision of this Agreement to the contrary, if any Lender becomes a Defaulting Lender, then the following provisions shall apply for so long as such Lender is a Defaulting Lender:

(a) (i) fees shall cease to accrue on the unfunded portion of the Commitment of such Defaulting Lender pursuant to Section 2.12(a) and (ii) the Borrowers may terminate the Commitment any Defaulting Lender, on a non-pro rata basis, in accordance with Section 2.09(c);

(b) any payment of principal, interest, fees or other amounts received by the Administrative Agent for the account of such Defaulting Lender (whether voluntary or mandatory, at maturity, pursuant to Section 2.18(b) or otherwise) or received by the Administrative Agent from a Defaulting Lender pursuant to Section 9.08 shall be applied at such time or times as may be determined by the Administrative Agent as follows: first, to the payment of any amounts owing by such Defaulting Lender to the Administrative Agent hereunder; second, to the payment on a pro rata basis of any amounts owing by such Defaulting Lender to any Issuing Bank or Swingline Lender hereunder; third, to cash collateralize the LC Exposure with respect to such Defaulting Lender; fourth, as the Borrower Representative may request (so long as no Default or Event of Default exists), to the funding of any Loan in respect of which such Defaulting Lender has failed to fund its portion thereof as required by this Agreement, as determined by the Administrative Agent; fifth, if so determined by the Administrative Agent and the Borrower Representative, to be held in a deposit account and released pro rata in order to (x) satisfy such Defaulting Lender's potential future funding obligations with respect to Loans under this Agreement and (y) cash collateralize future LC Exposure with respect to such Defaulting Lender with respect to future Letters of Credit issued under this Agreement; sixth, to the payment of any amounts owing to the Lenders, the Issuing Banks or Swingline Lender as a result of any judgment of a court of competent jurisdiction obtained by any Lender, the Issuing Banks or Swingline Lender against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement or under any other Loan Document; seventh, so long as no Default or Event of Default exists, to the payment of any amounts owing to the Borrowers as a result of any judgment of a court of competent jurisdiction obtained by any Borrower against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement or under any other Loan Document; and eighth, to such Defaulting Lender or as otherwise directed by a court of competent jurisdiction; provided that if (x) such payment is a payment of the principal amount of any Loans or LC Disbursements in respect of which such Defaulting Lender has not fully funded its appropriate share, and (y) such Loans were made or the related Letters of Credit were issued 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, and LC Disbursements owed to, all non-Defaulting Lenders on a pro rata basis prior to being applied to the payment of any Loans of, or LC Disbursements owed to, such Defaulting Lender until such time as all Loans and funded and unfunded participations in the Borrowers' obligations corresponding to such Defaulting Lender's LC Exposure and Swingline Loans are held by the Lenders pro rata in accordance with the Commitments without giving effect to clause (d) below. Any payments, prepayments or other amounts paid or payable to a Defaulting Lender that are applied (or held) to pay amounts owed by a Defaulting Lender or to post cash collateral pursuant to this Section shall be deemed paid to and redirected by such Defaulting Lender, and each Lender irrevocably consents hereto;

(c) such Defaulting Lender shall not have the right to vote on any issue on which voting is required (other than to the extent expressly provided in Section 9.02(b)) and the Commitment and Aggregate Revolving Exposure of such Defaulting Lender shall not be included in determining whether the Required Lenders have taken or may take any action hereunder (including any consent to any amendment, waiver or other modification pursuant to Section 9.02) or under any other Loan Document; provided, that, except as otherwise provided in Section 9.02, this clause (c) shall not apply to the vote of a Defaulting Lender in the case of an amendment, waiver or other modification requiring the consent of such Lender or each Lender directly affected thereby;

(d) if any Swingline Exposure or LC Exposure exists at the time such Lender becomes a Defaulting Lender then:

(i) all or any part of the Swingline Exposure and LC Exposure of such Defaulting Lender (other than, in the case of a Defaulting Lender that is a Swingline Lender, the portion of such Swingline Exposure referred to in clause (b) of the definition of such term) shall be reallocated among the non-Defaulting Lenders in accordance with their respective Applicable Percentages but only to the extent that such reallocation does not, as to any non-Defaulting Lender, cause such non-Defaulting Lender's Revolving Exposure to exceed its Revolving Commitment;

(ii) if the reallocation described in clause (i) above cannot, or can only partially, be effected, the Borrowers shall within one (1) Business Day following notice by the Administrative Agent (x) first, prepay such Swingline Exposure and (y) second, cash collateralize, for the benefit of the Issuing Bank, the Borrowers' obligations corresponding to such Defaulting Lender's LC Exposure (in each case, after giving effect to any partial reallocation pursuant to clause (i) above) in accordance with the procedures set forth in Section 2.06(j) for so long as such LC Exposure is outstanding;

(iii) if the Borrowers cash collateralize any portion of such Defaulting Lender's LC Exposure pursuant to clause (ii) above, the Borrowers shall not be required to pay any fees to such Defaulting Lender pursuant to Section 2.12(b) with respect to such Defaulting Lender's LC Exposure during the period such Defaulting Lender's LC Exposure is cash collateralized;

(iv) if the LC Exposure of the non-Defaulting Lenders is reallocated pursuant to clause (i) above, then the fees payable to the Lenders pursuant to Sections 2.12(a) and 2.12(b) shall be adjusted in accordance with such non-Defaulting Lenders' Applicable Percentages; and

(v) if all or any portion of such Defaulting Lender's LC Exposure is neither reallocated nor cash collateralized pursuant to clause (i) or (ii) above, then, without prejudice to any rights or remedies of the Issuing Bank or any other Lender hereunder, all letter of credit fees payable under Section 2.12(b) with respect to such Defaulting Lender's LC Exposure shall be payable to the Issuing Bank until and to the extent that such LC Exposure is reallocated and/or cash collateralized; and

(e) so long as such Lender is a Defaulting Lender, the Issuing Bank shall not be required to issue, amend, extend or increase any Letter of Credit, unless it is satisfied that such Defaulting Lender's then outstanding LC Exposure will be 100% covered by the Commitments of the non-Defaulting Lenders and/or cash collateral will be provided by the Borrowers in accordance with Section 2.20(d), and LC Exposure related to any newly issued or increased Letter of Credit shall be allocated among non-Defaulting Lenders in a manner consistent with Section 2.20(d)(i) (and such Defaulting Lender shall not participate therein).

If (i) a Bankruptcy Event or a Bail-In Action with respect to a Lender Parent shall occur following the date hereof and for so long as such event shall continue or (ii) the Issuing Bank has a good faith belief that any Revolving Lender has defaulted in fulfilling its obligations under one or more other agreements in which such Revolving Lender commits to extend credit, the Issuing Bank shall not be required to issue, amend or increase any Letter of Credit, unless the Issuing Bank shall have entered into arrangements with the Borrowers or such Revolving Lender, satisfactory to the Issuing Bank to defease any risk to it in respect of such Revolving Lender hereunder.

In the event that each of the Administrative Agent, the Borrowers and the Issuing Bank agrees that a Defaulting Lender has adequately remedied all matters that caused such Lender to be a Defaulting Lender, then LC Exposure of the Lenders shall be readjusted to reflect the inclusion of such Lender's Commitment and on the date of such readjustment such Lender shall purchase at par such of the Loans of the other

Lenders (other than Swingline Loans) as the Administrative Agent shall determine may be necessary in order for such Lender to hold such Loans in accordance with its Applicable Percentage.

Nothing in this Section 2.20 shall limit the rights and remedies of any party hereto shall have against any Defaulting Lender.

SECTION 2.21. Additional Borrowers. The Company may designate any wholly-owned Domestic Subsidiary that is a Subsidiary as a Borrower (each, a “Joining Borrower”) subject to the receipt by the Administrative Agent, in form and substance reasonably satisfactory to the Administrative Agent, of: (a) documents, certificates, proofs of required actions and other deliverables reasonably requested by the Administrative Agent and corresponding to those delivered to the Administrative Agent on the Effective Date (in each case unless previously delivered, on terms reasonably satisfactory to the Administrative Agent and which shall include required “know your customer” information reasonably requested by any Lender (subject to receipt by such Lender at least 5 Business days prior to effectiveness of the Borrower Joinder Agreement)), (b) a counterpart of the Borrower Joinder Agreement, signed on behalf of the Joining Borrower (or a PDF or facsimile copy thereof) and all agreements and documents required to be delivered in connection therewith, and (c) such other information, certificates, documents, instruments and agreements as the Administrative Agent shall reasonably request in connection therewith, including any promissory notes requested by a Lender through the Administrative Agent and, if reasonably requested, written opinions of the Loan Parties’ counsel covering customary matters as may be reasonably requested by the Administrative Agent in its Permitted Discretion.

ARTICLE III

Representations and Warranties

Each Loan Party represents and warrants to the Lenders that, other than with respect to any Excluded Matters:

SECTION 3.01. Organization; Powers. Subject to any restriction arising on account of the Loan Parties’ status as “debtors” under the Bankruptcy Code and any required approvals of the Bankruptcy Court, each Loan Party and each Subsidiary is duly organized or formed, validly existing and in good standing under the laws of the jurisdiction of its organization, has all requisite power and authority to carry on its business as now conducted and, except where the failure to do so, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect, is qualified to do business, and is in good standing, in every jurisdiction where such qualification is required.

SECTION 3.02. Authorization; Enforceability. The Transactions are within each Loan Party’s corporate or other organizational powers and have been duly authorized by all necessary corporate or other organizational actions and, if required, actions by equity holders. Each Loan Document to which each Loan Party is a party has been duly executed and delivered by such Loan Party and constitutes a legal, valid and binding obligation of such Loan Party, enforceable in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors’ rights generally and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law.

SECTION 3.03. Governmental Approvals; No Conflicts. Subject to the Financing Orders, the Transactions (a) do not require any consent or approval of, registration or filing with, or any other action by, any Governmental Authority, except (i) such as have been obtained or made and are in full force and effect, (ii) consents or approvals of, registration or filing with or any other action by, any Governmental Authority the absence of which could not reasonably be expected to result in a Material Adverse Effect and (iii) filings necessary to perfect Liens created pursuant to the Loan Documents, (b) will not violate any

Requirement of Law applicable to any Loan Party or any Subsidiary, except as would not reasonably be expected to have a Material Adverse Effect, (c) will not violate or result in a default under any indenture, or other material agreement or instrument binding upon any Loan Party or any Subsidiary or the assets of any Loan Party or any Subsidiary, or give rise to a right thereunder (other than a Loan Document) to require any payment to be made by any Loan Party or any Subsidiary, except for violations that could not reasonably be expected to result in a Material Adverse Effect, and (d) will not result in the creation or imposition of any Lien on any asset of any Loan Party or any Subsidiary, except Liens created pursuant to the Loan Documents and Permitted Liens.

SECTION 3.04. No Material Adverse Change. No event, change or condition has occurred that has had, or would reasonably be expected to have, a Material Adverse Effect, since the Petition Date.

SECTION 3.05. Properties.

(a) Except as would not reasonably be expected to have a Material Adverse Effect, each of the Loan Parties and their Subsidiaries has good and indefeasible title to, or valid leasehold interests in, all its real and personal property that is material to its business, free of all Liens other than Permitted Liens.

(b) Each Loan Party and each Subsidiary owns, or is licensed to use, all trademarks, tradenames, copyrights, patents and other intellectual property necessary to its business as currently conducted, and the use thereof by the Loan Parties and the Subsidiaries does not infringe in any material respect upon the rights of any other Person, except, in each case, as could not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

(c) Each Loan Party and each Subsidiary has all licenses, permits, authorizations, consents and approvals required by law to carry on its business as currently conducted or proposed to be conducted, except in each case, to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect.

SECTION 3.06. Litigation and Environmental Matters.

(a) Except for the Disclosed Matters, there are no actions, suits or proceedings by or before any arbitrator or Governmental Authority pending against or, to the knowledge of any Loan Party, threatened against or affecting any Loan Party or any Subsidiary (i) as to which there is a reasonable possibility of an adverse determination and would reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect or (ii) that involve any Loan Document or the Transactions.

(b) Except for the Disclosed Matters (a) each Loan Party and each Subsidiary, and their respective operations and properties, is in compliance with all Environmental Laws, which compliance includes having obtained and being in compliance with all permits, licenses or other approval required under any Environmental Law, except for such noncompliance that, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect, (b) no Loan Party nor any Subsidiary has received written notice of any pending or threatened claim with respect to any Environmental Liability or knows of any basis for any Environmental Liability, in each case, that, individually or in the aggregate, would reasonably be expected to result in a Material Adverse Effect and (c) except as could not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect, no Loan Party nor any Subsidiary has become subject to any Environmental Liability, (d) no Loan Party nor any Subsidiary has treated, stored, transported, disposed of, or arranged for the treatment, transport or disposal of, any Hazardous Materials at or from any currently or formerly owned, leased or operated property in a manner that could reasonably be expected to result in a Material Adverse Effect, and (e) there are no circumstances, conditions or occurrences, including the Release or threatened Release of any Hazardous Material, relating

to any property currently or, to the knowledge of any Loan Party or Subsidiary, formerly owned, leased or operated by any Loan Party or any Subsidiary, that could reasonably be expected to have a Material Adverse Effect.

SECTION 3.07. Compliance with Laws and Agreements. Except where the failure to do so, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect, each Loan Party and each Subsidiary is in compliance with (a) all Requirement of Law applicable to it or its property and (b) all indentures, agreements and other instruments binding upon it or its property.

SECTION 3.08. Investment Company Status. No Loan Party or any Subsidiary is an “investment company” as defined in, or subject to regulation under, the Investment Company Act of 1940.

SECTION 3.09. Taxes. Each Borrower and each of its Subsidiaries has timely filed or caused to be filed all Tax returns and reports required to have been filed and has paid or caused to be paid all Taxes levied or imposed upon it or otherwise due and payable (including in its capacity as a withholding agent), except (a) Taxes that are being contested in good faith by appropriate proceedings that stay the enforcement of the Tax in question and for which such Borrower or such Subsidiary, as applicable, has set aside on its books adequate reserves in accordance with GAAP or (b) to the extent that the failure to do so could not reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect. There are no Liens for Taxes with respect to any assets of any Borrower or its Subsidiaries (other than Permitted Encumbrances). There is no current, pending or, to the knowledge of the Borrowers, proposed Tax audit, assessment, deficiency or other claim against any Borrower or any of its Subsidiaries that could reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect.

SECTION 3.10. ERISA. No ERISA Event has occurred or is reasonably expected to occur that, when taken together with all other such ERISA Events that have occurred or for which liability is reasonably expected to occur, could reasonably be expected to result in a Material Adverse Effect. Except for any failure that could not reasonably be expected to have a Material Adverse Effect, (i) each employee pension benefit plan (within the meaning of Section 3(2) of ERISA) established or maintained by any Borrower or any ERISA Affiliate that is intended to be qualified under Section 401(a) of the Code has been determined by the IRS to be so qualified, and (ii) each trust related to such plan has been determined to be exempt under Section 501(a) of the Code. No liability that could reasonably be expected to result in a Material Adverse Effect has been incurred by any Borrower or any ERISA Affiliate which remains unsatisfied for any taxes or penalties with respect to any Employee Benefit Plan or any Multiemployer Benefit Plan. Except as could not reasonably be expected to result in a Material Adverse Effect, neither any Borrower nor any ERISA Affiliate has engaged in a transaction that could be subject to Section 4069 or 4212(c) of ERISA.

SECTION 3.11. Disclosure.

(a) No written reports, financial statements, certificates or other information (other than projections and information of a general economic or industry specific nature) furnished by or on behalf of any Loan Party to the Administrative Agent or any Lender in connection with the negotiation of this Agreement or any other Loan Document (as modified or supplemented by other information so furnished), when taken as a whole, contained as of the date such report, financial statement, certificate or other information was so furnished any untrue statement of a material fact or omitted to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not materially misleading; provided that, with respect to projected financial information, (a) the Borrowers represent only that such information was prepared in good faith based upon assumptions believed by management of the Loan Parties to be reasonable at the time delivered and, if such projected financial information was delivered prior to the Effective Date, as of the Effective Date, and (b) it is understood and

agreed that uncertainty is inherent in any forecasts or projections and no assurances can be given by the Company or the other Loan Parties of the future achievement of such performance.

(b) As of the Effective Date, to the best knowledge of any Borrower, the information included in the Beneficial Ownership Certification provided on or prior to the Effective Date to any Lender in connection with this Agreement is true and correct in all respects.

SECTION 3.12. [Reserved].

SECTION 3.13. [Reserved].

SECTION 3.14. [Reserved].

SECTION 3.15. Capitalization and Subsidiaries. All of the issued and outstanding Equity Interests owned by any Loan Party have been (to the extent such concepts are relevant with respect to such ownership interests) duly authorized and issued and are fully paid and non-assessable. There are no outstanding commitments or other obligations of any Loan Party to issue, and no options, warrants or other rights of any Person to acquire, any shares of any class of capital stock or other equity interests of the Company or any Subsidiary.

SECTION 3.16. Security Interest in Collateral; Superpriority Claims.

(a) Upon entry of the Interim Order, the provisions of this Agreement and the other Loan Documents create legal and valid Liens on all the Collateral granted by the Loan Parties in favor of the Administrative Agent, securing the Obligations and such Liens constitute perfected and continuing Liens on the Collateral securing the Obligations, enforceable against each applicable Loan Party and all third parties, and having priority over all other Liens on the Collateral except in the case of Permitted Liens that have priority over the Liens in favor of the Administrative Agent pursuant to any applicable law.

(b) Pursuant to Section 364(c)(1) of the Bankruptcy Code, the Obligations shall at all times constitute allowed senior administrative expenses against each of the Loan Parties in the Chapter 11 Cases (without the need to file any proof of claim or request for payment of administrative expense), with priority over any and all other administrative expenses, adequate protection claims, diminution claims and all other claims against the Loan Parties, now existing or hereafter arising, of any kind or nature whatsoever, including, without limitation, all administrative expenses of the kind specified in sections 503(b) and 507(b) of the Bankruptcy Code, and over any and all other administrative expense claims arising under Sections 105, 326, 328, 330, 331, 361, 362, 363, 503(b), 506(c) (with any claims arising under Section 506(c) only subject to the entry of the Financing Orders), 507(a), 507(b), 546, 726, 1113 and 1114 of the Bankruptcy Code, whether or not such expenses or claims may become secured by a judgment Lien or other nonconsensual Lien, levy or attachment, which allowed claims shall for purposes of section 1129(a)(9)(A) of the Bankruptcy Code be considered administrative expenses allowed under section 503(b) of the Bankruptcy Code, and which shall be payable from and have recourse to all pre- and post-petition property of Borrowers and their estates and all proceeds thereof except as otherwise set forth in the Financing Orders (such Obligations, collectively, the “Superpriority Claims”).

SECTION 3.17. [Reserved].

SECTION 3.18. Margin Regulations. No Loan Party is engaged and will not engage, principally or as one of its important activities, in the business of purchasing or carrying Margin Stock, or extending credit for the purpose of purchasing or carrying Margin Stock, and no part of the proceeds of any Borrowing or Letter of Credit hereunder will be used to buy or carry any Margin Stock. Following the application of

the proceeds of each Borrowing or drawing under each Letter of Credit, not more than 25% of the value of the assets (either of any Loan Party only or of the Loan Parties and their subsidiaries on a consolidated basis) will be Margin Stock.

SECTION 3.19. Use of Proceeds. The proceeds of the Loans have been used and will be used, whether directly or indirectly as set forth in Section 5.08.

SECTION 3.20. Financing Orders; Recoupment / Setoff. The stipulations of the Loan Parties in each of the Financing Orders are true, complete and correct in all material respects. None of the Obligations shall be subject to setoff or recoupment or any such rights under Section 553 of the Bankruptcy Code or otherwise with respect to any claim any Loan Party may have against any Secured Party.

SECTION 3.21. Anti-Corruption Laws and Sanctions. Each Loan Party has implemented and maintains in effect policies and procedures designed to promote compliance by such Loan Party, its subsidiaries and their respective directors, officers, employees and agents with Anti-Corruption Laws and applicable Sanctions. Each Loan Party, its subsidiaries and their respective officers and directors and, to the knowledge of such Loan Party, its employees and agents, are in compliance with Anti-Corruption Laws and applicable Sanctions in all material respects. None of (a) any Loan Party, any subsidiary or any of their respective directors, officers or, to the knowledge of any such Loan Party or subsidiary, employees, or (b) to the knowledge of any such Loan Party or subsidiary, any agent of such Loan Party or any subsidiary that will act in any capacity in connection with or benefit from the credit facility established hereby, is a Sanctioned Person. No Borrowing or Letter of Credit, use of proceeds, Transaction or other transaction contemplated by this Agreement or the other Loan Documents will violate Anti-Corruption Laws or applicable Sanctions.

ARTICLE IV

Conditions

SECTION 4.01. Effective Date. The obligations of the Lenders to make Loans and of the Issuing Bank to issue Letters of Credit hereunder shall not become effective until the date on which each of the following conditions is satisfied (or waived in accordance with Section 9.02):

(a) Credit Agreement and Other Loan Documents. The Administrative Agent (or its counsel) shall have received (i) from each party hereto a counterpart of this Agreement signed on behalf of such party (which, subject to Section 9.06(b), may include any Electronic Signatures transmitted by facsimile, emailed pdf. or any other electronic means that reproduces an image of an actual executed signature page) and (ii) any promissory notes requested by a Lender at least five (5) Business Days prior to the Effective Date pursuant to Section 2.10 payable to such requesting Lender.

(b) Closing Certificates; Certified Certificate of Incorporation; Good Standing Certificates. The Administrative Agent (or its counsel) shall have received (i) a certificate of each Loan Party, dated the Effective Date and executed by a Responsible Officer, which shall (A) certify the resolutions of its Board of Directors, members or other body authorizing the execution, delivery and performance of the Loan Documents to which it is a party, (B) identify by name and title and bear the signatures of the officers of such Loan Party authorized to sign the Loan Documents to which it is a party, and (C) contain appropriate attachments, including the certificate or articles of incorporation or organization of each Loan Party certified by the relevant authority of the jurisdiction of organization of such Loan Party and a true and correct copy of its by-laws or operating, management or partnership agreement, or other organizational or governing documents, and (ii) a good standing certificate for each Loan Party from its jurisdiction of

organization or the substantive equivalent available in the jurisdiction of organization for each Loan Party from the appropriate governmental officer in such jurisdiction.

(c) Officer's Certificate. The Administrative Agent shall have received a certificate, signed by a Responsible Officer of the Company, dated as of the Effective Date (i) stating that no Default has occurred and is continuing and (ii) stating that the representations and warranties contained in the Loan Documents are true and correct as of such date.

(d) Expenses. (i) the Administrative Agent and the Lenders shall have received payment for all expenses for which invoices have been presented to the Company (including the reasonable fees and expenses of legal counsel), at least three (3) Business Days prior to the Effective Date and (ii) the administrative agent and the lenders under the Prepetition Credit Agreement shall have received payment for all expenses for which invoices have been presented to the Company (including the reasonable fees and expenses of legal counsel) under the Prepetition Credit Agreement.

(e) USA PATRIOT Act, Etc. (i) The Administrative Agent shall have received, at least five (5) days prior to the Effective Date, all documentation and other information regarding the Borrowers requested in connection with applicable "know your customer" and anti-money laundering rules and regulations, including the USA PATRIOT Act, to the extent requested in writing of the Borrowers at least ten (10) days prior to the Effective Date, and (ii) to the extent any Borrower qualifies as a "legal entity customer" under the Beneficial Ownership Regulation, at least five (5) days prior to the Effective Date, any Lender that has requested, in a written notice to the Borrowers at least ten (10) days prior to the Effective Date, a Beneficial Ownership Certification in relation to each Borrower shall have received such Beneficial Ownership Certification (provided that, upon the execution and delivery by such Lender of its signature page to this Agreement, the condition set forth in this clause (ii) shall be deemed to be satisfied).

(f) Interim Order. The Bankruptcy Court shall have entered the Interim Order which Interim Order shall be in full force and effect and not stayed or subject to appeal, and the Loan Parties shall be in compliance in all respects with the Interim Order.

(g) First Day Pleadings and Orders. The Loan Parties shall have provided the Lenders with drafts of all motions, orders (including the "first day" orders) and other substantive documents to be filed with or submitted to the Bankruptcy Court on the Petition Date in form and substance reasonably satisfactory to the Lenders; and all "first day" orders shall have been approved and entered by the Bankruptcy Court except as otherwise agreed by the Lenders.

(h) Long-Term DIP Budget. Each Lender shall have received the Long-Term DIP Budget, which Long-Term DIP Budget shall be satisfactory to the Lenders.

(i) Short-Term DIP Budget. Each Lender shall have received the Short-Term DIP Budget, which Short-Term DIP Budget shall be satisfactory to the Required Lenders.

(j) Compliance with Milestones. The Loan Parties shall be in compliance with each Milestone required to be satisfied (or waived) in accordance with the terms hereof.

(k) No Trustee or Examiner. No trustee under chapter 7 or chapter 11 of the Bankruptcy Code or examiner with enlarged powers beyond those set forth in Sections 1106(a)(3) and (4) of the Bankruptcy Code shall have been appointed in the Chapter 11 Cases.

(l) Other Information. Each Lender shall have received any other information (financial or otherwise) reasonably requested by such Lender, which information shall be in form and substance

reasonably satisfactory to such Lender. The Administrative Agent shall notify the Borrowers, the Lenders and the Issuing Bank of the Effective Date, and such notice shall be conclusive and binding.

SECTION 4.02. Each Credit Event. The obligation of each Lender to make a Loan on the occasion of any Borrowing (each, a "Credit Event"), is subject to the satisfaction of the following conditions:

(a) The representations and warranties of the Loan Parties set forth in the Loan Documents shall be true and correct in all material respects with the same effect as though made on and as of the date of such Borrowing or the date of issuance, amendment or extension of such Letter of Credit, as applicable (it being understood and agreed that any representation or warranty which by its terms is made as of a specified date shall be required to be true and correct in all material respects only as of such specified date, and that any representation or warranty which is subject to any materiality qualifier shall be required to be true and correct in all respects).

(b) At the time of and immediately after giving effect to such Borrowing, no Default shall have occurred and be continuing.

(c) The Bankruptcy Court shall have entered the applicable Financings Order which Financing Orders shall be in full force and effect and not stayed or subject to appeal, and the Loan Parties shall be in compliance in all respects with the applicable Financing Order.

(d) No trustee under chapter 7 or chapter 11 of the Bankruptcy Code or examiner with enlarged powers beyond those set forth in Sections 1106(a)(3) and (4) of the Bankruptcy Code shall have been appointed in the Chapter 11 Cases.

(e) There shall exist no unstayed action, suit, investigation, litigation or proceeding pending or (to the knowledge of Borrowers) threatened in writing in any court or before any arbitrator or governmental instrumentality (other than the Chapter 11 Cases or the consequences that would normally result from the commencement and continuation of the Chapter 11 Cases) restraining, prohibiting or imposing material and adverse conditions upon this Agreement or the facilities provided hereunder.

(f) To the extent applicable, all necessary governmental, Bankruptcy Court and third-party orders, approvals and consents in connection with the Loan shall have been obtained and remain in effect, and all applicable waiting periods shall have expired without any action being taken by any competent authority, which in the judgement of the Required Lenders restrains, prevents or imposes material and adverse conditions upon the Loans.

(g) Lenders shall have received evidence satisfactory to Lenders that Borrowers are in compliance with the DIP Budgets.

Each Borrowing and each issuance, amendment or extension of a Letter of Credit shall be deemed to constitute a representation and warranty by the Borrowers on the date thereof as to the matters specified in paragraphs (a), (b), (d) and (e) of this Section 4.02.

ARTICLE V

Affirmative Covenants

Until all of the Obligations have been Paid in Full, each Loan Party executing this Agreement covenants and agrees, jointly and severally with all of the other Loan Parties, with the Lenders:

SECTION 5.01. Information. The Loan Parties will furnish to the Administrative Agent (for delivery to each Lender):

(a) [reserved];

(b) [reserved];

(c) [reserved];

(d) no later than 5:00 p.m. (New York City) on each Monday following the completion of each calendar week, a Compliance Certificate (i) certifying as to whether a Default has occurred and, if a Default has occurred, specifying the details thereof and any action taken or proposed to be taken with respect thereto and (ii) setting forth reasonably detailed calculations demonstrating compliance with Section 6.13 as of the last days of the most recently ended calendar week;

(e) [reserved];

(f) [reserved];

(g) [reserved];

(h) [reserved];

(i) [reserved];

(j) [reserved];

(k) [reserved];

(l) [reserved];

(m) promptly following any request therefor, (i) such other information regarding the operations, material changes in ownership of Equity Interests, business affairs and financial condition of any Loan Party or any Subsidiary, or compliance with the terms of this Agreement, as the Administrative Agent or any Lender (acting through the Administrative Agent) may reasonably request, and (ii) information and documentation reasonably requested by the Administrative Agent or any Lender (acting through the Administrative agent) as are required for purposes of compliance with applicable “know your customer” and anti-money laundering rules and regulations, including the USA PATRIOT Act and the Beneficial Ownership Regulation.

SECTION 5.02. Notices of Material Events. The Borrowers will furnish to the Administrative Agent (for delivery to each Lender) prompt written notice of the following:

(a) the occurrence of any Default;

(b) the filing or commencement of, or any written threat or notice of intention of any Person to file or commence, any action, suit or proceeding, whether at law or in equity or by or before any Governmental Authority or in arbitration, against Holdings, the Company or any of its Subsidiaries that would reasonably be expected to have a Material Adverse Effect;

(c) [reserved];

(d) any settlement offer or proposal with respect to any pending action, suit or proceeding involving the Loan Parties;

(e) (i) the occurrence of any ERISA Event, or (ii) steps taken by any Borrower or any ERISA Affiliate to terminate any Employee Benefit Plan, in each case that, alone or together with any other ERISA Events that have occurred, would reasonably be expected to have a Material Adverse Effect;

(f) any other development that results in, or would reasonably be expected to result, in a Material Adverse Effect; and

(g) any change in the information provided in the Beneficial Ownership Certification delivered to such Lender that would result in a change to the list of beneficial owners identified in such certification.

Each notice delivered under this Section 5.02 shall be accompanied by a statement of a Financial Officer or other executive officer of the Borrower Representative setting forth in reasonable detail the nature of the event or development requiring such notice and any action taken or proposed to be taken with respect thereto and with respect to notice required under Section 5.02(e), any action taken or threatened by the PBGC or any other Governmental Authority or the Multiemployer Benefit Plan sponsor with respect thereto, to the extent applicable.

SECTION 5.03. Existence; Conduct of Business. Each Borrower will, and, except where the failure to so preserve, renew or keep in full force and effect any of the following could not reasonably be expected to result in a Material Adverse Effect, will cause each Subsidiary to, do or cause to be done all things necessary to preserve, renew and keep in full force and effect its legal existence and, except where the failure to so preserve, renew or keep in full force and effect any of the following could not reasonably be expected to result in a Material Adverse Effect, the rights, qualifications, licenses, permits, franchises, governmental authorizations, intellectual property rights, licenses and permits material to the conduct of its business, and, except as would not reasonably be expected to have a Material Adverse Effect, maintain all requisite authority to conduct its business in each jurisdiction in which its business is conducted; provided that the foregoing shall not prohibit any merger, consolidation, liquidation or dissolution permitted under Section 6.03.

SECTION 5.04. Payment of Obligations. Each Borrower will, and will cause each of its Subsidiaries to, pay or discharge all liabilities to the extent set forth in the DIP Budgets.

SECTION 5.05. Maintenance of Properties. Each Loan Party will, and will cause each Subsidiary to, keep and maintain all property material to the conduct of its business as conducted on the Petition Date in good working order and condition, ordinary wear and tear excepted and casualty and condemnation excepted, except where the failure to so keep and maintain could not reasonably be expected to result in a Material Adverse Effect.

SECTION 5.06. Books and Records; Inspection Rights. Each Loan Party will, and will cause each Subsidiary to, (i) keep proper books of record and account in which entries full, true and correct in all material respects in conformity with all Requirements of Law shall be made of all dealings and transactions in relation to its business and activities as conducted on the Petition Date and (ii) permit any representatives designated by the Administrative Agent (including employees of the Administrative Agent or any consultants, accountants, lawyers and appraisers retained by any of the Administrative Agent), upon reasonable prior notice and at reasonable times during normal business hours, to visit and inspect its properties, to examine and make extracts from its books and records, and to discuss its affairs, finances and condition with its officers and accountants. The Loan Parties acknowledge that the Administrative Agent may, after exercising their rights of inspection, prepare and distribute to the Lenders certain Reports

pertaining to the Loan Parties' assets for internal use by the Lenders. Notwithstanding anything to the contrary in this Section 5.06, no Loan Party will be required to disclose or permit the inspection or discussion of, any document, information or other matter (i) that constitutes non-financial trade secrets or non-financial proprietary information, (ii) in respect of which disclosure to the Administrative Agent or any Lender (or their respective representatives or contractors) is prohibited by Law or any binding agreement or (iii) that is subject to attorney client or similar privilege or constitutes attorney work product.

SECTION 5.07. Compliance with Laws and Material Contractual Obligations.

(a) Each Loan Party will, and will cause each Subsidiary to, comply with all of its contractual obligations (other than with respect to Indebtedness) and Requirements of Law applicable to it or its property (including without limitation Environmental Laws), except where the failure to do so, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect.

(b) Each Loan Party will maintain in effect and enforce policies and procedures designed to promote compliance by such Loan Party, its subsidiaries and their respective directors, officers, employees and agents with Anti-Corruption Laws and applicable Sanctions.

SECTION 5.08. Use of Proceeds.

(a) The proceeds of the Loans and the Letters of Credit will be used for general corporate purposes solely to pay expenses reflected in the DIP Budgets and the Roll-Up. No part of the proceeds of any Loan and no Letter of Credit will be used, whether directly or indirectly, for any purpose that entails a violation of any of the regulations of the Federal Reserve Board, including Regulations T, U and X.

(b) No Borrower will request any Borrowing or Letter of Credit, and no Borrower shall use, and each Borrower shall procure that its subsidiaries and its and their respective directors, officers, employees and agents shall not use, the proceeds of any Borrowing or Letter of Credit (i) in furtherance of an offer, payment, promise to pay, or authorization of the payment or giving of money, or anything else of value, to any Person in violation of any Anti-Corruption Laws, (ii) for the purpose of funding, financing or facilitating any activities, business or transaction of or with any Sanctioned Person, or in any Sanctioned Country, except to the extent permitted for a Person required to comply with Sanctions, or (iii) in any manner that would result in the violation of any Sanctions applicable to any party hereto.

SECTION 5.09. [Reserved].

SECTION 5.10. [Reserved].

SECTION 5.11. [Reserved].

SECTION 5.12. [Reserved].

SECTION 5.13. [Reserved].

SECTION 5.14. Collateral; Further Assurances.

(a) Subject to applicable Requirement of Law, each Loan Party shall cause each of its Domestic Subsidiaries, in each case, other than an Excluded Subsidiary, formed or acquired after the Effective Date in accordance with the terms of this Agreement or that ceased to be an Excluded Subsidiary, to become a Guarantor promptly (and in any event within 1 day after the creation or acquisition thereof or after such Domestic Subsidiary ceases to be an Excluded Subsidiary (or such longer period as the

Administrative Agent shall agree)) by executing a Joinder Agreement, whereupon it shall guarantee repayment of all the Obligations. Upon execution and delivery thereof, each such Person (A) shall automatically become a Guarantor hereunder and thereupon shall have all of the rights, benefits, duties, and obligations in such capacity under the Loan Documents and (B) and automatically and without further action grant the security interest contemplated by clause (b) below.

(b) To secure the prompt payment and performance of all the Obligations, each Loan Party grants to the Administrative Agent, for the benefit of the Secured Parties, a lien on and security interest in all of the Collateral as provided in the Financing Orders.

(c) Without limiting the foregoing, each Loan Party will execute and deliver, or cause to be executed and delivered, to the Administrative Agent such documents, agreements and instruments, and will take or cause to be taken such further actions (including the filing and recording of financing statements, fixture filings, mortgages, deeds of trust and other documents and such other actions or deliveries of the type required by Section 4.01), which may be required by any Requirement of Law or which the Administrative Agent may, from time to time, reasonably request to carry out the terms and conditions of this Agreement and the other Loan Documents and to ensure perfection and priority of the Liens created or intended to be created by the Collateral Documents, all in form and substance reasonably satisfactory to the Administrative Agent and all at the expense of the Loan Parties.

ARTICLE VI

Negative Covenants

Until all of the Obligations have been Paid in Full, each Loan Party executing this Agreement covenants and agrees, jointly and severally with all of the other Loan Parties, with the Lenders that:

SECTION 6.01. Indebtedness. Holdings will not and will not permit any Subsidiary to, create, incur, assume or suffer to exist any Indebtedness, except:

(a) the Obligations;

(b) (i) Indebtedness existing on the Petition Date and set forth in Schedule 6.01 and (ii) Indebtedness consisting of past due rent, accounts payable and taxes to the extent consistent with the DIP Budgets;

(c) Indebtedness of any Borrower to any Subsidiary and of any Subsidiary to any Borrower or any other Subsidiary, provided that (i) Indebtedness of any Subsidiary that is not a Loan Party to any Borrower or any other Loan Party shall be subject to Section 6.04 and (ii) Indebtedness of any Loan Party to any Subsidiary that is not a Loan Party shall be subordinated to the Obligations on terms reasonably satisfactory to the Administrative Agent;

(d) Guarantees by any Borrower of Indebtedness of any Subsidiary and by any Subsidiary of Indebtedness of any Borrower or any other Subsidiary, provided that (i) the Indebtedness so Guaranteed is permitted by this Section 6.01, (ii) Guarantees by any Borrower or any other Loan Party of Indebtedness of any Subsidiary that is not a Loan Party shall be subject to Section 6.04 and (iii) Guarantees permitted under this clause (d) shall be subordinated to the Obligations on the same terms as the Indebtedness so Guaranteed is subordinated to the Obligations;

(e) [reserved];

(f) [reserved];

(g) Indebtedness owed to any Person providing workers' compensation, health, disability or other employee benefits or property, casualty or liability insurance, self-insurance obligations, indemnities, letters of credit, bank guarantees, banker's acceptances and similar investments, pursuant to reimbursement or indemnification obligations to such Person, in each case incurred in the ordinary course of business;

(h) Indebtedness of any Loan Party in respect of performance bonds, bid bonds, appeal bonds, surety bonds, performance and completion guarantees and similar obligations, in each case provided in the ordinary course of business;

(i) [reserved];

(j) [reserved];

(k) [reserved];

(l) [reserved];

(m) Indebtedness consisting of indemnifications or other similar obligations in connection with any acquisition or disposition of a line of business or Subsidiary permitted hereunder;

(n) [reserved];

(o) [reserved];

(p) [reserved];

(q) [reserved];

(r) (x) cash management obligations of Holdings and its Subsidiaries and other Indebtedness of the Loan Parties in respect of netting services, overdraft protections and similar arrangements in each case in connection with deposit accounts, in the ordinary course of business and (y) 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; provided that such Indebtedness pursuant to this clause (y) is extinguished within fifteen Business Days of its incurrence;

(s) [reserved];

(t) [reserved];

(u) [reserved];

(v) [reserved];

(w) [reserved]; and

(x) Indebtedness (other than for borrowed money or purchase money obligations) secured by Liens permitted under Section 6.02.

The accrual of interest, the accretion of accreted value, the accretion or amortization of original issue discount and the payment of interest in the form of additional Indebtedness shall not be deemed to be an incurrence of Indebtedness for purposes of this Section 6.01.

SECTION 6.02. Liens. Holdings will not, and will not permit any Subsidiary to, create, incur, assume or permit to exist any Lien on any property or asset now owned or hereafter acquired by it, except:

(a) Liens created pursuant to any Loan Document (including pursuant to the Financing Orders);

(b) Permitted Encumbrances;

(c) Any Lien on any property or asset of any Borrower or any Subsidiary existing on the Petition Date and set forth in Schedule 6.02; provided that (i) such Lien shall not apply to any other property or asset of such Borrower or Subsidiary or any other Borrower or Subsidiary and (ii) such Lien shall secure only those obligations which it secures on the date hereof;

(d) Involuntary Liens securing Indebtedness and other obligations of the type described in Section 6.01(b)(ii);

(e) [reserved];

(f) Liens (i) of a collecting bank arising in the ordinary course of business under Section 4-210 of the Uniform Commercial Code in effect in the relevant jurisdiction covering only the items being collected upon or (ii) in favor of a banking institution arising as a matter of law, encumbering amounts credited to deposit or securities accounts (including the right of set-off) and which are within the general parameters customary in the banking industry;

(g) [reserved];

(h) Liens granted by a Subsidiary that is not a Loan Party in favor of any Borrower or another Loan Party in respect of Indebtedness owed by such Subsidiary;

(i) Liens arising from precautionary UCC financing statements or similar state laws, including in respect of any lease or disposition permitted by this Agreement;

(j) Liens arising solely by virtue of any statutory or common law provision relating to banker's liens, rights of setoff or similar rights and remedies, in each case as to deposit accounts or other funds maintained with a creditor depository institution;

(k) [reserved];

(l) [reserved];

(m) Involuntary Liens not otherwise permitted by this Section 6.02 (other than any Lien under ERISA) so long as the aggregate outstanding principal amount of the obligations secured thereby does not exceed the \$100,000;

(n) [reserved];

(o) [reserved];

(p) [reserved];

(q) [reserved];

(r) [reserved];

(s) [reserved];

(t) [reserved];

(u) [reserved];

(v) Liens that are contractual rights of set-off relating to the establishment of depository relations with banks not given in connection with the issuance of Indebtedness;

(w) [reserved];

(x) [reserved];

(y) [reserved];

(z) [reserved];

(aa) [reserved];

(bb) [reserved]; and

(cc) [reserved].

SECTION 6.03. Fundamental Changes.

(a) No Loan Party will, nor will it permit any Subsidiary to, merge into or consolidate with any other Person, or permit any other Person to merge into or consolidate with it, or, unless constituting an Excluded Matter, liquidate or dissolve.

(b) No Loan Party will, nor will it permit any Subsidiary to, engage in any business other than businesses of the type conducted by the Borrowers and their Subsidiaries on the date hereof and businesses reasonably related, ancillary or incidental thereto.

(c) No Loan Party will, nor will it permit any Subsidiary to, change its fiscal year from the basis in effect on the Effective Date without the reasonable consent of the Administrative Agent.

SECTION 6.04. Investments, Loans, Advances, Guarantees and Acquisitions. Holdings will not, nor will it permit any Subsidiary to purchase or acquire (including pursuant to any merger) any Equity Interests, evidences of Indebtedness or other securities (including any option, warrant or other right to acquire any of the foregoing) of, make any loans or advances to, Guarantee any obligations of, or make any investment or any other interest in, any other Person, or purchase or otherwise acquire (in one transaction or a series of transactions) any assets of any other Person constituting a business unit (whether through purchase of assets, merger or otherwise) (each, an “Investment”), except:

(a) Investments in Cash Equivalents (or Investments that were Cash Equivalents when made);

(b) Investments in existence on the Petition Date and other than with respect to a Subsidiary of the Loan Parties, described in Schedule 6.04;

(c) Investments by Holdings and/or its Subsidiaries in the Company and/or its Subsidiaries, provided that no Investments by Loan Parties in Subsidiaries that are not Loan Parties shall be permitted pursuant to this clause (c);

(d) [reserved];

(e) [reserved];

(f) [reserved];

(g) [reserved];

(h) Investments constituting deposits described in clauses (c) and (d) of the definition of the term “Permitted Encumbrances” to the extent set forth in the DIP Budgets;

(i) [reserved];

(j) [reserved];

(k) [reserved];

(l) Investments acquired by a Loan Party or any of its Subsidiaries (i) in exchange for any other Investment or accounts receivable held by a Loan Party or any of its Subsidiaries in connection with or as a result of a bankruptcy or reorganization of the Person in which such other Investment is made or which is the obligor with respect to such accounts receivable or (ii) as a result of a foreclosure by a Loan Party or any of its Subsidiaries with respect to any secured Investment or other transfer of title with respect to any secured Investment in default;

(m) [reserved];

(n) [reserved];

(o) [reserved];

(p) [reserved];

(q) [reserved];

(r) Guarantees constituting Indebtedness permitted by Section 6.01;

(s) Investments constituting Liens permitted under Section 6.02 and transactions permitted by Section 6.09;

(t) [reserved];

(u) [reserved];

(v) the forgiveness or conversion to equity of any Indebtedness owed to a Subsidiary and permitted by Section 6.01; and

(w) [reserved].

SECTION 6.05. Asset Sales. Holdings will not, nor will it permit any Subsidiary to, Dispose of any asset, including any Equity Interest owned by it, nor will Holdings permit any Subsidiary to issue any additional Equity Interest in such Subsidiary, except:

(a) Dispositions of Equipment;

(b) Dispositions constituting Investments permitted under Section 6.04;

(c) Dispositions of Accounts (as defined in the UCC) in connection with the compromise, settlement or collection thereof ;

(d) any Excluded Matter;

(e) Dispositions resulting from any casualty or other insured damage to, or any taking under power of eminent domain or by condemnation or similar proceeding of, any property or asset of any Borrower or any Subsidiary;

(f) [reserved];

(g) transactions permitted by Section 6.03;

(h) Dispositions of cash and Cash Equivalents in the ordinary course of business;

(i) [reserved];

(j) non-exclusive licensing or sublicensing of intellectual property rights in the ordinary course of business;;

(k) the granting of Liens permitted under Section 6.02;

(l) Dispositions which are required by court order or regulatory decree or otherwise required or compelled by regulatory authorities;

(m) licenses, sublicenses, leases or subleases with respect to any personal or real property or assets (other than intellectual property) granted to third Persons in the ordinary course of business (including the termination or expiration of any lease or real or personal property in accordance with its terms); provided, that the same do not in any material respect interfere with the business of the Company and its Subsidiaries, taken as a whole as conducted on the Petition Date, or materially detract from the value of the relative assets of the Company and the Subsidiaries, taken as a whole;

(n) the abandonment or cancellation of intellectual property, in the reasonable judgment of the Company, that is no longer used or useful in the business of Holdings and its Subsidiaries, taken as a whole as conducted on the Petition Date and does not have more than minimal economic value;

(o) [reserved];

(p) [reserved];

(q) [reserved];

(r) [reserved];

(s) [reserved];

(t) [reserved];

(u) transfers of property subject to casualty events upon receipt of the net proceeds of such casualty events; and

(v) [reserved],

provided that Dispositions permitted by paragraphs (a) shall be made for fair value and 100% cash consideration.

SECTION 6.06. Sale and Leaseback Transactions. Holdings will not, nor will it permit any Subsidiary to, enter into any arrangement, directly or indirectly, whereby it shall sell or transfer any property, real or personal, used or useful in its business, whether now owned or hereafter acquired, and thereafter rent or lease such property or other property that it intends to use for substantially the same purpose or purposes as the property sold or transferred.

SECTION 6.07. Swap Agreements. Holdings will not, nor will it permit any Subsidiary to, enter into any Swap Agreement.

SECTION 6.08. Restricted Payments.

(a) Holdings will not, nor will it permit any of the Subsidiaries to, declare or make, or agree to pay or make, directly or indirectly, any Restricted Payment, or incur any obligation (contingent or otherwise) to do so, except Subsidiaries may declare and pay dividends ratably with respect to their Equity Interests to a Loan Party (other than Holdings).

(b) No Loan Party will, nor will it permit any Subsidiary to, make or agree to pay or make, directly or indirectly, any prepayment or other distribution (whether in cash, securities or other property) of or in respect of principal of or interest on any Indebtedness, or any payment or other distribution (whether in cash, securities or other property), including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, acquisition, cancellation or termination of any Indebtedness, except:

(i) Payment of the Obligations; and

(ii) Payments of Indebtedness reflected in the DIP Budgets.

SECTION 6.09. Transactions with Affiliates. Holdings will not, nor will it permit any Subsidiary to, sell, lease or otherwise transfer any property or assets to, or purchase, lease or otherwise acquire any property or assets from, or otherwise engage in any other transactions with, any of its Affiliates, except (a) transactions that are at prices and on terms and conditions not less favorable to Company or such Subsidiary than could be obtained on an arm's-length basis from unrelated third parties, (b) transactions between or among Holdings and its Subsidiaries and ordinary course transactions among Holdings, on the one hand, and the Company or its Subsidiaries, on the other hand, that are operational in nature, (c) payments reflected in the DIP Budgets, (d) transactions constituting Excluded Matters and (e) any agreement, instrument or arrangement as in effect as of the Petition Date and set forth in Schedule 6.09.

SECTION 6.10. Restrictive Agreements. Holdings will not, nor will it permit any of its Subsidiaries to, directly or indirectly, enter into, incur or permit to exist any agreement or other arrangement that prohibits, restricts or imposes any condition upon (a) the ability of Holdings or any of the Subsidiaries to create, incur or permit to exist any Lien upon any Collateral to secure the Obligations, or (b) the ability of any Subsidiary to pay dividends or other distributions with respect to any shares of its Equity Interests or to make or repay loans or advances to the Company or any other Subsidiary or to Guarantee Indebtedness of the Company or any other Subsidiary; provided that the foregoing shall not apply to (i) restrictions and conditions imposed by Requirement of Law or by any Loan Document, (ii) [reserved], (iii) customary restrictions and conditions contained in agreements relating to the sale of assets pending such sale; provided further that such restrictions and conditions apply only to such assets that are to be sold and such sale is permitted hereunder; and (iv) secured Indebtedness otherwise permitted to be incurred pursuant to Sections 6.01 and 6.02 that limit the right of the debtor to dispose of the assets securing such Indebtedness.

SECTION 6.11. Amendment of Material Documents. The Company will not, nor will it permit any Subsidiary to, amend, modify or waive any of its rights under (a) any material agreement (other than the Loan Documents) or (b) its charter, articles or certificate of incorporation or organization, by-laws, operating, management or partnership agreement or other organizational or governing documents, to the extent any such amendment, modification or waiver would be materially adverse to the Lenders.

SECTION 6.12. Holding Company. Holdings shall not engage at any time in any business or business activity other than (i) ownership of Equity Interests of the Company, together with activities directly related thereto; (ii) performance of its obligations under and in connection with the Loan Documents; (iii) any Excluded Matters; (iv) as otherwise necessary to comply with any Requirement of Law; and (v) holding any cash and Cash Equivalents received in accordance with the terms hereof. Holdings shall (x) own no assets other than the Equity Interests of the Company and its books and records, (y) incur no Indebtedness for borrowed money other than guarantees of Indebtedness of the Borrower and Subsidiaries permitted hereunder and (z) grant no Lien on any of its assets other than Liens created pursuant to the Loan Documents (including the Financing Orders).

SECTION 6.13. Financial Covenant.

The Borrowers will comply with the reporting requirements and maximum disbursement limitations set forth in the Financing Orders.

SECTION 6.14. Case Milestones.

The Borrowers will cause the Milestones to be satisfied.

ARTICLE VII

Events of Default

If any of the following events ("Events of Default") shall occur:

(a) the Borrowers shall fail to pay any principal of any Loan or any repayment or reimbursement obligation in respect of any LC Disbursement when and as the same shall become due and payable, whether at the due date thereof or at a date fixed for prepayment thereof or otherwise;

(b) the Borrowers shall fail to pay (i) any interest on any Loan or (ii) any fee or any other amount (other than an amount referred to in clause (a) of this Article VII) payable under this Agreement or

any other Loan Document, when and as the same shall become due and payable and, in respect of this clause (ii) only, such failure shall continue unremedied for a period of two (2) Business Days;

(c) any representation or warranty made or deemed made by or on behalf of any Loan Party in, or in connection with, this Agreement or any other Loan Document or any amendment or modification hereof or thereof or waiver hereunder or thereunder, or in any report, certificate, financial statement or other document furnished pursuant to or in connection with this Agreement or any other Loan Document or any amendment or modification hereof or thereof or waiver hereunder or thereunder, shall prove to have been incorrect in any material respect (taken as a whole) when made or deemed made and, such representation or warranty, to the extent capable of being cured, is not cured within five (5) Business Days after the earlier of (x) notice thereof to the Company from the Administrative Agent and (y) the date on which a Responsible Officer of any Loan Party becomes aware thereof;

(d) any Loan Party shall fail to observe or perform any covenant, condition or agreement contained in this Agreement or any other Loan Documents (other than those which constitute a default under addressed in clause (a) or (b) above) and such failure shall continue unremedied for more than five (5) Business Days after the earlier of (x) notice thereof to the Company from the Administrative Agent (which notice will be given at the request of any Lender) and (y) the date on which a Responsible Officer of any Loan Party becomes aware thereof;

(e) [reserved];

(f) The cessation of any provision of this Agreement, any other Loan Document, or the Financing Orders being in full force and effect or any provision of this Agreement, any other Loan Document, the Financing Orders being declared by the Bankruptcy Court to be null and void or the validity or enforceability of any provision of this Agreement, any other Loan Document, the Financing Orders being contested by any Loan Party or any Loan Party denying in writing that it has any further liability or obligation under any provision of this Agreement, any other Loan Document, or the Financing Orders, or any Secured Party ceasing to have the benefit of the Liens granted by the Loan Documents or the Financing Orders; or

(g) The entry of a Financing Order in form or substance that is not acceptable to the Required Lenders in their sole discretion;

(h) The entry of an order of the Bankruptcy Court approving any claims for recovery of amounts under Section 506(c) of the Bankruptcy Code or otherwise arising from the preservation or disposition of any Collateral;

(i) The use of Cash Collateral for any purpose other than to fund the Carve Out or in a manner consistent with the DIP Budgets, the Loan Documents and the Financing Orders;

(j) The filing of any application by any Loan Party (other than the application for financing provided by a third party which seeks authority to pay all of the Obligations in full upon entry of the order approving such financing) for the approval of (or an order is entered by the Bankruptcy Court approving) any claim arising under section 507(b) of the Bankruptcy Code or any other provision of the Bankruptcy Code or any security, mortgage, collateral interest or other lien in the Chapter 11 Cases which is *pari passu* with or senior to the liens securing the Obligations, excluding liens arising under the Financing Orders, or pursuant to any other financing agreement made with the prior written consent of the Required Lenders;

(k) The commencement of any action by any Loan Party or other authorized person (other than an action permitted by the Financing Orders) against any of the Lenders or any of their agents and

employees, to contest or challenge in any manner the Loan or any other Obligation payable to, the Collateral and the Liens therein and any claims (including any Superpriority Claim) of, the Lender;

(l) Any Loan Parties files a pleading in any court seeking or supporting an order to revoke, reverse, stay, vacate, amend, supplement or otherwise modify any Financing Order and/or any Loan Document, or to disallow the Obligations, in whole or in part;

(m) Any request made for, or the reversal, modification, amendment, stay, reconsideration or vacatur of a Financing Order, as entered by the Bankruptcy Court, without the prior written consent of the Required Lenders;

(n) The filing with the Bankruptcy Court of a motion seeking approval of a sale under Section 363 of the Bankruptcy Code not consented to by the Required Lenders at the closing thereof;

(o) The appointment in the Chapter 11 Cases of a trustee, receiver, examiner or disinterested person with expanded powers (powers beyond those set forth in sections 1106(a)(3) and (a)(4) of the Bankruptcy Code);

(p) The granting of relief from the automatic stay by the Bankruptcy Court to any other creditor or party in interest in the Chapter 11 Cases with respect to any portion of the Collateral exceeding \$50,000 in value in the aggregate;

(q) If any Loan Party requests authority to obtain any financing not consented to by the Required Lenders;

(r) The filing of any plan of reorganization or liquidation or related disclosure statement not consented to by the Required Lenders;

(s) The conversion of any of the Chapter 11 Cases to chapter 7 on the effective date thereof;

(t) The termination of the Loan Parties' exclusive right to file and/or solicit acceptances of a Plan;

(u) The Bankruptcy Court enters an order modifying, reversing, revoking, staying, amending, supplementing, rescinding, vacating or otherwise modifying the Interim Order, the Final Order or any Loan Document;

(v) The dismissal of any of the Chapter 11 Cases;

(w) The entry of any order by the Bankruptcy Court or any other court of competent jurisdiction constituting a material adverse resolution or determination of all or a material portion of the claims of the Loan Parties in any litigation or the rights and interests of the Secured Parties (or the Secured Parties under the Prepetition Credit Agreement) with respect thereto, without the prior written consent of the applicable Secured Parties.

(x) (A) an ERISA Event shall have occurred; or (B) any Borrower or any ERISA Affiliate shall have been notified by the sponsor of a Multiemployer Benefit Plan that it has incurred or will be assessed Withdrawal Liability to such Multiemployer Benefit Plan and such entity does not have reasonable grounds for contesting such Withdrawal Liability or is not contesting such Withdrawal Liability in a timely and appropriate manner; and in each case in clauses (A) and (B) above, such event or condition, together with

all other such events or conditions, if any, could reasonably be expected to result, individually or in the aggregate, in a Material Adverse Effect; or

(y) a Change in Control shall occur;

then, and in every such event, and at any time thereafter during the continuance of such event, the Administrative Agent may, and at the request of the Required Lenders shall, by notice to the Borrower Representative, take any or all of the following actions, at the same or different times: (i) terminate the Commitments, whereupon the Commitments shall terminate immediately, (ii) prohibit the use of Cash Collateral, whereupon the Loan Parties' right to use Cash Collateral shall immediately terminate, (iii) require that the Borrowers cash collateralize the LC Exposure in accordance with Section 2.06(j) and (iv) declare the Loans and other Obligations then outstanding to be due and payable in whole (or in part, but ratably as among the Classes of Loans and the Loans of each Class at the time outstanding, in which case any principal not so declared to be due and payable may thereafter be declared to be due and payable), whereupon the principal of the Loans so declared to be due and payable, together with accrued interest thereon and all fees (including, for the avoidance of doubt, any break funding payments) and other obligations of the Borrowers accrued hereunder and under any other Loan Document, shall become due and payable immediately, in each case without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Borrowers. Upon the occurrence and during the continuance of an Event of Default, the Administrative Agent may, and at the request of the Required Lenders shall, exercise any rights and remedies provided to the Administrative Agent under the Loan Documents or at law or equity, including all remedies provided under the UCC.

Notwithstanding the provisions of section 362 of the Bankruptcy Code, and subject to the applicable provisions of the Financing Orders, as the case may be, upon the Maturity Date (whether by acceleration or otherwise), the Lenders shall be entitled to exercise all rights and remedies in accordance with the Financing Orders.

ARTICLE VIII

The Administrative Agent

SECTION 8.01. Authorization and Action.

(a) Each Lender, on behalf of itself and any of its Affiliates that are Secured Parties and each Issuing Bank hereby irrevocably appoints the entity named as Administrative Agent in the heading of this Agreement and its successors and assigns to serve as the administrative agent and collateral agent under the Loan Documents and each Lender and each Issuing Bank authorizes the Administrative Agent to take such actions as agent on its behalf and to exercise such powers under this Agreement and the other Loan Documents as are delegated to the Administrative Agent under such agreements and to exercise such powers as are reasonably incidental thereto. In addition, to the extent required under the laws of any jurisdiction other than within the United States, each Lender and each Issuing Bank hereby grants to the Administrative Agent any required powers of attorney to execute and enforce any Collateral Document governed by the laws of such jurisdiction on such Lender's or such Issuing Bank's behalf. Without limiting the foregoing, each Lender and each Issuing Bank hereby authorizes the Administrative Agent to execute and deliver, and to perform its obligations under, each of the Loan Documents to which the Administrative Agent is a party, and to exercise all rights, powers and remedies that the Administrative Agent may have under such Loan Documents.

(b) As to any matters not expressly provided for herein and in the other Loan Documents (including enforcement or collection), the Administrative Agent shall not be required to exercise any

discretion or take any action, but shall be required to act or to refrain from acting (and shall be fully protected in so acting or refraining from acting) upon the written instructions of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary, pursuant to the terms in the Loan Documents), and, unless and until revoked in writing, such instructions shall be binding upon each Lender and each Issuing Bank; provided, however, that the Administrative Agent shall not be required to take any action that (i) the Administrative Agent in good faith believes exposes it to liability unless the Administrative Agent receives an indemnification and is exculpated in a manner satisfactory to it from the Lenders and the Issuing Banks with respect to such action or (ii) is contrary to this Agreement or any other Loan Document or applicable law, including any action that may be in violation of the automatic stay under any requirement of law relating to bankruptcy, insolvency or reorganization or relief of debtors or that may effect a forfeiture, modification or termination of property of a Defaulting Lender in violation of any requirement of law relating to bankruptcy, insolvency or reorganization or relief of debtors; provided, further, that the Administrative Agent may seek clarification or direction from the Required Lenders prior to the exercise of any such instructed action and may refrain from acting until such clarification or direction has been provided. Except as expressly set forth in the Loan Documents, the Administrative Agent shall not have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to any Borrower, any other Loan Party, any Subsidiary or any Affiliate of any of the foregoing that is communicated to or obtained by the Person serving as Administrative Agent or any of its Affiliates in any capacity. Nothing in this Agreement shall require the Administrative Agent to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder or in the exercise of any of its rights or powers if it shall have reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it.

(c) In performing its functions and duties hereunder and under the other Loan Documents, the Administrative Agent is acting solely on behalf of the Lenders and the Issuing Banks (except in limited circumstances expressly provided for herein relating to the maintenance of the Register), and its duties are entirely mechanical and administrative in nature. Without limiting the generality of the foregoing:

(i) the Administrative Agent does not assume and shall not be deemed to have assumed any obligation or duty or any other relationship as the agent, fiduciary or trustee of or for any Lender, Issuing Bank or any other Secured Party other than as expressly set forth herein and in the other Loan Documents, regardless of whether a Default or an Event of Default has occurred and is continuing (and it is understood and agreed that the use of the term “agent” (or any similar term) herein or in any other Loan Document with reference to the Administrative Agent is not intended to connote any fiduciary duty or other implied (or express) obligations arising under agency doctrine of any applicable law, and that such term is used as a matter of market custom and is intended to create or reflect only an administrative relationship between contracting parties); additionally, each Lender agrees that it will not assert any claim against the Administrative Agent based on an alleged breach of fiduciary duty by the Administrative Agent in connection with this Agreement and/or the transactions contemplated hereby; and

(ii) nothing in this Agreement or any Loan Document shall require the Administrative Agent to account to any Lender for any sum or the profit element of any sum received by the Administrative Agent for its own account.

(d) The Administrative Agent may perform any of its duties and exercise its rights and powers hereunder or under any other Loan Document by or through any one or more sub-agents appointed by the Administrative Agent. The Administrative Agent and any such sub-agent may perform any of their respective duties and exercise their respective rights and powers through their respective Related Parties. The exculpatory provisions of this Article shall apply to any such sub-agent and to the Related Parties of the Administrative Agent and any such sub-agent, and shall apply to their respective activities pursuant to

this Agreement. 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-appellable judgment that the Administrative Agent acted with gross negligence or willful misconduct in the selection of such sub-agent.

(e) The Arranger shall not have obligations or duties whatsoever in such capacity under this Agreement or any other Loan Document and shall incur no liability hereunder or thereunder in such capacity, but all shall have the benefit of the indemnities provided for hereunder.

(f) In the Chapter 11 Cases and during the pendency of any proceeding with respect to any Loan Party under any Federal, state or foreign bankruptcy, insolvency, receivership or similar law now or hereafter in effect, the Administrative Agent (irrespective of whether the principal of any Loan or any reimbursement obligation in respect of any LC Disbursement 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 any Borrower) shall be entitled and empowered (but not obligated) by intervention in such proceeding or otherwise:

(i) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans, LC Disbursements and all other Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Lenders, the Issuing Banks and the Administrative Agent (including any claim under Sections 2.12, 2.13, 2.15, 2.17 and 9.03) allowed in such judicial proceeding; and

(ii) 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 proceeding is hereby authorized by each Lender, each Issuing Bank and each other Secured Party 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, the Issuing Banks or the other Secured Parties, to pay to the Administrative Agent any amount due to it, in its capacity as the Administrative Agent, under the Loan Documents (including under Section 9.03). 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 or Issuing Bank any plan of reorganization, arrangement, adjustment or composition affecting the Obligations or the rights of any Lender or Issuing Bank or to authorize the Administrative Agent to vote in respect of the claim of any Lender or Issuing Bank in any such proceeding.

(g) The provisions of this Article (other than as set forth below) are solely for the benefit of the Administrative Agent, the Lenders and the Issuing Banks, and, except with respect to Section 8.03(d), Section 8.05, Section 8.07 and Section 8.08, no Loan Party nor any Subsidiary, or any of their respective Affiliates, shall have any rights as a third party beneficiary under any such provisions. Each Secured Party, whether or not a party hereto, will be deemed, by its acceptance of the benefits of the Collateral and of the Guarantees of the Obligations provided under the Loan Documents, to have agreed to the provisions of this Article.

SECTION 8.02. Administrative Agent's Reliance, Limitation of Liability, Etc.

(a) Neither the Administrative Agent nor any of its Related Parties shall be (i) liable to any Lender or Issuing Bank for any action taken or omitted to be taken by such party, the Administrative Agent or any of its Related Parties under or in connection with this Agreement or the other Loan Documents (x) with the consent of 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 to be necessary, under the circumstances as provided in the Loan Documents) or (y) in the absence of its own gross negligence or willful misconduct (such absence to be presumed unless otherwise determined by a court of competent jurisdiction by a final and non-appealable judgment) or (ii) responsible in any manner to any of the Lenders for any recitals, statements, representations or warranties made by any Loan Party or any officer thereof contained in this Agreement or any other Loan Document or in any certificate, report, statement or other document referred to or provided for in, or received by the Administrative Agent under or in connection with, this Agreement or any other Loan Document or for the value, validity, effectiveness, genuineness, enforceability or sufficiency of this Agreement or any other Loan Document (including, for the avoidance of doubt, in connection with the Administrative Agent's reliance on any Electronic Signature transmitted by facsimile, emailed pdf. or any other electronic means that reproduces an image of an actual executed signature page) or for any failure of any Loan Party to perform its obligations hereunder or thereunder.

(b) The Administrative Agent shall be deemed not to have knowledge of any (i) notice of any of the events or circumstances set forth or described in Section 5.02 unless and until written notice thereof stating that it is a "notice under Section 5.02" in respect of this Agreement and identifying the specific clause under said Section is given to the Administrative Agent by the Borrower Representative, or (ii) notice of any Default or Event of Default unless and until written notice thereof (stating that it is a "notice of Default" or a "notice of an Event of Default") is given to the Administrative Agent by the Borrower Representative, a Lender or the Issuing Bank. Further, the Administrative Agent shall not be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with any Loan Document, (ii) the contents of any certificate, report or other document delivered thereunder or in connection therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth in any Loan Document or the occurrence of any Default or Event of Default, (iv) the sufficiency, validity, enforceability, effectiveness or genuineness of any Loan Document or any other agreement, instrument or document, (v) the satisfaction of any condition set forth in Article IV or elsewhere in any Loan Document, other than to confirm receipt of items (which on their face purport to be such items) expressly required to be delivered to the Administrative Agent or satisfaction of any condition that expressly refers to the matters described therein being acceptable or satisfactory to the Administrative Agent, or (vi) the creation, perfection or priority of Liens on the Collateral.

(c) Without limiting the foregoing, the Administrative Agent (i) may treat the payee of any promissory note as its holder until such promissory note has been assigned in accordance with Section 9.04, (ii) may rely on the Register to the extent set forth in Section 9.04(b), (iii) may consult with legal counsel (including counsel to the Borrowers), independent public accountants and other experts selected by it, and shall not be liable for any action taken or omitted to be taken in good faith by it in accordance with the advice of such counsel, accountants or experts, (iv) makes no warranty or representation to any Lender or Issuing Bank and shall not be responsible to any Lender or Issuing Bank for any statements, warranties or representations made by or on behalf of any Loan Party in connection with this Agreement or any other Loan Document, (v) in determining compliance with any condition hereunder to the making of a Loan, or the issuance of a Letter of Credit, that by its terms must be fulfilled to the satisfaction of a Lender or an Issuing Bank, may presume that such condition is satisfactory to such Lender or Issuing Bank unless the Administrative Agent shall have received notice to the contrary from such Lender or Issuing Bank sufficiently in advance of the making of such Loan or the issuance of such Letter of Credit and (vi) shall be entitled to rely on, and shall incur no liability under or in respect of this Agreement or any other Loan Document by acting upon, any notice, consent, certificate or other instrument or writing (which writing may be a fax, any electronic message, Internet or intranet website posting or other distribution) or any statement made to it orally or by telephone and believed by it to be genuine and signed or sent or otherwise authenticated by the proper party or parties (whether or not such Person in fact meets the requirements set forth in the Loan Documents for being the maker thereof).

SECTION 8.03. Posting of Communications.

(a) The Borrowers agree that the Administrative Agent may, but shall not be obligated to, make any Communications available to the Lenders and the Issuing Bank by posting the Communications on IntraLinks™, DebtDomain, SyndTrak, ClearPar or any other electronic system chosen by the Administrative Agent to be its electronic transmission system (the “Approved Electronic Platform”).

(b) Although the Approved Electronic Platform and its primary web portal are secured with generally-applicable security procedures and policies implemented or modified by the Administrative Agent from time to time (including, as of the Effective Date, a user ID/password authorization system) and the Approved Electronic Platform is secured through a per-deal authorization method whereby each user may access the Approved Electronic Platform only on a deal-by-deal basis, each of the Lenders, the Issuing Bank and each Borrower acknowledges and agrees that the distribution of material through an electronic medium is not necessarily secure, that the Administrative Agent is not responsible for approving or vetting the representatives or contacts of any Lender that are added to the Approved Electronic Platform, and that there may be confidentiality and other risks associated with such distribution. Each of the Lenders, the Issuing Bank and each Borrower hereby approves distribution of the Communications through the Approved Electronic Platform and understands and assumes the risks of such distribution.

(c) THE APPROVED ELECTRONIC PLATFORM AND THE COMMUNICATIONS ARE PROVIDED “AS IS” AND “AS AVAILABLE”. THE APPLICABLE PARTIES (AS DEFINED BELOW) DO NOT WARRANT THE ACCURACY OR COMPLETENESS OF THE COMMUNICATIONS, OR THE ADEQUACY OF THE APPROVED ELECTRONIC PLATFORM AND EXPRESSLY DISCLAIM LIABILITY FOR ERRORS OR OMISSIONS IN THE APPROVED ELECTRONIC PLATFORM AND THE COMMUNICATIONS. NO WARRANTY OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF THIRD PARTY RIGHTS OR FREEDOM FROM VIRUSES OR OTHER CODE DEFECTS, IS MADE BY THE APPLICABLE PARTIES IN CONNECTION WITH THE COMMUNICATIONS OR THE APPROVED ELECTRONIC PLATFORM. IN NO EVENT SHALL THE ADMINISTRATIVE AGENT, ANY ARRANGER OR ANY OF THEIR RESPECTIVE RELATED PARTIES (COLLECTIVELY, “APPLICABLE PARTIES”) HAVE ANY LIABILITY TO ANY LOAN PARTY, ANY LENDER, ANY ISSUING BANK OR ANY OTHER PERSON OR ENTITY FOR DAMAGES OF ANY KIND, INCLUDING DIRECT OR INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, LOSSES OR EXPENSES (WHETHER IN TORT, CONTRACT OR OTHERWISE) ARISING OUT OF ANY LOAN PARTY’S OR THE ADMINISTRATIVE AGENT’S TRANSMISSION OF COMMUNICATIONS THROUGH THE INTERNET OR THE APPROVED ELECTRONIC PLATFORM.

“Communications” means, collectively, any notice, demand, communication, information, document or other material provided by or on behalf of any Loan Party pursuant to any Loan Document or the transactions contemplated therein which is distributed by the Administrative Agent, any Lender or Issuing Bank by means of electronic communications pursuant to this Section, including through an Approved Electronic Platform.

(d) Each Lender and Issuing Bank agrees that notice to it (as provided in the next sentence) specifying that Communications have been posted to the Approved Electronic Platform shall constitute effective delivery of the Communications to such Lender for purposes of the Loan Documents. Each Lender and Issuing Bank agrees (i) to notify the Administrative Agent in writing (which could be in the form of electronic communication) from time to time of such Lender’s or Issuing Bank’s (as applicable) email address to which the foregoing notice may be sent by electronic transmission and (ii) that the foregoing notice may be sent to such email address.

(e) Each of the Lenders, Issuing Bank and each Borrower agrees that the Administrative Agent may, but (except as may be required by applicable law) shall not be obligated to, store the Communications on the Approved Electronic Platform in accordance with the Administrative Agent's generally applicable document retention procedures and policies.

(f) Nothing herein shall prejudice the right of the Administrative Agent, any Lender or Issuing Bank to give any notice or other communication pursuant to any Loan Document in any other manner specified in such Loan Document.

SECTION 8.04. The Administrative Agent Individually. With respect to its Commitment, Loans (including Swingline Loans) and Letters of Credit, the Person serving as the Administrative Agent shall have and may exercise the same rights and powers hereunder and is subject to the same obligations and liabilities as and to the extent set forth herein for any other Lender or Issuing Bank, as the case may be. The terms "Issuing Bank", "Lenders", "Required Lenders" and any similar terms shall, unless the context clearly otherwise indicates, include the Administrative Agent in its individual capacity as a Lender, Issuing Bank or as one of the Required Lenders, as applicable. The Person serving as the Administrative Agent and its Affiliates may accept deposits from, lend money to, own securities of, act as the financial advisor or in any other advisory capacity for and generally engage in any kind of banking, trust or other business with, any Loan Party, any Subsidiary or any Affiliate of any of the foregoing as if such Person was not acting as the Administrative Agent and without any duty to account therefor to the Lenders or the Issuing Bank.

SECTION 8.05. Successor Administrative Agent.

(a) The Administrative Agent may resign at any time by giving 30 days' prior written notice thereof to the Lenders, the Issuing Bank and the Borrower Representative, whether or not a successor Administrative Agent has been appointed. Upon any such resignation, the Required Lenders shall have the right to appoint a successor Administrative Agent. If no successor Administrative Agent shall have been so appointed by the Required Lenders, and shall have accepted such appointment, within 30 days after the retiring Administrative Agent's giving of notice of resignation, then the retiring Administrative Agent may, on behalf of the Lenders and the Issuing Bank, appoint a successor Administrative Agent, which shall be a bank with an office in New York, New York or an Affiliate of any such bank. In either case, such appointment shall be subject to the prior written approval of the Borrower Representative (which approval may not be unreasonably withheld and shall not be required while a Specified Event of Default has occurred and is continuing). Upon the acceptance of any appointment as Administrative Agent by a successor Administrative Agent, such successor Administrative Agent shall succeed to, and become vested with, all the rights, powers, privileges and duties of the retiring Administrative Agent. Upon the acceptance of appointment as Administrative Agent by a successor Administrative Agent, the retiring Administrative Agent shall be discharged from its duties and obligations under this Agreement and the other Loan Documents. Prior to any retiring Administrative Agent's resignation hereunder as Administrative Agent, the retiring Administrative Agent shall take such action as may be reasonably necessary to assign to the successor Administrative Agent its rights as Administrative Agent under the Loan Documents.

(b) Notwithstanding paragraph (a) of this Section, in the event no successor Administrative Agent shall have been so appointed and shall have accepted such appointment within 30 days after the retiring Administrative Agent gives notice of its intent to resign, the retiring Administrative Agent may give notice of the effectiveness of its resignation to the Lenders, the Issuing Bank and the Borrowers, whereupon, on the date of effectiveness of such resignation stated in such notice, (i) the retiring Administrative Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents; provided that, solely for purposes of maintaining any security interest granted to the Administrative Agent under any Financing Order for the benefit of the Secured Parties, the retiring

Administrative Agent shall continue to be vested with such security interest as collateral agent for the benefit of the Secured Parties and continue to be entitled to the rights set forth in the Financing Orders, and, in the case of any Collateral in the possession of the Administrative Agent, shall continue to hold such Collateral, in each case until such time as a successor Administrative Agent is appointed and accepts such appointment in accordance with this Section (it being understood and agreed that the retiring Administrative Agent shall have no duty or obligation to take any further action with respect to any Collateral, including any action required to maintain the perfection of any such security interest), and (ii) the Required Lenders shall succeed to and become vested with all the rights, powers, privileges and duties of the retiring Administrative Agent; provided that (A) all payments required to be made hereunder or under any other Loan Document to the Administrative Agent for the account of any Person other than the Administrative Agent shall be made directly to such Person and (B) all notices and other communications required or contemplated to be given or made to the Administrative Agent shall directly be given or made to each Lender and Issuing Bank. Following the effectiveness of the Administrative Agent's resignation from its capacity as such, the provisions of this Article, Section 2.17(d) and Section 9.03, as well as any exculpatory, reimbursement and indemnification provisions set forth in any other Loan Document, shall continue in effect for the benefit of such retiring Administrative Agent, its sub-agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while the retiring Administrative Agent was acting as Administrative Agent and in respect of the matters referred to in the proviso under clause (i) above.

SECTION 8.06. Acknowledgements of Lenders and Issuing Bank.

(a) Each Lender and each Issuing Bank represents and warrants that (i) the Loan Documents set forth the terms of a commercial lending facility, (ii) it is engaged in making, acquiring or holding commercial loans and in providing other facilities set forth herein as may be applicable to such Lender or Issuing Bank, in each case in the ordinary course of business, and not for the purpose of purchasing, acquiring or holding any other type of financial instrument (and each Lender and each Issuing Bank agrees not to assert a claim in contravention of the foregoing), (iii) it has, independently and without reliance upon the Administrative Agent, any Arranger, or any other Lender or Issuing Bank, or any of the Related Parties of any of the foregoing, and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement as a Lender, and to make, acquire or hold Loans hereunder and (iv) it is sophisticated with respect to decisions to make, acquire and/or hold commercial loans and to provide other facilities set forth herein, as may be applicable to such Lender or such Issuing Bank, and either it, or the Person exercising discretion in making its decision to make, acquire and/or hold such commercial loans or to provide such other facilities, is experienced in making, acquiring or holding such commercial loans or providing such other facilities. Each Lender and each Issuing Bank also acknowledges that it will, independently and without reliance upon the Administrative Agent, the Arranger or any other Lender or Issuing Bank, or any of the Related Parties of any of the foregoing, and based on such documents and information (which may contain material, non-public information within the meaning of the United States securities laws concerning the Borrowers and their Affiliates) as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Agreement, any other Loan Document or any related agreement or any document furnished hereunder or thereunder.

(b) Each Lender, by delivering its signature page to this Agreement on the Effective Date, or delivering its signature page to an Assignment and Assumption or any other Loan Document pursuant to which it shall become a Lender hereunder, shall be deemed to have acknowledged receipt of, and consented to and approved, each Loan Document and each other document required to be delivered to, or be approved by or satisfactory to, the Administrative Agent or the Lenders on the Effective Date or the effective date of any such Assignment and Assumption or any other Loan Document pursuant to which it shall have become a Lender hereunder.

(c) Each Lender hereby agrees that (i) it has requested a copy of each Report prepared by or on behalf of the Administrative Agent; (ii) the Administrative Agent (A) makes no representation or warranty, express or implied, as to the completeness or accuracy of any Report or any of the information contained therein or any inaccuracy or omission contained in or relating to a Report and (B) shall not be liable for any information contained in any Report; (iii) the Reports are not comprehensive audits or examinations, and that any Person performing any field examination will inspect only specific information regarding the Loan Parties and will rely significantly upon the Loan Parties' books and records, as well as on representations of the Loan Parties' personnel and that the Administrative Agent undertakes no obligation to update, correct or supplement the Reports; (iv) it will keep all Reports confidential and strictly for its internal use, not share the Report with any Loan Party or any other Person except as otherwise permitted pursuant to this Agreement; and (v) without limiting the generality of any other indemnification provision contained in this Agreement, (A) it will hold the Administrative Agent and any such other Person preparing a Report harmless from any action the indemnifying Lender may take or conclusion the indemnifying Lender may reach or draw from any Report in connection with any extension of credit that the indemnifying Lender has made or may make to a Borrower, or the indemnifying Lender's participation in, or the indemnifying Lender's purchase of, a Loan or Loans; and (B) it will pay and protect, and indemnify, defend, and hold the Administrative Agent and any such other Person preparing a Report harmless from and against, the claims, actions, proceedings, damages, costs, expenses, and other amounts (including reasonable attorneys' fees) incurred by the Administrative Agent or any such other Person as the direct or indirect result of any third parties who might obtain all or part of any Report through the indemnifying Lender.

(d) (i) Each Lender hereby agrees that (x) if the Administrative Agent notifies such Lender that the Administrative Agent has determined in its sole discretion that any funds received by such Lender from the Administrative Agent or any of its Affiliates (whether as a payment, prepayment or repayment of principal, interest, fees or otherwise; individually and collectively, a "Payment") were erroneously transmitted to such Lender (whether or not known to such Lender), and demands the return of such Payment (or a portion thereof), such Lender shall promptly, but in no event later than one (1) Business Day thereafter, return to the Administrative Agent the amount of any such Payment (or portion thereof) as to which such a demand was made in same day funds, together with interest thereon in respect of each day from and including the date such Payment (or portion thereof) was received by such Lender to the date such amount is repaid to the Administrative Agent at the greater of the NYFRB Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation from time to time in effect, and (y) to the extent permitted by applicable law, such Lender shall not assert, and hereby waives, as to the Administrative Agent, any claim, counterclaim, defense or right of set-off or recoupment with respect to any demand, claim or counterclaim by the Administrative Agent for the return of any Payments received, including without limitation any defense based on "discharge for value" or any similar doctrine. A notice of the Administrative Agent to any Lender under this Section 8.06(d) shall be conclusive, absent manifest error.

(ii) Each Lender hereby further agrees that if it receives a Payment from the Administrative Agent or any of its Affiliates (x) that is in a different amount than, or on a different date from, that specified in a notice of payment sent by the Administrative Agent (or any of its Affiliates) with respect to such Payment (a "Payment Notice") or (y) that was not preceded or accompanied by a Payment Notice, it shall be on notice, in each such case, that an error has been made with respect to such Payment. Each Lender agrees that, in each such case, or if it otherwise becomes aware a Payment (or portion thereof) may have been sent in error, such Lender shall promptly notify the Administrative Agent of such occurrence and, upon demand from the Administrative Agent, it shall promptly, but in no event later than one (1) Business Day thereafter, return to the Administrative Agent the amount of any such Payment (or portion thereof) as to which such a demand was made in same day funds, together with interest thereon in respect of each day

from and including the date such Payment (or portion thereof) was received by such Lender to the date such amount is repaid to the Administrative Agent at the greater of the NYFRB Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation from time to time in effect.

(iii) Each Borrower and each other Loan Party hereby agrees that (x) in the event an erroneous Payment (or portion thereof) are not recovered from any Lender that has received such Payment (or portion thereof) for any reason, the Administrative Agent shall be subrogated to all the rights of such Lender with respect to such amount and (y) an erroneous Payment shall not pay, prepay, repay, discharge or otherwise satisfy any Obligations owed by any Borrower or any other Loan Party.

(iv) Each party's obligations under this Section 8.06(d) shall survive the resignation or replacement of the Administrative Agent or any transfer of rights or obligations by, or the replacement of, a Lender, the termination of the Commitments or the repayment, satisfaction or discharge of all Obligations under any Loan Document.

SECTION 8.07. Collateral Matters.

(a) Except with respect to the exercise of setoff rights in accordance with Section 9.08 or with respect to a Secured Party's right to file a proof of claim in an insolvency proceeding, no Secured Party shall have any right individually to realize upon any of the Collateral or to enforce any Guarantee of the Obligations, it being understood and agreed that all powers, rights and remedies under the Loan Documents may be exercised solely by the Administrative Agent on behalf of the Secured Parties in accordance with the terms thereof. In its capacity, the Administrative Agent is a "representative" of the Secured Parties within the meaning of the term "secured party" as defined in the UCC. In the event that any Collateral is hereafter pledged by any Person as collateral security for the Obligations, the Administrative Agent is hereby authorized, and hereby granted a power of attorney, to execute and deliver on behalf of the Secured Parties any Loan Documents necessary or appropriate to grant and perfect a Lien on such Collateral in favor of the Administrative Agent on behalf of the Secured Parties.

(b) [reserved].

(c) The Secured Parties irrevocably authorize the Administrative Agent, at its option and in its discretion to subordinate any Lien on any property granted to or held by the Administrative Agent under any Loan Document to the holder of any Lien on such property that is permitted by Section 6.02(b). The Administrative Agent shall not be responsible for or have a duty to ascertain or inquire into any representation or warranty regarding the existence, value or collectability of the Collateral, the existence, priority or perfection of the Administrative Agent's Lien thereon or any certificate prepared by any Loan Party in connection therewith, nor shall the Administrative Agent be responsible or liable to the Lenders or any other Secured Party for any failure to monitor or maintain any portion of the Collateral.

SECTION 8.08. Credit Bidding. 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 by 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, or (b) at any other sale, 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 by the Administrative Agent at the direction of the Required Lenders 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 shall 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) for the asset or assets so purchased (or for the equity interests or debt instruments of the acquisition vehicle or vehicles that are issued in connection with such purchase). In connection with any such bid (i) the Administrative Agent shall be authorized to form one or more acquisition vehicles and to assign any successful credit bid to such acquisition vehicle or vehicles, (ii) each of the Secured Parties' ratable interests in the Obligations which were credit bid shall be deemed without any further action under this Agreement to be assigned to such vehicle or vehicles for the purpose of closing such sale, (iii) the Administrative Agent shall be authorized 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, and the governing documents shall provide for, control by the vote of the Required Lenders or their permitted assignees under the terms of this Agreement or the governing documents of the applicable acquisition vehicle or vehicles, as the case may be, irrespective of the termination of this Agreement and without giving effect to the limitations on actions by the Required Lenders contained in Section 9.02 of this Agreement), (iv) the Administrative Agent on behalf of such acquisition vehicle or vehicles shall be authorized to issue to each of the Secured Parties, ratably on account of the relevant Obligations which were credit bid, interests, whether as equity, partnership interests, limited partnership interests or membership interests, in any such acquisition vehicle and/or debt instruments issued by such acquisition vehicle, all without the need for any Secured Party or acquisition vehicle to take any further action, and (v) 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 Obligations credit bid by the acquisition vehicle or otherwise), such Obligations shall automatically be reassigned to the Secured Parties pro rata with their original interest in such Obligations and the equity interests and/or debt instruments issued by any acquisition vehicle on account of such Obligations shall automatically be cancelled, without the need for any Secured Party or any acquisition vehicle to take any further action. Notwithstanding that the ratable portion of the Obligations of each Secured Party are deemed assigned to the acquisition vehicle or vehicles as set forth in clause (ii) above, each Secured Party shall execute such documents and provide such information regarding the Secured Party (and/or any designee of the Secured Party which will receive interests in or debt instruments issued by such acquisition vehicle) as the Administrative Agent may reasonably request in connection with the formation of any acquisition vehicle, the formulation or submission of any credit bid or the consummation of the transactions contemplated by such credit bid.

SECTION 8.09. Certain ERISA Matters.

(a) Each Lender (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, the Administrative Agent, each Arranger and their respective Affiliates, and not, for the avoidance of doubt, to or for the benefit of any Borrower or any other Loan Party, that at least one of the following is and will be true:

(i) such Lender is not using "plan assets" (within the meaning of the Benefit Plan Asset Regulations) 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 Letters of Credit, the Commitments and this Agreement,

(iii) (A) such Lender is an investment fund managed by a "Qualified Professional Asset Manager" (within the meaning of Part VI of PTE 84-14), (B) such Qualified Professional Asset Manager made the investment decision on behalf of such Lender to enter into, participate in, administer and perform the Loans, the Letters of Credit, the Commitments and this Agreement, (C) the entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement satisfies the requirements of sub-sections (b) through (g) of Part I of PTE 84-14 and (D) to the best knowledge of such Lender, the requirements of subsection (a) of Part I of PTE 84-14 are satisfied with respect to such Lender's entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement, or

(iv) such other representation, warranty and covenant as may be agreed in writing between the Administrative Agent, in its sole discretion, and such Lender.

(b) In addition, unless sub-clause (i) in the immediately preceding clause (a) is true with respect to a Lender or such Lender has 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 each Arranger and their respective Affiliates, and not, for the avoidance of doubt, to or for the benefit of any Borrower or any other Loan Party, that none of the Administrative Agent, any Arranger, or any of their respective Affiliates is a fiduciary with respect to the Collateral or 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).

(c) The Administrative Agent and each Arranger hereby informs the Lenders that each such Person is not undertaking to provide 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 Letters of Credit, the Commitments, this Agreement and any other Loan Documents, (ii) may recognize a gain if it extended the Loans, the Letters of Credit or the Commitments for an amount less than the amount being paid for an interest in the Loans, the Letters of Credit 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 8.10. Flood Laws. JPMCB has adopted internal policies and procedures that address requirements placed on federally regulated lenders under the National Flood Insurance Reform Act of 1994

and related legislation (the “Flood Laws”). JPMCB, as administrative agent or collateral agent on a syndicated facility, will post on the applicable electronic platform (or otherwise distribute to each Lender in the syndicate) documents that it receives in connection with the Flood Laws. However, JPMCB reminds each Lender and Participant in the facility that, pursuant to the Flood Laws, each federally regulated Lender (whether acting as a Lender or Participant in the facility) is responsible for assuring its own compliance with the flood insurance requirements.

ARTICLE IX

Miscellaneous

SECTION 9.01. Notices.

(a) Except in the case of notices and other communications expressly permitted to be given by telephone or Electronic Systems (and subject in each case to paragraph (b) below), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by facsimile or email, as follows:

- (i) if to any Loan Party, to the Borrower Representative at:

12499 Evergreen Road
Detroit, Michigan 48228
Attention: Eric Kaup
Email: EKaup@hilcoglobal.com
With copies to (which shall not constitute notice):

787 Seventh Avenue
New York, NY 10019
Attention: Anthony Grossi, Mark G. Adler
Telephone: 212 839 6769; 212 839 8410
Email: agrossisidley.com; mark.adler@sidley.com

- (ii) if to the Administrative Agent, JPMCB in its capacity as an Issuing Bank or the Swingline Lender, to JPMorgan Chase Bank, N.A. at:

JPMorgan Chase Bank, N.A.
10 South Dearborn, Floor L2,
Suite IL1-0480
Chicago, IL 60603-2300
Attention: Omolola Eneh
Telephone: (312) 954-1007
Email: omolola.enh@chase.com

With copy(s) to:

JPMorgan Chase Bank, N.A.
Middle Market Servicing
10 South Dearborn, Floor L2,
Suite IL1-0480
Chicago, IL 60603-2300
Attention: Commercial Banking Group

Facsimile No: (844) 490-5663
Email: jpm.agency.cri@jpmorgan.com
Email: jpm.agency.servicing.1@jpmorgan.com

(iii) if to any other Lender or Issuing Bank, to it at its address or facsimile number set forth in its Administrative Questionnaire.

All such notices and other communications (A) sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received, (B) sent by facsimile shall be deemed to have been given when sent, provided that if not given during normal business hours of the recipient, such notice or communication shall be deemed to have been given at the opening of business on the next Business Day of the recipient, (C) delivered through Electronic Systems or Approved Electronic Platforms, as applicable, to the extent provided in paragraph (b) below shall be effective as provided in such paragraph or (D) delivered through email 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 not given during the normal business hours of the recipient, such notice or communication shall be deemed to have been given at the opening of business on the next Business Day for the recipient.

(b) Notices and other communications to any Borrower, any Loan Party, the Lenders and the Issuing Banks hereunder may be delivered or furnished by using Electronic Systems or Approved Electronic Platforms, as applicable, or pursuant to procedures approved by the Administrative Agent; provided that the foregoing shall not apply to notices pursuant to Article II, notices of Default or to Compliance Certificates delivered pursuant to Section 5.01(d) unless otherwise agreed by the Administrative Agent and the applicable Lender. Each of the Administrative Agent and the Borrower Representative (on behalf of the Loan Parties) may, in its discretion, agree to accept notices and other communications to it hereunder by Electronic Systems or Approved Electronic Platforms, as applicable, pursuant to procedures approved by it; provided that approval of such procedures may be limited to particular notices or communications. Unless the Administrative Agent otherwise proscribes, all such notices and other 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 clause (D) above, of notification that such notice or communication is available and identifying the website address therefor; 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 Business Day of the recipient.

(c) Any party hereto may change its address, facsimile number or e-mail address for notices and other communications hereunder by notice to the other parties hereto.

SECTION 9.02. Waivers; Amendments.

(a) No failure or delay by the Administrative Agent, the Issuing Bank or any Lender in exercising any right or power hereunder or under any other Loan Document shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such a right or power, preclude any other or further exercise thereof or the exercise of any other right or power. The rights and remedies of the Administrative Agent, the Issuing Bank and the Lenders hereunder and under any other Loan Document are cumulative and are not exclusive of any rights or remedies that they would otherwise have. No waiver of any provision of any Loan Document or consent to any departure by any Loan Party therefrom shall in any event be effective unless the same shall be permitted by paragraph (b) of this Section 9.02, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. Without limiting the generality

of the foregoing, the making of a Loan or issuance of a Letter of Credit shall not be construed as a waiver of any Default, regardless of whether the Administrative Agent, any Lender or the Issuing Bank may have had notice or knowledge of such Default at the time.

(b) Subject to Section 2.14(c), (d) and (e) and Section 9.02(e) below, neither this Agreement nor any other Loan Document nor any provision hereof or thereof may be waived, amended or modified except (i) in the case of this Agreement, pursuant to an agreement or agreements in writing entered into by the Borrowers (or the Borrower Representative on behalf of the Borrowers), the Administrative Agent and the Required Lenders or (ii) in the case of any other Loan Document, pursuant to an agreement or agreements in writing entered into by the Administrative Agent and the Loan Party or Loan Parties that are parties thereto (or the Borrower Representative on behalf of the Loan Parties), with the consent of the Required Lenders; provided that no such agreement shall (A) increase or extend the Commitment of any Lender without the written consent of such Lender (including any such Lender that is a Defaulting Lender), (B) reduce or forgive the principal amount of any Loan or LC Disbursement or reduce the rate of interest thereon, or reduce or forgive any interest or fees payable hereunder, without the written consent of each Lender (including any such Lender that is a Defaulting Lender) directly affected thereby, (C) postpone any scheduled date of payment of the principal amount of any Loan or LC Disbursement, or any date for the payment of any interest, fees or other Obligations payable hereunder, or reduce the amount of, waive or excuse any such payment, or postpone the scheduled date of expiration of any Commitment, without the written consent of each Lender (including any such Lender that is a Defaulting Lender) directly affected thereby, (D) change Section 2.09(d) or Section 2.18(b) or (d) in a manner that would alter the ratable reduction of Commitments or the manner in which payments are shared, without the written consent of each Lender (other than any Defaulting Lender), (E) [reserved], (F) change any of the provisions of this Section or the definition of "Required Lenders" or any other provision of any Loan Document specifying the number or percentage of Lenders (or Lenders of any Class) required to waive, amend or modify any rights thereunder or make any determination or grant any consent thereunder, without the written consent of each Lender (other than any Defaulting Lender) directly affected thereby, (G) change Section 2.20 without the consent of each Lender (other than any Defaulting Lender), (H) except as provided in clause (c), release all or substantially all of the Guarantors from their obligation under their Loan Guaranty (except as otherwise permitted herein or in the other Loan Documents), without the written consent of each Lender (other than any Defaulting Lender), (I) except as provided in clause (c) of this Section, release all or substantially all of the Collateral, without the written consent of each Lender (other than any Defaulting Lender), (J) unless otherwise permitted by this Agreement (x) subordinate, or have the effect of subordinating, the Obligations hereunder to any other Indebtedness for borrowed money, or (y) subordinate, or have the effect of subordinating, the Liens securing the Obligations to Liens securing any other Indebtedness for borrowed money, without the consent of each Lender, (K) [reserved], (L) [reserved], (M) [reserved], (N) amend, modify or waive Section 6.05 in a manner that would increase the ability to Dispose of Collateral without the consent of each Lender (other than any Defaulting Lender), (O) [reserved]; provided, further, that no such agreement shall amend, modify or otherwise affect the rights or duties of the Administrative Agent, the Issuing Bank or the Swingline Lender hereunder without the prior written consent of the Administrative Agent, the Issuing Bank or the Swingline Lender, as the case may be (it being understood that any amendment to Section 2.20 shall require the consent of the Administrative Agent, the Issuing Bank and the Swingline Lender); provided further that no such agreement shall amend or modify the provisions of Section 2.06 without the prior written consent of the Administrative Agent and the Issuing Banks. The Administrative Agent may also amend the Commitment Schedule to reflect assignments entered into pursuant to Section 9.04. Any amendment, waiver or other modification of this Agreement or any other Loan Document that by its terms affects the rights or duties under this Agreement of the Lenders of one or more Classes (but not the Lenders of any other Class), may be effected by an agreement or agreements in writing entered into by the Borrowers and the requisite number or percentage in interest of each affected Class of Lenders that would be required to consent thereto under this Section if such Class of Lenders were the only Class of Lenders hereunder at the time.

(c) The Lenders and the Issuing Banks hereby irrevocably authorize the Administrative Agent to release any Liens granted to the Administrative Agent by the Loan Parties or the Financing Orders on any Collateral and such Liens shall be automatically and revocably released (i) upon Payment in Full of the Obligations, (ii) constituting property being sold or disposed of (other than to another Loan Party that is required to grant a Lien in such Collateral to the Administrative Agent to secure the Obligations) if the Loan Party disposing of such property certifies to the Administrative Agent that the sale or disposition is made in compliance with the terms of this Agreement (and the Administrative Agent may rely conclusively on any such certificate, without further inquiry), and to the extent that the property being sold or disposed of results in a Subsidiary ceasing to be a Subsidiary, the Administrative Agent is authorized to release any Loan Guaranty provided by such Subsidiary and such Loan Guaranty shall be automatically and irrevocably released, (iii) constituting property leased to a Loan Party under a lease which has expired or been terminated in a transaction permitted under this Agreement, (iv) as required to effect any sale or other disposition of such Collateral in connection with any exercise of remedies of the Administrative Agent and the Lenders pursuant to Article VII, (v) if such Liens were granted by any Loan Party (other than the Company) that is otherwise released from its Loan Guaranty in a transaction permitted by this Agreement. The Administrative Agent is also authorized, and may, in its sole discretion subordinate, any security interest granted under the Collateral Documents to any Lien permitted by Section 6.02(b) (other than clause (g) of the definition of "Permitted Encumbrances"). Except as provided in this clause (c), the Administrative Agent will not release any Liens on Collateral without the prior written authorization of the Required Lenders. The Lenders and Issuing Banks hereby irrevocably authorize the Administrative Agent to release any Guarantor from its obligation under its Loan Guaranty (other than any Borrower, other than in a transaction permitted under this Agreement) if such Loan Party ceases to be a Subsidiary in a transaction permitted by this Agreement. Any such release shall not in any manner discharge, affect, or impair the Obligations or any Liens (other than those expressly being released) upon (or obligations 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. In connection with any termination or release pursuant to this Section 9.02, the Administrative Agent shall reasonably promptly execute and deliver to any Loan Party, at such Loan Party's expense, all documents that such Loan Party shall reasonably request to evidence such termination or release. Any execution and delivery by the Administrative Agent of documents in connection with any such release shall be without recourse to or warranty by the Administrative Agent.

(d) If, in connection with any proposed amendment, waiver or consent requiring the consent of "each Lender" or "each Lender affected thereby," the consent of the Required Lenders is obtained, but the consent of other necessary Lenders is not obtained (any such Lender whose consent is necessary but has not been obtained being referred to herein as a "Non-Consenting Lender"), then the Borrowers may elect to replace a Non-Consenting Lender as a Lender party to this Agreement or terminate the Commitments of such Non-Consenting Lender, provided that, if the Borrowers elect to replace such Non-Consenting Lender, concurrently with such replacement, (i) another bank or other entity which is reasonably satisfactory to the Borrowers, the Administrative Agent and the Issuing Bank shall agree, as of such date, to purchase for cash the Loans and other Obligations due to the Non-Consenting Lender pursuant to an Assignment and Assumption and to become a Lender for all purposes under this Agreement and to assume all obligations of the Non-Consenting Lender to be terminated as of such date and to comply with the requirements of clause (b) of Section 9.04, and (ii) the Borrowers shall pay to such Non-Consenting Lender in same day funds on the day of such replacement (1) all interest, fees and other amounts then accrued but unpaid to such Non-Consenting Lender by the Borrowers hereunder to and including the date of termination, including without limitation payments due to such Non-Consenting Lender under Sections 2.15 and 2.17, and (2) an amount, if any, equal to the payment which would have been due to such Lender on the day of such replacement under Section 2.16 had the Loans of such Non-Consenting Lender been prepaid on such date rather than sold to the replacement Lender; provided further that if the Borrowers elect to terminate the Commitments of such Non-Consenting Lender, concurrently with such termination, the Borrower must repay each outstanding Loan of such Non-Consenting Lender, which gave rise to the need

to obtain such Non-Consenting Lender's consent and/or cash collateralize its Applicable Percentage of such Non-Consenting Lenders LC Exposure, in accordance with Section 2.06(j). Each party hereto agrees that an assignment required pursuant to this paragraph may be effected pursuant to an Assignment and Assumption executed by the Borrower Representative, the Administrative Agent and the assignee (or, to the extent applicable, an agreement incorporating an Assignment and Assumption by reference pursuant to an Approved Electronic Platform as to which the Administrative Agent and such parties are participants), and the Lender required to make such assignment need not be a party thereto in order for such assignment to be effective and shall be deemed to have consented to and be bound by the terms thereof; provided that, following the effectiveness of any such assignment, the other parties to such assignment agree to execute and deliver such documents necessary to evidence such assignment as reasonably requested by the applicable Lender, provided that any such documents shall be without recourse to or warranty by the parties thereto.

(e) Notwithstanding anything to the contrary herein the Administrative Agent may, with the consent of the Borrower Representative only, amend, modify or supplement this Agreement or any of the other Loan Documents to cure any ambiguity, omission, mistake, defect or inconsistency.

SECTION 9.03. Expenses; Limitation of Liability; Indemnity; Etc.

(a) Expenses. The Borrowers shall, jointly and severally, pay all (i) reasonable out-of-pocket expenses incurred by the Administrative Agent and its Affiliates, including the reasonable fees, charges and disbursements of a single counsel for the Administrative Agent and such special and local counsel as the Administrative Agent may deem appropriate in its good faith discretion, in connection with the syndication and distribution (including, without limitation, via the internet or through any Electronic System or Approved Electronic Platform) of the credit facilities provided for herein, the preparation and administration of the Loan Documents and any amendments, modifications or waivers of the provisions of the Loan Documents (whether or not the transactions contemplated hereby or thereby shall be consummated), (ii) reasonable and documented out-of-pocket expenses incurred by the Issuing Bank in connection with the issuance, amendment, renewal or extension of any Letter of Credit or any demand for payment thereunder and (iii) reasonable and documented out-of-pocket expenses incurred by the Administrative Agent, the Issuing Bank or any Lender, including the fees, charges and disbursements of a single counsel, (in addition to any reasonably necessary special counsel and local counsel in each applicable jurisdiction) for the Administrative Agent, the Issuing Banks or any Lender (and, in the event of a conflict, one additional counsel for the affected parties and any reasonably required special counsel and local counsel) and of the Financial Advisor, in connection with the Chapter 11 Cases and enforcement, collection or protection of its rights in connection with the Loan Documents and the Financing Orders, including its rights under this Section 9.03, or in connection with the Loans made or Letters of Credit issued hereunder, including all such reasonable and documented out-of-pocket expenses incurred in connection with any workout, restructuring or negotiations in respect of such Loans or Letters of Credit. All out-of-pocket costs and expenses of the Administrative Agents, Issuing Banks and Lenders relating to this Agreement and the Chapter 11 Cases, including without limitation, prepetition and post-petition reasonable and documented fees, costs, expenses and disbursements of Latham & Watkins LLP, local counsel for the Chapter 11 Cases, and the Financial Advisor, and as reasonably necessary, other counsel and advisors (collectively, the "DIP Professionals"), shall be payable by the Borrowers promptly upon written demand without reference to the DIP Budgets. A copy of the summary invoice (containing the name of each time keeper along with hourly rates, number of hours worked and total fees charged) shall be provided by the Borrowers to the Office of the U.S. Trustee and counsel for any statutory committee. The DIP Professionals shall not be required to comply with the U.S. Trustee fee guidelines or file applications or motions with, or obtain approval of, the Bankruptcy Court for compensation and reimbursement of fees and expenses. Expenses being reimbursed by the Borrowers under this Section include, without limiting the generality of the foregoing, fees, costs and expenses incurred in connection with:

- (A) subject to Section 5.12, appraisals and insurance reviews;
- (B) subject to Section 5.11, field examinations and the preparation of Reports based on the fees charged by a third party retained by the Administrative Agent or the internally allocated fees for each Person employed by the Administrative Agent with respect to each field examination;
- (C) Taxes, fees and other charges for (1) lien and title searches and title insurance and (2) filing financing statements and continuations, and other actions to perfect, protect, and continue the Administrative Agent's Liens;
- (D) sums paid or incurred to take any action required of any Loan Party under the Loan Documents that such Loan Party fails to pay or take;
- (E) forwarding loan proceeds, collecting checks and other items of payment, and establishing and maintaining the accounts and lock boxes, and costs and expenses of preserving and protecting the Collateral; and
- (F) perfection of any titled goods including any fees of any third party agent engaged by the Administrative Agent for the purpose of maintaining possession of certificates of title.

All of the foregoing fees, costs and expenses may be charged to the Borrowers as Loans or to another deposit account, all as described in Section 2.18(c).

(b) Limitation of Liability. To the extent permitted by applicable law (i) neither any Borrower nor any Loan Party shall assert, and each Borrower and each Loan Party hereby waives, any claim against the Administrative Agent, any Arranger, any Issuing Bank and any Lender, and any Related Party of any of the foregoing Persons (each such Person being called a "Lender-Related Person") for any Liabilities arising from the use by others of information or other materials (including, without limitation, any personal data) obtained through telecommunications, electronic or other information transmission systems (including the Internet), and (ii) no party hereto shall assert, and each such party hereby waives, any Liabilities against any other party hereto, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any other Loan Document, or any agreement or instrument contemplated hereby or thereby, the Transactions, any Loan or Letter of Credit or the use of the proceeds thereof; provided that, nothing in this Section 9.03(b) shall relieve any Borrower or any Loan Party of any obligation it may have to indemnify an Indemnitee, as provided in Section 9.03(c), against any special, indirect, consequential or punitive damages asserted against such Indemnitee by a third party.

(c) Indemnity. The Loan Parties shall, jointly and severally, indemnify the Administrative Agent, each Arranger, the Issuing Bank and each Lender, and each Related Party of any of the foregoing Persons (each such Person being called an "Indemnitee") against, and hold each Indemnitee harmless from, any and all Liabilities and related expenses, including the reasonable fees, charges and disbursements of any counsel for any Indemnitee, incurred by or asserted against any Indemnitee arising out of, in connection with, or as a result of (i) the execution or delivery of the Loan Documents or any agreement or instrument contemplated thereby (but in each case excluding any losses, liabilities, claims damages or expenses relating to the matters referred to in Sections 2.15 and 2.16 which shall be the sole remedy in respect of the matters set forth therein), (ii) the performance by the parties hereto of their respective obligations thereunder or the consummation of the Transactions or any other transactions contemplated hereby, (iii) any Loan or Letter of Credit or the use of the proceeds therefrom (including any refusal by the Issuing Bank to honor a demand for payment under a Letter of Credit if the documents presented in connection with such demand do not strictly comply with the terms of such Letter of Credit), (iv) any actual or alleged presence or Release

of Hazardous Materials on or from any property owned or operated by a Loan Party or a Subsidiary, or any Environmental Liability related in any way to a Loan Party or a Subsidiary, (v) the failure of a Loan Party to deliver to the Administrative Agent the required receipts or other required documentary evidence with respect to a payment made by a Loan Party for Taxes pursuant to Section 2.17, or (vi) any actual or prospective Proceeding relating to any of the foregoing, whether or not such Proceeding is brought by any Loan Party or their respective equity holders, Affiliates, creditors or any other third Person and whether based on contract, tort or any other theory and regardless of whether any Indemnatee is a party thereto; provided that such indemnity shall not, as to any Indemnatee, be available to the extent that such Liabilities or related expenses are (x) determined by a court of competent jurisdiction by final and non-appealable judgment to have resulted from the gross negligence, bad faith or willful misconduct of such Indemnatee (y) resulting from a material breach of the Loan Documents by such Indemnatee as determined by a final non appealable judgment of a court of competent jurisdiction or (z) relating to disputes among Indemnitees (other than the Administrative Agent in its capacity as such and other than conduct involving a Loan Party), provided further that Holdings, the Company and the other Loan Parties shall not be required to reimburse the legal fees and expenses of more than one firm of outside counsel (in addition to any reasonably necessary special counsel and up to one local counsel in each applicable local jurisdiction) for all Indemnitees unless, in the opinion of outside counsel reasonably satisfactory to the Company, representation of all such Indemnitees would be inappropriate due to the existence of an actual or potential conflict of interest, in which case, the Company shall be required to reimburse the legal fees and expenses of one additional outside counsel (in addition to any reasonably necessary special counsel and up to one local counsel in each applicable local jurisdiction). This Section 9.03(c) shall not apply with respect to Taxes other than any Taxes that represent losses or damages arising from any non-Tax claim.

(d) Lender Reimbursement. Each Lender severally agrees to pay any amount required to be paid by any Loan Party under paragraphs (a), (b) or (c) of this Section 9.03 to the Administrative Agent, each Issuing Bank and the Swingline Lender, and each Related Party of any of the foregoing Persons (each, an "Agent-Related Person") (to the extent not reimbursed by a Loan Party and without limiting the obligation of any Loan Party to do so), ratably according to their respective Applicable Percentage in effect on the date on which such payment is sought under this Section (or, if such payment is sought after the date upon which the Commitments shall have terminated and the Loans shall have been paid in full, ratably in accordance with such Applicable Percentage immediately prior to such date), and agrees to indemnify and hold each Agent-Related Person harmless from and against any and all Liabilities and related expenses, including the fees, charges and disbursements of any kind whatsoever that may at any time (whether before or after the payment of the Loans) be imposed on, incurred by or asserted against such Agent-Related Person in any way relating to or arising out of the Commitments, this Agreement, any of the other Loan Documents or any documents contemplated by or referred to herein or therein or the transactions contemplated hereby or thereby or any action taken or omitted by such Agent-Related Person under or in connection with any of the foregoing; provided that the unreimbursed expense or Liability or related expense, as the case may be, was incurred by or asserted against such Agent-Related Person in its capacity as such; provided, further, that no Lender shall be liable for the payment of any portion of such Liabilities, costs, expenses or disbursements that are found by a final and non-appealable decision of a court of competent jurisdiction to have resulted primarily from such Agent-Related Person's gross negligence or willful misconduct. The agreements in this Section shall survive the termination of this Agreement and Payment in Full of the Obligations.

(e) Payments. All amounts due under this Section 9.03 shall be payable promptly after written demand therefor.

SECTION 9.04. Successors and Assigns.

(a) The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby (including any Affiliate of the Issuing Bank that issues any Letter of Credit), except that (i) no Borrower may assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of each Lender (and any attempted assignment or transfer by any Borrower without such consent shall be null and void) and (ii) no Lender may assign or otherwise transfer its rights or obligations hereunder except in accordance with this Section 9.04. 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 (including any Affiliate of an Issuing Bank that issues any Letter of Credit), Participants (to the extent provided in paragraph (c) of this Section 9.04) and, to the extent expressly contemplated hereby, the Related Parties of each of the Administrative Agent, the Issuing Banks and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) (i) Subject to the conditions set forth in paragraph (b)(ii) below, any Lender may assign to one or more Persons (other than an Ineligible Institution) all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitment, participations in Letters of Credit and the Loans at the time owing to it) with the prior written consent (such consent not to be unreasonably withheld) of:

(A) the Borrower Representative, provided that the Borrower Representative shall be deemed to have consented to any such assignment of all or a portion of the Loans and Commitments unless it shall object thereto by written notice to the Administrative Agent within fifteenth (15) Business Days after having received notice thereof, and provided further that no consent of the Borrower Representative shall be required for an assignment to a Lender, an Affiliate of a Lender, an Approved Fund or, if a Specified Event of Default has occurred and is continuing, any other assignee;

(B) the Administrative Agent;

(C) each Issuing Bank; and

(D) the Swingline Lender.

(ii) Assignments shall be subject to the following additional conditions:

(A) except in the case of an assignment to a Lender or an Affiliate of a Lender or an Approved Fund or an assignment of the entire remaining amount of the assigning Lender's Commitment or Loans of any Class, the amount of the Commitment or Loans of the assigning Lender subject to each such assignment (determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Administrative Agent) shall not be less than \$5,000,000 unless each of the Borrower Representative and the Administrative Agent otherwise consent, provided that no such consent of the Borrower Representative shall be required if a Specified Event of Default has occurred and is continuing;

(B) 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;

(C) the parties to each assignment shall execute and deliver to the Administrative Agent (x) an Assignment and Assumption or (y) to the extent applicable, an agreement

incorporating an Assignment and Assumption by reference pursuant to an Approved Electronic Platform as to which the Administrative Agent and the parties to the Assignment and Assumption are participants, together with a processing and recordation fee of \$3,500;

(D) the assignee, if it shall not be a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire in which the assignee designates one or more credit contacts to whom all syndicate-level information (which may contain material non-public information about the Company, the other Loan Parties and their Related Parties or their respective securities) will be made available and who may receive such information in accordance with the assignee's compliance procedures and applicable laws, including Federal and state securities laws;

(E) [reserved].

For the purposes of this Section 9.04(b), the terms "Approved Fund" and "Ineligible Institution" have the following meanings:

"Approved Fund" means any Person (other than a natural person) that is engaged in making, purchasing, holding or investing in bank loans and similar extensions of credit in the ordinary course of its business and that is administered or managed by (a) a Lender, (b) an Affiliate of a Lender or (c) an entity or an Affiliate of an entity that administers or manages a Lender.

"Ineligible Institution" means (a) any person that the Company has not expressly agreed to other than a commercial bank, a savings and loan institution, a savings bank, any other regulated institution that is engaged in secured lending in the ordinary course of business and has capital and surplus in excess of \$250,000,000, or the foreign currency equivalent thereof, (b) a natural person, (c) a Defaulting Lender or its Lender Parent, (d) a holding company, investment vehicle or trust for, or owned and operated for the primary benefit of, a natural person or relative(s) thereof; provided that, with respect to clause (d), such holding company, investment vehicle or trust shall not constitute an Ineligible Institution if it (x) has not been established for the primary purpose of acquiring any Loans or Commitments, (y) is managed by a professional advisor, who is not such natural person or a relative thereof, having significant experience in the business of making or purchasing commercial loans, and (z) has assets greater than \$25,000,000 and a significant part of its activities consist of making or purchasing commercial loans and similar extensions of credit in the ordinary course of its business or (e) a Loan Party or a subsidiary or other Affiliate of a Loan Party.

(iii) Subject to acceptance and recording thereof pursuant to paragraph (b)(iv) of this Section, from and after the effective date specified in each Assignment and Assumption, the assignee thereunder shall be a party hereto and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto but shall continue to be entitled to the benefits of Sections 2.15, 2.16, 2.17 and 9.03). Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this Section 9.04 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 paragraph (c) of this Section 9.04.

(iv) The Administrative Agent, acting for this purpose as a non-fiduciary agent of the Borrowers, shall maintain at one of its offices 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 Commitment of, and principal amount (and related interest amounts) of the Loans and LC Disbursements 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 Borrowers, the Administrative Agent, the Issuing Bank 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 any notice to the contrary. The Register shall be available for inspection by the Borrowers, the Issuing Bank and any Lender, at any reasonable time and from time to time upon reasonable prior notice.

(v) Upon its receipt of (x) a duly completed Assignment and Assumption executed by an assigning Lender and an assignee or (y) to the extent applicable, an agreement incorporating an Assignment and Assumption by reference pursuant to an Approved Electronic Platform as to which the Administrative Agent and the parties to the Assignment and Assumption are participants, the assignee's completed Administrative Questionnaire (unless the assignee shall already be a Lender hereunder), the processing and recordation fee referred to in paragraph (b) of this Section and any written consent to such assignment required by paragraph (b) of this Section 9.04, the Administrative Agent shall accept such Assignment and Assumption and record the information contained therein in the Register; provided that if either the assigning Lender or the assignee shall have failed to make any payment required to be made by it pursuant to Section 2.05, 2.06(d) or (e), 2.07(b), 2.18(d) or 9.03(d), the Administrative Agent shall have no obligation to accept such Assignment and Assumption and record the information therein in the Register unless and until such payment shall have been made in full, together with all accrued interest thereon. No assignment shall be effective for purposes of this Agreement unless it has been recorded in the Register as provided in this paragraph.

(c) Any Lender may, without the consent of, or notice to, the Borrowers, the Administrative Agent, the Issuing Bank or the Swingline Lender, sell participations to one or more banks or other entities (a "Participant") other than an Ineligible Institution in all or a portion of such Lender's rights and obligations under this Agreement (including all or a portion of its Commitment and/or the Loans owing to it); provided that (i) such Lender's obligations under this Agreement shall remain unchanged; (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations; and (iii) the Borrowers, the Administrative Agent, the Issuing Bank and the other Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and/or 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 to approve any amendment, modification or waiver of any provision of this Agreement; provided that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, modification or waiver described in the first proviso to Section 9.02(b) that directly affects such Participant. The Borrowers agree that each Participant shall be entitled to the benefits of Sections 2.15, 2.16 and 2.17 (subject to the requirements and limitations therein, including the requirements under Section 2.17(f) (it being understood that the documentation required under Section 2.17(f) shall be delivered solely to the participating Lender) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to paragraph (b) of this Section; provided that such Participant (A) shall be subject to the provisions of Sections 2.18 and 2.19 as if it were an assignee under paragraph (b) of this Section 9.04; and (B) shall not be entitled to receive any greater payment under Section 2.15 or 2.17, with respect to any participation, than its participating Lender would have been entitled to receive, except to the extent such entitlement to receive a greater payment results from a Change in Law that occurs after the Participant acquired the applicable participation.

Each Lender that sells a participation agrees, at the Borrowers' request and expense, to use reasonable efforts to cooperate with the Borrowers to effectuate the provisions of Section 2.19(b) with respect to any Participant. To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 9.08 as though it were a Lender, provided such Participant agrees to be subject to Section 2.18(b) as though it were a Lender. Each Lender that sells a participation shall, acting solely for this purpose as a non-fiduciary agent of the Borrowers, maintain a register on which it enters 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 or any other Loan Document (the "Participant Register"); provided that no Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any information relating to a Participant's interest in any Commitments, Loans, Letters of Credit or its other obligations under any Loan Document) to any Person except to the extent that such disclosure is necessary to establish that such Commitment, Loan, Letter of Credit or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, the Administrative Agent (in its capacity as Administrative Agent) shall have no responsibility for maintaining a Participant Register.

(d) Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement to secure obligations of such Lender, including without limitation any pledge or assignment to secure obligations to a Federal Reserve Bank, and this Section shall not apply to any such pledge or assignment of a security interest; provided that no such pledge or assignment of a security interest shall release a Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

SECTION 9.05. Survival. All covenants, agreements, representations and warranties made by the Loan Parties in the Loan Documents and in the certificates or other instruments delivered in connection with or pursuant to this Agreement or any other Loan Document shall be considered to have been relied upon by the other parties hereto and shall survive the execution and delivery of the Loan Documents and the making of any Loans and issuance of any Letters of Credit, regardless of any investigation made by any such other party or on its behalf and notwithstanding that the Administrative Agent, the Issuing Bank or any Lender may have had notice or knowledge of any Default or incorrect representation or warranty at the time any credit is extended hereunder, and shall continue in full force and effect as long as the principal of or any accrued interest on any Loan or any fee or any other amount payable under this Agreement is outstanding and unpaid or any Letter of Credit is outstanding, unless the same has been cash collateralized in accordance with Section 2.06(j) and so long as the Commitments have not expired or terminated. The provisions of Sections 2.15, 2.16, 2.17 and 9.03 and Article VIII shall survive and remain in full force and effect regardless of the resignation or replacement of the Administrative Agent or any assignment of rights by, or the replacement of, a Lender, the consummation of the transactions contemplated hereby, the repayment of the Loans, the expiration or termination of the Letters of Credit and the Commitments or the termination of this Agreement or any other Loan Document or any provision hereof or thereof.

SECTION 9.06. Counterparts; Integration; Effectiveness; Electronic Execution.

(a) This Agreement may be executed in counterparts (and by different parties hereto on different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement, the other Loan Documents and any separate letter agreements with respect to (i) fees payable to the Administrative Agent and (ii) increases or reductions of the Issuing Bank sublimit of the Issuing Bank 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 which, when taken together, bear the signatures of each of the other parties hereto, and thereafter shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

(b) Delivery of an executed counterpart of a signature page of (x) this Agreement, (y) any other Loan Document and/or (z) any document, amendment, approval, consent, information, notice (including, for the avoidance of doubt, any notice delivered pursuant to Section 9.01), certificate, request, statement, disclosure or authorization related to this Agreement, any other Loan Document and/or the transactions contemplated hereby and/or thereby (each, an “Ancillary Document”) that is an Electronic Signature transmitted by facsimile, emailed pdf. or any other electronic means that reproduces an image of an actual executed signature page shall be effective as delivery of a manually executed counterpart of this Agreement, such other Loan Document or such Ancillary Document, as applicable. The words “execution,” “signed,” “signature,” “delivery,” and words of like import in or relating to this Agreement, any other Loan Document and/or any Ancillary Document shall be deemed to include Electronic Signatures, deliveries or the keeping of records in any electronic form (including deliveries by facsimile, emailed pdf. or any other electronic means that reproduces an image of an actual executed signature page), 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; provided that nothing herein shall require the Administrative Agent to accept Electronic Signatures in any form or format without its prior written consent and pursuant to procedures approved by it; provided, further, without limiting the foregoing, (i) to the extent the Administrative Agent has agreed to accept any Electronic Signature, each party hereto shall be entitled to rely on such Electronic Signature purportedly given by or on behalf of any other party without further verification thereof and without any obligation to review the appearance or form of any such Electronic Signature and (ii) upon the request of the Administrative Agent or any Lender, each Loan Party shall use commercially reasonable efforts to follow any Electronic Signature to this Agreement, any note and/or the Security Agreement with a manually executed counterpart. Without limiting the generality of the foregoing, each party hereto hereby (A) agrees that, for all purposes, including without limitation, in connection with any workout, restructuring, enforcement of remedies, bankruptcy proceedings or litigation among the Administrative Agent, the Lenders, the Borrowers and the Loan Parties, Electronic Signatures transmitted by facsimile, emailed pdf. or any other electronic means that reproduces an image of an actual executed signature page and/or any electronic images of this Agreement, any other Loan Document and/or any Ancillary Document shall have the same legal effect, validity and enforceability as any paper original, (B) the Administrative Agent, each of the Lenders, and each Loan Party may, at its option, create one or more copies of this Agreement, any other Loan Document and/or any Ancillary Document in the form of an imaged electronic record in any format, which shall be deemed created in the ordinary course of such Person’s business, and destroy the original paper document (and all such electronic records shall be considered an original for all purposes and shall have the same legal effect, validity and enforceability as a paper record), (C) waives any argument, defense or right to contest the legal effect, validity or enforceability of this Agreement, any other Loan Document and/or any Ancillary Document based solely on the lack of paper original copies of this Agreement, such other Loan Document and/or such Ancillary Document, respectively, including with respect to any signature pages thereto and (D) waives any claim against any other Person for any Liabilities arising solely from such Person’s reliance on or use of Electronic Signatures and/or transmissions by facsimile, emailed pdf. or any other electronic means that reproduces an image of an actual executed signature page, including any Liabilities arising as a result of the failure of any Person to use any available security measures in connection with the execution, delivery or transmission of any Electronic Signature.

SECTION 9.07. Severability. Any provision of any Loan Document held to be invalid, illegal or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such

invalidity, illegality or unenforceability without affecting the validity, legality and enforceability of the remaining provisions thereof; and the invalidity of a particular provision in a particular jurisdiction shall not invalidate such provision in any other jurisdiction.

SECTION 9.08. Right of Setoff. If an Event of Default shall have occurred and be continuing, each Lender, the Issuing Bank and each of their respective Affiliates is hereby authorized at any time and from time to time, to the fullest extent permitted by law, to set off and apply any and all deposits (general or special, time or demand, provisional or final) at any time held, and other obligations at any time owing, by such Lender, the Issuing Bank or any such Affiliate, to or for the credit or the account of any Loan Party against any and all of the Obligations held by such Lender, the Issuing Bank or their respective Affiliates, irrespective of whether or not such Lender, the Issuing Bank or their respective Affiliates shall have made any demand under the Loan Documents and although such obligations may be contingent or unmatured or are owed to a branch office or Affiliate of such Lender or the Issuing Bank different from the branch office or Affiliate holding such deposit or obligated on such indebtedness; provided that in the event that any Defaulting Lender shall exercise any such right of setoff, (x) all amounts so set off shall be paid over immediately to the Administrative Agent for further application in accordance with the provisions of Section 2.20 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, the Issuing Bank, 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 applicable Lender, the Issuing Bank or such Affiliate shall notify the Borrower Representative and the Administrative Agent of such setoff or application, provided that any failure to give or any delay in giving such notice shall not affect the validity of any such setoff or application under this Section. The rights of each Lender, the Issuing Bank and their respective Affiliates under this Section are in addition to other rights and remedies (including other rights of setoff) that such Lender, the Issuing Bank or their respective Affiliates may have.

SECTION 9.09. Governing Law; Jurisdiction; Consent to Service of Process.

(a) The Loan Documents (other than those containing a contrary express choice of law provision) and all claims, controversies or disputes (whether in tort or otherwise) relating to the Loan Documents shall be governed by and construed in accordance with the laws of the State of New York, but giving effect to federal laws applicable to national banks.

(b) Each of the Lenders and the Administrative Agent hereby irrevocably and unconditionally agrees that, notwithstanding the governing law provisions of any applicable Loan Document, any claims brought against the Administrative Agent by any Secured Party relating to this Agreement, any other Loan Document, the Collateral or the consummation or administration of the transactions contemplated hereby or thereby shall be construed in accordance with and governed by the law of the State of New York.

(c) Each of the parties hereto hereby irrevocably and unconditionally submits, for itself and its property, to the exclusive jurisdiction of any U.S. federal or New York state court sitting in New York, New York, and any appellate court from any thereof, in any action or proceeding arising out of or relating to any Loan Documents, the transactions relating hereto or thereto, or for recognition or enforcement of any judgment, and each of the parties hereto hereby irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding may (and any such claims, cross-claims or third party claims brought against the Administrative Agent or any of its Related Parties may only) be heard and determined in such New York State or, to the extent permitted by law, in such Federal court. Each of the parties hereto agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing in this Agreement or any other Loan Document shall affect any right that the Administrative Agent, the Issuing

Bank or any Lender may otherwise have to bring any action or proceeding relating to this Agreement or any other Loan Document against any Loan Party or its properties in the courts of any jurisdiction.

(d) Each Person party hereto hereby irrevocably and unconditionally waives, to the fullest extent it may legally and effectively do so, any objection which it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this Agreement or any other Loan Document in any court referred to in paragraph (c) of this Section 9.09. Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

(e) Each party to this Agreement irrevocably consents to service of process in the manner provided for notices in Section 9.01. Nothing in this Agreement or any other Loan Document will affect the right of any party to this Agreement to serve process in any other manner permitted by law.

SECTION 9.10. WAIVER OF JURY TRIAL. EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT, ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE OR OTHER AGENT (INCLUDING ANY ATTORNEY) OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 9.10.

SECTION 9.11. Headings. Article and Section headings and the Table of Contents used herein are for convenience of reference only, are not part of this Agreement and shall not affect the construction of, or be taken into consideration in interpreting, this Agreement.

SECTION 9.12. Confidentiality. Each of the Administrative Agent, the Issuing Bank and the Lenders agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (a) to its and its Affiliates' directors, officers, employees and agents, including accountants, legal counsel and other advisors (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential), (b) to the extent requested by any Governmental Authority (including any self-regulatory authority, such as the National Association of Insurance Commissioners) (in which case, except in the case of regulatory examinations, each such Person agrees to promptly notify the Borrower Representative to the extent not prohibited by law), (c) to the extent required by any Requirement of Law or by any subpoena or similar legal process (in which case each such Person agrees to promptly notify the Borrower Representative to the extent not prohibited by law), (d) to any other party to this Agreement, (e) in connection with the exercise of any remedies under this Agreement or any other Loan Document or any suit, action or proceeding relating to this Agreement or any other Loan Document or the enforcement of rights hereunder or thereunder, (f) subject to an agreement containing provisions substantially the same as those of this Section, to (i) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights or obligations under this Agreement or (ii) any actual or prospective counterparty (or its advisors) to any swap or derivative transaction relating to the Loan Parties and their obligations (and any such Person may disclose such Information to its and its Affiliates' directors, officers, employees and agents, including accountants, legal counsel and other advisors (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)), (g) with the consent of the Borrower Representative, (h) to holders of Equity Interests in any Borrower, or (i) to the extent such Information (i) becomes publicly available other than as a result of a breach of this Section 9.12 or (ii) becomes available to the Administrative Agent, the Issuing Bank or any Lender other than as a result of a breach of this Section 9.12 on a non-confidential basis from a source other than the Borrowers or their representatives which is not known by such Person to be under a duty of confidentiality with respect the Information.

For the purposes of this Section, “Information” means all information received from the Borrowers relating to the Borrowers or their business, other than any such information that is available to the Administrative Agent, the Issuing Bank or any Lender on a non-confidential basis prior to disclosure by the Borrowers and other than information pertaining to this Agreement provided by arrangers to data service providers, including league table providers, that serve the lending industry; provided that, in the case of information received from the Borrowers after the Effective Date, such information is clearly identified at the time of delivery as confidential. Any Person required to maintain the confidentiality of Information as provided in this Section 9.12 shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information.

EACH LENDER ACKNOWLEDGES THAT INFORMATION (AS DEFINED IN THIS SECTION 9.12) FURNISHED TO IT PURSUANT TO THIS AGREEMENT MAY INCLUDE MATERIAL NON-PUBLIC INFORMATION CONCERNING THE COMPANY, AND ITS AFFILIATES, THE OTHER LOAN PARTIES AND THEIR RELATED PARTIES OR THEIR RESPECTIVE SECURITIES, AND CONFIRMS THAT IT HAS DEVELOPED COMPLIANCE PROCEDURES REGARDING THE USE OF MATERIAL NON-PUBLIC INFORMATION AND THAT IT WILL HANDLE SUCH MATERIAL NON-PUBLIC INFORMATION IN ACCORDANCE WITH THOSE PROCEDURES AND APPLICABLE LAW, INCLUDING FEDERAL AND STATE SECURITIES LAWS.

ALL INFORMATION, INCLUDING REQUESTS FOR WAIVERS AND AMENDMENTS, FURNISHED BY THE BORROWERS OR THE ADMINISTRATIVE AGENT PURSUANT TO, OR IN THE COURSE OF ADMINISTERING, THIS AGREEMENT WILL BE SYNDICATE-LEVEL INFORMATION, WHICH MAY CONTAIN MATERIAL NON-PUBLIC INFORMATION ABOUT THE COMPANY, THE LOAN PARTIES AND THEIR RELATED PARTIES OR THEIR RESPECTIVE SECURITIES. ACCORDINGLY, EACH LENDER REPRESENTS TO THE BORROWERS AND THE ADMINISTRATIVE AGENT THAT IT HAS IDENTIFIED IN ITS ADMINISTRATIVE QUESTIONNAIRE A CREDIT CONTACT WHO MAY RECEIVE INFORMATION THAT MAY CONTAIN MATERIAL NON-PUBLIC INFORMATION IN ACCORDANCE WITH ITS COMPLIANCE PROCEDURES AND APPLICABLE LAW, INCLUDING FEDERAL AND STATE SECURITIES LAWS.

SECTION 9.13. Several Obligations; Nonreliance; Violation of Law. The respective obligations of the Lenders hereunder are several and not joint and the failure of any Lender to make any Loan or perform any of its obligations hereunder shall not relieve any other Lender from any of its obligations hereunder. Each Lender hereby represents that it is not relying on or looking to any margin stock (as defined in Regulation U of the Board) for the repayment of the Borrowings provided for herein. Anything contained in this Agreement to the contrary notwithstanding, neither the Issuing Bank nor any Lender shall be obligated to extend credit to the Borrowers in violation of any Requirement of Law.

SECTION 9.14. USA PATRIOT Act. Each Lender that is subject to the requirements of the USA PATRIOT Act hereby notifies each Loan Party that pursuant to the requirements of the USA PATRIOT Act, it is required to obtain, verify and record information that identifies such Loan Party, which

information includes the name and address of such Loan Party and other information that will allow such Lender to identify such Loan Party in accordance with the USA PATRIOT Act.

SECTION 9.15. Disclosure. Each Loan Party, each Lender and the Issuing Bank hereby acknowledges and agrees that the Administrative Agent and/or its Affiliates from time to time may hold Investments in, make other loans to or have other relationships with any of the Loan Parties and their respective Affiliates.

SECTION 9.16. Appointment for Perfection. Each Lender hereby appoints each other Lender as its agent for the purpose of perfecting Liens, for the benefit of the Administrative Agent and the other Secured Parties, in assets which, in accordance with Article 9 of the UCC or any other applicable law can be perfected only by possession or control. Should any Lender (other than the Administrative Agent) obtain possession or control of any such Collateral, such Lender shall notify the Administrative Agent thereof, and, promptly upon the Administrative Agent's request therefor shall deliver such Collateral to the Administrative Agent or otherwise deal with such Collateral in accordance with the Administrative Agent's instructions.

SECTION 9.17. Interest Rate Limitation. Notwithstanding anything herein to the contrary, if at any time the interest rate applicable to any Loan, together with all fees, charges and other amounts which are treated as interest on such Loan under applicable law (collectively the "Charges"), shall exceed the maximum lawful rate (the "Maximum Rate") which may be contracted for, charged, taken, received or reserved by the Lender holding such Loan in accordance with applicable law, the rate of interest payable in respect of such Loan hereunder, together with all Charges payable in respect thereof, shall be limited to the Maximum Rate and, to the extent lawful, the interest and Charges that would have been payable in respect of such Loan but were not payable as a result of the operation of this Section 9.17 shall be cumulated and the interest and Charges payable to such Lender in respect of other Loans or periods shall be increased (but not above the Maximum Rate therefor) until such cumulated amount, together with interest thereon at the NYFRB Rate to the date of repayment, shall have been received by such Lender.

SECTION 9.18. [reserved].

SECTION 9.19. Acknowledgement and Consent to Bail-In of Affected Financial Institutions. Notwithstanding anything to the contrary in any Loan Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any Affected Financial Institution arising under any Loan Document 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.

SECTION 9.20. No Fiduciary Duty, Etc.

(a) Each Borrower acknowledges and agrees, and acknowledges its Subsidiaries' understanding, that no Credit Party will have any obligations except those obligations expressly set forth herein and in the other Loan Documents and each Credit Party is acting solely in the capacity of an arm's length contractual counterparty to each Borrower with respect to the Loan Documents and the transactions contemplated herein and therein and not as a financial advisor or a fiduciary to, or an agent of, any Borrower or any other person. Each Borrower agrees that it will not assert any claim against any Credit Party based on an alleged breach of fiduciary duty by such Credit Party in connection with this Agreement and the transactions contemplated hereby. Additionally, each Borrower acknowledges and agrees that no Credit Party is advising any Borrower as to any legal, tax, investment, accounting, regulatory or any other matters in any jurisdiction. Each Borrower shall consult with its own advisors concerning such matters and shall be responsible for making its own independent investigation and appraisal of the transactions contemplated herein or in the other Loan Documents, and the Credit Parties shall have no responsibility or liability to any Borrower with respect thereto.

(b) Each Borrower further acknowledges and agrees, and acknowledges its Subsidiaries' understanding, that each Credit Party, together with its Affiliates, is a full service securities or banking firm engaged in securities trading and brokerage activities as well as providing investment banking and other financial services. In the ordinary course of business, any Credit Party may provide investment banking and other financial services to, and/or acquire, hold or sell, for its own accounts and the accounts of customers, equity, debt and other securities and financial instruments (including bank loans and other obligations) of, any Borrower and other companies with which any Borrower may have commercial or other relationships. With respect to any securities and/or financial instruments so held by any Credit Party or any of its customers, all rights in respect of such securities and financial instruments, including any voting rights, will be exercised by the holder of the rights, in its sole discretion.

(c) In addition, each Borrower acknowledges and agrees, and acknowledges its Subsidiaries' understanding, that each Credit Party and its affiliates may be providing debt financing, equity capital or other services (including financial advisory services) to other companies in respect of which a Borrower may have conflicting interests regarding the transactions described herein and otherwise. No Credit Party will use confidential information obtained from any Borrower by virtue of the transactions contemplated by the Loan Documents or its other relationships with such Borrower in connection with the performance by such Credit Party of services for other companies, and no Credit Party will furnish any such information to other companies. Each Borrower also acknowledges that no Credit Party has any obligation to use in connection with the transactions contemplated by the Loan Documents, or to furnish to any Borrower, confidential information obtained from other companies.

SECTION 9.21. Acknowledgement Regarding Any Supported QFCs. To the extent that the Loan Documents provide support, through a guarantee or otherwise, for Swap Agreements or any other agreement or instrument that is a QFC (such support "QFC Credit Support" and each such QFC a "Supported QFC"), the parties acknowledge and agree as follows with respect to the resolution power of the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act and Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (together with the regulations promulgated thereunder, the "U.S. Special Resolution Regimes") in respect of such Supported QFC and QFC Credit Support (with the provisions below applicable notwithstanding that the Loan Documents and any Supported QFC may in fact be stated to be governed by the laws of the State of New York and/or of the United States or any other state of the United States):

In the event a Covered Entity that is party to a Supported QFC (each, a “Covered Party”) becomes subject to a proceeding under a U.S. Special Resolution Regime, the transfer of such Supported QFC and the benefit of such QFC Credit Support (and any interest and obligation in or under such Supported QFC and such QFC Credit Support, and any rights in property securing such Supported QFC or such QFC Credit Support) from such Covered Party will be effective to the same extent as the transfer would be effective under the U.S. Special Resolution Regime if the Supported QFC and such QFC Credit Support (and any such interest, obligation and rights in property) were governed by the laws of the United States or a state of the United States. In the event a Covered Party or a BHC Act Affiliate of a Covered Party becomes subject to a proceeding under a U.S. Special Resolution Regime, Default Rights under the Loan Documents that might otherwise apply to such Supported QFC or any QFC Credit Support that may be exercised against such Covered Party are permitted to be exercised to no greater extent than such Default Rights could be exercised under the U.S. Special Resolution Regime if the Supported QFC and the Loan Documents were governed by the laws of the United States or a state of the United States. Without limitation of the foregoing, it is understood and agreed that rights and remedies of the parties with respect to a Defaulting Lender shall in no event affect the rights of any Covered Party with respect to a Supported QFC or any QFC Credit Support.

SECTION 9.22. Joint and Several. Each Borrower hereby unconditionally and irrevocably agrees it is jointly and severally liable to the Administrative Agent, the Issuing Banks and the Lenders for the Obligations. In furtherance thereof, each Borrower agrees that wherever in this Agreement it is provided that a Borrower is liable for a payment, such obligation is the joint and several obligation of each Borrower. Each Borrower acknowledges and agrees that its joint and several liability under this Agreement and the Loan Documents is absolute and unconditional and shall not in any manner be affected or impaired by any acts or omissions whatsoever by the Administrative Agent, any Issuing Bank, any Lender or any other Person. Each Borrower’s liability for the Obligations shall not in any manner be impaired or affected by who receives or uses the proceeds of the credit extended hereunder or for what purposes such proceeds are used, and each Borrower waives notice of borrowing requests issued by, and loans or other extensions of credit made to, other Borrowers. Each Borrower hereby agrees not to exercise or enforce any right of exoneration, contribution, reimbursement, recourse or subrogation available to such Borrower against any party liable for payment under this Agreement and the Loan Documents unless and until the Administrative Agent, each Issuing Bank and each Lender have been paid in full and all of the Obligations are satisfied and discharged following termination or expiration of all commitments of the Lenders to extend credit to the Borrowers. Each Borrower’s joint and several liability hereunder with respect to the Obligations shall, to the fullest extent permitted by applicable law, be the unconditional liability of such Borrower irrespective of (i) the validity, enforceability, avoidance or subordination of any of the Obligations or of any other document evidencing all or any part of the Obligations, (ii) the absence of any attempt to collect any of the Obligations from any other Loan Party or any Collateral or other security therefor, or the absence of any other action to enforce the same, (iii) the amendment, modification, waiver, consent, extension, forbearance or granting of any indulgence by the Administrative Agent or any Lender with respect to any provision of any instrument executed by any other Loan Party evidencing or securing the payment of any of the Obligations, or any other agreement now or hereafter executed by any other Loan Party and delivered to the Administrative Agent, (iv) the failure by the Administrative Agent or any Lender to take any steps to perfect or maintain the perfected status of its Lien upon, or to preserve its rights to, any of the Collateral or other security for the payment or performance of any of the Obligations or the Administrative Agent’s release of any Collateral or of its Liens upon any Collateral, (v) the release or compromise, in whole or in part, of the liability of any other Loan Party for the payment of any of the Obligations, (vi) any increase in the amount of the Obligations beyond any limits imposed herein or in the amount of any interest, fees or other charges payable in connection therewith, in each case, if consented to by any other Borrower, or any decrease in the same, or (vii) any other circumstance that might constitute a legal or equitable discharge or defense of any Loan Party. After the occurrence and during the continuance of any Event of Default, the Administrative Agent may proceed directly and at once, without notice to any Borrower, against any or all

of Loan Parties to collect and recover all or any part of the Obligations, without first proceeding against any other Loan Party or against any Collateral or other security for the payment or performance of any of the Obligations, and each Borrower waives any provision that might otherwise require the Administrative Agent or the Lenders under applicable law to pursue or exhaust remedies against any Collateral or other Loan Party before pursuing such Borrower or its property. Each Borrower consents and agrees that neither the Administrative Agent nor any Lender shall be under any obligation to marshal any assets in favor of any Loan Party or against or in payment of any or all of the Obligations.

SECTION 9.23. Incorporation of Financing Orders by Reference. Each of the parties hereto hereby agrees that any reference contained herein to the Financing Orders shall include all terms, conditions and provisions of such Financing Order and that the Financing Orders are incorporated herein for all purposes. To the extent there is any conflict or inconsistency between the terms of any of the Loan Documents and the terms of the Financing Orders, the terms of the Financing Orders, as applicable, shall govern.

ARTICLE X

Loan Guaranty

SECTION 10.01. Guaranty. Each Guarantor (other than those that have delivered a separate Loan Guaranty) hereby agrees that it is jointly and severally liable for, and, as a primary obligor and not merely as surety, absolutely, unconditionally and irrevocably guarantees to the Secured Parties, the prompt payment when due, whether at stated maturity, upon acceleration or otherwise, and at all times thereafter, of the Obligations and all costs and expenses, including, without limitation, all reasonable and documented court costs and attorneys' and paralegals' fees and expenses paid or incurred by the Administrative Agent, the Issuing Bank and the Lenders in endeavoring to collect all or any part of the Obligations from, or in prosecuting any action against, any Borrower, any Guarantor or any other guarantor of all or any part of the Obligations (such costs and expenses, together with the Obligations, collectively the "Guaranteed Obligations." Each Guarantor further agrees that the Guaranteed Obligations may be extended or renewed in whole or in part without notice to or further assent from it, and that it remains bound upon its guarantee notwithstanding any such extension or renewal. All terms of this Loan Guaranty apply to and may be enforced by or on behalf of any domestic or foreign branch or Affiliate of any Lender that extended any portion of the Guaranteed Obligations.

SECTION 10.02. Guaranty of Payment. This Loan Guaranty is a guaranty of payment and not of collection. Each Guarantor waives any right to require the Administrative Agent, the Issuing Bank or any Lender to sue any Borrower, any Guarantor, any other guarantor of, or any other Person obligated for, all or any part of the Guaranteed Obligations (each, an "Obligated Party"), or otherwise to enforce its payment against any collateral securing all or any part of the Guaranteed Obligations.

SECTION 10.03. No Discharge or Diminishment of Loan Guaranty.

(a) Except as otherwise provided for herein, the obligations of each Guarantor hereunder are unconditional and absolute and not subject to any reduction, limitation, impairment or termination for any reason (other than Payment in Full of the Guaranteed Obligations or as otherwise set forth in Section 9.02(c)), including: (i) any claim of waiver, release, extension, renewal, settlement, surrender, alteration or compromise of any of the Guaranteed Obligations, by operation of law or otherwise; (ii) any change in the corporate existence, structure or ownership of any Borrower or any other Obligated Party liable for any of the Guaranteed Obligations; (iii) any insolvency, bankruptcy, reorganization or other similar proceeding affecting any Obligated Party or their assets or any resulting release or discharge of any obligation of any Obligated Party; or (iv) the existence of any claim, setoff or other rights which any Guarantor may have at

any time against any Obligated Party, the Administrative Agent, the Issuing Bank, any Lender or any other Person, whether in connection herewith or in any unrelated transactions.

(b) The obligations of each Guarantor hereunder are not subject to any defense or setoff, counterclaim, recoupment or termination whatsoever by reason of the invalidity, illegality or unenforceability of any of the Guaranteed Obligations or otherwise, or any provision of applicable law or regulation purporting to prohibit payment by any Obligated Party, of the Guaranteed Obligations or any part thereof.

(c) Further, the obligations of any Guarantor hereunder are not discharged or impaired or otherwise affected by: (i) the failure of the Administrative Agent, the Issuing Bank or any Lender to assert any claim or demand or to enforce any remedy with respect to all or any part of the Guaranteed Obligations; (ii) any waiver or modification of or supplement to any provision of any agreement relating to the Guaranteed Obligations; (iii) any release, non-perfection or invalidity of any indirect or direct security for the obligations of any Borrower for all or any part of the Guaranteed Obligations or any obligations of any other Obligated Party liable for any of the Guaranteed Obligations; (iv) any action or failure to act by the Administrative Agent, the Issuing Bank or any Lender with respect to any collateral securing any part of the Guaranteed Obligations; or (v) any default, failure or delay, willful or otherwise, in the payment or performance of any of the Guaranteed Obligations, or any other circumstance, act, omission or delay that might in any manner or to any extent vary the risk of such Guarantor or that would otherwise operate as a discharge of any Guarantor as a matter of law or equity (other than in each case, Payment in Full of the Guaranteed Obligations).

SECTION 10.04. Defenses Waived. To the fullest extent permitted by applicable law, each Guarantor hereby waives any defense based on or arising out of any defense of any Borrower or any Guarantor or the unenforceability of all or any part of the Guaranteed Obligations from any cause, or the cessation from any cause of the liability of any Borrower, any Guarantor or any other Obligated Party, other than Payment in Full of the Guaranteed Obligations. Without limiting the generality of the foregoing, each Guarantor irrevocably waives acceptance hereof, presentment, demand, protest and, to the fullest extent permitted by law, any notice not provided for herein, as well as any requirement that at any time any action be taken by any Person against any Obligated Party or any other Person. Each Guarantor confirms that it is not a surety under any state law and shall not raise any such law as a defense to its obligations hereunder. The Administrative Agent may, at its election, foreclose on any Collateral held by it by one or more judicial or nonjudicial sales, accept an assignment of any such Collateral in lieu of foreclosure or otherwise act or fail to act with respect to any collateral securing all or a part of the Guaranteed Obligations, compromise or adjust any part of the Guaranteed Obligations, make any other accommodation with any Obligated Party or exercise any other right or remedy available to it against any Obligated Party, without affecting or impairing in any way the liability of such Guarantor under this Loan Guaranty except to the extent the Guaranteed Obligations have been Paid in Full. To the fullest extent permitted by applicable law, each Guarantor waives any defense arising out of any such election even though that election may operate, pursuant to applicable law, to impair or extinguish any right of reimbursement or subrogation or other right or remedy of any Guarantor against any Obligated Party or any security.

SECTION 10.05. Rights of Subrogation. No Guarantor will assert any right, claim or cause of action, including, without limitation, a claim of subrogation, contribution or indemnification, that it has against any Obligated Party or any collateral, until the Loan Parties and the Guarantors have fully performed all their obligations to the Administrative Agent, the Issuing Bank and the Lenders.

SECTION 10.06. Reinstatement; Stay of Acceleration. If at any time any payment of any portion of the Guaranteed Obligations (including a payment effected through exercise of a right of setoff) is rescinded, or must otherwise be restored or returned upon the insolvency, bankruptcy or reorganization of

any Borrower or otherwise (including pursuant to any settlement entered into by a Secured Party in its discretion), each Guarantor's obligations under this Loan Guaranty with respect to that payment shall be reinstated at such time as though the payment had not been made and whether or not the Administrative Agent, the Issuing Bank and the Lenders are in possession of this Loan Guaranty. If acceleration of the time for payment of any of the Guaranteed Obligations is stayed upon the insolvency, bankruptcy or reorganization of any Borrower, all such amounts otherwise subject to acceleration under the terms of any agreement relating to the Guaranteed Obligations shall nonetheless be payable by the Guarantors forthwith on demand by the Administrative Agent.

SECTION 10.07. Information. Each Guarantor assumes all responsibility for being and keeping itself informed of the Borrowers' financial condition and assets, and of all other circumstances bearing upon the risk of nonpayment of the Guaranteed Obligations and the nature, scope and extent of the risks that each Guarantor assumes and incurs under this Loan Guaranty, and agrees that none of the Administrative Agent, the Issuing Bank or any Lender shall have any duty to advise any Guarantor of information known to it regarding those circumstances or risks.

SECTION 10.08. Termination. Each of the Lenders and the Issuing Bank may continue to make loans or extend credit to the Borrowers based on this Loan Guaranty until five (5) days after it receives written notice of termination from any Guarantor. Notwithstanding receipt of any such notice, each Guarantor will continue to be liable to the Lenders for any Guaranteed Obligations created, assumed or committed to prior to the fifth day after receipt of the notice, and all subsequent renewals, extensions, modifications and amendments with respect to, or substitutions for, all or any part of such Guaranteed Obligations. Nothing in this Section 10.08 shall be deemed to constitute a waiver of, or eliminate, limit, reduce or otherwise impair any rights or remedies the Administrative Agent or any Lender may have in respect of, any Default or Event of Default that shall exist under clause (n) of Article VII hereof as a result of any such notice of termination. Notwithstanding the foregoing or anything in this Article X to the contrary, the Loan Guaranty of any Guarantor or all Guarantors, as applicable, shall be automatically released as provide in Section 9.02(e).

SECTION 10.09. [reserved].

SECTION 10.10. Maximum Liability. Notwithstanding any other provision of this Loan Guaranty, the amount guaranteed by each Guarantor hereunder shall be limited to the extent, if any, required so that its obligations hereunder shall not be subject to avoidance under Section 548 of the Bankruptcy Code or under any applicable state Uniform Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act, Uniform Voidable Transactions Act or similar statute or common law. In determining the limitations, if any, on the amount of any Guarantor's obligations hereunder pursuant to the preceding sentence, it is the intention of the parties hereto that any rights of subrogation, indemnification or contribution which such Guarantor may have under this Loan Guaranty, any other agreement or applicable law shall be taken into account.

SECTION 10.11. Contribution.

(a) To the extent that any Guarantor shall make a payment under this Loan Guaranty (a "Guarantor Payment") which, taking into account all other Guarantor Payments then previously or concurrently made by any other Guarantor, exceeds the amount which otherwise would have been paid by or attributable to such Guarantor if each Guarantor had paid the aggregate Guaranteed Obligations satisfied by such Guarantor Payment in the same proportion as such Guarantor's "Allocable Amount" (as defined below) (as determined immediately prior to such Guarantor Payment) bore to the aggregate Allocable Amounts of each of the Guarantors as determined immediately prior to the making of such Guarantor Payment, then, following indefeasible payment in full in cash of the Guarantor Payment and Payment in

Full of the Guaranteed Obligations and the termination of this Agreement, such Guarantor shall be entitled to receive contribution and indemnification payments from, and be reimbursed by, each other Guarantor for the amount of such excess, pro rata based upon their respective Allocable Amounts in effect immediately prior to such Guarantor Payment.

(b) As of any date of determination, the “Allocable Amount” of any Guarantor shall be equal to the excess of the fair saleable value of the property of such Guarantor over the total liabilities of such Guarantor (including the maximum amount reasonably expected to become due in respect of contingent liabilities, calculated, without duplication, assuming each other Guarantor that is also liable for such contingent liability pays its ratable share thereof), giving effect to all payments made by other Guarantors as of such date in a manner to maximize the amount of such contributions.

(c) This Section 10.11 is intended only to define the relative rights of the Guarantors, and nothing set forth in this Section 10.11 is intended to or shall impair the obligations of the Guarantors, jointly and severally, to pay any amounts as and when the same shall become due and payable in accordance with the terms of this Loan Guaranty.

(d) The parties hereto acknowledge that the rights of contribution and indemnification hereunder shall constitute assets of the Guarantor or Guarantors to which such contribution and indemnification is owing.

(e) The rights of the indemnifying Guarantors against other Guarantors under this Section 10.11 shall be exercisable upon Payment in Full of the Guaranteed Obligations and the termination of this Agreement.

SECTION 10.12. Liability Cumulative. The liability of each Loan Party as a Guarantor under this Article X is in addition to and shall be cumulative with all liabilities of each Loan Party to the Administrative Agent, the Issuing Bank and the Lenders under this Agreement and the other Loan Documents to which such Loan Party is a party or in respect of any obligations or liabilities of the other Loan Parties, without any limitation as to amount, unless the instrument or agreement evidencing or creating such other liability specifically provides to the contrary.

ARTICLE XI

The Borrower Representative

SECTION 11.01. Appointment; Nature of Relationship. The Company is hereby appointed by each of the Borrowers as its contractual representative (herein referred to as the “Borrower Representative”) hereunder and under each other Loan Document, and each of the Borrowers irrevocably authorizes the Borrower Representative to act as the contractual representative of such Borrower with the rights and duties expressly set forth herein and in the other Loan Documents. The Borrower Representative agrees to act as such contractual representative upon the express conditions contained in this Article XI. Additionally, the Borrowers hereby appoint the Borrower Representative as their agent to receive all of the proceeds of the Loans in the funding account, at which time the Borrower Representative shall promptly disburse such Loans to the appropriate Borrower(s), provided that, in the case of a Loan, such amount shall not exceed the Revolving Availability. The Administrative Agent and the Lenders, and their respective officers, directors, agents or employees, shall not be liable to the Borrower Representative or any Borrower for any action taken or omitted to be taken by the Borrower Representative or the Borrowers pursuant to this Section 11.01.

SECTION 11.02. Powers. The Borrower Representative shall have and may exercise such powers under the Loan Documents as are specifically delegated to the Borrower Representative by the terms of each thereof, together with such powers as are reasonably incidental thereto. The Borrower Representative shall have no implied duties to the Borrowers, or any obligation to the Lenders to take any action thereunder except any action specifically provided by the Loan Documents to be taken by the Borrower Representative.

SECTION 11.03. Employment of Agents. The Borrower Representative may execute any of its duties as the Borrower Representative hereunder and under any other Loan Document by or through authorized officers.

SECTION 11.04. [reserved].

SECTION 11.05. Successor Borrower Representative. Upon the prior written consent of the Administrative Agent, the Borrower Representative may resign at any time, such resignation to be effective upon the appointment of a successor Borrower Representative. The Administrative Agent shall give prompt written notice of such resignation to the Lenders.

SECTION 11.06. Execution of Loan Documents. The Borrowers hereby empower and authorize the Borrower Representative, on behalf of the Borrowers, to execute and deliver to the Administrative Agent and the Lenders the Loan Documents and all related agreements, certificates, documents, or instruments as shall be necessary or appropriate to effect the purposes of the Loan Documents, including, without limitation, the Compliance Certificates. Each Borrower agrees that any action taken by the Borrower Representative or the Borrowers in accordance with the terms of this Agreement or the other Loan Documents, and the exercise by the Borrower Representative of its powers set forth therein or herein, together with such other powers that are reasonably incidental thereto, shall be binding upon all of the Borrowers.

(Signature Pages Follow)

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered by their respective authorized officers as of the day and year first above written.

HOLDINGS:

SURFLINER HOLDINGS, INC.

By: _____
Name:
Title:

BORROWERS:

HARVEST SHERWOOD FOOD DISTRIBUTORS,
INC.

By: _____
Name:
Title:

HARVEST MEAT COMPANY, INC.

By: _____
Name:
Title:

HAMILTON MEAT, LLC

By: _____
Name:
Title:

WESTERN BOXED MEATS DISTRIBUTORS, INC.

By: _____
Name:
Title:

SFD ACQUISITION LLC

By: _____
Name:
Title:

SFD COMPANY LLC

By: _____
Name:
Title:

SHERWOOD FOOD DISTRIBUTORS, L.L.C.

By: _____
Name:
Title:

OTHER LOAN PARTIES:

CASCADE FOOD BROKERS, INC.

By: _____
Name:
Title:

LAMCP CAPITAL, LLC

By: _____
Name:
Title:

SFD TRANSPORTATION CORP.

By: _____
Name:
Title:

JPMORGAN CHASE BANK, N.A., individually and as
Administrative Agent, Issuing Bank, Swingline Lender
and Lender

By: _____
Name:
Title:

[OTHER BANKS], as Lender

By: _____
Name:
Title:

COMMITMENT SCHEDULE

Lender Name	Revolving Commitment
JPMorgan Chase Bank, N.A.	\$42,828,950.00
Bank of America, N.A.	27,631,580.00
Fifth Third Bank	34,539,470.00
Total	\$105,000,000.00

SCHEDULE 1.01

Letter of Credit No:	Amount
104729012	\$484,577.30
106126302	98,692.00

SCHEDULE 6.01

1. Certain Capital Lease Obligations in an aggregate amount outstanding on the Petition Date not to exceed \$9,500,000.
2. Indebtedness under that certain Amended & Restated Substitute Insurance Collateral Facility Agreement, effective as of September 16, 2024, by and among 1970 Group, Inc., a Delaware corporation, and Harvest Sherwood, a Delaware corporation, and each of the subsidiaries and affiliates of Harvest Sherwood party thereto as guarantors.
3. Certain other Indebtedness disclosed to the Lenders prior to the Petition Date in an aggregate amount not to exceed \$8,250,000.

SCHEDULE 6.02

1. Liens in respect of Indebtedness set forth on Schedule 6.01, items 1-3; provided that in the case of clauses (i) and (iii), such Liens are of the type permitted by Section 6.02(d) of the Prepetition Credit Agreement and, in the case of item 2, such Liens are only on cash collateral.