IT IS ORDERED as set forth below:

Date: April 3, 2025

Sage M. Sigler
U.S. Bankruptcy Court Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

In re	)	Chapter 11
OTB HOLDING LLC, *et al.*,[1]	)	Case No. 25-54215 (SMS)
Debtors.	)	(Jointly Administered)

FINAL ORDER (I) AUTHORIZING THE DEBTORS TO OBTAIN SENIOR SECURED SUPERPRIORITY POSTPETITION FINANCING; (II) GRANTING (A) LIENS AND SUPERPRIORITY ADMINISTRATIVE EXPENSE CLAIMS AND (B) ADEQUATE PROTECTION; (III) AUTHORIZING USE OF CASH COLLATERAL; (IV) MODIFYING THE AUTOMATIC STAY; AND (V) GRANTING RELATED RELIEF

Upon the motion (the "Motion")[2] of OTB Acquisition LLC ("OTB") and its affiliated debtors in the above-captioned chapter 11 cases (collectively, the "Chapter 11 Cases"), as debtors and debtors in possession (collectively, the "Debtors") seeking entry of an interim order (the

[1] The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, include: OTB Holding LLC (3213), OTB Acquisition LLC (8500), OTB Acquisition of New Jersey LLC (1506), OTB Acquisition of Howard County LLC (9865), Mt. Laurel Restaurant Operations LLC (5100), OTB Acquisition of Kansas LLC (9014), OTB Acquisition of Baltimore County, LLC (6963). OTB Holding LLC's service address is One Buckhead Plaza, 3060 Peachtree Road, NW, Atlanta, GA 30305.

[2] Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Motion.

"Interim DIP Order") and a final order (this "Final DIP Order", and together with the Interim DIP Order, the "DIP Orders") pursuant to sections 105, 361, 362, 363, 364(c), 364(d), 364(e), 503, and 507 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 rules 2002-1, 4001-1(b), 4002-1, and 9013-1(i) of the Local rules of the United States Bankruptcy Court for the Northern District of Georgia (the "Local Bankruptcy Rules"), seeking, among other things:

(i) authorizing the Debtors to incur senior secured postpetition obligations on a superpriority basis in respect of a senior secured superpriority delayed multiple-draw term loan facility in the aggregate principal amount of $14 million (the "DIP Facility") (provided that such $14 million commitment amount excludes all interest, fees and expenses that will be capitalized as part of the aggregate outstanding principal amount under the DIP Facility, and, all amounts extended, deemed extended or capitalized under the DIP Facility, the "DIP Loans"), comprised of: (a) upon entry of the Interim DIP Order, $11.5 million, including $7.5 million of new money DIP Loans (the "Interim Advance"), plus a roll-up and conversion into DIP Loans of $4 million of the outstanding principal balance under the Prepetition Secured Note (as defined below) (the "Roll-Up"), plus capitalization of the DIP Facility Fee (defined below) and (b) upon entry of this Final DIP Order, an additional $2.5 million of new money DIP Loans (the "Remaining Availability") (for a total of $10 million of new money DIP Loans), pursuant to the terms and conditions of the Interim DIP Order, this Final DIP Order, and a Secured Super-Priority Debtor-in-Possession Credit Agreement, a copy of which is attached hereto as **Exhibit 2** (as the same may be amended, restated, supplemented, waived, or otherwise modified from time to time, consistent with the terms of the Interim DIP Order and this Final DIP Order, the "DIP Credit Agreement"), by and among OTB, as borrower (the "DIP Facility Borrower"), and its affiliates who are Debtors in these Chapter 11 Cases, as guarantors (such guarantors together with the DIP Facility Borrower, the "DIP Facility Loan Parties" and, each, a "DIP Facility Loan Party"), and OTB Lender, LLC (the "DIP Lender");

(ii) authorizing the Debtors to execute and deliver the DIP Credit Agreement in form and substance consistent with the terms of this Final DIP Order, and any other agreements, instruments, pledge agreements, guarantees, fee letters, control agreements, and other ancillary documents related thereto (including any security agreements, intellectual property security agreements, or notes) (as amended, restated, supplemented, waived, and/or modified from time to time, collectively with the DIP Credit Agreement, the "DIP Loan Documents") and to perform such

other acts as may be necessary or desirable in connection with the DIP Loan Documents;

(iii) authorizing the Debtors to borrow a maximum aggregate principal amount of up to $14 million of the DIP Loans, consisting of new money loans in an aggregate principal amount of $10 million and the Roll-Up in an aggregate principal amount of $4 million, with the unfunded portion of the new money DIP Loans to be available from and after the entry of this Final DIP Order as further described in the DIP Credit Agreement and so long as such advance is or advances are determined to be appropriate and supported by the Approved Budget; *provided* that the limitation on the principal amount of the DIP Loans shall not limit the capitalized interest, the capitalized DIP Facility Fee or any other amounts capitalized under the terms of the DIP Credit Agreement;

(iv) approving upon entry of the Interim DIP Order, an upfront commitment fee in an amount equal to 0.50% of the $14 million DIP Facility, which such amount was deemed to have been borrowed concurrently with the Interim Advance and such amount was capitalized and added to the principal amount outstanding under the DIP Facility (the "DIP Facility Fee");

(v) subject to and subordinate in all respects to the Carve-Out (as defined below), granting the DIP Facility and all obligations owing thereunder and under, or secured by, the DIP Loan Documents, to the DIP Lender (collectively, and including all "Obligations" as defined in the DIP Credit Agreement, the "DIP Obligations") allowed superpriority administrative expense claim status in each of the Chapter 11 Cases and any Successor Cases (as defined below);

(vi) subject to the Carve-Out, granting to the DIP Lender automatically and validly perfected security interests in and liens on all of the DIP Collateral (as defined below), including all property constituting Cash Collateral (as defined below);

(vii) authorizing and directing the Debtors to pay the principal, interest, premiums, fees, expenses, and other amounts payable under the DIP Orders and the DIP Loan Documents as such become earned, due and payable, including the DIP Facility Fee, any administrative agent's fees, the reasonable and documented fees and disbursements of the DIP Lender's attorneys (including Porter Hedges LLP), advisors, accountants, and other consultants, all to the extent provided in, and in accordance with, the DIP Order and the DIP Loan Documents;

(viii) authorizing the Debtors to use the Prepetition Collateral (as defined below), including the Cash Collateral of the Prepetition Bridge Lender (as defined below) under (a) each of the agreements, instruments, and other documents executed in connection with the Prepetition Secured Note; and (b) the Prepetition Secured Note;

(ix) authorizing the Debtors to use the assets ("CrossFirst Collateral") subject to junior liens held by CrossFirst Bank ("CrossFirst"), including the cash collateral of CrossFirst, and providing adequate protection to CrossFirst for any diminution in value of the CrossFirst Collateral from and after the Petition Date to the extent such diminution in value occurs on account of the Debtors' sale, lease or use of the CrossFirst Collateral, the priming of the liens securing the obligations to CrossFirst (the "CrossFirst Liens"), and the imposition of the automatic stay pursuant to section 362 of the Bankruptcy Code ("Diminution in Value");

(x) waiving (a) the Debtors' right to surcharge any collateral pursuant to sections 105(a) and 506(c) of the Bankruptcy Code or otherwise and (b) the equitable doctrine of marshaling and other similar doctrines; and

(xi) modifying the automatic stay imposed by section 362 of the Bankruptcy Code to the extent necessary to implement and effectuate the terms and provisions of the DIP Loan Documents and this Final DIP Order.

This Court having considered the Motion, the exhibits attached thereto, the *Declaration of Jonathan Tibus in Support of Debtors' Motion for Interim and Final Orders (I) Authorizing the Debtors to Obtain Senior Secured Superpriority Postpetition Financing; (II) Granting (A) Liens and Superpriority Administrative Expense Claims and (B) Adequate Protection; (III) Authorizing Use of Cash Collateral; (IV) Modifying the Automatic Stay; (V) Scheduling a Final Hearing; and (VI) Granting Related Relief*, the First Day Declaration, and the evidence submitted and arguments made at the final hearing held on April 3, 2025 (the "Final Hearing"); and it appearing that proper and adequate notice of the Motion has been given under the circumstances and no further notice need be provided; and all objections, if any, to the relief requested in the Motion having been withdrawn, resolved, or overruled by the Court; and it appearing that approval of the relief requested in the Motion is necessary to avoid immediate and irreparable harm to the Debtors and is otherwise fair and reasonable and in the best interests of the Debtors, their creditors, and their estates, and essential for the continued operation of the Debtors' businesses and maximization of the value of the Debtors' assets; and it appearing that the Debtors' entry into the DIP Loan Documents is a sound and prudent

exercise of the Debtors' business judgment; and after due deliberation and consideration; and for good and sufficient cause appearing therefor;

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

A. **Petition Date**. On March 4, 2025 (the "Petition Date"), each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code in this Bankruptcy Court for the Northern District of Georgia (the "Court").

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

C. **Jurisdiction and Venue**. This Court has jurisdiction over the Chapter 11 Cases, the Motion, and the parties and property affected hereby pursuant to 28 U.S.C. § 1334. Consideration of the Motion constitutes a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue for the Chapter 11 Cases and proceedings with respect to the Motion is proper before this Court pursuant to 28 U.S.C. § 1408.

D. **Committee Formation**. On March 17, 2025, the United States Trustee for the Northern District of Georgia (the "U.S. Trustee") appointed an official committee of unsecured creditors in the Chapter 11 Cases (the "Committee") pursuant to section 1102 of the Bankruptcy Code.

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

E. **Notice**. Notice of the Motion and the Final Hearing has been provided in accordance with the Bankruptcy Code, the Bankruptcy Rules, and the Local Bankruptcy Rules, and no other or further notice of the Motion with respect to the relief requested at the Final Hearing or the entry of this Final DIP Order shall be required.

F. **Debtors' Stipulations**. After consultation with their attorneys and financial advisors, and without prejudice to the rights of other parties in interest, including any Committee, the Debtors admit, stipulate, acknowledge, and agree to the statements set forth in this paragraph (collectively, the "Debtors' Stipulations"): (i) on February 14, 2025, OTB Lender, LLC, a Delaware corporation (the "Prepetition Bridge Lender"), entered into that certain Secured Promissory Note dated as of February 14, 2025 (such agreement, as amended, the "Prepetition Secured Note"); (ii) as of the Petition Date, the Debtors were Borrowers (as defined in the Prepetition Secured Note) and thus were justly and lawfully indebted and liable to the Prepetition Bridge Lender, without defense, counterclaim, or offset of any kind, in an aggregate principal amount of not less than $4 million plus accrued and unpaid interest and all other obligations of whatever nature incurred in connection therewith which are chargeable or otherwise reimbursable under the applicable agreements or applicable law (collectively, the "Prepetition Secured Note Obligations"); (iii) as more fully set forth in the Prepetition Secured Note, prior to the Petition Date, the Debtors granted legal, valid, perfected, binding, enforceable, and nonavoidable liens and security interests on all of the Pledged Collateral (as defined in the Prepetition Secured Note) (excluding any Previously Unencumbered DIP Collateral (as defined below)) (the "Prepetition Collateral") to secure the Prepetition Secured Note Obligations (collectively, the "Prepetition Liens"); (iv) the Debtors acknowledge and agree that as of the Petition Date (a) the Prepetition

Liens on the Prepetition Collateral were valid, binding, enforceable, non-avoidable, and properly perfected and were granted to, or for the benefit of, the Prepetition Bridge Lender for fair consideration and reasonably equivalent value; (b) the Prepetition Liens were senior in priority over any and all other liens on the Prepetition Collateral, subject only to certain liens senior by operation of law, solely to the extent any such liens were, as of the Petition Date, valid, properly perfected (or are perfected subsequent to the Petition Date as permitted by section 546(b)), non-avoidable, and senior in priority to the Prepetition Liens; and (v) no claims or causes of action exist that are held by the Debtors or their estates against, or with respect to, the Prepetition Bridge Lender under the Prepetition Secured Note or any other applicable law. The Debtors and their estates have no valid claims, objections, challenges, causes of action, and/or choses in action against any of the Prepetition Bridge Lender or any of its respective affiliates, agents, attorneys, advisors, professionals, officers, directors, and employees with respect to the Prepetition Secured Note, the Prepetition Secured Note Obligations, or the Prepetition Liens whether arising at law or at equity, including, without limitation, any challenge, recharacterization, subordination, avoidance, recovery, disallowance, reduction, or other claims arising under or pursuant to sections 105, 502, 510, 541, 542 through 553, inclusive, or 558 of the Bankruptcy Code or applicable state law equivalents.

G. **Cash Collateral**. All of the Debtors' cash, including any cash in their deposit accounts, wherever located, whether as original collateral or proceeds of other Prepetition Collateral, constitutes or will constitute cash collateral ("Cash Collateral") of the Prepetition Bridge Lender, the DIP Lender, and CrossFirst.

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

(i) *Request for Postpetition Financing and Use of Cash Collateral*. The Debtors seek (a) confirmation that entry into the DIP Facility and incurring the DIP Obligations on the terms described in the DIP Credit Agreement and herein are within the Debtors' authority as granted in the Interim DIP Order and (b) authority to use Cash Collateral on the terms described herein, in each case, to administer their Chapter 11 Cases and fund their operations.

(ii) *Priming of the Prepetition Liens*. The consensual priming of the CrossFirst Liens under section 364(d) of the Bankruptcy Code, as provided herein, will enable the Debtors to obtain the financing needed to continue to operate their business during the pendency of the Chapter 11 Cases, to the benefit of their estates and creditors. CrossFirst is entitled to receive adequate protection as set forth in this Final DIP Order pursuant to sections 361, 363, and 364 of the Bankruptcy Code, solely to the extent of any Diminution in Value of its interests in the CrossFirst Collateral (including Cash Collateral) that may result from the priming of the CrossFirst Liens. CrossFirst has consented to the priming of the CrossFirst Liens.

(iii) *Need for Postpetition Financing and Use of Cash Collateral*. The Debtors have a need to use Cash Collateral and obtain credit in an amount equal to the DIP Facility in order to, among other things, enable the orderly continuation of their operations and to administer and preserve the value of their estates. The ability of the Debtors to maintain business relationships with their vendors, suppliers, and customers, to pay their employees, and otherwise finance their operations requires the availability of working capital from the DIP Facility and the use of Cash Collateral, the absence of either of which would immediately and irreparably harm the Debtors, their estates, and parties in interest. The Debtors do not have sufficient available sources of working capital and financing to operate their businesses, maintain their properties in the ordinary course of business and fund the Chapter 11 Cases without the authorization to use Cash Collateral and to borrow the DIP Facility.

(iv) *No Credit Available on More Favorable Terms*. The DIP Facility is the best source of debtor in possession financing available to the Debtors. Given their current financial condition, financing arrangements, and capital structure, the Debtors have been and continue to be unable to obtain financing from sources other than the DIP Lender on terms more favorable than the DIP Facility. The Debtors are unable to obtain unsecured credit allowable under section 503(b)(1) of the Bankruptcy Code as an administrative expense. The Debtors have also been unable to obtain (a) unsecured credit having priority over that of administrative expenses of the kind specified in sections 503(b), 507(a), and 507(b) of the Bankruptcy Code; (b) credit secured solely by a lien on property of the Debtors and their estates that is not otherwise subject to a lien; or (c) credit secured solely by a junior lien on property of the Debtors and their estates that is subject to a lien. Financing on a postpetition basis on better terms is not available without granting

the DIP Lender, (1) perfected security interests in and liens on (each as provided herein) the DIP Collateral, with the priorities set forth herein; (2) superpriority administrative claims; and (3) the other protections set forth in this Final DIP Order.

(v) *Use of Cash Collateral and Proceeds of the DIP Facility*. As a condition to entry into the DIP Credit Agreement, the extension of credit under the DIP Facility, and the authorization to use the Prepetition Collateral, including Cash Collateral, the DIP Lender (in its capacity as the Prepetition Bridge Lender) requires, and the Debtors have agreed, that proceeds of the DIP Facility and the DIP Lender's Cash Collateral shall be used in a manner consistent with the terms and conditions of this Final DIP Order, and in a manner consistent with the budget (as the same may be modified from time to time with the written consent of the DIP Lender in its sole discretion and consistent with the terms of this Final DIP Order, the "Budget," a copy of which is attached hereto as **Exhibit 1**), solely for the purposes set forth in this Final DIP Order, including (a) ongoing working capital and other general corporate purposes of the Debtors; (b) permitted payment of costs of administration of the Chapter 11 Cases, including restructuring charges arising on account of the Chapter 11 Cases, including statutory fees of the U.S. Trustee (the "Statutory Fees") and allowed professional fees and expenses of the Professionals (as defined below); (c) payment of such prepetition expenses as consented to by the DIP Lender or otherwise permitted under this Final DIP Order; (d) payment of interest, premiums, fees, expenses, and other amounts (including, without limitation, legal and other professionals' fees and expenses of the DIP Lender) owed under this Final DIP Order, including those incurred in connection with the preparation, negotiation, documentation, and Court approval of the DIP Facility, whether incurred before, on, or after the Petition Date; (e) funding the Roll-Up; and (f) payment of obligations arising from or related to the Carve-Out.

(vi) *Roll-Up of Prepetition Secured Note Obligations*. Upon the entry of the Interim DIP Order, $4 million of the outstanding principal amount of the Prepetition Secured Note Obligations (and all of the accrued and unpaid interest) was converted into DIP Loans in accordance with this Interim DIP Order. The DIP Lender would not otherwise provide the DIP Facility without the inclusion of the Roll-Up.

(vii) *Application of Proceeds of DIP Collateral*. As a condition to entry into a DIP Credit Agreement, the extension of credit under the DIP Facility and authorization to use Cash Collateral, the Debtors, and the DIP Lender have agreed that the Debtors shall utilize the proceeds of the DIP Collateral in accordance with the DIP Orders.

I. **Adequate Protection**. CrossFirst is entitled to receive adequate protection of its interests in the CrossFirst Collateral, including, without limitation, the Cash Collateral.

J. **Sections 506(c) and Marshaling.** In light of (i) the DIP Lender's agreement that its DIP Liens (as defined below) and superpriority claims shall be subject and

subordinate in all respects to the Carve-Out; and (ii) the DIP Lender's agreement to the payment (in a manner consistent with the Budget, and subject to the terms and conditions of this Final DIP Order) of certain expenses of administration of these Chapter 11 Cases, the Debtors shall waive the provisions of section 506(c) of the Bankruptcy Code and the equitable doctrine of marshaling and other similar doctrines; *provided*, that the DIP Lender shall use commercially reasonable efforts to first use the proceeds of all DIP Collateral other than the Previously Unencumbered DIP Collateral (as defined below) to repay the DIP Obligations and the DIP Superpriority Claims.

K. **Good Faith of the DIP Lender and the Prepetition Bridge Lender**. Based upon the pleadings and proceedings of record in the Chapter 11 Cases, (a) the extensions of credit under the DIP Facility are fair and reasonable, are appropriate for secured financing to debtors in possession, are the best available to the Debtors under the circumstances, reflect the Debtors' exercise of prudent business judgment consistent with their fiduciary duties, and are supported by reasonably equivalent value and fair consideration; (b) the terms and conditions of the DIP Facility and the use of the Cash Collateral have been negotiated in good faith and at arm's-length among the Debtors, the DIP Lender, and the Prepetition Bridge Lender with the assistance and counsel of their respective advisors; (c) the use of Cash Collateral, including, without limitation, pursuant to the DIP Orders, has been allowed in "good faith" within the meaning of section 364(e) of the Bankruptcy Code; (d) any credit to be extended, loans to be made, and other financial accommodations to be extended to the Debtors by the DIP Lender or the Prepetition Bridge Lender, including, without limitation, pursuant to the DIP Orders, have been allowed, advanced, extended, issued, or made, as the case may be, in "good faith" within the meaning of section 364(e) of the Bankruptcy Code by the DIP Lender and the Prepetition Bridge

Lender in express reliance upon the protections offered by section 364(e) of the Bankruptcy Code; and (e) the DIP Facility, the DIP Liens, and the DIP Superpriority Claims (as defined below) shall be entitled to the full protection of section 364(e) of the Bankruptcy Code in the event that the DIP Orders or any provision hereof is vacated, reversed, or modified, on appeal or otherwise.

Based upon the foregoing findings and conclusions, the Motion, and the record before the Court with respect to the Motion, and after due consideration and good and sufficient cause appearing therefor, **IT IS HEREBY ORDERED THAT**:

1. DIP Facility Approved on a Final Basis. The DIP Facility is hereby authorized and approved to the extent set forth herein, and the use of Cash Collateral is authorized, in each case subject to the terms and conditions set forth in this Final DIP Order. All objections to entry of this Final DIP Order, to the extent not withdrawn, waived, settled, or resolved, are hereby denied and overruled. This Final DIP Order shall become effective immediately upon its entry. Notwithstanding anything to the contrary set forth in the DIP Credit Agreement: (A) the aggregate principal amount of the DIP Facility shall be increased by $1,000,000 (the "Incremental Availability") to a total amount of $15,000,000; and (B) the DIP Lender shall only be obligated to fund $750,000 of the Remaining Availability upon entry of this Final Order. An amount equal to $250,000 of the Remaining Availability shall be funded one (1) Business Day after the expiration of the Challenge Period (as defined below) so long as no Challenge (as defined below) has been commenced. The remaining amount of the Remaining Availability (i.e., $1,500,000) plus the Incremental Availability shall be funded by the DIP Lender within one (1) Business Day after the expiration of the Release Challenge Period (as defined below) so long as no Challenge has been commenced. The Incremental Availability shall not be used to pay any amounts other

than obligations accruing under the Debtors' non-residential real property leases during the month of March 2025.

2. Authorization of the DIP Facility. Upon entry of the Interim DIP Order, the Debtors were expressly and immediately authorized and empowered to execute and deliver the DIP Loan Documents and to incur and to perform the DIP Obligations in accordance with, and subject to, the terms of the Interim DIP Order and the DIP Loan Documents, and to deliver all instruments, certificates, agreements, and documents that may be required or necessary for the performance by the Debtors under the DIP Facility and the creation and perfection of the DIP Liens and pursuant to this Final DIP Order, all such authority and power is hereby confirmed and continued. The Debtors shall pay, in accordance with this Final DIP Order, the principal, interest, premiums, fees, payments, expenses, and other amounts described in the DIP Loan Documents as such amounts become due and payable, without the need to obtain further Court approval, whether or not such fees arose before, on, or after the Petition Date, and whether or not the transactions contemplated hereby are consummated, and to take any other actions that may be necessary or appropriate, all as provided in this Final DIP Order or the DIP Loan Documents; *provided* that the payment of legal and other professionals' fees and expenses of the DIP Lender (other than legal and other professionals' fees and expenses incurred prior to the Petition Date) shall be subject to the requirements of paragraph 26 hereof. All collections and proceeds, whether from ordinary course collections, asset sales, debt or equity issuances, insurance recoveries (subject to paragraph 35 herein), condemnations, or otherwise, will be deposited and applied as required by this Final DIP Order and the DIP Loan Documents. Upon execution and delivery, the DIP Loan Documents shall represent valid and binding obligations of the Debtors, enforceable against each

of the Debtors and their estates in accordance with their terms. Upon the entry of the Interim DIP Order, the DIP Facility Fee was fully earned and non-refundable and, concurrently with the Interim Advance under the DIP Facility, the full amount of the DIP Facility Fee was capitalized and added to the aggregate principal amount outstanding under the DIP Loans.

3. Authorization to Borrow and Use Cash Collateral. The Debtors are hereby authorized to (i) borrow under the DIP Facility in an aggregate outstanding principal amount equal to the DIP Facility and (ii) use the Cash Collateral for the purposes described in this Final DIP Order.

4. DIP Obligations. The Interim DIP Order constituted and evidenced, and this Final DIP Order shall continue to constitute and evidence, the validity and binding effect of the DIP Obligations, which are enforceable against each of the Debtors, their estates, and any successors thereto, including, without limitation, any trustee appointed in the Chapter 11 Cases or in any case under chapter 7 of the Bankruptcy Code upon the conversion of any of the Chapter 11 Cases, or in any other proceedings superseding or related to any of the foregoing (collectively, the "Successor Cases"). Upon entry of the Interim DIP Order, as such order is confirmed and continued by this Final DIP Order, the DIP Obligations include all loans and any other indebtedness or obligations, contingent or absolute, which may now or from time to time be owing by any of the Debtors to the DIP Lender, in each case, under this Final DIP Order or secured by the DIP Liens, including, without limitation, all principal, accrued and unpaid interest, costs, fees, expenses, and other amounts owing under this Final DIP Order. The Debtors shall be jointly and severally liable for the DIP Obligations. No obligation, payment, transfer, or grant of collateral security hereunder (including any DIP Obligations or DIP Liens) shall be stayed, restrained,

voidable, avoidable, or recoverable under the Bankruptcy Code or under any applicable law (including, without limitation, under chapter 5 of the Bankruptcy Code, section 724(a) of the Bankruptcy Code, or any other provision with respect to avoidance actions under the Bankruptcy Code or applicable state or foreign law equivalents ("Avoidance Actions") or subject to any avoidance, reduction, setoff, recoupment, offset, recharacterization, subordination (whether equitable, contractual, or otherwise, but other than to the Carve-Out), counterclaim, cross-claim, defense, or any other challenge under the Bankruptcy Code or any applicable law or regulation by any person or entity.

5. DIP Liens. All DIP Obligations shall be secured by the following liens and security interests (the "DIP Liens") on all assets and properties of the Debtors (whether tangible, intangible, real, personal or mixed), whether now owned or hereafter acquired and wherever located, before or after the Petition Date, including, without limitation, all cash, cash equivalents, accounts, inventory, equipment, equity interests or capital stock in subsidiaries, investment property, instruments, chattel paper, real property, leasehold interests, contracts, patents, copyrights, trademarks and other general intangibles, receivables, all claims or causes of action (excluding avoidance actions arising under Chapter 5 of the Bankruptcy Code but including all proceeds thereof) and all products, offspring, profits and proceeds of each of the foregoing (collectively, the "DIP Collateral"); *provided* that notwithstanding the definition of DIP Collateral, (i) the DIP Liens shall only attach to the Debtors' liquor licenses to the extent permitted by applicable non-bankruptcy law, (ii) to the extent applicable non-bankruptcy law does not permit the DIP Liens to attach directly to the Debtors' liquor licenses, the DIP Liens shall be valid, binding, continuing, enforceable, non-avoidable, and automatically and properly perfected

security interests and liens in any proceeds from any sale or other disposition of the Debtors' liquor licenses and such proceeds shall constitute DIP Collateral, and (iii) in no event shall DIP Collateral include any leasehold interest in non-residential real property that prohibits or restricts the granting of liens thereon (except as permitted pursuant to applicable non-bankruptcy law), but DIP Collateral shall include the proceeds of the sale or other disposition of such leases and the DIP Liens shall be:

(a) secured pursuant to section 364(c)(2) of the Bankruptcy Code, by a first-priority perfected lien on, and security interest in, all present and after-acquired property of the Debtors, wherever located, that is not subject to a perfected lien or security interest on the Petition Date;

(b) secured pursuant to section 364(c)(3) of the Bankruptcy Code, by a junior perfected lien on, and security interest in, all present and after-acquired property of the Debtors, wherever located, that is subject to a valid, perfected, enforceable and unavoidable lien or security interest (excluding the CrossFirst Liens) on the Petition Date or subject to a lien or security interest (excluding the CrossFirst Liens) in existence on the Petition Date that is perfected subsequent thereto as permitted by section 546(b) of the Bankruptcy Code (including, without limitation, the Carve-Out (as defined below)), in each case, that is expressly permitted to be senior to the DIP Liens pursuant to this Final DIP Order or the DIP Credit Agreement;

(c) secured pursuant to section 364(d)(1) of the Bankruptcy Code, a first-priority, perfected senior priming lien on, and security interest in, all present and after-acquired property of the Debtors, wherever located, that is or was subject to a perfected lien or security interest on the Petition Date (including the CrossFirst Liens but excluding the liens and security interests set forth in clause (b) of this sub-paragraph);

(d) other than as set forth herein (including with respect to the Carve-Out), the DIP Liens shall not be made subject to or *pari passu* with any lien or security interest heretofore or hereinafter granted in the Chapter 11 Cases or any Successor Cases and shall be valid and enforceable against any trustee appointed in the Chapter 11 Cases or any Successor Cases, upon the conversion of any of the Chapter 11 Cases to any Successor Case, and/or upon the dismissal or conversion of any of the Chapter 11 Cases or Successor Cases. The DIP Liens shall not be subject to any of sections 510, 549, or 550 of the Bankruptcy Code. No lien or interest avoided and preserved for the benefit of the estate pursuant to section 551 of the Bankruptcy Code shall be *pari passu* with or senior to the DIP Liens.

For the avoidance of doubt, the DIP Liens (i) shall be subject only to (x) the Carve-Out and (y) validly perfected and non-avoidable liens (excluding the CrossFirst Liens) existing as of the Petition Date to which the liens securing the obligations under the Prepetition Secured Note were subject, and (ii) shall not extend to, and the DIP Collateral shall not consist of, Avoidance Actions but they shall extend to the proceeds thereof. The DIP Liens and security interests of the DIP Lender shall not prime any Permitted Liens (as defined in the DIP Credit Agreement). As used herein, the term "Previously Unencumbered DIP Collateral" shall mean: (A) the Debtors' liquor licenses (solely to the extent that they are not subject to a lien in favor of the Prepetition Bridge Lender); (B) the proceeds of non-residential real property leasehold interests; (C) commercial tort claims; (D) any causes of action against insiders (as defined in the Bankruptcy Code) of the Debtors; and (E) Avoidance Actions. Notwithstanding anything herein to the contrary: (i) the Previously Unencumbered DIP Collateral shall not secure the Roll-Up portion of the DIP Obligations and the Superpriority Claims arising from the Roll-Up Portion of the DIP Obligations shall not be paid from the proceeds of Previously Unencumbered DIP Collateral; and (ii) in the event that there is a going concern sale of substantially all of the Debtors' assets and either the DIP Obligations are fully satisfied or the Asset Purchase Agreement (as defined below) has been terminated (other than a termination due to a material default of the Debtors), the DIP Lender shall release the DIP Liens on: (x) commercial tort claims against Non-Trade Parties; (y) Avoidance Actions against Non-Trade Parties; and (z) causes of action against insiders (as defined in the Bankruptcy Code) of the Debtors (collectively, (x)-(z) are the "Sale Excluded Assets"). "Non-Trade Parties" shall mean any person or entity that was not, as of or after the

Petition Date, providing goods or services to the Debtors. The Sale Excluded Assets shall not be acquired by the DIP Lender pursuant to the Sale Order.

6. Superpriority Claims. Subject to and subordinate in all respects to the Carve-Out and in the priority set forth herein, upon entry of this Final DIP Order, the DIP Lender is hereby granted, pursuant to section 364(c)(1) of the Bankruptcy Code, allowed superpriority administrative expense claims against each of the Debtors in each of the Chapter 11 Cases and any Successor Cases (collectively, the "DIP Superpriority Claims") for all DIP Obligations with priority over any and all administrative expense claims and unsecured claims against the Debtors or their estates in any of the Chapter 11 Cases or any Successor Cases, at any time existing or arising, of any kind or nature whatsoever, including, without limitation, administrative expenses of the kinds specified in or ordered pursuant to sections 105, 326, 327, 328, 330, 331, 361, 362, 363, 364, 503(a), 503(b), 507(a), 507(b), 546(c), 546(d), 726, 1113, or 1114 of the Bankruptcy Code or any other provision of the Bankruptcy Code. The DIP Lender shall use commercially reasonable efforts to first use the proceeds of all DIP Collateral other than the Previously Unencumbered DIP Collateral to repay the DIP Obligations and the DIP Superpriority Claims. The proceeds of any Sale Excluded Assets shall not be used to pay the DIP Superpriority Claims in the event that there is a going concern sale of substantially all of the Debtors' assets and either the DIP Obligations are fully satisfied or the Asset Purchase Agreement has been terminated (other than a termination due to a material default of the Debtors).

7. Interest. Interest shall be computed and accrue monthly on the outstanding principal amount of all draws under the DIP Facility at a rate of 12% per annum. All accrued interest will be paid-in-kind and capitalized on the first business day of each month (and thereby

added to principal, which shall thereafter accrue interest). Effective immediately upon the occurrence of an Event of Default (as defined below), interest on the DIP Loans under the DIP Facility shall accrue at a rate that is 15% per annum.

8. No Obligation to Extend Credit. The DIP Lender shall have no obligation to make any loan under this Final DIP Order or the DIP Loan Documents, as applicable, unless all conditions set forth in the DIP Loan Documents, have been satisfied in full or waived by the DIP Lender in accordance with the terms of this Final DIP Order and the DIP Facility.

9. Use of Proceeds of DIP Facilities. From and after the Petition Date, the Debtors shall use proceeds of borrowings under the DIP Facility only for the purposes specifically set forth in this Final DIP Order, and, in each case, in a manner consistent with the Budget and the terms and conditions in this Final DIP Order, including for (i) the Roll-Up, (ii) to fund postpetition operating expenses and working capital needs of the Debtors; (iii) to pay interest, fees, and expenses (including attorneys' fees) to the DIP Lender pursuant to this Final DIP Order (whether or not such amounts are reflected in the Budget); (d) to fund fees and expenses incurred in connection with the Sale Transaction (as defined below); (e) to pay the fees and expenses incurred by, and/or payable to, any Professional (the "Professional Fees") and expenses solely as provided for in the Budget (including, for the avoidance of doubt, the reasonable and documented fees and expenses of the Committee's Professionals incurred in connection with the performance of the Committee's statutory and fiduciary duties, subject to the Budget); and (f) to pay certain other costs and expenses of administration of the Chapter 11 Cases.

10. Authorization to Use Cash Collateral. Subject to the terms and conditions of this Final DIP Order, and in a manner consistent with the Budget, the Debtors are authorized to use

Cash Collateral. Nothing in this Final DIP Order shall authorize the disposition of any assets of the Debtors or their estates outside the ordinary course of business, or any Debtor's use of any Cash Collateral or other proceeds resulting therefrom, except as permitted in this Final DIP Order (including with respect to the Carve-Out).

11. Adequate Protection for CrossFirst. CrossFirst is entitled, pursuant to sections 361, 362, 363(c)(2), 363(e), and 507 of the Bankruptcy Code, to adequate protection to the extent of its valid, perfected and unavoidable security interests in the applicable Prepetition Collateral, including Cash Collateral, solely to the extent of any Diminution in Value of its interests in the Prepetition Collateral. As adequate protection, CrossFrist is hereby granted (the "Adequate Protection"), effective and perfected upon the Petition Date and without the necessity of the execution by the Debtors of security agreements, pledge agreements, mortgages, financing statements, or other agreements, a valid, perfected replacement security interest in and lien on the CrossFirst Collateral (the "Adequate Protection Liens"), which security interests and liens shall be subject to and subordinate in all respects to the Carve-Out, the DIP Liens, and any liens or security interests that are valid, perfected, enforceable and unavoidable as of the Petition Date. The Adequate Protection Liens shall be in addition to all valid and enforceable liens and security interests now existing in favor of CrossFirst and not in substitution therefor. The Adequate Protection Liens shall not attach to Avoidance Actions or the proceeds thereof. The Adequate Protection Liens and the CrossFirst Liens shall be subject to and subordinate to the Carve-Out.

12. Budget Maintenance.

(a) The Debtors shall use the proceeds of all borrowings under the DIP Facility and Cash Collateral in a manner consistent with the Budget and exclusions set forth herein. The

Budget annexed hereto as **Exhibit 1** is a summary of the Budget. The Debtors shall update the Budget every four (4) weeks after entry of this Final DIP Order, with such Budget update (along with a cash flow forecast (in Microsoft Excel) through the anticipated consummation of the Sale Transaction for all of Debtors' assets to the DIP Lender in the same format as the cash flow forecast delivered at or before the Petition Date) being delivered to the DIP Lender no later than the Thursday of each week before entry of the Final DIP Order (or delivered more frequently and on such dates as consented to exclusively by the DIP Lender), which shall be subject to the DIP Lender's written approval in its sole discretion. During any period a proposed Budget has not been approved, the previously approved Budget shall be the Budget. Each Budget delivered to the DIP Lender shall be accompanied by such supporting documentation as reasonably requested by the DIP Lender and its advisors, and each Budget shall be prepared in good faith based upon assumptions the Debtors believe to be reasonable. Each Budget delivered to the DIP Lender shall also be provided to the Committee.

(b) The Debtors' budgeted disbursements shall be tested on a rolling four-week basis, and the aggregate amount of such disbursements may not vary unfavorably from the applicable Budget more than ten percent (10%) for each four-week Budget period (the "Budget Variances"); *provided*, *however*, that: (i) such testing shall not have commenced until after the second week after the Petition Date; and (ii) in determining compliance with the Budget, all disbursements to the DIP Lender's professionals shall be excluded from the calculation.

(c) For the avoidance of doubt, the Budget Variances shall not include or otherwise require a test of payment on Professional Fees; *provided*, *however*, that payment on Professional Fees shall not vary unfavorably from the applicable Budget on a cumulative four-

week basis per Professional Fee line item for that portion of the Budget period then ending (and each professional that may receive Professional Fees shall be reflected on its own Budget line item).

(d) On or before Thursday of each week, commencing with the first week following the Petition Date, the Debtors shall deliver to the DIP Lender a current report that: (i) details the actual amount of cash receipts and disbursements for the prior week for each line item included in the Budget (on a weekly and cumulative basis); (ii) compares such actual cash receipts and disbursements (on a line item by line item basis) with the weekly and cumulative budgeted amounts for each line item set forth in the Budget for such period; and (iii) provides an explanation for all material variances between budgeted amounts and actual amounts (an "Approved Budget Variance Report"). Each Approved Budget Variance Report will be certified as true and correct by the Debtors' Chief Restructuring Officer ("CRO"). Any Approved Budget Variance Report provided to the DIP Lender shall also be provided to CrossFirst and the Committee.

13. Modification of Automatic Stay. The automatic stay imposed under section 362(a)(2) of the Bankruptcy Code is hereby modified as necessary to effectuate all of the terms and provisions of this Final DIP Order, including, without limitation, to: (a) permit the Debtors to grant the DIP Liens, Adequate Protection Liens, and DIP Superpriority Claims; (b) permit the Debtors to perform such acts as the DIP Lender may reasonably request to assure the perfection and priority of the liens granted herein; (c) permit the Debtors to incur all liabilities and obligations to the DIP Lender; and (d) authorize the Debtors to pay, and the DIP Lender to retain and apply, payments made in accordance with the terms of this Final DIP Order.

14. Cash Management. The Debtors shall use a cash management system that is acceptable to the DIP Lender and the motion and orders to approve the use of the Debtors' cash management system shall be acceptable to the DIP Lender. Any material changes from such cash management system must be acceptable to the DIP Lender.

15. Perfection of DIP Liens and Adequate Protection Liens. This Final DIP Order shall be sufficient and conclusive evidence of the creation, validity, perfection, and priority of all liens granted herein, including the DIP Liens and the Adequate Protection Liens, without the necessity of filing or recording any financing statement, mortgage, notice, or other instrument or document which may otherwise be required under the law or regulation of any jurisdiction or the taking of any other action (including, for the avoidance of doubt, entering into any deposit account control agreement) to validate or perfect (in accordance with applicable non-bankruptcy law) the DIP Liens or the Adequate Protection Liens or to entitle the DIP Lender to the priorities granted herein. This Final DIP Order shall be sufficient to grant the DIP Lender control of each deposit account subject to a DIP Lien. Notwithstanding the foregoing, the DIP Lender is authorized to file or record, in its sole discretion, as applicable, as each may deem necessary or advisable, such financing statements, security agreements, mortgages, notices of liens, and other similar documents to perfect its respective liens in accordance with applicable non-bankruptcy law, and all such financing statements, mortgages, notices, and other documents shall be deemed to have been filed, sent, or recorded as of the Petition Date. The Debtors shall execute and deliver upon reasonable request to the DIP Lender, all such financing statements, mortgages, notices, and other documents as the DIP Lender may reasonably request. The DIP Lender may file a photocopy of this Final DIP Order as a financing statement with any filing or recording office or with any

registry of deeds or similar office, in addition to or in lieu of such financing statements, notices of lien, or similar instrument, and all applicable officials shall accept a photocopy of this Final DIP Order for filing or recordation for such purpose.

16. Events of Default. The following shall constitute "Events of Default:"

(a) termination of the CRO without the appointment of a successor that is reasonably acceptable to the DIP Lender;

(b) resignation of the CRO without the appointment of a successor that is reasonably acceptable to the DIP Lender;

(c) conversion of any of the Chapter 11 Cases to a case under Chapter 7 of the Bankruptcy Code or dismissal of any of the Chapter 11 Cases;

(d) filing or support of a proposed plan of reorganization or liquidation by any Debtor that does not provide for the indefeasible payment in full and in cash of the Debtors' obligations outstanding under the DIP Facility;

(e) appointment of a trustee for any of the Debtors under section 1104 of the Bankruptcy Code, or the filing of any motion or other pleading requesting such relief that is not timely opposed by the Debtors;

(f) appointment of an examiner with enlarged powers (powers beyond those set forth in section 1106(a)(3) and (4) of the Bankruptcy Code) under section 1106(b) of the Bankruptcy Code for any of the Debtors, or the filing of a motion or other pleading requesting such relief that is not timely opposed by the Debtors;

(g) entry of an order by the Court amending, supplementing, staying, vacating, or otherwise modifying the DIP Facility, the Interim DIP Order or this Final DIP Order approving

the DIP Facility, or the filing of a motion or other pleading requesting such relief that is not timely opposed by the Debtors;

(h) any attempt by any Debtor to obtain, or if any other party in interest obtains, an order of the Court or other judgment, and the effect of such order or judgment is to, invalidate, reduce, or otherwise impair the DIP Lender's claims or to subject any of the Prepetition Collateral or the DIP Collateral to a surcharge pursuant to section 506(c) of the Bankruptcy Code;

(i) request by any Debtor for approval of any postpetition financing (other than the DIP Facility), except: (A) with the consent of the DIP Lender; or (B) if the proceeds of such financing are sufficient to satisfy all DIP Obligations in full;

(j) application by any Debtor for an order substituting any assets for all or any portion of the DIP Collateral;

(k) entry of an order granting liens or claims that are senior to or *pari passu* with the liens granted in favor of the DIP Lender under the DIP Loan Documents;

(l) any payment of, or application for authority to pay, any prepetition claim in whole or in part not included in an approved Budget;

(m) the sale process is terminated;

(n) entry of an order granting any creditor (other than as provided under paragraph 13 of this Final DIP Order) with a claim in excess of $100,000 relief from the automatic stay;

(o) failure to make all payments under the DIP Facility when due;

(p) failure to pay any material postpetition indebtedness;

(q) breach of any term or covenant of the DIP Facility or in any DIP Loan Document, including, without limitation, compliance with any Milestone (as defined below);

(r) any representation or warranty by any Debtor is incorrect in any material respect when made;

(s) exclusivity shall have been terminated or any Debtor shall have agreed to any such termination;

(t) after entry thereof, either of (i) an order in form and substance satisfactory to the DIP Lender approving the bidding procedures to be applicable to the Sale Transaction, or (ii) an order entered by the Court in form and substance satisfactory to the DIP Lender that, among other things, approves the Sale Transaction, shall cease to be in full force and effect, shall have been reversed, stayed, vacated or subject to stay pending appeal or shall have been modified or amended;

(u) action taken by any Debtor (or any Debtor's support for any other person in taking such action) to restrict or prohibit the DIP Lender from submitting a "credit bid" for any assets of the Debtors in accordance with Bankruptcy Code section 363(k);

(v) failure by the Debtors to disburse the proceeds of the Sale Transaction to the DIP Lender on account of the DIP Obligations contemporaneously with the closing of the Sale Transaction;

(w) commencement of any action or the filing of any motion by the Debtors that is inconsistent with the terms of this Final DIP Order; and

(x) failure to pay the DIP Facility in full prior to May 30, 2025 (the "Maturity Date").

17. Milestones. It shall be an Event of Default if the Debtors fail to comply with the following milestones (the "Milestones"), which may only be modified by the written consent of the DIP Lender in its sole discretion:

(a) No later than April 4, 2025, the Court shall have entered this Final DIP Order in form and substance satisfactory to the DIP Lender;

(b) No later than April 4, 2025, the Court shall have entered an order in form and substance acceptable to the DIP Lender, approving the bidding procedures set forth in a motion to sell, and to approve bidding procedures for the sale of substantially all of the Debtors' assets (the "Assets");

(c) No later than May 16, 2025, the Court shall have entered an order (the "Sale Order") in form and substance acceptable to the DIP Lender, approving the sale of all or substantially all of the Assets; and

(d) No later than 15 days after the entry of the Sale Order, the Debtors shall have consummated the Sale Transaction for all of Debtors' assets in a manner consistent with the Sale Order.

18. Credit Bidding. Subject only to the Challenge Period with respect to the Roll-Up portion of the DIP Obligations, in connection with any sale process authorized by the Court, whether effectuated through sections 363, 725, or 1123 of the Bankruptcy Code, the DIP Lender shall have the right to "credit bid" pursuant to section 363(k) of the Bankruptcy Code all or any portion of the DIP Obligations owed to it or any of its affiliated entities in the sale of the Debtors' assets, and shall not be prohibited or limited from making such credit bid "for cause" under section 363(k) of the Bankruptcy Code. Without limiting the foregoing, the DIP Lender may assign all

or any portion of the DIP Obligations owed to it to an acquisition vehicle, affiliate, or any other Person (any such Person, the "Agent Assignee"). The Agent Assignee shall have the right to "credit bid" any postpetition secured obligations so assigned to it or assigned to or owned by any of its affiliated entities in any sale of the Debtors' assets. Notwithstanding the foregoing, the DIP Lender agrees that, unless otherwise consented to by the Committee and the Debtor, the DIP Lender and its assignees shall not be permitted to credit bid for any asset other than the Purchased Assets (as defined in the Amended and Restated Asset Purchase Agreement, dated as of April 1, 2025, filed at docket no. 182) (the "Asset Purchase Agreement").

19. Application of Sale Proceeds. Unless the DIP Lender or any Agent Assignee is the bidder selected by the Debtors as the highest and best bid for the assets included in the sale of all or substantially all of the assets of the Debtors under section 363 of the Bankruptcy Code (the "Sale Transaction"), subject and subordinate in all respects to the Carve-Out, proceeds from the Sale Transaction shall be paid pursuant to a Sale Order, through which the Debtors shall seek to be made directly to the DIP Lender upon the closing of the Sale Transaction and shall be applied: (i) first, to reduce outstanding DIP Facility obligations (including all fees and professional fees payable pursuant to the DIP Loan Documents); (ii) second, to outstanding Prepetition Secured Note Obligations, in the manner set forth in the Prepetition Secured Note, with the surplus remaining (if any) following satisfaction of the Prepetition Secured Note Obligations to be disbursed in the manner set forth in the Prepetition Secured Note, to the extent not rolled up; and (iii) with the surplus remaining (if any) to be disbursed in accordance with the Bankruptcy Code and any plan of liquidation. Consistent with paragraph 6 of this Final Order, the proceeds of all DIP Collateral other than the Previously Unencumbered DIP Collateral shall be used to repay the

DIP Obligations and the DIP Superpriority Claims prior to the use of proceeds of any Previously Unencumbered DIP Collateral (which shall not be used to satisfy the Roll-Up portion of the DIP Obligations). The proceeds of any DIP Collateral (other than Previously Unencumbered DIP Collateral) shall be used to first satisfy the Roll-Up portion of the DIP Obligations until such obligations are satisfied in full before such proceeds are applied to any other portion of the DIP Obligations.

20. Proceeds of Subsequent Financing. If the Debtors, any trustee, any examiner with expanded powers, or any responsible officer subsequently appointed in these Chapter 11 Cases or any Successor Cases shall obtain credit or incur debt pursuant to sections 364(b), 364(c), 364(d) of the Bankruptcy Code in violation of this Final DIP Order at any time prior to repayment in full of the DIP Facility (the "DIP Repayment"), including subsequent to the confirmation of any chapter 11 plan with respect to any or all of the Debtors (if applicable), then all the cash proceeds derived from such credit or debt shall immediately be applied in accordance with this Final DIP Order.

21. Maintenance of DIP Collateral. Until the DIP Repayment has occurred, the Debtors shall (a) insure the DIP Collateral as required under the DIP Credit Agreement; and (b)(i) maintain accurate records of all transfers (including intercompany transactions) within the cash management system so that all postpetition transfers and transactions shall be adequately and promptly documented in, and readily ascertainable from, their books and records, to the same extent maintained by the Debtors before the Petition Date, and (ii) provide reasonable access to such records to the DIP Lender.

22. Disposition of DIP Collateral. Except as otherwise provided for in this Final DIP Order, the Debtors shall not sell, transfer, lease, encumber, or otherwise dispose of any portion of the DIP Collateral other than in the ordinary course of business without the prior written consent of the DIP Lender and no such consent shall be implied from any other action, inaction, or acquiescence by the DIP Lender.

23. Rights and Remedies Upon Event of Default.

(a) Upon the occurrence of an Event of Default and after the transmission of written notice thereof to counsel for the Debtors, any Committee, and the U.S. Trustee stating an occurrence of an Event of Default, the DIP Lender, in its sole discretion, may: (i) cease making DIP Facility advances to the Debtors; (ii) terminate the Debtors' use of the DIP Collateral (including, without limitation, Cash Collateral), and/or (iii) immediately terminate the DIP Facility and demand immediate repayment, in cash, of the DIP Facility obligations then outstanding. Notwithstanding the foregoing, the Debtors may, after the occurrence of an Event of Default, use all cash on hand in satisfaction of any expenses or other amounts (solely to the extent set forth in the Budget) actually incurred prior to the issuance of a notice of default.

(b) Upon the occurrence of an Event of Default, but prior to exercising any additional remedies not listed in paragraph 23(a) but later approved by the Court as set forth in this paragraph 23(b), the DIP Lender shall be required to file a motion with the Court seeking emergency relief on not less than five (5) days' notice, which may be by email, to the Debtors, the U.S. Trustee, and counsel to the Committee (if any) for a further order of the Court, who may fashion any appropriate remedy at the hearing, including modifying the automatic stay in the chapter 11 cases to allow the DIP Lender to exercise customary remedies, including, without

limitation, the ability to foreclose upon and/or sell the DIP Collateral and the right to exercise any remedy available under applicable law. Notwithstanding anything to the contrary herein, upon the occurrence and continuation of an Event of Default, the DIP Lender or the Agent Assignee, if applicable, may enter upon the Debtors' leased premises only as provided by: (i) a separate written agreement by and between the applicable landlord and the DIP Lender or the Agent Assignee; (ii) applicable non-bankruptcy law; or (iii) an order from the Bankruptcy Court on no less than five (5) days' notice to the landlord for the affected leased premises.

24. Carve-Out.

(a) The "Carve-Out" shall be, collectively, (i) all fees required to be paid to the Clerk of the Court and to the U.S. Trustee pursuant to 28 U.S.C. § 1930(a) *plus* interest at the statutory rate, if any, pursuant to 31 U.S.C. § 3717 (without regard to the Carve-Out Trigger Notice (as defined below)), (ii) reasonable fees and expenses incurred by a trustee and payable under section 726(b) of the Bankruptcy Code in an aggregate amount not to exceed $100,000 (without regard to the Carve-Out Trigger Notice), (iii) to the extent allowed at any time and only as specifically permitted under the Budget, all unpaid fees and expenses of the professionals retained by the Debtors and any Committee appointed in the Bankruptcy Cases, (A) that are incurred on or prior to the third business day succeeding the date of delivery of the Carve-Out Trigger Notice, or (B) subject to an aggregate cap of $100,000 for the Debtors' professionals and a separate aggregate cap of $50,000 for the Committee's professionals that are incurred after the third business day succeeding the date of delivery of a Carve-Out Trigger Notice (the caps set forth in this clause (B), the "Post Carve-Out Trigger Notice Cap), (iv) to the extent allowed by order of the Court, the fees and expenses payable to Hilco Corporate Finance in connection with

the consummation of a sale of substantially all of the Debtors' assets; and (v) to the extent allowed by order of the Court, the completion fee payable by the Debtors to Alvarez & Marsal.

(b) No proceeds of the DIP Facility, the Carve-Out or any Cash Collateral may be used for any fees and expenses, if any, of the Professionals incurred directly or indirectly, in respect of, arising from or relating to: (i) the initiation, joinder, support, or prosecution of any action contesting the indebtedness owed to the Prepetition Bridge Lender or the DIP Lender or the validity of any liens granted to the Prepetition Bridge Lender or the DIP Lender; (ii) preventing, hindering or otherwise delaying, whether directly or indirectly, the exercise by the Prepetition Bridge Lender or the DIP Lender of any of its rights and remedies under the Interim DIP Order, this Final DIP Order, the Prepetition Secured Note or the DIP Loan Documents, (iii) the commencement, support, or prosecution of any action or proceeding of any claims, causes of action or defenses against the DIP Lender, the Prepetition Bridge Lender, or any of their respective affiliates, officers, directors, employees, representatives, and agents (including all of their professionals), including, without limitation, any attempt to recover or avoid any claim or interest held by the Prepetition Bridge Lender or the DIP Lender; (iv) any request to borrow money other than pursuant to the terms of the Interim DIP Order, this Final DIP Order, or the documents comprising the DIP Facility; or (v) with respect to the Debtors, any of the Debtors' Professionals, or any of their successors or assigns (including, without limitation, any trustee, responsible officer, examiner, estate administrator or representative or similar person appointed in a case for any of the Debtors under any chapter of the Bankruptcy Code) performing or commencing any investigation or litigation (whether threatened or pending) by the Debtors with respect to any matter released or to be released, waived, or to be waived by the Debtors pursuant

to the Interim DIP Order or this Final DIP Order; *provided* that prior to the Challenge Period (as defined below), an investigation budget in an aggregate amount of $35,000 (the "Investigation Budget"), may be used by the Committee to investigate the Debtors' Stipulations and the Releases. The proceeds of the DIP Facility may be used to pay, in accordance with and limited by the approved Budget, the reasonable and documented fees and expenses of the Committee's professionals incurred in connection with the performance of the Committee's statutory and fiduciary duties, including, without limitation, (i) investigating any liens, claims, and causes of action against the DIP Lender, and (ii) objecting to or challenging the DIP Facility (prior to the date hereof), the exercise of remedies by the DIP Lender, or any chapter 11 plan proposed or supported by the DIP Lender, provided, however, that such use of DIP proceeds in respect of (i) above shall be strictly limited to the "Investigation Budget," which shall constitute a cap on the fees and expenses incurred by the Committee's professionals in connection with the investigation and potential challenge of the validity, enforceability, priority, perfection, or amount of the Prepetition Liens and the Prepetition Secured Note Obligations.

(c) Contemporaneously with the Interim Advance, the Debtors transferred cash proceeds from the DIP Facility in an amount equal to the total budgeted weekly fees and expenses for the Debtors' and Committee's (if appointed and as applicable) retained professionals (the "Professional Persons") for the period beginning on the Petition Date through the first four weeks of the Chapter 11 Cases under the approved Budget and after such four-week period on a weekly basis, in each case, excluding any success or other transaction fees of any investment banker or financial advisor of the Debtors or Committee, into one or more escrow accounts at Truist Bank (the "Escrow Agent") for the benefit of the Professional Persons (the "Professional

Fee Reserve"). Upon the delivery of a Carve-Out Trigger Notice, the Carve-Out Trigger Notice shall be deemed a request by the Debtors for, and the DIP Lender shall fund DIP Loans under the DIP Facility, in an amount equal to (A) the aggregate amount of budgeted accrued and unpaid Professional Fees incurred before or on the third business day following delivery of a Carve-Out Trigger Notice (to the extent not previously funded) and (B) the Post Carve-Out Trigger Notice Cap (less any amounts already funded in respect of such amounts) (any such amounts actually advanced shall constitute DIP Loans). Amounts funded into the Professional Fee Reserve shall be considered used by the Debtors at such time as they are deposited into the Professional Fee Reserve for distribution to Professional Persons in accordance with orders of the Court. The Debtors are hereby permitted to instruct the Escrow Agent to disburse funds to Professional Persons consistent with orders of the Court (including the Second Amended and Restated General Order 26-2019, Procedures for Complex Chapter 11 Cases). Any amounts remaining in the Professional Fee Reserve after payment of allowed fees and expenses pursuant to the Budget shall be subject to the DIP Liens and the DIP Superpriority Claims. Pursuant to the Budget, the Debtors shall also deposit in such escrow account the anticipated fees required to be paid to the Clerk of the Court and to the U.S. Trustee pursuant to 28 U.S.C. §1930(a) for the period from the Petition Date through March 31, 2025. The Budgeted amount for Professional Persons retained by the Committee shall not be reduced without the consent of the Committee.

(d) The Debtors shall use funds held in the Professional Fee Reserve exclusively to pay Professional Fees within the Carve-Out as they become allowed and payable pursuant to the Bankruptcy Code, the Bankruptcy Rules, the Local Bankruptcy Rules, and any interim or final orders of the Court; *provided* that when all Professional Fees and the other

obligations that are a part of the Carve-Out have been paid in full (regardless of when such Professional Fees are allowed by the Court), any funds remaining in the Professional Fee Reserve shall revert to the DIP Lender.

(e) Notwithstanding anything to the contrary in the DIP Loan Documents, this Final DIP Order, or any other Court order, the Professional Fee Reserve and the amounts on deposit in the Professional Fee Reserve shall be available and used only to satisfy Professional Fees benefitting from the Carve-Out, and the other obligations that are a part of the Carve-Out. The failure of the Professional Fee Reserve to satisfy Professional Fees in full shall not affect the priority of the Carve-Out; *provided*, that, to the extent that the Professional Fee Reserve is actually funded, the Carve-Out shall be reduced by such funded amount dollar-for-dollar. In no way shall the Carve-Out, Professional Fee Reserve, or the approved Budget or any of the foregoing be construed as a cap or limitation on the amount of the allowed Debtor or Committee Professional Fees or Statutory Fees due and payable by the Debtors or that may be allowed by the Court at any time (whether by interim order, final order, or otherwise). No Professional Person shall be entitled to disbursements from the Professional Fee Reserve in excess of the amounts deposited into the Professional Fee Reserve on account of such Professional Person pursuant to the Budget (the "Deposited Amount"); provided, however, that: (w) in the event that the actual fees and expenses of the counsel to the Committee is less than the Deposited Amount for the counsel to the Committee, such excess may be used to satisfy amounts payable to the financial advisor to the Committee; (x) in the event that the actual fees and expenses of the financial advisor to the Committee is less than the Deposited Amount for the financial advisor to the Committee, such excess may be used to satisfy amounts payable to the counsel to the Committee; (y) in the event

that the actual fees and expenses of the bankruptcy counsel to the Debtors is less than the Deposited Amount for the bankruptcy counsel to the Debtors, such excess may be used to satisfy amounts payable to the financial advisor to the Debtors; and (z) in the event that the actual fees and expenses of the financial advisor to the Debtors is less than the Deposited Amount for the financial advisor to the Debtors, such excess may be used to satisfy amounts payable to the bankruptcy counsel to the Debtors.

(f) "Carve-Out Trigger Notice" shall mean a written notice delivered by the DIP Lender to the Debtors' lead counsel, the U.S. Trustee, and lead counsel to the Committee, which notice may only be delivered following the occurrence and during the continuation of an Event of Default under the DIP Facility.

(g) No Direct Obligation to Pay Allowed Professional Fees. Neither the DIP Lender nor the Prepetition Bridge Lender shall be responsible for the payment or reimbursement of any fees or disbursements of any Professional incurred in connection with the Chapter 11 Cases or any Successor Cases. Nothing in this Final DIP Order or otherwise shall be construed to obligate the DIP Lender or the Prepetition Bridge Lender, in any way, to pay compensation to, or to reimburse expenses of, any Professional or to guarantee that the Debtors have sufficient funds to pay such compensation or reimbursement. As used herein, the term "Professional" means any professional retained by the Debtors or retained by any Committee appointed in the Bankruptcy Cases.

25. Good Faith Under Section 364(e) of the Bankruptcy Code; No Modification or Stay of this Final DIP Order. Based on the findings set forth in this Final DIP Order and the record made during the Final Hearing, and in accordance with section 364(e) of the Bankruptcy Code,

in the event any or all of the provisions of this Final DIP Order are hereafter modified, amended, waived, or vacated by a subsequent order of this Court or any other court of competent jurisdiction, each of the DIP Lender and the Prepetition Bridge Lender is entitled to the protections provided in section 364(e) of the Bankruptcy Code. Any such modification, amendment, waiver or vacatur shall not affect the validity and enforceability of any advances previously made, including advances made hereunder, or any lien, claim, or priority authorized or created hereby, unless such authorization and the incurring of such debt, or the granting of such priority or lien, is stayed pending appeal.

26. Payment of Fees and Expenses. The Debtors shall pay all reasonable and documented prepetition and postpetition fees and out-of-pocket expenses of the DIP Lender (in its capacity as the DIP Lender) in connection with the DIP Facility and the Chapter 11 Cases, as provided in this Final DIP Order. Any time that professionals of the DIP Lender, including, without limitation, Porter Hedges LLP, as counsel to the DIP Lender, seek payment of fees and expenses from the Debtors, such professional shall provide summary copies of its fee and expense statements or invoices (which shall not be required to contain time entries and which may be redacted or modified to the extent necessary to delete any information subject to the attorney-client privilege, any information constituting attorney work product, or any other confidential information, and the provision of such invoices shall not constitute any waiver of the attorney-client privilege or of any benefits of the attorney work product doctrine) with: (i) a summary of the work performed during the relevant compensation period; (ii) the name of, hourly rate (if applicable) of, and number of hours worked by each professional and paraprofessional who worked on the matter during the relevant compensation period; and (iii) the total fee amount being

requested by electronic mail to the U.S. Trustee and counsel to the Committee (if appointed) contemporaneously with the delivery of such fee and expense statements to the Debtors. The Debtors, any Committee, or the U.S. Trustee may dispute the payment of any portion of such invoiced fees and expenses (the "Disputed Invoiced Fees") if a Debtor, any Committee, or the U.S. Trustee notifies the submitting party in writing, within ten (10) days of the receipt of such fee and expense statement or invoice, setting forth the specific objections to the Disputed Invoiced Fees (to be followed by the filing with the Court, if necessary, of an objection, with at least ten (10) days' prior written notice to the submitting party of any hearing on such objection). The Debtors shall promptly pay in full all such invoiced fees and expenses other than the Disputed Invoiced Fees. Notwithstanding the foregoing, the Debtors were required to pay on or about the date of entry of the Interim DIP Order all reasonable and documented fees, costs, and out-of-pocket expenses of the DIP Lender incurred on or prior to such date without the need for any professional engaged by the DIP Lender to first deliver a copy of its invoice as provided for herein (other than to the Debtors). No attorney or advisor to the DIP Lender shall be required to file an application seeking compensation for services or reimbursement of expenses with the Court. Any and all fees, costs, and expenses paid prior to the Petition Date by any of the Debtors to the DIP Lender (including the fees and expenses of Porter Hedges LLP, as counsel to the DIP Lender) were approved in full in the Interim DIP Order. The DIP Lender shall have the right to charge the DIP Facility for any such fees and costs (whether such costs were incurred prior to the Petition Date or after the Petition Date). To the extent the DIP Lender charges the DIP Facility for such fees and costs, they will become part of the DIP Facility.

27. Proofs of Claim. The DIP Lender and the Prepetition Bridge Lender will not be required to file proofs of claim in any of the Chapter 11 Cases or Successor Cases for any claim allowed herein, including any claims arising under the Prepetition Secured Note. The Debtors' Stipulations shall be deemed to constitute a timely filed proof of claim for the DIP Lender and the Prepetition Bridge Lender upon approval of this Final DIP Order, and the DIP Lender and the Prepetition Bridge Lender shall be treated under section 502(a) of the Bankruptcy Code as if they filed a proof of claim. Any order entered by the Court in relation to the establishment of a bar date for any claim (including without limitation administrative claims) in any of the Chapter 11 Cases or any Successor Cases shall not apply to (i) the DIP Lender or (ii) the Prepetition Bridge Lender with respect to any claims arising under the Prepetition Secured Note.

28. Effect of Stipulations and Order.

(a) *Generally*. The Debtors' Stipulations and the releases set forth in paragraph 32 of this Final DIP Order, shall be binding on the Debtors in all circumstances and for all purposes, including with respect to any Prepetition Secured Note Obligations. The Debtors' Stipulations shall also be binding on all creditors and other parties in interest and all of their respective successors and assigns, including, without limitation, any statutory or non-statutory committees appointed or formed in the Chapter 11 Cases, including the Committee, and any other person or entity acting or seeking to act on behalf of the Debtors' estates in all circumstances and for all purposes, unless, solely with respect to the Debtors' Stipulations related to the Prepetition Secured Note Obligations, (i) an adversary proceeding or contested matter (a "Challenge") is filed prior to April 11, 2025 (the "Challenge Period") challenging the Debtors' Stipulations; *provided* that any pleadings filed in any Challenge shall set forth with specificity the basis for such

Challenge (and any such Challenge not so specified prior to the Challenge Period shall be deemed forever, waived, released, and barred); *provided further* that any party in interest that fails to file a Challenge within the Challenge Period shall be forever barred from challenging in any manner the Debtors' Stipulations. As used herein, "Challenge" includes any pleading filed by the Committee seeking standing to challenge the Prepetition Liens and the Prepetition Secured Note Obligations.

(b) If no such Challenge is timely and properly filed prior to the end of the Challenge Period or the Court does not rule in favor of the plaintiff in any such proceeding, then the Debtors' Stipulations contained in this Final DIP Order shall nonetheless remain binding and preclusive on the Committee and on any other person or entity and the Debtors.

(c) Nothing in this final DIP Order vests or confers on any Person (as defined in the Bankruptcy Code), including the Committee or any statutory or non-statutory committees appointed or formed in these Chapter 11 Cases, standing or authority to pursue any claim or cause of action belonging to the Debtors or their estates, including, without limitation, Challenges with respect the Debtors' stipulations, admissions, agreements, and other releases contained in this Interim DIP Order, including the Debtors' Stipulations and Releases, and all rights to object to such standing are expressly reserved.

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

30. Section 506(c) Claims. Except to the extent of the Carve-Out, no costs or expenses of administration that have been or may be incurred in the Chapter 11 Cases at any time shall be

charged against the DIP Lender, the DIP Collateral, the Prepetition Bridge Lender, or the Prepetition Collateral pursuant to sections 105 or 506(c) of the Bankruptcy Code, or otherwise, without the prior written consent of the DIP Lender or the Prepetition Bridge Lender, as may be applicable, and no such consent shall be implied from any action, inaction, or acquiescence by any party; provided, however, that the waiver provided for herein: (i) shall be subject to the Debtors' ability to use all cash on hand in satisfaction of any expenses or other amounts (solely to the extent set forth in the Budget) actually incurred prior to the issuance of a Carve-Out Trigger Notice; and (ii) shall not be effective with respect to any costs and expenses payable to the Objecting Landlords pursuant to the Debtors' non-residential real property leases on account of regular recurring monthly obligations for the period from the Petition Date through March 31, 2025. The term "Objecting Landlords" shall mean: Regency Centers, L.P., Realty Income Corporation, Kite Realty Group, as managing agent of KRG Townson Square, LLC and KRG Las Vegas Centennial Gateway, LLC, Acadia Realty Trust, ARC NCCHRNC001, LLC, Beltline/Airport Freeway, Ltd., Rivertown Crossings Mall, LLC, and Katronel Properties.

31. No Marshaling/Applications of Proceeds. Except as other provided for herein with respect to the Previously Unencumbered DIP Collateral, in no event shall the DIP Lender or the Prepetition Bridge Lender be subject to the equitable doctrine of "marshaling" or any other similar doctrine with respect to any of the DIP Collateral or the Prepetition Collateral, as applicable.

32. Releases. In exchange for good and valuable consideration, the adequacy of which is hereby confirmed, each of the Debtors, (in their own right, on behalf of their estates) (collectively, the "Releasing Parties") hereby unconditionally and irrevocably releases, acquits, absolves, forever discharges and covenants not to sue the DIP Lender, the Prepetition Bridge

Lender, and each such entities' current and former affiliates, and each such entity's current and former directors, officers, managers and equityholders (regardless of whether such interests are held directly or indirectly), predecessors, successors and assigns, and direct and indirect subsidiaries, and each of such entity's current and former officers, members, managers, directors, equityholders (regardless of whether such interests are held directly or indirectly), principals, members, employees, agents, independent contractors, representatives, managed accounts or funds, management companies, fund advisors, investment advisors, financial advisors, and partners (including both general and limited partners) (the "Released Parties") and their respective property and assets from any and all acts and omissions of the Released Parties, and from any and all claims, interests, causes of action, avoidance actions, counterclaims, defenses, setoffs, demands, controversies, suits, judgments, costs, debts, sums of money, accounts, reckonings, bonds, bills, damages, obligations, objections, legal proceedings, equitable proceedings, executions of any nature, type, or description and liabilities whatsoever (including any derivative claims asserted or assertable on behalf of the Debtors, their estates, or such entities' successors or assigns, whether individually or collectively), which the Releasing Parties now have, may claim to have or may come to have against the Released Parties through the date of this Final DIP Order, at law or in equity, by statute or common law, in contract or in tort, including, without limitation, (a) any so-called "lender liability" or equitable subordination claims or defenses, (b) any and all "claims" (as defined in the Bankruptcy Code) and causes of action arising under the Bankruptcy Code and (c) any and all offsets, defenses, claims, counterclaims, set off rights, objections, challenges, causes of action, and/or choses in action of any kind or nature whatsoever, whether liquidated or unliquidated, fixed or contingent, known or unknown, suspected or unsuspected,

disputed or undisputed, whether arising at law or in equity, including any recharacterization, recoupment, subordination, disallowance, avoidance, challenge, or other claim or cause of action arising under or pursuant to section 105, chapter 5, or section 724(a) of the Bankruptcy Code or under other similar provisions of applicable state, federal, or foreign laws, including without limitation, any right to assert any disgorgement, recovery, and further waives and releases any defense, right of counterclaim, right of setoff, or deduction on the payment of the Prepetition Secured Note Obligations, but excluding obligations of the DIP Lender under the DIP Facility arising after the date of this Final DIP Order. This paragraph is in addition to and shall not in any way limit any other release, covenant not to sue, or waiver by the Releasing Parties in favor of the Released Parties. Notwithstanding the foregoing, the Releases set forth in this paragraph 32 shall not be binding on the Committee in the event that the Committee files a Challenge regarding the Releases on or before the date that is three weeks after the entry of this Final Order (the "Release Challenge Period").

33. Indemnification. The Debtors shall indemnify and hold the DIP Lender (in its capacity as the DIP Lender) and its current and former directors, officers, managers and equityholders (regardless of whether such interests are held directly or indirectly), predecessors, successors and assigns, and direct and indirect subsidiaries, and each of such entity's current and former officers, members, managers, directors, equityholders (regardless of whether such interests are held directly or indirectly), principals, members, employees, agents, independent contractors, representatives, managed accounts or funds, management companies, fund advisors, investment advisors, financial advisors, and partners (including both general and limited partners) (each an "Indemnified Party") harmless from and against any and all claims, damages, losses, liabilities

and expenses (including, without limitation, all fees and disbursements of attorneys and other professionals) to which any Indemnified Party may become liable or which may be incurred by or asserted against any Indemnified Party, in each case in connection with or arising out of or by reason of any investigation, litigation or proceeding arising out of or relating to or in connection with the DIP Facility, any obligation, or any act, event or transaction related or attendant thereto or any use or intended use of the proceeds of the DIP Facility, except to the extent the same is found in a final, nonappealable judgment by a court of competent jurisdiction to have resulted from such Indemnified Party's own gross negligence or willful misconduct. The Debtors shall file a notice with the Court if any Indemnified Party asserts a claim against the Debtors under this paragraph.

34. Limits on Lender Liability. Nothing in this Final DIP Order, any of the DIP Loan Documents, the Prepetition Secured Note, or any other documents related thereto, shall in any way be construed or interpreted to impose or allow the imposition upon the DIP Lender, or the Prepetition Bridge Lender of any liability for any claims arising from any activities by the Debtors in the operation of their businesses or in connection with the administration of these Chapter 11 Cases or any Successor Cases. The DIP Lender and the Prepetition Bridge Lender shall not, solely by reason of having made loans under the DIP Facility or authorizing the use of Cash Collateral, be deemed in control of the operations of the Debtors or to be acting as a "responsible person" or "owner or operator" with respect to the operation or management of the Debtors (as such terms, or any similar terms, are used in the United States Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§ 9601 *et seq.*, as amended, or any similar federal or state statute). Nothing in this Final DIP Order shall in any way be construed or interpreted to

impose or allow the imposition upon the DIP Lender or the Prepetition Bridge Lender of any liability for any claims arising from the prepetition or postpetition activities of any of the Debtors.

35. Insurance Proceeds and Policies. Upon entry of this Final DIP Order and to the fullest extent provided by applicable law, the DIP Lender shall be deemed to be, without any further action or notice, named as additional insured and loss payee on each insurance policy (except for the Debtors' directors & officers insurance policy) maintained by the Debtors that in any way relates to the DIP Collateral or any collateral subject to Adequate Protection Liens; *provided* that the rights of a landlord under any non-residential real property lease to any such insurance proceeds are hereby preserved.

36. Joint and Several Liability. Nothing in this Final DIP Order shall be construed to constitute a substantive consolidation of any of the Debtors' estates, it being understood, however, that the Debtors shall be jointly and severally liable for the obligations hereunder and all DIP Obligations. All unpaid principal, interest, fees, costs, and expenses accruing under the DIP Facility shall be due and payable in full on the Maturity Date to the extent not due earlier, and if such amounts are not paid in full in cash, interest, fees, costs, and expenses in respect of the DIP Facility shall continue to accrue until paid in full.

37. [Reserved].

38. Rights Preserved. Notwithstanding anything herein to the contrary, the entry of this Final DIP Order is without prejudice to, and does not constitute a waiver of, expressly or implicitly: (a) the DIP Lender's and the Prepetition Bridge Lender's rights to seek any other or supplemental relief; (b) any of the rights of any of the DIP Lender and/or the Prepetition Bridge Lender under the Bankruptcy Code or applicable non-bankruptcy law, including, without

limitation, the right to request modification of the automatic stay imposed by section 362 of the Bankruptcy Code, request dismissal of any of the Chapter 11 Cases or Successor Cases, conversion of any of the Chapter 11 Cases to cases under chapter 7, or appointment of a chapter 11 trustee or examiner with expanded powers, to enforce any guarantee against a non-Debtor; or (iii) 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 the DIP Lender or the Prepetition Bridge Lender.

39. Texas Taxing Authorities. Notwithstanding any provisions in the Motion, the Interim Order or this Final Order, the statutory tax liens held by the Texas Taxing Authorities,[4] or which shall arise during the course of this case pursuant to applicable non-bankruptcy law for prepetition and postpetition taxes (the "Tax Liens"), if any, shall neither be primed by nor subordinated to any liens granted thereby or pursuant to this Final Order to the extent such Tax Liens are valid, senior, perfected, and unavoidable, and all parties' rights to object to the priority, validity, amount, and extent of the claims and liens asserted by the Texas Taxing Authorities are fully preserved.

40. No Waiver by Failure to Seek Relief. The failure of the DIP Lender or the Prepetition Bridge Lender to seek relief or otherwise exercise their rights and remedies under this

[4] Texas Taxing Authorities is defined as City of Allen, Allen Independent School District, Dallas County, Gregg County, Lewisville Independent School District, McClennan County, Northwest Independent School District, Nueces County, City of Richardson, City of Roanoke, Smith County, Tarrant County, Bowie CAD, Brazos County, Midland CAD, Denton County (including City of Denton, Denton ISD, City of Lewisville), City of Waco, Waco ISD, Burleson Independent School District, Carrollton-Farmers Branch Independent School District, Eagle Mountain-Saginaw Independent School District, City of Garland, Garland Independent School District, Frisco Independent School District, Plano Independent School District, Lubbock Central Appraisal District, Midland County, Tyler Independent School District, Wichita County Tax Office, and Rockwall County Appraisal District.

Final DIP Order, the DIP Loan Documents, the Prepetition Secured Note, or applicable law, as the case may be, shall not constitute a waiver of any of the rights hereunder, thereunder, or otherwise of the DIP Lender or the Prepetition Bridge Lender.

41. Binding Effect of Final DIP Order. The provisions of this Final DIP Order shall be binding upon and inure to the benefit of the Debtors, the DIP Lender, the Prepetition Bridge Lender, any Committee appointed in these Chapter 11 Cases, all other creditors of any of the Debtors and all other parties in interest and, in each case, their respective successors and assigns (including any chapter 7 or chapter 11 trustee hereinafter appointed or elected for the estate 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); *provided* that the Final DIP Order shall control over the Interim DIP Order. This Final DIP Order shall bind any trustee hereafter appointed for the estate of any of the Debtors, whether in these Chapter 11 Cases or in the event of the conversion of any of the Chapter 11 Cases, any Successor Cases, or upon dismissal of any Chapter 11 Case or Successor Case, to a liquidation under chapter 7 of the Bankruptcy Code. Such binding effect is an integral part of this Final DIP Order.

42. No Modification of Final DIP Order. Until the DIP Repayment has occurred, the Debtors shall be prohibited from seeking or consenting to, directly or indirectly, any modification, stay, vacatur, waiver, or amendment to this Final DIP Order or any provision hereof without the prior written consent of the DIP Lender, and no such consent shall be implied by any action or inaction of the DIP Lender.

43. Modifications to DIP Loan Documents. The Debtors and the DIP Lender are authorized to implement, in accordance with the terms of the DIP Loan Documents, any non-material modifications or amendments of the DIP Loan Documents without further order of this Court; *provided, however*, that notice of any non-material modification or amendment to the DIP Loan Documents shall be provided to lead counsel to the Committee (if appointed) and the U.S. Trustee, each of whom shall have five (5) business days from the date of such notice within which to object in writing (email to suffice) to such modification or amendment. If any such party timely objects to any non-material modification or amendment to the DIP Loan Documents, such modification or amendment shall only be permitted pursuant to an order of this Court. For the avoidance of doubt, the extension of a Milestone shall not constitute a material amendment, modification, waiver, or supplement to the DIP Loan Documents.

44. Final DIP Order Controls. In the event of any inconsistency between the terms and conditions of the DIP Loan Documents and this Final DIP Order, the provisions of this Final DIP Order shall control.

45. Discharge. Subject to the terms and conditions of this Final DIP Order, the DIP Obligations shall not be discharged by the entry of an order confirming any plan of reorganization in any of the Chapter 11 Cases, notwithstanding the provisions of section 1141(d) of the Bankruptcy Code, unless the DIP Repayment has occurred on or before the effective date of such plan of reorganization or the DIP Lender has otherwise agreed in writing.

46. Survival. The provisions of this Final DIP Order, any actions taken pursuant hereto or thereto, and all of the protections, rights, remedies, liens, priorities, privileges, and benefits granted to the DIP Lender shall survive, and shall not be modified, impaired, or discharged by,

the entry of any order confirming any plan of reorganization or liquidation in any of the Chapter 11 Cases, converting any of the Chapter 11 Cases to a chapter 7 case, dismissing any of the Chapter 11 Cases or any Successor Cases, withdrawing of the reference of any of these Chapter 11 Cases, any Successor Cases, or providing for abstention from handling or retaining of jurisdiction of any of these Chapter 11 Cases in this Court, or terminating the joint administration of these Chapter 11 Cases or by any other act or omission. The terms and provisions of this Final DIP Order shall continue in the Chapter 11 Cases, in any Successor Cases, or following the dismissal of the Chapter 11 Cases or any Successor Cases, notwithstanding the entry of any such order, and such protections, rights, remedies, liens, priorities, privileges, and benefits shall continue in full force and effect in these proceedings and after dismissal of any thereof, and shall maintain their respective priorities as provided by this Final DIP Order, and to the maximum extent permitted by law, until all of the DIP Obligations are indefeasibly paid in full in cash and discharged.

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

48. Retention of Jurisdiction. The Court retains exclusive jurisdiction to resolve any dispute arising from or related to the interpretation or enforcement of the DIP Facility and/or this Final DIP Order.

[END OF ORDER]

Prepared and presented by:

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Counsel for the Debtors in Possession

Exhibit 1

Budget

ON THE BORDER **PRIVILEGED & CONFIDENTIAL**

DIP Budget DRAFT - Subject to Material Revision

($ in 000s)

Week Number	1	2	3	4	5	6	7	Total
Actual / Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Chapter 11
Week Ending	4/8/2025	4/15/2025	4/22/2025	4/29/2025	5/6/2025	5/13/2025	5/20/2025	
Total Receipts	**$ 3,114**	**$ 3,204**	**$ 3,003**	**$ 3,048**	**$ 3,713**	**$ 3,744**	**$ 3,433**	**$ 23,260**
Disbursements								
Payroll & Benefits	$ (722)	$ (2,233)	$ (452)	$ (2,273)	$ (452)	$ (2,706)	$ (452)	$ (9,291)
Food & Beverage	(867)	(860)	(850)	(842)	(871)	(887)	(893)	(6,070)
Occupancy Costs	(941)	(194)	(170)	(170)	(2,219)	(55)	(365)	(4,114)
Insurance	(311)	--	--	--	(202)	--	--	(513)
Sales Tax	(124)	(36)	(636)	(165)	(64)	(28)	(493)	(1,545)
Operating Disbursements	(450)	(238)	(363)	(258)	(258)	(295)	(320)	(2,182)
Total Operating Disbursements	**$ (3,415)**	**$ (3,561)**	**$ (2,471)**	**$ (3,707)**	**$ (4,066)**	**$ (3,972)**	**$ (2,523)**	**$ (23,716)**
Operating Cash Flow	**$ (300)**	**$ (357)**	**$ 532**	**$ (659)**	**$ (353)**	**$ (228)**	**$ 910**	**$ (456)**
Non-Operating Disbursements								
Capex	$ (29)	$ (29)	$ (29)	$ (30)	$ (39)	$ (34)	$ --	$ (189)
Total Non-Operating Disbursements	**$ (29)**	**$ (29)**	**$ (29)**	**$ (30)**	**$ (39)**	**$ (34)**	**$ --**	**$ (189)**
Restructuring Disbursements								
Professional Fees	$ (1,209)	$ (774)	$ (474)	$ (564)	$ (702)	$ (534)	$ (558)	$ (4,814)
Retention / Severance	--	--	--	--	--	--	(355)	(355)
Critical Vendors	(575)	--	--	--	--	--	--	(575)
Adequate Assurance Deposit	--	--	--	--	--	--	--	--
Total Restructuring Disbursements	**$ (1,784)**	**$ (774)**	**$ (474)**	**$ (564)**	**$ (702)**	**$ (534)**	**$ (914)**	**$ (5,745)**
Total Disbursements	**$ (1,813)**	**$ (803)**	**$ (503)**	**$ (594)**	**$ (741)**	**$ (568)**	**$ (914)**	**$ (5,934)**
Net Cash Flow	**$ (2,113)**	**$ (1,160)**	**$ 29**	**$ (1,253)**	**$ (1,094)**	**$ (796)**	**$ (4)**	**$ (6,390)**
Cash Balances								
Beginning Cash Balance	$ 2,899	$ 1,536	$ 626	$ 655	$ 1,903	$ 809	$ 13	$ 2,899
(+/-) Net Cash Flow	(2,113)	(1,160)	29	(1,253)	(1,094)	(796)	(4)	(6,390)
(+/-) DIP Facility Borrowings / (Repayments)	750	250	--	2,500	--	--	--	3,500
Ending Book Cash (excl. restricted cash)	**$ 1,536**	**$ 626**	**$ 655**	**$ 1,903**	**$ 809**	**$ 13**	**$ 9**	**$ 9**
Float	$ --	$ --	$ --	$ --	$ --	$ --	$ --	$ --
Ending Bank Cash (Incl. restricted cash)	**$ 1,536**	**$ 626**	**$ 655**	**$ 1,903**	**$ 809**	**$ 13**	**$ 9**	**$ 9**

Notes:

(1) Case timeline based on milestones pursuant to APA.

(2) Beginning cash of $2.9m reflects cash on hand available for the management team to fund and operate the business.

(3) Professional fees to be escrowed on a weekly basis with final true-up occurring upon filing of final fee applications.

ON THE BORDER **PRIVILEGED & CONFIDENTIAL**

Professional Fee Schedule DRAFT - Subject to Material Revision

Professional	Actual 3/11/2025	Actual 3/18/2025	Actual 3/25/2025	Actual 4/1/2025	Forecast 4/8/2025	Forecast 4/15/2025	Forecast 4/22/2025	Forecast 4/29/2025	Forecast 5/6/2025	Forecast 5/13/2025	Forecast 5/20/2025	Actual Total	Forecast Total	Grand Total
Debtor Lead Counsel	$ 429,250	$ 214,625	$ 214,625	$ --	$ 343,400	$ 171,700	$ 171,700	$ 243,242	$ 286,167	$ 286,167	$ 214,625	$ 858,500	$ 1,717,000	$ 2,575,500
Debtor Financial Advisor	286,650	137,025	137,025	--	274,050	149,625	149,625	191,100	191,100	197,925	156,450	560,700	1,309,875	1,870,575
Debtor IB	25,250	--	--	--	25,250	--	--	--	25,250	--	--	25,250	50,500	75,750
Claims Agent	312,900	53,125	37,188	--	59,500	29,750	29,750	42,146	49,583	49,583	37,188	403,213	297,500	700,713
Real Estate Advisor	50,500	--	--	--	--	--	--	--	--	--	--	50,500	--	50,500
Debtor Professionals	**$ 1,104,550**	**$ 404,775**	**$ 388,838**	**$ --**	**$ 702,200**	**$ 351,075**	**$ 351,075**	**$ 476,488**	**$ 552,100**	**$ 533,675**	**$ 408,263**	**$ 1,898,163**	**$ 3,374,875**	**$ 5,273,038**
Lender Counsel	$ 250,000	$ --	$ --	$ --	$ 200,000	$ --	$ --	$ --	$ 150,000	$ --	$ 150,000	$ 250,000	$ 500,000	$ 750,000
Lender Professionals	**$ 250,000**	**$ --**	**$ --**	**$ --**	**$ 200,000**	**$ --**	**$ --**	**$ --**	**$ 150,000**	**$ --**	**$ 150,000**	**$ 250,000**	**$ 500,000**	**$ 750,000**
UCC Restructuring Counsel	$ 50,000	$ 50,250	$ 25,000	$ --	$ 176,250	$ 91,250	$ 91,250	$ 66,000	$ --	$ --	$ --	$ 125,250	$ 424,750	$ 550,000
UCC Financial Advisor	30,000	15,000	40,250	--	130,383	31,489	31,489	21,389	--	--	--	85,250	214,750	300,000
U.S. Trustee	--	--	--	--	--	300,000	--	--	--	--	--	--	300,000	300,000
UCC / Other Professionals	**$ 80,000**	**$ 65,250**	**$ 65,250**	**$ --**	**$ 306,633**	**$ 422,739**	**$ 122,739**	**$ 87,389**	**$ --**	**$ --**	**$ --**	**$ 210,500**	**$ 939,500**	**$ 1,150,000**
Total Professional Fees	**$ 1,434,550**	**$ 470,025**	**$ 454,088**	**$ --**	**$ 1,208,833**	**$ 773,814**	**$ 473,814**	**$ 563,876**	**$ 702,100**	**$ 533,675**	**$ 558,263**	**$ 2,358,663**	**$ 4,814,375**	**$ 7,173,038**

Notes:

(1) Excludes completion fees.

(2) Reflects agreed upon UCC budget.

(3) Claims agent includes related reimbursable filing expenses.

Exhibit 2

DIP Credit Agreement

EXECUTION VERSION

SECURED SUPER-PRIORITY
DEBTOR-IN-POSSESSION CREDIT AGREEMENT

by and between

OTB ACQUISITION LLC,
Debtor and Debtor-In-Possession

as Borrower,

and

OTB LENDER, LLC

as DIP Lender

Dated as of March 4, 2025

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SECURED SUPER-PRIORITY
DEBTOR-IN-POSSESSION CREDIT AGREEMENT

THIS SECURED SUPER-PRIORITY DEBTOR IN POSSESSION CREDIT AGREEMENT (this "Agreement"), dated as of March 4, 2025, between **OTB ACQUISITION LLC**, a Delaware limited liability company, as debtor and debtor in possession under Chapter 11 of the Bankruptcy Code (as defined below) ("Borrower"), **OTB HOLDING LLC**, a Delaware limited liability company ("Holding"), **OTB ACQUISITION OF NEW JERSEY LLC**, a New Jersey limited liability company ("OTBNJ"), **OTB ACQUISITION OF HOWARD COUNTY LLC**, a Maryland limited liability company ("OTB Howard"), **MT. LAUREL RESTAURANT OPERATIONS LLC**, a New Jersey limited liability company ("OTB Operations"), **OTB ACQUISITION OF KANSAS LLC**, a Kansas limited liability company ("OTB Kansas"), and **OTB ACQUISITION OF BALTIMORE COUNTY, LLC**, a Maryland limited liability company ("OTB Baltimore" and OTB Baltimore together with Holding, OTBNJ, OTB Howard, OTB Operations and OTB Kansas, collectively, the "Guarantors" and the Guarantors herein collectively with the Borrower, the "Debtors") and **OTB LENDER, LLC**, a Delaware limited liability company, as lender ("DIP Lender").

RECITALS:

A. DIP Lender extended a term loan in an aggregate principal amount of $4,000,000 (the "Prepetition Bridge Loan Amount") to the Debtors pursuant to that certain Secured Promissory Note, dated as of February 14, 2025 (as amended or otherwise modified prior to the Petition Date, the "Prepetition Secured Note" and the loans thereunder, the "Prepetition Bridge Loans").

B. Reference is made to (i) that certain Credit Agreement, dated as of September 9, 2022 (as amended or otherwise modified prior to the Petition Date, the "CrossFirst Credit Agreement"), by and among Borrower, Holding and CrossFirst Bank, (ii) the obligations owed to CrossFirst Bank and the other lenders named in the CrossFirst Credit Agreement, (iii) the Liens against certain assets of Debtors (which such Liens were perfected prior to the Liens granted in connection with the Prepetition Secured Note) held by CrossFirst Bank (the "CrossFirst Liens").

C. Concurrently with entering into the Prepetition Secured Note, the DIP Lender entered into that certain Subordination and Intercreditor Agreement, dated as of February 14, 2025 (as amended or otherwise modified, the "Subordination Agreement") pursuant to which CrossFirst Bank has consented to the priming of the CrossFirst Liens and the subordination of the obligations arising under the CrossFirst Credit Agreement.

D. On March 4, 2025 (the "Petition Date"), each Debtor filed a voluntary petition for relief (each, a "Chapter 11 Case" and, collectively, the "Chapter 11 Cases") under Chapter 11 of the Bankruptcy Code with the United States Bankruptcy Court for the Northern District of Georgia (the "Bankruptcy Court").

E. Each Debtor is continuing to operate its business and manage its properties as a debtor in possession under Sections 1107 and 1108 of the Bankruptcy Code.

F. Borrower has requested that DIP Lender provide a secured super-priority term loan credit facility providing for an aggregate principal amount not to exceed the sum of $14,000,000 plus all interest, fees and expenses that will be capitalized as part of the Principal Amount under this Agreement to Borrower on the terms and conditions set forth herein. The Loans hereunder shall consist of:

(a) up to $10,000,000 of new money loans, (i) with the portion that is sufficient to fund the estimated professional fees for the entire Availability Period plus all other amounts required to fund the Approved Budget for the first twenty-eight (28) days after the Petition Date (but in any event not in excess of $7,500,000) is to be available to Borrower upon entry of the Interim DIP Order (such amount that is actually extended on such date, the "Interim Advance") and (ii) the remainder of which is to be available to Borrower upon entry of the Final DIP Order;

(b) An Advance in an amount equal to the Prepetition Bridge Loan Amount, together with all accrued and unpaid interest and fees under the Prepetition Secured Note, shall be deemed to be made hereunder concurrently with the Interim Advance; and

(c) An amount equal to the Facility Fee shall be capitalized and added to the Principal Amount outstanding hereunder concurrently with the Interim Advance.

G. Each Guarantor will materially benefit from the extensions of credit made hereunder and the DIP Lender will not make the extensions of credit hereunder without the guarantee of all of Borrower's obligations hereunder by each Guarantor.

H. DIP Lender is willing to make available to Borrower such post-petition loans and other extensions of credit upon the terms and subject to the conditions set forth herein.

I. Such post-petition loans and other extensions of credit will be used to repay the Prepetition Bridge Loans of Debtors, together with all accrued and unpaid interest and fees under the Prepetition Secured Note, to pay DIP Lender's related fees and expenses associated with the negotiation, execution and delivery of this Agreement and for working capital and other general corporate purposes in accordance with Section 6.14 to the extent permitted hereunder.

J. Each Debtor has agreed to secure its obligations to DIP Lender hereunder with, *inter alia*, security interests in, and liens on, all of its property and assets, whether real or personal, tangible or intangible, now existing or hereafter acquired or arising, all as more fully provided herein and in the other Loan Documents.

NOW, THEREFORE, in consideration of the premises and the covenants and agreements contained herein, the parties hereto hereby agree as follows:

1. DEFINITIONS AND CONSTRUCTION.

1.1. **Definitions**. Capitalized terms used in this Agreement shall have the meanings specified therefor on Schedule 1.1.

1.2. **Accounting Terms**. All accounting terms not specifically defined herein shall be construed in accordance with GAAP. When used herein, the term "financial statements" shall include the notes and schedules thereto.

1.3. **UCC**. Any terms used in this Agreement that are defined in the UCC shall be construed and defined as set forth in the UCC unless otherwise defined herein; provided, however, that to the extent that the UCC is used to define any term herein and such term is defined differently in different Articles of the UCC, the definition of such term contained in Article 9 of the UCC shall govern.

1.4. **Construction**. Unless the context of this Agreement or any other Loan Document clearly requires otherwise, references to the plural include the singular, references to the singular include the plural, the terms "includes" and "including" are not limiting, and the term "or" has, except where otherwise indicated, the inclusive meaning represented by the phrase "and/or." The words "hereof," "herein," "hereby," "hereunder," and similar terms in this Agreement or any other Loan Document refer to this Agreement or such other Loan Document, as the case may be, as a whole and not to any particular provision of this Agreement or such other Loan Document, as the case may be. Section, subsection, clause, schedule, and exhibit references herein are to this Agreement unless otherwise specified. Any reference in this Agreement or in the other Loan Documents to any agreement, instrument, or document shall include all alterations, amendments, changes, extensions, modifications, renewals, replacements, substitutions, joinders, and supplements, thereto and thereof, as applicable (subject to any restrictions on such alterations, amendments, changes, extensions, modifications, renewals, replacements, substitutions, joinders, and supplements set forth herein). Any reference herein to the satisfaction or repayment in full of the Obligations shall mean the repayment in full in cash of all Obligations other than contingent indemnification Obligations. Any reference herein to any Person shall be construed to include such Person's successors and assigns. Any requirement of a writing contained herein or in the other Loan Documents shall be satisfied by the transmission of a Record and any Record transmitted shall constitute a representation and warranty as to the accuracy and completeness of the information contained therein.

1.5. **Schedules and Exhibits**. All of the schedules and exhibits attached to this Agreement shall be deemed incorporated herein by reference.

2. LOAN AND TERMS OF PAYMENT.

2.1. **Advances; Termination of Loan Commitment**.

(a) Term Loans. During the Availability Period, subject to the terms and conditions of this Agreement and the Budget, DIP Lender agrees to make the Interim Advance and one or more additional Advances in Dollars on a non-revolving basis to Borrower from time to time in an aggregate amount not to exceed the lesser of the Available Commitment Amount and the Loan Commitment Amount.

(b) Deemed Advances. (i) An Advance in an aggregate principal amount equal to the Prepetition Bridge Loan Amount shall be deemed to have been made hereunder concurrently

with the Interim Advance (the "Prepetition Bridge Loan Roll-Up"). (ii) An amount equal to the Facility Fee shall be added to the Principal Amount as further described in Section 2.7.

(c) General Terms. Amounts borrowed pursuant to this Section 2.1 may be prepaid or repaid but may not be reborrowed. Upon each extension (in cash, by net funding or by deemed issuance) of an Advance hereunder, the Available Commitment Amount and the Loan Commitment shall be reduced by an amount equal to the principal amount of such Advance. The Advances shall, from the Interim DIP Order Date until the Effective Date, be subject to all conditions set forth in the Interim DIP Order and, after the Effective Date, be subject and conditioned upon satisfaction of the DIP Orders and the conditions in Section 3.

(d) Limitations on Advances. Notwithstanding anything to the contrary contained in this Section 2, DIP Lender will not be required and shall have no obligation to make any Advance requested hereunder if (i) the amount of such requested Advance exceeds the Available Commitment Amount in effect on such date, (ii) the amount of such requested Advance is not supported by or consistent with the Approved Budget for the applicable Budget Period or (iii) the conditions in Section 3 have not been satisfied. The portion of the Loan Commitment Amount equal to the Prepetition Bridge Loan Amount shall only be available hereunder in the form of a deemed Advance and in no event shall be available as a new money Advance.

(e) Termination. The Loan Commitment shall automatically terminate on the Termination Date.

2.2. **Borrowing Procedures**.

(a) **Procedure for Borrowing**. Each Advance shall be in such amount as Borrower may request by an irrevocable written request substantially in the form attached hereto as Exhibit B or such other form approved by DIP Lender (each, a "Notice of Borrowing") by the chief restructuring officer of the Debtors delivered to the DIP Lender. Such Notice of Borrowing must be received by the DIP Lender no later than 12:00 noon (Central time) at least one (1) Business Day prior to the proposed funding date, which such funding date shall be a Business Day. Each Notice of Borrowing shall specify (i) the amount of the proposed Advance, (ii) the requested funding date, and (iii) Budget Period covered by such Notice of Borrowing and a reconciliation of the intended use of proceeds of such Advance against the items budgeted for during such Budget Period. The Prepetition Bridge Loan Roll-Up shall be made automatically on the applicable date specified in Section 2.1 without delivery of any Notice of Borrowing.

(b) **Making of Loan**. DIP Lender shall make each Advance available to Borrower in immediately available funds, to the Borrower Designated Account, not later than 1:00 p.m. (Eastern time) on the funding date applicable thereto; provided, however, that each Advance shall be net of all amounts deemed to have been advanced hereunder and other amounts reserved pursuant to Section 10.3(a); provided, however, that DIP Lender shall not have the obligation to make any Advance if DIP Lender shall have knowledge that (i) one or more of the applicable conditions precedent set forth in Section 3 will not be satisfied on the requested funding date for such Advance, unless such condition has been waived inwriting by the DIP Lender or (ii) the amount of the requested Borrowing would exceed the total projected expenditures of Borrower set forth in the Approved Budget for the applicable Budget Period.

(c) **Notation**. The Advances made by DIP Lender shall be evidenced by one or more accounts or records maintained by DIP Lender in the ordinary course of business. The accounts or records maintained by the DIP Lender shall be conclusive absent manifest error of the amount of the Advances made by the DIP Lender to Borrower and the interest and payments thereon. Any failure to so record or any error in doing so shall not, however, limit or otherwise affect the obligation of Borrower hereunder to pay any amount owing with respect to the Obligations.

2.3. **Payments**.

(a) **Payments by Borrower**. Except as otherwise expressly provided herein, all payments by Borrower shall be made to the DIP Lender Designated Account for the account of DIP Lender and shall be made in immediately available funds, no later than 2:00 p.m. (Eastern time) on the date specified herein. Any payment received by DIP Lender later than 2:00 p.m. (Eastern time) shall be deemed to have been received on the following Business Day and any applicable interest or fee shall continue to accrue until such following Business Day.

(b) **Application**.

(i) So long as DIP Lender has not commenced an Enforcement Action, all payments and proceeds of Collateral shall be applied in accordance with the DIP Orders; provided, however, that, subject to the DIP Orders, if an Event of Default shall have occurred and be continuing and DIP Lender has commenced an Enforcement Action, any payments made by Debtors and all proceeds of Collateral received by DIP Lender, shall be applied in accordance with Section 9.

(ii) In the event of a direct conflict between the DIP Orders, the priority provisions of this Section 2.3 and other provisions contained in any other Loan Document, it is the intention of the parties hereto that such priority provisions in such documents shall be read together and construed, to the fullest extent possible, to be in concert with each other. In the event of any actual, irreconcilable conflict that cannot be resolved as aforesaid, the terms and provisions of the DIP Orders shall control and govern.

(c) **Prepayments and Repayment**.

(i) Voluntary Prepayments. Subject to the terms of this Agreement (including Section 2.11), Borrower may at any time and from time to time voluntarily prepay the Obligations, in whole or in part, upon not less than five (5) days prior irrevocable written notice to DIP Lender; provided, however, that each partial prepayment shall be in an amount that is an integral multiple of $25,000 and not less than $50,000.

(ii) Mandatory Prepayment.

(A) Immediately upon the receipt of Net Cash Proceeds in respect of any Disposition of assets (other than Permitted Dispositions) in excess of $500,000, through one or a series of

related transactions or Casualty Event, Borrower shall apply 100% of the Net Cash Proceeds received with respect thereto to prepay the outstanding Obligations.

(B) In the event that the Borrower shall receive Net Cash Proceeds from any issuance or incurrence of Indebtedness (other than Permitted Indebtedness) or issuance of shares of Capital Stock, Borrower shall immediately upon the receipt of such Net Cash Proceeds by Borrower, apply an amount equal to 100% of such Net Cash Proceeds to prepay outstanding Obligations.

(C) All prepayments under Section 2.3(c)(ii) shall be accompanied by the concurrent payment in immediately available cash of all accrued and unpaid interest that has not been capitalized as part of the Principal Amount as of the date of such prepayment.

(D) Borrower shall deliver to DIP Lender, (1) at the time of each prepayment required under this Section 2.3(c)(ii), a certificate signed by a Responsible Officer of Borrower setting forth in reasonable detail the calculation of the amount of such prepayment and (2) at least five (5) days prior to such prepayment, written notice of such prepayment.

(E) Without affecting any of DIP Lender's rights and remedies hereunder or in respect hereof, if Borrower fails to pay on the Termination Date any amounts required to be paid pursuant to this Section 2.3(c)(ii), then such amounts shall be payable on demand and shall bear interest at the Default Rate until Paid in Full.

(iii) Repayment on the Termination Date. On the Termination Date, Borrower shall pay, in full and in cash, all outstanding Advances and all other outstanding Obligations owing by it (including all accrued and unpaid interest that has not been added to the Principal Amount as of the Termination Date). Without affecting any of DIP Lender's rights and remedies hereunder or in respect hereof, if Borrower fails to pay on the Termination Date any amounts required to be paid pursuant to this Section 2.3(c)(iii), then such amounts shall be payable on demand and shall bear interest at the Default Rate until Paid in Full.

2.4. **Interest Rate: Rates, Payments, and Calculations**.

(a) **Interest Rate**. Except as provided in clause (b) below, all Obligations shall bear interest at a fixed rate equal to 12.00% per annum. Interest in respect of the Obligations shall be due and payable in arrears and shall accrue and compound monthly beginning on the date of each Advance (in cash, by net funding or by deemed issuance) hereunder through the last day of the calendar month in which such Advance is made (or deemed made), and thereafter, beginning on the first day of each subsequent month through the last day of such calendar month, and shall continue to accrue until the Obligations are indefeasibly Paid in Full. Except as otherwise specified

herein, interest shall be paid-in-kind, automatically, and without any further action by Borrower or DIP Lender by capitalizing and adding such amount to the outstanding Principal Amount on the first Business Day of each month. The adjusted outstanding and unpaid Principal Amount together with all other outstanding Obligations shall accrue interest at the rate applicable under this Section 2.4.

(b) **Default Rate**. Upon the occurrence of an Event of Default, all Obligations (including, but not limited to, the outstanding and unpaid Principal Amount) shall bear interest at the Default Rate.

(c) **DIP Lender Expenses**. Subject to the DIP Orders, Borrower hereby agrees to pay all DIP Lender Expenses as and when permitted by the DIP Orders but in any event no less frequently than once per month (and, for the avoidance of doubt, all such DIP Lender Expenses shall be Obligations and accrue interest in accordance with Section 2.4(a) from the date of incurrence). All DIP Lender Expenses shall be paid-in-kind, automatically, and without any further action by Borrower or DIP Lender by capitalizing and adding such amount to the outstanding Principal Amount and so long as the timing of each such payment is approved by the DIP Orders, such capitalization shall occur on the first Business Day of each month occurring after the Petition Date. Notwithstanding the foregoing, all professional fees, including the fees of the DIP Lender's legal counsel shall be paid in cash on the Effective Date as required by Section 3 hereof and the Borrower shall remain responsible for paying all fees and expenses of professionals as and when due after the Petition Date to the extent permitted by the DIP Orders and the Bankruptcy Court.

(d) **Payment**. Interest, fees and all DIP Lender Expenses payable hereunder shall be due and payable on the Termination Date (and on such other date as specified herein). DIP Lender shall be entitled, but not obligated to pay such interest, fees and DIP Lender Expenses under this Agreement and the other Loan Documents and fees and DIP Lender Expenses incurred in connection with the Chapter 11 Cases. Borrower hereby authorizes DIP Lender, from time to time, without prior notice to Borrower, to charge all interest and fees (when due and payable), all DIP Lender Expenses (as and when incurred), and all other payments as and when due and payable under any Loan Document or the DIP Orders to Borrower, which amounts thereafter shall accrue interest at the rate then applicable under this Section 2.4.

(e) **Computation**. All interest, fees and DIP Lender Expenses chargeable under this Agreement and the other Loan Documents shall be computed on the basis of a 365 day year for the actual number of days elapsed.

2.5. **Intent to Limit Charges to Maximum Lawful Rate**. In no event shall the interest rate or rates payable under this Agreement, plus any other amounts paid in connection herewith, exceed the highest rate permissible under any law that a court of competent jurisdiction shall, in a final determination, deem applicable. Borrower and DIP Lender, in executing and delivering this Agreement, intend legally to agree upon the rate or rates of interest and manner of payment stated within it; provided, however, that, anything contained herein to the contrary notwithstanding, if said rate or rates of interest or manner of payment exceeds the maximum allowable under Applicable Law, then, *ipso facto*, as of the date of this Agreement, Borrower is and shall be liable only for the payment of such maximum as allowed by law, and payment received from Borrower

in excess of such legal maximum, whenever received, shall be applied to reduce the principal balance of the relevant Obligations to the extent of such excess.

2.6. **Borrower Designated Account**. Borrower agrees to establish and maintain the Borrower Designated Account with the Borrower Designated Account Bank for the purpose of receiving the proceeds of each Advance requested by Borrower and made by Lender hereunder. Unless otherwise agreed by Lender and Borrower, any Advance requested by Borrower and made by Lender hereunder shall be made to the Borrower Designated Account.

2.7. **Facility Fee**. On the date of the Interim Advance, Borrower shall owe to DIP Lender an amount equal to $65,000 (the "Facility Fee") as commitment fee for entering into this facility. The Facility Fee shall be fully earned when due and shall be non-refundable for any reason whatsoever. Concurrently with the Interim Advance, the Facility Fee shall be paid-in-kind, automatically, and without any further action by Borrower or DIP Lender by capitalizing and adding such amount to the outstanding Principal Amount. The adjusted outstanding and unpaid Principal Amount together with all other outstanding Obligations shall accrue interest at the rate applicable under Section 2.4.

2.8. **Security Interest; Superpriority Claim and Liens; Collateral**.

(a) As security for the payment and performance of the Obligations and without limiting any other grant of a Lien and security interest in any Security Document, each Debtor hereby assigns and grants to DIP Lender a continuing Lien on and security interest in, upon, and to all assets and properties of such Debtor (whether tangible, intangible, real, personal or mixed), whether now owned or hereafter acquired, and wherever located, before or after the Petition Date, including, without limitation, all cash, Deposit Accounts, Cash Equivalents, Accounts, Inventory, Equipment, equity interests or Capital Stock in domestic and foreign Subsidiaries, Investment Property, Instruments, Chattel Paper, Real Property, leasehold interests, contracts, trademarks, trade names, copyrights, patents, patent rights, licenses, liquor licenses (and the proceeds of any liquor licenses) and other General Intangibles, Receivables, all claims or causes of action (excluding avoidance actions arising under Chapter 5 of the Bankruptcy Code but including all proceeds thereof), and all products, offspring, profits and proceeds of each of the foregoing (the "Collateral"). For the avoidance of doubt, any amounts remaining in the Professional Fee Reserve (as defined in the DIP Orders) after payment of allowed fees and expenses shall be Collateral.

(b) Subject to the Carve-Out and the terms and provisions of the DIP Orders, each Debtor hereby covenants, represents and warrants that, upon entry of the Interim DIP Order, the Obligations of the Debtors hereunder and under the other Loan Documents:

(i) pursuant to Section 364(c)(1) of the Bankruptcy Code, shall at all times constitute joint and several allowed administrative expense claims in the Chapter 11 Cases having priority over all administrative expenses of the kind specified in Sections 105, 326, 328, 330, 331, 503(b), 506(c), 507(a), 507(b), 546(c), 1113 and 1114 of the Bankruptcy Code;

(ii) pursuant to Section 364(c)(2) of the Bankruptcy Code, upon the entry of the DIP Orders, shall at all times be secured by a perfected first priority

Lien on and security interest in all of the Collateral that is not subject to a perfected lien or security interest as of the Petition Date;

(iii) pursuant to Section 364(c)(3) of the Bankruptcy Code, shall at all times be secured by a perfected Lien on and security interest in all of the Collateral, subject only to (A) the validly perfected, enforceable and unavoidable Liens (excluding the CrossFirst Liens) existing on the Petition Date and (B) the Liens (excluding the CrossFirst Liens) existing on the Petition Date but that were perfected subsequent to the Petition Date as permitted by Bankruptcy Code §546(b) (including, without limitation, the Carve-Out), in each case, that is expressly permitted to be senior to the DIP Lender's Liens pursuant to the Interim DIP Order; and

(iv) pursuant to Section 364(d)(1) of the Bankruptcy Code, shall at all times be secured by a perfected first-priority, senior priming Lien on and security interest in all of the Collateral that is or was subject to a perfected lien or security interest on the Petition Date (including the CrossFirst Liens); provided, however that the Liens and security interests of DIP Lender shall not prime (A) the Liens and security interests granted to the DIP Lender pursuant to Section 364(c)(3) of the Bankruptcy Code as described in Section 2.8(b)(iii) or (B) any Permitted Liens.

(c) (*Reserved*)

(d) Except as set forth herein (including with respect to the Carve-Out and Permitted Liens) or in the DIP Orders, the Liens granted hereunder shall not be made subject to or *pari passu* with any Lien or security interest heretofore or hereinafter granted in the Chapter 11 Cases or any Successor Cases and shall be valid and enforceable against any trustee appointed in the Chapter 11 Cases or any Successor Cases, upon the conversion of any of the Chapter 11 Cases to any Successor Case, and/or upon the dismissal or conversion of any of the Chapter 11 Cases or Successor Cases. The Liens granted hereunder shall not be subject to any of sections 510, 549, or 550 of the Bankruptcy Code. No Lien or interest avoided and preserved for the benefit of the estate pursuant to section 551 of the Bankruptcy Code shall be *pari passu* with or senior to the Liens granted hereunder.

(e) Subject to the priorities set forth in subsection (a) above and the Carve-Out and Permitted Liens, as to all Collateral, including, without limitation, all Real Property, the title to which is held by any Debtor, or the possession of which is held by a Debtor pursuant to a leasehold interest, such Debtor hereby assigns and conveys as security, grants a Lien and security interest in, hypothecates, mortgages, pledges and sets over unto DIP Lender, all of the right, title and interest of such Debtor in all of such Collateral, including without limitation, all owned Real Property and in all such leasehold interests, together in each case with all of the right, title and interest of such Debtor in and to all buildings, improvements, and fixtures related to such Real Property, any lease or sublease thereof, all general intangibles relating thereto and all proceeds thereof. Each Debtor acknowledges that, pursuant to the DIP Orders, the Liens granted in favor of DIP Lender in all of the Collateral shall be perfected by operation of law and without the recordation of any Uniform Commercial Code financing statements, notices of Lien, leases, or other instruments of mortgage or assignment. Notwithstanding this Section 2.8(e), or any failure

on the part of Debtors and DIP Lender to take any further act to perfect, maintain, protect or enforce the Liens and security interests in the Collateral granted hereunder, the DIP Orders shall automatically, and without further action by any Person, perfect such Liens and security interests against the Collateral. Each Debtor further agrees that (i) DIP Lender shall have rights and remedies set forth in Section 8 in respect of the Collateral and (ii) if requested by DIP Lender, each Debtor shall enter into separate Security Documents with respect to such Collateral on terms reasonably satisfactory to counsel to DIP Lender.

2.9. **Continuing and Unconditional Guaranty**.

(a) Guarantee. Each Guarantor hereby irrevocably and unconditionally becomes surety for and guarantees to DIP Lender the full and prompt payment and performance of the Obligations.

(b) Absolute and Irrevocable Guaranty. This Section 2.9 constitutes an absolute, continuing, irrevocable and unconditional guaranty of payment and performance, and not a guaranty of collection, and each Guarantor shall remain liable on its obligations hereunder until full satisfaction of the Obligations. No set-off, counterclaim, recoupment, reduction or diminution of any obligation, or any defense of any kind or nature that the Borrower may have against DIP Lender, any Participant or any subsequent holder of the Obligations or any other party shall be available to, or shall be asserted by, any Guarantor against DIP Lender, and Participant or any subsequent holder of the Obligations or any part thereof or against payment of the Obligations or any part thereof (other than Payment in Full).

(c) Agreement to Pay Obligations. In the event of default by the Borrower in payment or performance of the Obligations, or any part thereof, when such Obligations become due, whether by its terms, by acceleration, or otherwise, each Guarantor shall promptly pay the full amount due thereon to DIP Lender, without notice or demand, in Dollars, and it shall not be necessary for DIP Lender, in order to enforce such payment by any Guarantor, first to institute suit or exhaust its remedies against the Borrower, any other Guarantor or others liable on such Obligations, or to enforce any rights against any Collateral. In the event such payment is made by a Guarantor, then such Guarantor shall be subrogated to the rights then held by DIP Lender with respect to the Obligations to the extent to which the Obligations were discharged by Guarantor. Notwithstanding the foregoing, upon payment by a Guarantor of any sums to DIP Lender hereunder, all rights of each Guarantor against the Borrower, any other guarantor or any collateral arising as a result therefrom by way of right of subrogation, reimbursement, contribution or otherwise shall in all respects be subordinate and junior in right of payment to the prior full satisfaction of the Obligations. All payments received by DIP Lender hereunder shall be applied pursuant to Section 2.3(b) or Section 9, as applicable.

(d) Stay of Acceleration. If acceleration of the time for payment of any amount payable by Borrower under the Obligations is stayed upon the insolvency, bankruptcy, or reorganization of the Borrower, all such amounts otherwise subject to acceleration under the terms of the Obligations shall nonetheless be payable by Guarantors hereunder forthwith on demand by DIP Lender.

(e) Obligations Not Impaired. Each Guarantor hereby agrees that its obligations under the Loan Documents shall not be released, discharged, diminished, impaired, reduced, or affected for any reason or by the occurrence of any event, including, one or more of the following events, whether or not with notice to or the consent of any Guarantor: (i) the taking or accepting of collateral as security for any or all of the Obligations or the release, surrender, exchange, or subordination of any Collateral; (ii) any partial release of the liability of any Guarantor hereunder, or the full or partial release of any other guarantor from liability for any or all of the Obligations; (iii) any disability of the Borrower, or the dissolution, insolvency, or bankruptcy of the Borrower, any Guarantor, or any other party at any time liable for the payment of any or all of the Obligations; (iv) any renewal, extension, modification, waiver, amendment, or rearrangement of any or all of the Obligations or any instrument, document, or agreement evidencing, securing, or otherwise relating to any or all of the Obligations; (v) any adjustment, indulgence, forbearance, waiver, or compromise that may be granted or given by DIP Lender to the Borrower, Guarantor, or any other party ever liable for any or all of the Obligations; (vi) any neglect, delay, omission, failure, or refusal of DIP Lender to take or prosecute any action for the collection of any of the Obligations or to foreclose or take or prosecute any action in connection with any instrument, document, or agreement evidencing, securing, or otherwise relating to any or all of the Obligations; (vii) the unenforceability or invalidity of any or all of the Obligations or of any instrument, document, or agreement evidencing, securing, or otherwise relating to any or all of the Obligations; (viii) any payment by the Borrower or any other party to DIP Lender is held to constitute a preference under applicable bankruptcy or insolvency law or if for any other reason DIP Lender is required to refund any payment or pay the amount thereof to someone else; (ix) the settlement or compromise of any of the Obligations; (x) the non-perfection of any Lien securing any or all of the Obligations; (xi) any impairment of any Collateral; (xii) the failure of DIP Lender to sell any Collateral in a commercially reasonable manner or as otherwise required by law; (xiii) any change in the corporate existence, structure, or ownership of the Borrower or any other Guarantor; or (xiv) any other circumstance that might otherwise constitute a defense available to, or discharge of, the Borrower or any Guarantor (other than the full satisfaction of the Obligations).

(f) Certain Waivers. Each Guarantor hereby waives the benefits of any provision of law requiring that DIP Lender exhaust any right or remedy, or take any action, against the Borrower, any other Guarantor, any other person and/or property.

(g) Subrogation. No Guarantor shall exercise any right of subrogation, contribution, indemnity, reimbursement or similar rights with respect to any payments it makes under this Agreement, and all such rights are hereby waived. If any amounts are paid to a Guarantor in violation of the foregoing limitation, then such amounts shall be held in trust for the benefit of DIP Lender and shall forthwith be paid to DIP Lender to reduce the amount of the Obligations, whether matured or unmatured.

(h) Borrower Information. Each Guarantor has, independently and without reliance upon DIP Lender and based upon such documents and information as it has deemed appropriate, made its own analysis and decision to enter into the Loan Documents to which such Guarantor is a party. Each Guarantor has adequate means to obtain from the Borrower on a continuing basis information concerning the financial condition and assets of the Borrower and no Guarantor is relying upon DIP Lender to provide (and DIP Lender shall not have any duty to provide) any such information either now or in the future.

(i) Benefit of Guaranty. The value of the consideration received and to be received by each Guarantor as a result of this Agreement, the transactions contemplated hereby and Guarantor's executing and delivering this Agreement and the other Loan Documents to which Guarantor is a party, is reasonably worth at least as much as the expected liability and obligation of Guarantor hereunder and thereunder, and such liability and obligation may reasonably be expected to benefit each Guarantor directly or indirectly.

2.10. **Joint and Several**. The obligations of the Borrower and each Guarantor hereunder constitute joint and several obligations.

2.11. **Waiver of any Priming Rights**. Upon the Effective Date, and on behalf of itself and its estate, and for so long as any Obligations shall be outstanding, each Debtor hereby irrevocably waives any right, pursuant to Sections 364(c) or 364(d) of the Bankruptcy Code or otherwise, to grant any Lien of equal or greater priority than the Liens securing the Obligations, or to approve a claim of equal or greater priority than the Obligations other than as expressly set forth in the DIP Orders.

3. CONDITIONS PRECEDENT; TERMINATION OF AGREEMENT.

3.1. **Conditions Precedent to Effectiveness of this Agreement**. The effectiveness of this Agreement and the obligation of DIP Lender to make each Advance on or after the Effective Date is subject to the following conditions precedent:

(a) DIP Lender shall have received from Debtors a counterpart of this Agreement duly executed by each Debtor.

(b) DIP Lender shall have received from Debtors a counterpart of each of the Security Documents, each duly executed by each Debtor party thereto.

(c) DIP Lender shall have received the Governing Documents and such other documents and certificates as DIP Lender or its counsel may reasonably request relating to the organization, existence and good standing of each Debtor, the authorization of the transactions contemplated by the Loan Documents, the capacity of each Responsible Officer and any other legal matters relating to any Debtor, the Loan Documents or the transactions contemplated thereby, all in form and substance reasonably satisfactory to DIP Lender.

(d) The Debtors shall have initiated the Chapter 11 Cases on the Petition Date.

(e) The Interim DIP Order shall have been entered, shall be in full force and effect, and shall not have been reversed, vacated or stayed, or modified without the prior written consent of DIP Lender, and all other necessary consents and approvals to the transactions contemplated hereby shall have been obtained and shall be satisfactory to DIP Lender.

(f) DIP Lender shall have received the initial Approved Budget which shall be in form and substance satisfactory to DIP Lender.

(g) Subject to the Effect of Bankruptcy, there shall not be pending any litigation or other proceeding, the result of which could reasonably be expected to have a Material Adverse Change.

(h) (*Reserved*)

(i) (*Reserved*)

(j) The Bankruptcy Court, in the Interim DIP Order, must find and conclude that this Agreement, the other Loan Documents, and the transactions contemplated hereby, were negotiated at arms' length and in good faith, and that DIP Lender is entitled to the protections offered by Section 364(e) of the Bankruptcy Code.

(k) Debtors shall have complied in full with the notice and other requirements of the Bankruptcy Code in a manner acceptable to DIP Lender and its counsel, with respect to the Interim DIP Order.

(l) No trustee, examiner or receiver under chapter 7 or chapter 11 of the Bankruptcy Code shall have been appointed in any Bankruptcy Case (nor shall any similar appointment have been made) with respect to any Debtor or any Debtor's business, properties or assets, and no motion shall be pending seeking any such relief.

(m) (*Reserved*).

(n) The representations and warranties contained in this Agreement or in the other Loan Documents shall be true, correct and complete in all material respects on and as of the date of such extension of credit, as though made on and as of such date (except to the extent that such representations and warranties relate solely to an earlier date in which case such representations and warranties shall be true and correct as of such earlier date).

(o) No material changes in Applicable Law adversely affecting Debtors or DIP Lender shall have occurred prior to the Effective Date.

(p) DIP Lender shall have received, in form and substance satisfactory to it, such other assurances, documents or consents related to the foregoing as DIP Lender may reasonably require.

3.2. **Conditions Precedent to all Advances**. The obligation of the DIP Lender to make each Advance shall be subject to the following conditions precedent:

(a) The DIP Lender shall have received a Notice of Borrowing with respect to such Advance.

(b) The representations and warranties contained in this Agreement or in the other Loan Documents shall be true, correct and complete in all material respects on and as of the date of such extension of credit, as though made on and as of such date (except to the extent that such representations and warranties relate solely to an earlier date in which case such representations and warranties shall be true and correct as of such earlier date);

(c) No Default, Event of Default or Material Adverse Change shall have occurred and be continuing on the date of such Advance, nor shall any Default, Event of Default or Material Adverse Change result from the making thereof.

(d) Such Advance shall not exceed the amounts permitted in accordance with Section 2.1(d) and the proceeds of such Advances shall be used in strict compliance with Section 6.14.

(e) The DIP Lender shall be satisfied that the Debtors have complied with the Approved Budget and that the requested Advance is consistent with the Approved Budget.

(f) With respect to the Interim Advance, the Interim DIP Order, and with respect to any other Advance, the Final DIP Order, shall have been entered, shall be in full force and effect, and shall not have been reversed, vacated or stayed, or modified without the prior written consent of the DIP Lender, and all other necessary consents and approvals to the transactions contemplated hereby shall have been obtained and shall be satisfactory to the DIP Lender.

(g) All motions and other documents to be filed with and submitted to the Bankruptcy Court in connection with this Agreement on or prior to the requested date of such Advance (including, without limitation and as applicable, the Interim DIP Order, the Final DIP Order, the Sale and Bidding Procedures Motion, the Bid Procedures Order and the Sale Order, and each other motion and order contemplated by Section 5.18(c)) shall be in form and substance satisfactory to the DIP Lenders.

(h) The DIP Lender shall be satisfied that, as of the date of such Advance, Debtors have satisfied the Milestones required to be achieved by such date and is continuing to take action and demonstrate progress towards all future Milestones.

(i) The DIP Lender shall have received, in form and substance satisfactory to it, such other assurances, documents or consents related to the foregoing as such DIP Lender may reasonably require.

(j) Borrower has paid (or concurrently with the applicable Advance, will pay) the DIP Lender Expenses to the extent that the DIP Lender has provided to Borrower, on or before the date that is one (1) Business Day prior to such Advance, an invoice reflecting all reasonable and documented fees, costs, disbursements and expenses for which reimbursement is being requested and that have been accrued or incurred by the DIP Lender through such date.

The request by Borrower for, and the acceptance by Borrower of, each Advance hereunder shall be deemed to be a representation and warranty by Debtors that the conditions specified in this Section 3.2 have been satisfied at that time and that after giving effect to such Advance, Borrower shall continue to be in compliance with Section 6.14.

3.3. **Term**. This Agreement shall continue in full force and effect until the Termination Date.

3.4. **Effect of Termination**. Upon the Termination Date, all Obligations immediately shall become due and payable without notice or demand. No termination of this Agreement, however, shall relieve or discharge Debtors of their duties, Obligations, or covenants hereunder or under any other Loan Document and DIP Lender's Liens in the Collateral shall remain in effect until all Obligations have been Paid in Full and DIP Lender's obligations to provide additional credit hereunder have been irrevocably terminated. When this Agreement has been terminated and all of the Obligations have been Paid in Full and DIP Lender's obligations to provide additional credit under the Loan Documents have been irrevocably terminated, DIP Lender will, at Borrower's sole expense, execute and deliver any termination statements, Lien releases, mortgage releases, re-assignments of trademarks, discharges of security interests, and other similar discharge or release documents (and, if applicable, in recordable form) as are reasonably necessary or requested to release, as of record, DIP Lender's Liens and all notices of security interests and liens previously filed by DIP Lender with respect to the Obligations.

4. REPRESENTATIONS AND WARRANTIES.

In order to induce DIP Lender to enter into this Agreement, each Debtor makes the following representations and warranties to DIP Lender which shall be true, correct, and complete, as of the Effective Date and as of the date of the making of each Advance (or other extension of credit) made hereunder, as though such representation and warranty were made on and as of the date of such Advance (or other extension of credit) (except to the extent that such representations and warranties relate solely to an earlier date, in which case such representations and warranties shall be true, correct and complete as of such earlier date) and such representations and warranties shall survive the execution and delivery of this Agreement:

4.1. **Due Organization and Qualification**. Each Debtor and each of its Subsidiaries (a) is duly organized and existing and in good standing under the laws of the jurisdiction of its organization and qualified to do business in any state where the failure to be so qualified reasonably could be expected to result in a Material Adverse Change, and (b) subject to Bankruptcy Court approval, has all requisite power and authority to own and operate its properties, to carry on its business as now conducted and as proposed to be conducted, to execute, deliver and perform the Loan Documents to which it is a party and to carry out the transactions contemplated thereby, except where failure to do so could not reasonably be expected to cause a Material Adverse Change.

4.2. **Due Authorization; Enforceability**. The execution, delivery, and performance by Debtors of this Agreement and the other Loan Documents to which it is a party have, upon the entry of the Interim DIP Order or the Final DIP Order, as applicable, been duly authorized by all necessary action on the part of each Debtor. This Agreement has been duly executed and delivered by each Debtor and upon the entry of the Interim DIP Order or the Final DIP Order, as applicable, constitutes, and each other Loan Document to which such Debtor is a party, when executed and delivered by such Debtor will constitute, a legal, valid and binding obligation of such Debtor, enforceable in accordance with its terms.

4.3. **No Conflict**. Subject to the entry of the Interim DIP Order or the Final DIP Order, as applicable, the execution, delivery, and performance by each Debtor of this Agreement and the other Loan Documents to which it is a party do not and will not (a) require any registration with,

consent, or approval of, or notice to, or other action with or by, any Governmental Authority, except for (i) such as have been obtained or made and are in full force and effect, or (ii) filings, the failure of which to obtain would not reasonably be expected to result in a Material Adverse Change, (b) violate any Applicable Law, (c) violate the Governing Documents of such Debtor, (d) except as set forth on Schedule 4.3, conflict with, result in a breach of, or constitute (with due notice or lapse of time or both) a default under any indenture or any other agreement, instrument or other evidence of Material Indebtedness or any other Material Contract, (e) result in or require the creation or imposition of any Lien of any nature whatsoever upon any properties or assets of such Debtor, other than Liens created under the Loan Documents and Permitted Liens and the Carve-Out, and (f) require any approval of such Debtor's equity holders or any approval or consent of any Person under any material contractual obligation of such Debtor, other than consents or approvals that have been obtained and that are still in force and effect.

4.4. **No Encumbrances**. Each Debtor has good and indefeasible title to, or a valid leasehold interest in, its personal property assets and good and marketable title to, or a valid leasehold interest in, its Real Property, in each case, free and clear of Liens except for Permitted Liens and the Carve-Out and the CrossFirst Liens.

4.5. **(Reserved)**.

4.6. **(Reserved)**.

4.7. **Location of Offices**. All offices of the Debtors are located on the locations identified on Schedule 4.7 (as such Schedule may be updated pursuant to Section 5.9).

4.8. **Inventory Records**. Debtors keep correct and accurate (in all material respects) records itemizing and describing the type and quantity of their and their Subsidiaries' Inventory and the book value thereof.

4.9. **State of Incorporation; Location of Chief Executive Office; Organizational Identification Number; Commercial Tort Claims; Books and Records Pertaining to Accounts**.

(a) The jurisdiction of organization of each Debtor and each of its Subsidiaries is set forth on Schedule 4.9(a).

(b) The chief executive office of each Debtor and each of its Subsidiaries is located at the address indicated on Schedule 4.9(b) (as such Schedule may be updated pursuant to Section 5.9).

(c) Each Debtor's and each of its Subsidiaries' organizational identification number, if any, are identified on Schedule 4.9(c).

(d) (Reserved).

(e) Except to the extent otherwise agreed to by DIP Lender, the books and records pertaining to Accounts are located at those locations listed on Schedule 4.9(b).

4.10. **Capitalization; Subsidiaries**.

(a) Set forth on Schedule 4.10(a), is a complete and accurate description of the authorized Capital Stock of each Debtor, by class, and, as of the Effective Date, a description of the number of shares of each such class that are issued and outstanding. Other than as described on Schedule 4.10(a), there are no subscriptions, options, warrants, or calls granted by any Debtor relating to any shares of such Debtor's Capital Stock, including any right of conversion or exchange under any outstanding security or other instrument. No Debtor is subject to any obligation (contingent or otherwise) to repurchase or otherwise acquire or retire any shares of its Capital Stock or any security convertible into or exchangeable for any of its Capital Stock.

(b) Set forth on Schedule 4.10(b), is a complete and accurate list of each Debtor's direct and indirect Subsidiaries, if any, showing for each such Subsidiary: (i) its jurisdiction of organization, (ii) the number of shares of each class of Capital Stock authorized, and (iii) the number and the percentage of the outstanding shares of each such class owned directly or indirectly by such Debtor. All of the outstanding Capital Stock of each such Subsidiary has been validly issued and is fully paid and non-assessable.

4.11. **(Reserved)**.

4.12. **(Reserved)**.

4.13. **(Reserved)**.

4.14. **(Reserved)**.

4.15. **Intellectual Property**. As of the Petition Date, each Debtor and each Subsidiary of each Debtor owns, or holds licenses in, all trademarks, trade names, copyrights, and licenses that are necessary to the conduct of its business as currently conducted and the use thereof by each such Debtor and each such Subsidiary does not infringe upon the rights of any other Person, except for any such infringements that, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Change.

4.16. **Leased and Owned Real Property**. Set forth on Schedule 4.16 is a listing of all leased real property of the Debtors. The Debtors do not own any real property.

4.17. **Deposit Accounts and Securities Accounts**. Set forth on Schedule 4.17 is a listing of all of each Debtor's Collateral Accounts.

4.18. **Complete Disclosure**. To the knowledge of the Debtors, all factual information furnished by or on behalf of the Debtors in writing to DIP Lender (including all information contained in the Schedules hereto or in the other Loan Documents) for purposes of or in connection with this Agreement, the other Loan Documents, or any transaction contemplated herein or therein is, and all other such factual information hereafter furnished by or on behalf of the Debtors in writing to DIP Lender will be, true and accurate in all material respects on the date as of which such information is dated or certified and not incomplete by omitting to state any fact necessary to make such information not misleading in any material respect at such time in light of the circumstances under which such information was provided. The Approved Budget is based upon

good faith estimates and assumptions believed by management of the Borrower to be reasonable at the time made..

4.19. **(Reserved)**.

4.20. **(Reserved)**.

4.21. **(Reserved)**.

4.22. **(Reserved)**.

4.23. **Labor Matters**. There are no collective bargaining agreements covering the employees of Debtors. The Debtors have not suffered any strikes, walkouts, work stoppages or other material labor difficulty within the last five (5) years.

4.24. **Security Documents; Priority of Liens**. The Security Documents and the DIP Orders (a) will create in favor of DIP Lender, as security for all Obligations, legal, valid, continuing and enforceable Liens in the Collateral, and (b) constitute a fully perfected, enforceable and unavoidable first priority Lien on, and security interest in, and hypothecation of, all right, title and interest of the Borrower thereunder in all Collateral, except as otherwise provided in the DIP Orders, and no further recording, filing or other action of any kind will be required in connection with the creation, perfection or enforcement of such security interests and Liens. Subject to the Carve-Out and Permitted Liens, no claims having a priority superior or *pari passu* to the Liens granted to DIP Lender shall be granted or approved while any of the Obligations or the Loan Commitment remain outstanding.

4.25. **Insurance**. The Debtors have in place (as of the Petition Date and on each date of an Advance hereunder) insurance that complies with Section 5.8.

4.26. **Compliance with Statutes, etc**. Each Debtor and its Subsidiaries is in material compliance with all applicable statutes, regulations and orders of, and all applicable restrictions imposed by, all Governmental Authorities, in respect of the conduct of its business and the ownership of its property (including compliance with all applicable Environmental Laws with respect to any Real Property or governing its business and the requirements of any permits issued under such Environmental Laws with respect to any such Real Property or the operations of such Borrower and its Subsidiaries). Each Debtor and its Subsidiaries is in material compliance with, and has procured and is now in possession of, all material licenses or permits required by all Governmental Authorities for the conduct of its business and the ownership of its property.

4.27. **Patriot Act**. To the extent applicable, each Debtor and its Subsidiaries is in compliance with the (a) Trading with the Enemy Act, as amended, and each of the foreign assets control regulations of the United States Treasury Department (31 CFR, Subtitle B, Chapter V, as amended) and any other enabling legislation or executive order relating thereto, and (b) the Patriot Act. No part of the proceeds of the Advances will be used, directly or indirectly, for any payments to any governmental official or employee, political party, official of a political party, candidate for political office, or anyone else acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage, in violation of the United States Foreign Corrupt Practices Act of 1977, as amended.

5. AFFIRMATIVE COVENANTS.

Each Debtor covenants and agrees that, until termination of the Loan Commitment and all of the Obligations are Paid in Full, such Debtor shall, and shall cause each of its Subsidiaries to, do all of the following:

5.1. **Reports and Information**. Furnish to DIP Lender:

(a) At least one Business Day prior to the date of the Initial Advance, the initial Approved Budget, and prior to the adoption thereof, any proposed subsequent modifications or supplements to the Approved Budget;

(b) On or before Thursday of each Fiscal Week, commencing with the first full Fiscal Week following the Petition Date, a Variance Report for the immediately preceding Fiscal Week;

(c) (*Reserved*);

(d) (*Reserved*);

(e) Promptly upon filing its monthly operating report with the U.S. Trustee (unless otherwise agreed to in writing by DIP Lender), deliver or cause to be delivered a copy of such report to DIP Lender;

(f) (*Reserved*);

(g) Within five (5) days after the end of each Fiscal Month, a summary of the amount of Professional Fees and Expenses that have been incurred or accrued (but remain unpaid) as of the end of such Fiscal Month;

(h) Promptly upon receipt thereof, copies of all reports submitted to Debtors by independent certified public accountants in connection with each annual, interim, or special audit of the books of Debtors or any of their Subsidiaries made by such accountants, including any management letter commenting on Debtors' internal controls submitted by such accountants to management in connection with its annual audit;

(i) Except as exigencies may dictate, all draft documents, pleadings and motions, in each case at least three (3) Business Days prior to filing with the Bankruptcy Court and copies of all pleadings, motions, applications, judicial information, financial information and other documents filed by any Debtor with the Bankruptcy Court or the Creditors' Committee (the form and substance of any pleadings or documents related to the sale of the Debtors' assets or the DIP Facility shall be satisfactory to the DIP Lender); and

(j) Promptly following any request therefor, such other information regarding the Collateral, operations, business affairs and financial condition of Debtors, or compliance with the terms of any Loan Document, as DIP Lender may reasonably request.

5.2. **Accounting System**. Maintain a system of accounting that enables Debtors to produce financial statements in accordance with GAAP and maintain records pertaining to the Collateral that contain information as from time to time reasonably may be requested by DIP Lender.

5.3. **Notices of Material Events**. Furnish to DIP Lender prompt written notice of the occurrence of any of the following:

(a) A Default or Event of Default, specifying the nature and extent thereof and the action (if any) which is proposed to be taken with respect thereto;

(b) The filing or commencement of any action, suit or proceeding by or before any arbitrator or Governmental Authority (including, without limitation, any of the foregoing relating to any Environmental Liability or potential Environmental Liability) against or affecting any Debtor or any Subsidiary thereof;

(c) Any development (including, without limitation, any Environmental Liability or potential Environmental Liability) that results in, or would reasonably be expected to result in, a Material Adverse Change;

(d) Any change in Borrower's chief restructuring officer;

(e) The discharge by Debtors of their present independent accountants or any withdrawal or resignation by such independent accountants;

(f) Any collective bargaining agreement or other contract with organized labor to which any Debtor becomes a party, or the application for the certification of a collective bargaining agent;

(g) The filing of any Lien for unpaid Taxes incurred or arising Post-Petition against any Debtor, except those Taxes which are being contested in good faith by appropriate proceedings diligently conducted and for which adequate reserves have been provided in accordance with GAAP;

(h) Any Casualty Event or other damage to any material portion of the Collateral or the commencement of any action or proceeding for the taking of any interest in a material portion of the Collateral or any part thereof or interest therein under power of eminent domain or by condemnation or similar proceeding; and

(i) The issuance of any material license or permit by any Governmental Authority or any alleged non-compliance with, proposed modification to, or termination of any material license or permit issued by any Governmental Authority.

Each notice delivered under this Section shall be accompanied by a statement of a Responsible Officer of Borrower setting forth the details of the event or development requiring such notice and, if applicable, any action taken or proposed to be taken with respect thereto.

5.4. **Material Contracts**. Subject to the Bankruptcy Code, (a) observe and perform all of the terms, covenants, conditions and provisions of the Material Contracts to be observed and performed by it, except to the extent the failure to do so could not reasonably be expected to result in a Material Adverse Change, (b) not do, permit, suffer or refrain from doing anything that would reasonably be expected to result in a material default under or breach of any of the terms of any Material Contract, (c) not cancel, permit the termination of or surrender any Material Contract except as any Material Contract expires in accordance with its terms, and (d) give DIP Lender prompt written notice of any material breach of any Material Indebtedness, or any default, by any Debtor, or the knowledge of any Debtor of any other party, under any Material Contract, and deliver to DIP Lender a copy of each notice of default (other than any such breach or default caused by an Effect of Bankruptcy) or any failure to pay amounts due or the filing of Lien notices, affidavits or the like.

5.5. **Inspection**. Permit DIP Lender and each of its representatives or agents to visit any of its properties and inspect any of its assets or books and records, during normal business hours, to make physical verifications and other appraisals of the Collateral, and business valuations, to examine and make copies of its books and records, and to discuss its affairs, finances, and accounts with, and to be advised as to the same by, its officers and employees at such reasonable times and intervals as DIP Lender may designate and, so long as no Default or Event of Default exists, with reasonable prior notice to Borrower.

5.6. **Maintenance of Properties and Books and Records**. Maintain and preserve:

(a) Subject to Section 6.4, all of its properties which are necessary or useful in the proper conduct of its business in good working order and condition, ordinary wear, tear, and casualty excepted, and comply at all times with the provisions of all material leases to which it is a party as lessee, so as to prevent any loss or forfeiture thereof or thereunder; and

(b) Proper books and records, in which full, true and correct (in all material respects) entries are made of all financial transactions and matters involving their respective properties and businesses consistent with past practices; and in material conformity with all applicable requirements of any Governmental Authority having regulatory jurisdiction over them, as the case may be.

5.7. **Payment of Obligations; Taxes**. Subject to the Bankruptcy Code, pay, and cause its Subsidiaries to pay, its liabilities for Taxes, and claims for labor, materials, or supplies, in each case, to the extent incurred Post-Petition, before delinquency or default or before the expiration of any extension period, except to the extent that the validity of such assessment or Tax shall be the subject of a Permitted Protest. Subject to the Effect of Bankruptcy, each Debtor will, make, and cause its Subsidiaries to make, timely payment or deposit of all Tax payments and withholding Taxes required of them by Applicable Laws, including those laws concerning F.I.C.A., F.U.T.A., state disability, and local, state, and federal income Taxes, and will, upon request, furnish DIP Lender with proof satisfactory to DIP Lender indicating that Debtors or any Subsidiary of Borrower has made such payments or deposits.

5.8. **Insurance**.

(a) At Debtors' expense, maintain insurance respecting Debtors' and their Subsidiaries' assets wherever located, covering loss or damage by fire, theft, explosion, and all other hazards and risks as ordinarily are insured against by other Persons engaged in the same or similar businesses. Each Debtor also shall maintain, and cause its Subsidiaries to maintain, business interruption, public liability, and product liability insurance. Each Debtor shall also maintain, and cause its Subsidiaries to maintain, all insurance coverage as required by any Material Contract or Applicable Law. All such policies of insurance shall be in such amounts and with such insurance companies as are reasonably satisfactory to DIP Lender. Upon the request of the DIP Lender, Borrower shall deliver copies of all such policies to DIP Lender with an endorsement naming DIP Lender as the sole loss payee (under a satisfactory DIP Lender's loss payable endorsement) or additional insured, as appropriate. Each policy of insurance or endorsement shall contain a clause requiring the insurer to give not less than 30 days prior written notice to DIP Lender in the event of cancellation of the policy for any reason (or 10 days prior written notice in the event of cancellation of the policy due to non-payment).

(b) Debtors shall give DIP Lender prompt notice of any loss exceeding $50,000 covered by such insurance. So long as no Event of Default has occurred and is continuing, Debtors shall have the exclusive right to adjust any losses payable under any such insurance policies which are less than $25,000. Following the occurrence and during the continuation of an Event of Default, or in the case of any losses payable under such insurance exceeding $25,000, DIP Lender shall have the exclusive right to adjust any losses payable under any such insurance policies, without any liability to Debtors whatsoever in respect of such adjustments. Any monies received as payment for any loss under any insurance policy mentioned above (other than liability insurance policies) or as payment of any award or compensation for condemnation or taking by eminent domain, shall be paid over to DIP Lender to be applied at the option of DIP Lender either to the prepayment of the Obligations in accordance with Section 2.3(c)(ii) or to be disbursed to Borrower under staged payment terms reasonably satisfactory to DIP Lender for application to the cost of repairs, replacements, or restorations.

5.9. **Location of Offices**. (a) Keep each Debtor's and its Subsidiaries' chief executive offices only at the locations identified on Schedule 4.9(b); provided, however, that Borrower may amend Schedule 4.9(b) so long as such amendment occurs by written notice to DIP Lender not less than 30 days prior to the date on which such chief executive office is relocated, so long as such new location is within the continental United States, and so long as, at the time of such written notification, the Borrower uses commercially reasonable efforts to provide the DIP Lender a Collateral Access Agreement with respect thereto), (b) keep each Debtor's and its Subsidiaries' books and records pertaining to Accounts at locations for which Collateral Access Agreements have been obtained (to the extent any such Collateral Access Agreement is requested by DIP Lender), (c) provide DIP Lender with an updated Schedule 4.7 every 90 days (or more frequently if requested by DIP Lender) and (d) use commercially reasonable efforts to provide DIP Lender with fully executed Collateral Access Agreements within 10 business days of DIP Lender requesting any such Collateral Access Agreement.

5.10. **Compliance with Laws**. Comply with the requirements of all Applicable Laws, rules, regulations, and orders of any Governmental Authority, and all rights, privileges, permits,

licenses and franchises necessary or desirable in the normal conduct of each Debtor's or any of its Subsidiaries' respective businesses.

5.11. **Leases**. Subject to the Bankruptcy Code, pay when due all rents and other amounts incurred Post-Petition under any material leases to which any Debtor or any Subsidiary of any Debtor is a party or by which any Debtor's or any of its Subsidiaries' properties and assets are bound, unless such payments are the subject of a Permitted Protest.

5.12. **Existence**. Subject to the Bankruptcy Code, at all times (a) preserve, renew and maintain in full force and effect each Debtor's and each of its Subsidiaries' respective legal existence and good standing under the Applicable Laws of the jurisdiction of their organization, (b) take all reasonable actions to maintain all rights, privileges, permits, licenses and franchises necessary or desirable in the normal conduct of their respective businesses, (c) use the standard of care typical in the industry in the operation and maintenance of its facilities, and (d) preserve or renew all of their respective registered Intellectual Property as it deems necessary or desirable in its business judgment (provided that the Debtors shall consult with the DIP Lender with respect to any Intellectual Property that any Debtor has determined it will cease to preserve or protect prior to taking or failing to take any relevant action).

5.13. **Use of Proceeds**. The proceeds of all Advances made hereunder will be used only in strict compliance with Section 6.14: (a) for general corporate purposes, in each case to the extent (i) not prohibited by Applicable Law and (ii) expressly permitted under the Loan Documents, the DIP Orders and in accordance with Section 6.14; (b) to refinance the Prepetition Bridge Loans, together with all accrued and unpaid interest, fees and other amounts under the Prepetition Secured Note; (c) to pay fees and expenses of Debtors' professionals in the Chapter 11 Cases, including those associated with the negotiation, execution and delivery of this Agreement and the other Loan Documents and in connection with the transactions contemplated hereby and thereby and, to the extent approved by the Bankruptcy Court and as set forth in the DIP Orders, in connection with the Chapter 11 Cases; and (d) to pay interest, fees and DIP Lender Expenses under this Agreement and the other Loan Documents. No part of the proceeds of any Advance will be used, whether directly or indirectly: (i) to finance in any way any action, suit, arbitration, proceeding, application, motion or other litigation of any type adverse to the interests of DIP Lender or its rights and remedies under this Agreement, the other Loan Documents or any of the DIP Order, including, without limitation, for the payment of any services rendered by the professionals retained by Debtors or an official committee of unsecured creditors 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 (x) invalidating, setting aside, avoiding or subordinating, in whole or in part, the Obligations or the Prepetition Bridge Loans or the Liens securing the Obligations or the Prepetition Bridge Loans, (y) for monetary, injunctive or other affirmative relief against DIP Lender or the Collateral, or (z) preventing, hindering or otherwise delaying the exercise by DIP Lender of any rights and remedies under any of the DIP Orders, the Loan Documents or Applicable Law, or the enforcement or realization (whether by foreclosure, credit bid, further order of the court or otherwise) by DIP Lender upon any of the Collateral, (ii) to make any distribution under a Reorganization Plan, (iii) to make any payment in settlement of any claim, action or proceeding, before any court, arbitrator or other governmental body without the prior written consent of DIP Lender, (iv) to pay any fees or

similar amounts to any Person who has made an offer to Debtors or that has proposed or may propose to purchase shares of Capital Stock in any Debtor without the prior written consent of DIP Lender, or (v) to object to or challenge, or (vi) for any purpose that entails a violation of any of the regulations of the Board, including Regulations U and X.

5.14. **Environmental**. Except as otherwise required by the Bankruptcy Code or by a Final Order, will, and will cause its Subsidiaries to, (a) keep any property either owned or operated by any Debtor or any Subsidiary of any Debtor free of any Environmental Liens or post bonds or other financial assurances sufficient to satisfy the obligations or liability evidenced by such Environmental Liens, (b) comply with Environmental Laws in all material respects, and provide to DIP Lender documentation of such compliance which DIP Lender reasonably requests, (c) promptly notify DIP Lender of any release of a Hazardous Material in any reportable quantity from or onto property owned or operated by any Debtor or any Subsidiary of any Debtor and take any Remedial Actions required to abate said release or otherwise to come into compliance with applicable Environmental Law, and (d) promptly, but in any event within 5 days of its receipt thereof, provide DIP Lender with written notice of any of the following: (i) that an Environmental Lien has been filed against any of the real or personal property of any Debtor or any Subsidiary of any Debtor, (ii) of the commencement of any Environmental Action or notice that an Environmental Action will be filed against any Debtor or any Subsidiary of any Debtor, and (iii) of a violation, citation, or other administrative order which reasonably could be expected to result in a Material Adverse Change.

5.15. **Disclosure Updates**. Promptly and in no event later than five (5) Business Days after obtaining knowledge thereof, notify DIP Lender if any written information, exhibit, or report furnished to DIP Lender contained, at the time it was furnished, any untrue statement of a material fact or omitted to state any material fact necessary to make the statements contained therein not misleading in light of the circumstances in which made. The foregoing to the contrary notwithstanding, any notification pursuant to the foregoing provision will not cure or remedy the effect of the prior untrue statement of a material fact or omission of any material fact nor shall any such notification have the effect of amending or modifying this Agreement or any of the Schedules hereto.

5.16. **Control of Collateral and Control Agreements**. If requested by DIP Lender, take reasonable steps as requested by DIP Lender in order for DIP Lender to obtain control in accordance with the UCC with respect to all of its Collateral Accounts, electronic chattel paper, investment property, and letter of credit rights. For the avoidance of doubt, Debtors hereby acknowledge and agree that the Liens granted hereunder in all such Collateral has been perfected by the DIP Orders without any need of entering into a Control Agreement or taking any other steps to obtain control of such Collateral and any such agreement or such other action shall be in addition to the rights afforded DIP Lender pursuant to the DIP Orders.

5.17. **Further Assurances**. File and prosecute any and all motions, pleadings or other filings with the Bankruptcy Court (in each case in form and substance satisfactory to DIP Lender), execute any and all further documents, financing statements, agreements and instruments, and take all such further actions (including the filing and recording of financing statements and other documents), that may be required under this Agreement, any of the other Loan Documents or any Applicable Law, or which DIP Lender may reasonably request, to effectuate the transactions

contemplated by the Loan Documents or to grant, preserve, protect or perfect the Liens created or intended to be created by the Security Documents or the validity or priority of any such Lien, all at the expense of Debtors. To the extent that DIP Lender elects to file financing statements to further evidence the Liens created hereunder and perfected by the DIP Orders, each Debtor agrees that the Collateral may be described therein as "all assets" or words of similar import.

5.18. **Bankruptcy Related Affirmative Covenants; Milestones**.

(a) Promptly provide DIP Lender with updates of any material developments in connection with each Debtor's sale under the Chapter 11 Cases.

(b) Promptly, punctually, and faithfully perform all and singular the terms and conditions of the DIP Orders.

(c) Comply with each of the following Bankruptcy milestones (the "Milestones"):

(i) No later than five (5) days after the Petition Date, the Bankruptcy Court shall have entered the Interim DIP Order in form and substance satisfactory to the DIP Lender.

(ii) No later than thirty (30) days after the Petition Date, the Bankruptcy Court shall have entered the Final DIP Order in form and substance satisfactory to the DIP Lender.

(iii) No later than two (2) days after the Petition Date, the Debtors shall have filed a motion to sell, and to approve bidding procedures for a 363 Sale of all of Debtors' assets to the DIP Lender, in manner, form and substance acceptable to DIP Lender (the "Sale and Bidding Procedures Motion").

(iv) No later than thirty (30) days after the Petition Date, the Bankruptcy Court shall have entered a Final Order (the "Bid Procedures Order") in form and substance acceptable to the DIP Lender, approving the bidding procedures set forth in the Sale and Bidding Procedures Motion.

(v) No later than sixty-six (66) days after the Petition Date, the Bankruptcy Court shall have entered a Final Order (the "Sale Order") in form and substance acceptable to the Lender, approving the 363 Sale of all of Debtors' assets to the DIP Lender.

(vi) No later than fifteen (15) days after the entry of the Sale Order, the Debtors shall have consummated the 363 Sale of all of Debtors' assets to the DIP Lender in a manner consistent with the Sale Order.

5.19. **Approved Budget; Variance Reports**.

(a) The initial Approved Budget shall be the budget attached to the Interim DIP Order.

(b) The Approved Budget may be amended by Borrower at any time with the prior written consent of DIP Lender.

(c) Any Advances under this Agreement shall be limited in accordance with the Approved Budget (subject to any variances permitted under this Agreement or the DIP Orders). The initial Approved Budget shall be attached to the Interim DIP Order.

(d) The Approved Budget may be updated, modified, or supplemented from time to time, and each such updated, modified, or supplemented budget shall be subject to approval by, and in form and substance satisfactory to, DIP Lender in its sole discretion. Each proposed Approved Budget shall be prepared in good faith based upon the assumptions which Borrower believes to be reasonable and are satisfactory to DIP Lender.

5.20. **Professional Fee Reserve**. Subject in all respects to the DIP Order, on the date of the Interim Advance, the Borrower shall deposit into a segregated account funds in an amount equal to the aggregate total of (i) fees anticipated to be paid to the Clerk of the Court and to the U.S. Trustee pursuant to 28 U.S.C. §1930(a) *plus* interest at the statutory rate, if any, pursuant to 31 U.S.C § 3717, (ii) all anticipated professional fees of the Borrower and anticipated professional fees of the Creditors' Committee for the period beginning on the Petition Date through the consummation of the 363 Sale and (iii) any other amounts constituting part of the Professional Fee Reserve (as defined in the DIP Order), which such funds shall be held in such segregated account by Borrower for the benefit of and the purposes set out in the DIP Orders and shall be disbursed by Borrower as the applicable invoices are approved by the Bankruptcy Court, as further detailed in the DIP Orders and in a manner consistent with the Approved Budget.

5.21. **Post-Closing Requirements**. Comply with the requirements set forth on Schedule 5.21.

6. NEGATIVE COVENANTS.

Each Debtor covenants and agrees that, until termination of the Loan Commitment and all of the Obligations are Paid in Full, such Debtor will not, and will not permit any of its Subsidiaries to, do any of the following:

6.1. **Indebtedness**. Create, incur, assume, suffer to exist, guarantee, or otherwise become or remain, directly or indirectly, liable with respect to any Indebtedness, except Permitted Indebtedness.

6.2. **Liens**. Create, incur, assume, or suffer to exist, directly or indirectly, any Lien on or with respect to any of its assets, of any kind, whether now owned or hereafter acquired, or any income or profits therefrom, except for Permitted Liens, CrossFirst Liens and the Carve-Out.

6.3. **Restrictions on Fundamental Changes**. Other than as required or permitted hereunder or under the DIP Orders:

(a) Enter into any merger, consolidation, reorganization, or recapitalization, or reclassify its Capital Stock;

(b) Liquidate, wind up, or dissolve or suffer any liquidation or dissolution;

(c) Dispose of all or any substantial part of its assets, in one transaction or a series of transactions; or

(d) Issue any additional shares of Capital Stock of any Debtor or any of its Subsidiaries.

6.4. **Disposal of Assets.** Convey, sell, lease, license, assign, transfer, or otherwise dispose of any of the assets of any Debtor or any Subsidiary, including any Capital Stock, except Permitted Dispositions.

6.5. **Change Name**. Change any Debtor's or any Subsidiaries' name, organizational identification number, state of organization, or organizational identity without DIP Lender's prior written consent.

6.6. **Nature of Business**. Make any change in the principal nature of their business as of the type conducted by Debtors on the Effective Date.

6.7. **Restricted Payments; Certain Payments of Indebtedness**.

(a) Declare or make, or agree to pay or make, directly or indirectly, any Restricted Payment.

(b) Make, distribute or agree to pay, make or distribute, directly or indirectly, any payment or other distribution (whether in cash securities or other property) of or in respect of principal of, or interest, premium or fees on, any Indebtedness, including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, acquisition, cancellation or termination of any Indebtedness, except any such payments or prepayments (i) required to be made under the DIP Orders, and (ii) expressly authorized by DIP Lender in writing.

6.8. **Change of Control**. Cause, permit, or suffer, directly or indirectly, any Change of Control.

6.9. **Consignments**. Consign any of their Inventory or sell any of their Inventory on bill and hold, sale or return, sale on approval, or other conditional terms of sale.

6.10. **Accounting Methods**. Modify or change their fiscal year or their method of accounting without the prior written consent of DIP Lender or enter into, modify, or terminate any agreement currently existing, or at any time hereafter entered into with any third party accounting firm or service bureau for the preparation or storage of Debtors' or their Subsidiaries' accounting records without said accounting firm or service bureau agreeing to provide DIP Lender information regarding Debtors' and their Subsidiaries' financial condition.

6.11. **Investments**.

(a) Except for Permitted Investments, directly or indirectly, make or acquire any Investment, or incur any liabilities (including contingent obligations) for or in connection with any Investment.

(b) Permit its Subsidiaries to, form any additional Subsidiaries or enter into any joint venture without the prior written consent of DIP Lender.

6.12. **Transactions with Affiliates**. Except as set forth in Schedule 6.12, directly or indirectly enter into or permit to exist any transaction with any Affiliate of any Debtor; provided, the foregoing restriction shall not apply (to the extent that the same are not inconsistent with the orders of the Bankruptcy Court or with the Bankruptcy Code and are reflected in the Approved Budget) to transactions that (a) are in the ordinary course of Debtors' business, (b) are upon fair and reasonable terms, (c) if they involve one or more payments by any Debtor or any Subsidiaries in excess of $50,000, any such payments and transactions are fully disclosed to DIP Lender, (d) are no less favorable to Debtors or their Subsidiaries, as applicable, than would be obtained in an arm's length transaction with a similarly situated non-Affiliate, and (e) are not prohibited under this Agreement (including, without limitation, Permitted Dispositions, Permitted Investments and Permitted Indebtedness).

6.13. **Inventory and Equipment with Bailees**. Store any material portion of the Inventory or Equipment of any Debtor at any time now or hereafter with a bailee, warehouseman, or similar party.

6.14. **Compliance with the Approved Budget**. Contract for, purchase or make any expenditure (including any Capital Expenditure) except in accordance with the Approved Budget and for replacements of fixed assets or improvements to the extent made from insurance proceeds arising from the damage, destruction, or loss of Equipment or other capital assets, to the extent such expenditure(s) is approved by DIP Lender in its sole discretion.

6.15. **Restrictive Agreements**. Other than as in accordance with the DIP Orders, incur or permit to exist any agreement or other arrangement that prohibits, restricts or imposes any condition upon the ability of any Debtor to create, incur or permit to exist any Lien upon any of its property or assets; provided that the foregoing shall not apply to (i) restrictions and conditions imposed by Applicable Law or by any Loan Document, (ii) restrictions or conditions imposed by any agreement relating to secured Indebtedness permitted by this Agreement if such restrictions or conditions apply only to the property or assets securing such Indebtedness, (iii) customary provisions in leases restricting the assignment or subleasing thereof, and (iv) licenses or contracts which by the terms of such licenses and contracts prohibit the granting of Liens on the rights contained therein.

6.16. **Amendment of Material Documents**. Amend, modify or waive: (a) (i) its Governing Documents, (ii) any Material Contract, or (iii) any agreement or document governing its Indebtedness, or (b) the subordination, payment or maturity provisions of any Indebtedness subordinated to the Obligations.

6.17. **Bankruptcy Related Negative Covenants**. No Debtor will seek, consent to, or permit to exist any of the following:

(a) (*Reserved*);

(b) Any order which authorizes the assumption or rejection of any executory contract or unexpired lease of any Debtor, without DIP Lender's prior written consent, such consent not to be unreasonably withheld, delayed or conditioned;

(c) Any modification, stay, vacation or amendment to any DIP Order to which DIP Lender has not consented in writing, such consent not to be unreasonably withheld, delayed or conditioned;

(d) A priority claim or administrative expense or unsecured claim against any Debtor (now existing or hereafter arising or any kind or nature whatsoever, including, without limitation, any administrative expense of the kind specified in Sections 105, 326, 328, 330, 331, 364(c), 503(a), 503(b), 506(c), 507(a), 507(b), 546(c), 546(d), 726 or 1114 of the Bankruptcy Code) equal or superior to the priority claim of DIP Lender in respect of the Obligations;

(e) Any Lien on any Collateral having a priority equal or superior to the Lien securing the Obligations, other than the Carve-Out;

(f) Any order which authorizes the return of any of the Debtors' property pursuant to Section 546(h) of the Bankruptcy Code, provided that the foregoing shall not prohibit any Debtor from returning any consigned inventory to consignors on such terms as are satisfactory to DIP Lender;

(g) Any order which authorizes the payment of any Indebtedness (other than the Prepetition Bridge Loans, payments permitted pursuant to the DIP Orders or otherwise consented to by DIP Lender) incurred prior to the Petition Date; or

(h) Any order seeking authority to take any action that is prohibited by the terms of this Agreement or the other Loan Documents or refrain from taking any action that is required to be taken by the terms of this Agreement or any of the other Loan Documents.

7. EVENTS OF DEFAULT.

If any of the following events (each, an "Event of Default") shall occur and be continuing:

(a) If any Debtor fails to pay within three (3) Business Days after the same becomes due and payable, or declared due and payable, all or any portion of the Obligations; provided that any payment of Obligations to be made from the proceeds of any 363 Sale shall be made directly from the applicable purchaser to the DIP Lender concurrently with such 363 Sale (and any failure to so pay such Obligations shall constitute an immediate Event of Default); or

(b) If any representation, warranty, certification or statement of fact made or deemed made by or on behalf of any Debtor herein, in any other Loan Document or in any document delivered in connection herewith or therewith shall be incorrect or misleading in any material respect when made or deemed made; or

(c) If any Debtor, or any Subsidiary, fails to perform or observe any covenant or other agreement contained in any of Sections 2.6, 5.1, 5.3, 5.5, 5.12, 5.13, 5.15, 5.16, 5.18, 5.19, 5.21 and 6.1 through 6.17 of this Agreement; or

(d) If Borrower, or any Subsidiary of Borrower, fails to perform or observe any covenant or other agreement contained in this Agreement, or in any of the other Loan Documents in each case, other than any such covenant or agreement that is the subject of another provision of this Section 7 (in which event such other provision of this Section 7 shall govern), and such failure continues for a period of five (5) days after the earlier of (i) the date on which such failure shall first become known to any Financial Officer or Responsible Officer of any Debtor or (ii) written notice thereof is given to Borrower by DIP Lender; or

(e) If any material portion of any Debtor's or any Subsidiary's assets is attached, seized, subject to a writ or distress warrant, or is levied upon, or comes into the possession of any third Person and the same is not discharged before the earlier of thirty (30) days after the date it first arises or five (5) days prior to the date on which such property or asset is subject to forfeiture; or

(f) Any Debtor or any Subsidiary shall fail to make any payment (whether of principal or interest and regardless of amount) in respect of any Material Indebtedness incurred Post-Petition when and as the same shall become due and payable (after giving effect to the expiration of any grace or cure period set forth therein); or

(g) Except for defaults occasioned by the Effect of Bankruptcy and defaults resulting from obligations with respect to which the Bankruptcy Code prohibits a Debtor or a Subsidiary from complying or permits a Debtor or a Subsidiary not to comply, a default, breach or condition occurs under any other agreement, document or instrument entered into Post-Petition, to which the applicable Debtor or Subsidiary, is a party that is not cured within any applicable grace period therefor, and such default or breach results in any Material Indebtedness incurred Post-Petition becoming due prior to its scheduled maturity or that enables or permits (with or without the giving of notice, the lapse of time or both) the holder or holders of any such Material Indebtedness or any trustee or agent on its or their behalf to cause any such Material Indebtedness to become due, or to require the prepayment, repurchase, redemption or defeasance thereof, prior to its scheduled maturity, or cash collateral in respect thereof to be demanded; or

(h) A Change of Control shall occur; or

(i) The determination of any Debtor, whether by vote of such Debtor's Board of Directors or otherwise, to suspend the operation of the business of such Debtor or to liquidate all or substantially all of such Debtor's assets; or

(j) If any Debtor or any Subsidiary is enjoined, restrained, or in any way prevented by court order from continuing to conduct all or any material part of its business; or

(k) There is entered against any Debtor or any Subsidiary: (i) a final judgment or order for the payment of money in an aggregate amount exceeding the $50,000 (to the extent not covered by independent third-party insurance as to which the insurer does not dispute coverage), or (ii) any one or more non-monetary final judgments that have, or could reasonably be

expected to have, individually or in the aggregate, a materially adverse effect on any Debtor or the operation of its business and, in either case: (A) enforcement proceedings are commenced by any creditor upon such judgment or order; or (B) there is a period of thirty (30) consecutive days during which a stay of enforcement of such judgment, by reason of a pending appeal or otherwise, is not in effect; or

(l) (i) An ERISA Event occurs with respect to a Pension Plan or Multiemployer Plan or (ii) Borrower or any ERISA Affiliate fails to pay when due, after the expiration of any applicable grace period, any installment payment with respect to its withdrawal liability under Section 4201 of ERISA under a Multiemployer Plan; or

(m) Any provision of any Loan Document shall at any time for any reason be declared to be null and void, or any challenge by or on behalf of any Debtor to the validity of any Loan Document or the enforceability of any Loan Document strictly in accordance with the subject Loan Document's terms or which seeks to void, avoid, limit, or otherwise adversely affect any security interest created by or in any Loan Document or any payment made pursuant thereto; or

(n) Any challenge by or on behalf of any other Person to the validity of any Loan Document or the enforceability of any Loan Document strictly in accordance with the subject Loan Document's terms or which seeks to void, avoid, limit, or otherwise adversely affect any security interest created by or in any Loan Document or any payment made pursuant thereto, in each case, as to which an order or judgment has been entered adverse to DIP Lender; or

(o) Any Lien purported to be created under this Agreement or any Security Document shall cease to be, or shall be asserted by any Debtor not to be, a valid and perfected Lien on any Collateral, with the priority required by this Agreement or the applicable Security Document, except as a result of the sale, release or other disposition of the applicable Collateral in a transaction permitted under the Loan Documents or the failure of DIP Lender, through its acts or omissions and through no fault of any Debtor, to maintain the perfection of its Liens in accordance with Applicable Law; or

(p) The occurrence of any uninsured loss to any portion of the Collateral, which loss could reasonably be expected to have a Material Adverse Change; or

(q) The imposition of any stay or other order, the effect of which restrains the conduct by the Debtors, taken as a whole, of their business in the ordinary course and that could reasonably be expected to have a Material Adverse Change; or

(r) The entry of an order in any Chapter 11 Case which amends, supplements, stays, modifies, vacates or reverses any DIP Order or which otherwise materially adversely affects the effectiveness of any DIP Order or the filing of any motion or other pleading requesting such relief that is not timely opposed by the Debtors, in each case, without the express written consent of DIP Lender; or

(s) (i) The appointment in any Chapter 11 Case of a trustee for any Debtor under Section 1104 of the Bankruptcy Code or (ii) the filing of a motion or other pleading requesting such relief that is not timely opposed by Debtors; or

(t) (i) The appointment in any Chapter 11 Case of a trustee or of any examiner having expanded powers to operate all or any part of Debtors' business, (ii) the filing of a motion or other pleading requesting such relief that is not timely opposed by Debtors or (iii) the conversion of any Chapter 11 Case to a case under Chapter 7 of the Bankruptcy Code; or

(u) The entry of any order (other than the DIP Orders) which provides relief from the automatic stay otherwise imposed pursuant to Section 362 of the Bankruptcy Code to any creditor with a claim in excess of $50,000 (unless otherwise provided in the DIP Order) or which permits any creditor to (i) realize upon, or to exercise any right or remedy with respect to, any Collateral, or (ii) to terminate any license, franchise, or similar agreement, where the exercise of such right or remedy or such realization or termination would reasonably be likely to have a Material Adverse Change; or

(v) The filing of any application by any Debtor without the express prior written consent of DIP Lender for the approval of any super-priority claim in any Chapter 11 Case which is *pari passu* with or senior to the priority of the claims of DIP Lender for the Obligations, or there shall arise any such super-priority claim under the Bankruptcy Code; or

(w) The payment or other discharge by any Debtor of any Prepetition Indebtedness, except as expressly permitted hereunder, under the DIP Orders, or in the Approved Budget or by order in any Chapter 11 Case to which order DIP Lender has provided its written consent; or

(x) The process for the 363 Sale of all of Debtors' assets to the DIP Lender described in the Sale and Bidding Procedures Motion (or, after entered, the Bid Procedures Order) is terminated; or

(y) Exclusivity between the Debtors and the DIP Lender (or its affiliates) shall have been terminated or any Debtor shall have agreed to any such termination; or

(z) The Sale Order or the Bid Procedures Order shall cease to be in full force and effect, shall have been reversed, stayed, vacated or subject to stay pending appeal or, without the prior approval of the DIP Lender, shall have been modified or amended; or

(aa) Any Debtor shall take any action or shall support any other Person in taking any action to restrict or prohibit the DIP Lender (whether in its capacity as the lender under the Prepetition Secured Note or as the lender hereunder) from submitting a "credit bid" for any assets of the Debtors in accordance with Bankruptcy Code 363(k); or

(bb) Failure by Debtors to disburse the proceeds of the 363 Sale to the DIP Lender (in its capacity as the lender under the Prepetition Secured Note or as the lender hereunder, as applicable) contemporaneously with the closing of the 363 Sale; or

(cc) The entry of any order in any Chapter 11 Case which provides adequate protection, or the granting by any Debtor of similar relief in favor of any one or more of any Debtor's Prepetition creditors, contrary to the terms and conditions of any DIP Order or the terms hereof; or

(dd) The failure of Debtors to comply in all material respects with each and all of the terms and conditions of the DIP Orders; or

(ee) The filing of any motion by any Debtor seeking, or the entry of any order in any Chapter 11 Case: (i) (A) permitting working capital, Post-Petition loans, exit financing, permanent or long-term financing or other financial accommodations for Borrower or any other Debtor from any Person other than DIP Lender, (B) granting a Lien on, or security interest in (other than a Permitted Lien and the Carve-Out) any of the Collateral, other than with respect to this Agreement, (C) except as permitted by this Agreement, permitting the use of any of the Collateral pursuant to Section 363(c) of the Bankruptcy Code without the prior written consent of DIP Lender, (D) permitting recovery from any portion of the Collateral any costs or expenses of preserving or disposing of such Collateral under Section 506(c) of the Bankruptcy Code, or (E) dismissing any Chapter 11 Case or (ii) the filing of any motion by any party in interest or any Creditors' Committee appointed in any Chapter 11 Case seeking any of the matters specified in the foregoing clause (i) that is not dismissed or denied within the later of (x) the soonest available time for a hearing before the Bankruptcy Court seeking the dismissal of such motion, and (y) thirty (30) days of the date of the filing of such motion (or such later date agreed to in writing by DIP Lender); or

(ff) The filing of any application by any Debtor without the express prior written consent of DIP Lender for an order substituting any assets for all or any portion of the Collateral;

(gg) The filing of a motion by a Debtor seeking approval of a disclosure statement and a Reorganization Plan, or any action by any Debtor supporting a Reorganization Plan, or the entry of an order confirming a Reorganization Plan, in each case that is not an Acceptable Plan; or

(hh) (i) The filing of any pleading by any Debtor, or the entry of any order challenging or invalidating the validity, priority, perfection, or enforceability of the Loan Documents, the Obligations, or any Lien granted pursuant to the Loan Documents to secure the Obligations, or (ii) any Lien granted pursuant to the Loan Documents is determined to be null and void, invalid or unenforceable by the Bankruptcy Court or another court of competent jurisdiction in any action commenced or asserted by any other party in interest in any Chapter 11 Case, including, without limitation, the Creditors' Committee; or

(ii) The filing of any motion, pleading, or proceeding by the Borrower, or the entry of any order, that could reasonably be expected to materially impair the rights or interests of DIP Lender; or

(jj) Any of the Events of Default (as defined in the DIP Orders) has occurred and is continuing.

8. RIGHTS AND REMEDIES ON DEFAULT.

8.1. **Rights and Remedies**.

(a) Subject to the terms of the DIP Orders, upon the occurrence, and during the continuation, of an Event of Default, DIP Lender may do any one or more of the following, all of which are authorized by each Debtor:

(i) Terminate the Loan Commitment, reduce the Available Commitment Amount to $0.00, and thereupon the DIP Lender shall no longer have any commitment to make Advances hereunder and such termination of the Loan Commitment shall be irrevocable and immediate;

(ii) Declare all or any portion of the Obligations, whether evidenced by this Agreement, by any of the other Loan Documents, or otherwise, due and payable, and thereupon the principal of the Advances and all other Obligations so declared to be due and payable, together with accrued interest thereon and all fees and other obligations of the Debtors accrued under Loan Documents, shall become due and payable immediately, without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Debtors;

(iii) (*Reserved*);

(iv) Terminate this Agreement and any of the other Loan Documents as to any future liability or obligation of DIP Lender, but without affecting any of DIP Lender's Liens in the Collateral and without affecting the Obligations;

(v) settle or adjust disputes and claims directly with Account Debtors on accounts of Debtors for amounts on terms and in any order that DIP Lender considers advisable, notify any Person owing any Debtor money of DIP Lender's Lien on such funds, and verify the amount of such account. Debtors shall collect all payments in trust for DIP Lender and, if requested by DIP Lender, immediately deliver the payments to DIP Lenders in the form received from the Account Debtor, with proper endorsement for deposit;

(vi) make any payments and do any acts it considers necessary or reasonable to protect the Collateral and/or its Lien upon the Collateral. During the continuance of an Event of Default, Debtors shall assemble the Collateral if DIP Lender so requests and make it available as DIP Lender so designates. DIP Lender may enter the premises where the Collateral is located, take and maintain possession of any part of the Collateral, and pay, purchase, contest, or compromise any Lien which appears to be prior or superior to DIP Lender's Lien thereon and pay all expenses incurred. Each Debtor grants DIP Lender a license to enter and occupy any of its premises, without charge, to exercise any of DIP Lender's rights or remedies during the continuance of an Event of Default;

(vii) apply to the Obligations any amount held by DIP Lender owing to or for the credit or the account of any Debtor;

(viii) ship, reclaim, recover, store, finish, maintain, repair, prepare for sale, advertise for sale, and sell the Collateral. DIP Lender is hereby granted a non-exclusive, royalty-free license or other right to use, during the continuance of an Event of Default, without charge, any Debtor's or any Subsidiaries' labels, patents, copyrights, mask works, rights of use of any name, trade secrets, trade names, trademarks, service marks, and advertising matter, or any similar property as it pertains to the Collateral, in completing production of, advertising for sale, and selling any Collateral and, in connection with DIP Lender's exercise of its rights under this Section, Debtors' and each Subsidiaries' rights under all licenses and all franchise agreements inure to DIP Lender;

(ix) deliver a notice of exclusive control, any entitlement order, or other directions or instructions pursuant DIP Lender's perfected security interest hereunder and under the DIP Orders in all applicable Collateral (and, to the extent delivered hereunder, pursuant to any Control Agreement);

(x) demand and receive possession of the Books and Records of Debtors;

(xi) set-off any amounts held as cash collateral; and

(xii) exercise all default rights and remedies available to the DIP Lender under the Loan Documents or at law or equity, including all default remedies under the UCC (including disposal of the collateral (including all Collateral) pursuant to the terms thereof) to obtain the full and indefeasible payment of the Obligations.

(b) (***Reserved***).

DIP Lender shall have all other rights and remedies available at law or in equity or pursuant to any other Loan Document or pursuant to the DIP Orders.

None of the Debtors, the Creditors' Committee, or any other party-in-interest shall have the right to contest the enforcement of remedies set forth in the DIP Orders and the Loan Documents on any basis other than an assertion that an Event of Default has not occurred or has been cured within the cure periods expressly set forth in the applicable Loan Documents or the DIP Orders. Debtors shall cooperate fully with the DIP Lenders in their exercise of rights and remedies, whether against the Collateral or otherwise. Each Debtor hereby waives any right to seek relief under the Bankruptcy Code, including under Section 105 thereof, to the extent such relief would restrict or impair the rights and remedies of the DIP Lender set forth in the DIP Orders and in the Loan Documents.

Subject to the DIP Orders, in case any one or more of the covenants and/or agreements set forth in this Agreement or any other Loan Document or in the DIP Orders shall have been breached by any Debtor, then the DIP Lender may proceed to protect and enforce its rights either by suit in equity and/or by action at law, including an action for damages as a result of any such breach and/or an action for specific performance of any such covenant or agreement contained in this Agreement or such other Loan Document. Without limitation of the foregoing, each Debtor agrees that failure to comply with any of the covenants contained herein will cause irreparable harm and that specific

performance shall be available in the event of any breach thereof. The DIP Lender shall be indemnified by Debtors against all liability, loss or damage, together with all reasonable costs and expenses related thereto (including reasonable legal and accounting fees and expenses) in accordance with the terms hereof.

8.2. **Power of Attorney**. Each Debtor hereby irrevocably appoints DIP Lender as its lawful attorney-in-fact, to take any of the following actions during the continuance of an Event of Default: (a) if any Debtor refuses to, or fails timely to execute and deliver any of the documents required to be delivered by it pursuant to the terms hereof, sign the name of the applicable Debtor on any of such documents, (b) endorse the applicable Debtor's name on any checks or other forms of payment or security, sign the applicable Debtor's name on any invoice or bill of lading for any account or drafts against Account Debtors or sign the applicable Debtor's name on any notices to Account Debtors, (c) send requests for verification of Accounts, (d) endorse the applicable Debtor's name on any collection item that may come into DIP Lender's possession, (e) at any time that an Event of Default has occurred and is continuing, make, settle, and adjust all claims under Debtors' policies of insurance and make all determinations and decisions with respect to such policies of insurance, (f) at any time that an Event of Default has occurred and is continuing, take control, in any manner, of any item of payment or proceeds relating to any Collateral, (g) at any time that an Event of Default has occurred and is continuing, prepare, file, and sign any Debtor's name to a proof of claim in bankruptcy or similar document against any Account Debtor, or to any notice of lien, assignment, or satisfaction of lien or similar document in connection with any of the Collateral, (h) at any time that an Event of Default has occurred and is continuing, receive, open and dispose of all mail addressed to any Debtor, and notify postal authorities to change the address for delivery thereof to such address as DIP Lender may designate, (i) at any time that an Event of Default has occurred and is continuing, use the information recorded on or contained in any data processing equipment, computer hardware, and software relating to the Collateral, (j) at any time that an Event of Default has occurred and is continuing, settle and adjust disputes and claims respecting the Accounts, Chattel Paper or General Intangibles directly with Account Debtors, for amounts and upon terms that DIP Lender determines to be reasonable, and DIP Lender may cause to be executed and delivered any documents and releases that DIP Lender determines to be necessary, (k) at any time file UCC-3 assignments reflecting DIP Lender as assignee of any Debtor with respect to any UCC-1 financing statements filed by Debtors in connection with Collateral, (l) at any time that an Event of Default has occurred and is continuing, cause an Account Debtor's insurers to add DIP Lender as loss payee under the relevant insurance policy, (m) at any time that an Event of Default has occurred and is continuing, pay, contest or settle any Lien, charge or adverse claim in, to or upon any or all of the Collateral, or any judgment based thereon, or otherwise take any action to terminate or discharge the same, (n) at any time that an Event of Default has occurred and is continuing, transfer any Collateral into the name of DIP Lender or a third party as the Uniform Commercial Code permits, and (o) do all other acts and things necessary, in DIP Lender's determination, to fulfill each Debtor's obligations under this Agreement. Each Debtor hereby appoints DIP Lender as its lawful attorney-in-fact to sign such Debtor's name on any documents necessary to perfect or continue the perfection of any security interest in the Collateral regardless of whether an Event of Default has occurred until all Obligations have been Paid in Full. DIP Lender's foregoing appointment as the attorney-in-fact for each Debtor, and all of DIP Lender's rights and powers, being coupled with an interest, are irrevocable until all Obligations have been Paid in Full and performed when due (as applicable).

8.3. **Remedies Cumulative**. The rights and remedies of DIP Lender under this Agreement, the other Loan Documents, and all other agreements shall be cumulative. DIP Lender shall have all other rights and remedies not inconsistent herewith as provided under the UCC, by law, or in equity. No exercise by DIP Lender of one right or remedy shall be deemed an election, and no waiver by DIP Lender of any Event of Default shall be deemed a continuing waiver. No delay by DIP Lender shall constitute a waiver, election, or acquiescence by it.

9. APPLICATION OF PROCEEDS ON DEFAULT.

After the occurrence of both an Event of Default and the commencement of an Enforcement Action relating to such Event of Default, subject to the Carve-Out, any and all proceeds of Collateral shall be applied in the following order:

(a) first, to pay any reasonable and documented costs and expenses (including reasonable and documented attorneys' fees) incurred by DIP Lender or any DIP Lender in connection with the Agreement, any Enforcement Action or any Loan Document;

(b) second, to pay, first to accrued interest arising hereunder that has not yet been capitalized, and then to the Principal Amount (including interest paid in kind), until Paid in Full;

(c) third, to pay the remaining Obligations; and

(d) last, the balance, if any, after all of the Obligations have been Paid in Full, to the Borrower or as otherwise directed by the Bankruptcy Court or any applicable Final Order.

10. TAXES AND EXPENSES.

10.1. **Taxes**.

(a) DIP Lender shall provide to Borrower on or before the Effective Date a validly executed IRS Form W-9. All payments of principal and interest on the Advances and all other amounts payable hereunder shall be made free and clear of and without deduction for any present or future income, gross receipts, excise, stamp, documentary, sales, use, payroll, employment, property, branch profits or franchise taxes and all other taxes, fees, duties, levies, assessments, withholdings (including backup withholdings) and other charges of any nature whatsoever (including interest, penalties and additions thereon) imposed by any Governmental Authority, excluding taxes imposed on or measured by DIP Lender's net income by the jurisdiction under which DIP Lender is organized or conducts business (other than solely as the result of entering into any of the Loan Documents or taking any action thereunder) (all non-excluded items being called a "Tax" or "Taxes"). If any withholding or deduction from any payment to be made by Borrower hereunder is required in respect of any Taxes pursuant to any Applicable Law, then Borrower will: (i) pay directly to the relevant authority the full amount required to be so withheld or deducted; (ii) promptly forward to DIP Lender an official receipt or other documentation satisfactory to DIP Lender evidencing such payment to such authority; and (iii) pay to DIP Lender for the account of DIP Lender such additional amount or amounts as is necessary to ensure that the net amount actually received by DIP Lender (as reduced by all deductions and withholdings, including deductions and withholdings on such additional payments) will equal the full amount

DIP Lender would have received had no such withholding or deduction been required. If any Taxes are directly asserted against DIP Lender with respect to any payment received by DIP Lender hereunder, DIP Lender may pay such Taxes and Borrower will promptly pay to DIP Lender such additional amounts (including any penalty, interest or expense) as is necessary in order that the net amount received by DIP Lender after the payment of such Taxes (including any Taxes on such additional payments) shall equal the amount DIP Lender would have received had such Taxes not been asserted.

(b) If Borrower fails to pay any Taxes when due to the appropriate taxing authority or fails to remit to DIP Lender, for the account of DIP Lender, the required receipts or other required documentary evidence, Borrower shall indemnify DIP Lender for any incremental Taxes (including any penalty, interest or expense) that may become payable by DIP Lender as a result of any such failure.

10.2. **Reserved**.

10.3. **Payment of other Amounts**. If Borrower fails to pay any monies (whether Taxes, assessments, insurance premiums, or, in the case of leased properties or assets, rents or other amounts payable under such leases) due to third Persons, or fails to make any deposits or furnish any required proof of payment or deposit, all as required under the terms of this Agreement, then, DIP Lender, in its sole discretion and without prior notice to Borrower, may do any or all of the following: (a) make payment of the same or any part thereof, (b) designate a portion of the Available Commitment Amount as reserves to the extent DIP Lender deems necessary to protect it from the exposure created by such failure, or (c) in the case of the failure to comply with Section 5.8 hereof, obtain and maintain insurance policies of the type described in Section 5.8 and take any action with respect to such policies as DIP Lender deems prudent. Any such amounts paid by DIP Lender shall constitute Advances and any such payments shall not constitute an agreement by DIP Lender to make similar payments in the future or a waiver by DIP Lender of any Event of Default under this Agreement. DIP Lender need not inquire as to, or contest the validity of, any such expense, Tax, or Lien and the receipt of the usual official notice for the payment thereof shall be conclusive evidence that the same was validly due and owing.

11. WAIVERS; INDEMNIFICATION.

11.1. **Demand; Protest, etc**. Each Debtor waives demand, protest, notice of protest, notice of default or dishonor, notice of payment and nonpayment, nonpayment at maturity, release, compromise, settlement, extension, or renewal of documents, instruments, chattel paper, and guarantees at any time held by DIP Lender on which Borrower may in any way be liable.

11.2. **DIP Lender's Liability for Collateral**. Borrower hereby agrees that: (a) so long as DIP Lender complies with its obligations, if any, under the DIP Orders, DIP Lender shall not in any way or manner be liable or responsible for: (i) the safekeeping of the Collateral, (ii) any loss or damage thereto occurring or arising in any manner or fashion from any cause, (iii) any diminution in the value thereof, or (iv) any act or default of any carrier, warehouseman, bailee, forwarding agency, or other Person, and (b) all risk of loss, damage, or destruction of the Collateral shall be borne by Borrower.

11.3. **Indemnification**.

(a) Borrower shall pay, indemnify, defend, and hold the DIP Lender-Related Persons (each, an "Indemnified Person") harmless (to the fullest extent permitted by Applicable Law) from and against any and all claims, demands, suits, actions, investigations, proceedings, liabilities, fees, losses, penalties and damages, and all attorneys', experts' and consultants' fees and disbursements and other costs and expenses actually incurred in connection therewith or in connection with the enforcement of this indemnification (as and when they are incurred and irrespective of whether suit is brought), at any time asserted against, imposed upon, or incurred by any of them (a) in connection with, or as a result of, or related to the execution, delivery, enforcement, performance, or administration (including any restructuring or workout with respect hereto) of this Agreement, any of the other Loan Documents, or the transactions contemplated hereby or thereby, any amendment hereto or thereto, or the monitoring of Borrower's and its Subsidiaries' compliance with the terms of the Loan Documents, and (b) with respect to any investigation, litigation, or proceeding related to this Agreement, any other Loan Document, or the use of the proceeds of the credit provided hereunder (irrespective of whether any Indemnified Person is a party thereto), or any act, omission, event, or circumstance in any manner related thereto (all the foregoing, collectively, the "Indemnified Liabilities"). The foregoing to the contrary notwithstanding, Borrower shall have no obligation to any Indemnified Person under this Section 11.3 with respect to any Indemnified Liability that a court of competent jurisdiction finally determines to have resulted from the gross negligence or willful misconduct of such Indemnified Person. This provision shall survive the termination of this Agreement, the repayment of the Obligations and any assignment by a DIP Lender pursuant to Section 14 (it being understood and agreed that the Borrower's obligations under this provision shall continue to apply to any such assigning DIP Lender with respect to any Indemnified Liabilities that arise from or relate to the period prior to the effectiveness of such assignment). If any Indemnified Person makes any payment to any other Indemnified Person with respect to an Indemnified Liability as to which Borrower is required to indemnify the Indemnified Person receiving such payment, the Indemnified Person making such payment is entitled to be indemnified and reimbursed by Borrower with respect thereto. WITHOUT LIMITATION, THE FOREGOING INDEMNITY SHALL APPLY TO EACH INDEMNIFIED PERSON WITH RESPECT TO INDEMNIFIED LIABILITIES WHICH IN WHOLE OR IN PART ARE CAUSED BY OR ARISE OUT OF ANY NEGLIGENT ACT OR OMISSION OF SUCH INDEMNIFIED PERSON OR OF ANY OTHER PERSON.

(b) To the fullest extent permitted by Applicable Law, Borrower shall not assert, and Borrower hereby waives, any claim against any Indemnified Person by Borrower on any theory of liability, for special, indirect, consequential, or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any other Loan Document, or any agreement or instrument contemplated hereby, the transactions contemplated hereby or thereby, any Advance, or the use of the proceeds thereof. No Indemnified Person shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed by it through telecommunications, electronic, or other information transmission systems in connection with this Agreement or the other Loan Documents or the transactions contemplated hereby or thereby.

(c) All amounts due under this Section 11.3 shall be payable immediately after written demand therefor. The agreements in this Section 11.3 shall survive Payment in Full of the Obligations, payment of all other amounts payable hereunder, and the termination of this Agreement.

12. NOTICES.

Unless otherwise provided in this Agreement or the DIP Orders, all notices or demands by Debtors or DIP Lender to the other relating to this Agreement or any other Loan Document shall be in writing and (except for financial statements and other informational documents which may be sent by first-class mail, postage prepaid) shall be personally delivered or sent by registered or certified mail (postage prepaid, return receipt requested), overnight courier, electronic mail (at such email addresses as the applicable Debtor or DIP Lender, as applicable, may designate to each other in accordance herewith), or be in an electronic writing sent by electronic mail to Borrower or to the applicable Guarantor in care of Borrower or to DIP Lender, as the case may be, at its address set forth below:

If to Borrower:
OTB Acquisition LLC
c/o OTB Holding LLC
3424 Peachtree Road,
Suite 1500
Atlanta, GA 30326
Attn: Jonathan Tibus, Chief Restructuring Officer
E-Mail: jtibus@alvarezandmarsal.com

with a copy to:
King & Spalding LLP
1180 Peachtree Street, NE
Suite 1600
Atlanta, GA 30309
Attn: Jeff Dutson
E-Mail: jdutson@kslaw.com

If to DIP Lender:
OTB Lender, LLC
c/o Pappas Restaurants Inc.
13939 NW Freeway
Houston, Texas 77040-5115
Eric Swanson and Anna Marchand
E-Mail: eswanson@pappas.com and
amarchand@pappas.com

with a copy to:
Porter Hedges LLP
1000 Main Street
36th Floor
Houston, TX 77002
Attn: Joshua Wolfshohl
Fax No.: (713) 226-6295
E-Mail: jwolfshohl@porterhedges.com

DIP Lender and Debtors may change the address at which they are to receive notices hereunder, by notice in writing in the foregoing manner given to the other parties hereto. All notices or demands sent in accordance with this Section 12, other than notices by DIP Lender in connection with enforcement rights against the Collateral under the provisions of the UCC, shall be deemed received on the earlier of the date of actual receipt or three (3) Business Days after the deposit thereof in the mail (or, with respect to electronic mail, deemed received at the close of business on the Business Day such message was sent, unless an error message or non-delivery notification is received by the sender of such communication). Each Debtor acknowledges and agrees that notices sent by DIP Lender in connection with the exercise of enforcement rights against Collateral under the provisions of the UCC shall be deemed sent when deposited in the mail or personally delivered, or, where permitted by law, transmitted by electronic mail or any other method set forth above.

13. CHOICE OF LAW AND VENUE; JURY TRIAL WAIVER.

(a) **THE VALIDITY OF THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS (UNLESS EXPRESSLY PROVIDED TO THE CONTRARY IN ANOTHER LOAN DOCUMENT IN RESPECT OF SUCH OTHER LOAN DOCUMENT), THE CONSTRUCTION, INTERPRETATION, AND ENFORCEMENT HEREOF AND THEREOF, AND THE RIGHTS OF THE PARTIES HERETO AND THERETO WITH RESPECT TO ALL MATTERS ARISING HEREUNDER OR THEREUNDER OR RELATED HERETO OR THERETO SHALL BE DETERMINED UNDER, GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, WITHOUT GIVING EFFECT TO THE CONFLICTS OF LAWS PRINCIPLES THEREOF, AND THE BANKRUPTCY CODE.**

(b) **THE PARTIES AGREE THAT ALL ACTIONS OR PROCEEDINGS ARISING IN CONNECTION WITH THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS SHALL BE TRIED AND LITIGATED ONLY IN THE UNITED STATES BANKRUPTCY COURT FOR THE NORTHERN DISTRICT OF GEORGIA, AND THE PARTIES CONSENT TO THE NON-EXCLUSIVE JURISDICTION OF SUCH COURTS. EACH DEBTOR AND DIP LENDER WAIVE, TO THE EXTENT PERMITTED UNDER APPLICABLE LAW, ANY RIGHT EACH MAY HAVE TO ASSERT THE DOCTRINE OF FORUM NON CONVENIENS OR TO OBJECT TO VENUE TO THE EXTENT ANY PROCEEDING IS BROUGHT IN ACCORDANCE WITH THIS SECTION 13(b).**

(c) **EACH DEBTOR AND DIP LENDER HEREBY WAIVE THEIR RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF ANY OF THE LOAN DOCUMENTS OR ANY OF THE TRANSACTIONS CONTEMPLATED THEREIN, INCLUDING CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS, AND ALL OTHER COMMON LAW OR STATUTORY CLAIMS. EACH DEBTOR AND DIP LENDER REPRESENT THAT EACH HAS REVIEWED THIS WAIVER AND EACH KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL. IN THE EVENT OF LITIGATION, A COPY OF THIS**

AGREEMENT MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT.

14. ASSIGNMENTS; SUCCESSORS.

14.1. **Successors and Assigns Generally**. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that no Debtor may assign or otherwise transfer or delegate any of its rights or obligations hereunder without the prior written consent of DIP Lender. Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants to the extent provided in Section 14.3 and, to the extent expressly contemplated hereby, the DIP Lender-Related Persons) any legal or equitable right, remedy, or claim under or by reason of this Agreement.

14.2. **Assignments by DIP Lender**. DIP Lender may at any time assign to one or more assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of the Advances at the time owing to it) without the prior written consent of any Debtor.

14.3. **Participations**. DIP Lender may at any time, without the consent of, or notice to, any Debtor, sell participations to any Person (each, a "Participant") in all or a portion of DIP Lender's rights or obligations under this Agreement (including all or a portion of the Advances owing to it); provided that (a) DIP Lender's obligations under this Agreement shall remain unchanged, (b) DIP Lender shall remain solely responsible to the other parties hereto for the performance of such obligations, and (c) Borrower shall continue to deal solely and directly with DIP Lender in connection with the rights and obligations under this Agreement.

15. AMENDMENTS; WAIVERS.

15.1. **Amendments and Waivers**. No amendment or waiver of any provision of this Agreement or any other Loan Document, and no consent with respect to any departure by any Debtor therefrom, shall be effective unless the same shall (a) be in writing and signed by DIP Lender and Borrower; provided that if such amendment modifies a provision giving rise to obligations of a Guarantor, then such amendment shall also be signed by the Guarantors and (b) specifically state that it is intended to amend this Agreement or such other Loan Document or waive the right hereunder or thereunder, as applicable, and then any such waiver or consent shall be effective, but only in the specific instance and for the specific purpose for which given.

15.2. **No Waivers; Cumulative Remedies**. No failure by DIP Lender to exercise any right, remedy, or option under this Agreement or any other Loan Document, or delay by DIP Lender in exercising the same, will operate as a waiver thereof. No waiver by DIP Lender will be effective unless it is in writing, and then only to the extent specifically stated. No waiver by DIP Lender on any occasion shall affect or diminish DIP Lender's rights thereafter to require strict performance by Debtors of any provision of this Agreement. DIP Lender's rights under this Agreement and the other Loan Documents will be cumulative and not exclusive of any other right or remedy that DIP Lender may have.

16. GENERAL PROVISIONS.

16.1. **Section Headings.** Headings and numbers have been set forth herein for convenience only. Unless the contrary is compelled by the context, everything contained in each Section applies equally to this entire Agreement.

16.2. **Interpretation**. Neither this Agreement nor any uncertainty or ambiguity herein shall be construed against DIP Lender or any Debtor, whether under any rule of construction or otherwise. On the contrary, this Agreement has been reviewed by all parties and shall be construed and interpreted according to the ordinary meaning of the words used so as to accomplish fairly the purposes and intentions of all parties hereto.

16.3. **Severability of Provisions**. Each provision of this Agreement shall be severable from every other provision of this Agreement for the purpose of determining the legal enforceability of any specific provision.

16.4. **Counterparts; Electronic Execution**. This Agreement may be executed in any number of counterparts and by different parties on separate counterparts, each of which, when executed and delivered, shall be deemed to be an original, and all of which, when taken together, shall constitute but one and the same Agreement. Delivery of an executed counterpart of this Agreement by any electronic method of transmission shall be equally as effective as delivery of an original executed counterpart of this Agreement. The failure by any party to deliver a manually executed counterpart of this Agreement shall not affect the validity, enforceability, and binding effect of this Agreement. The foregoing shall apply to each other Loan Document *mutatis mutandis*.

16.5. **Revival and Reinstatement of Obligations**. If the incurrence or payment of the Obligations by Borrower (or the guarantee of the Obligations by any Guarantor) or the transfer to DIP Lender of any property should for any reason subsequently be declared to be void or voidable under any state or federal law relating to creditors' rights, including provisions of the Bankruptcy Code relating to fraudulent conveyances, preferences, or other voidable or recoverable payments of money or transfers of property (collectively, a "Voidable Transfer"), and if DIP Lender is required to repay or restore, in whole or in part, any such Voidable Transfer, or elects to do so upon the reasonable advice of its counsel, then, as to any such Voidable Transfer, or the amount thereof that DIP Lender is required or elects to repay or restore, and as to all reasonable costs, expenses, and attorneys fees of DIP Lender related thereto, the liability of the applicable Debtor automatically shall be revived, reinstated, and restored and shall exist as though such Voidable Transfer had never been made.

16.6. **Reserved**.

16.7. **Integration**. This Agreement, together with the other Loan Documents, reflects the entire understanding of the parties with respect to the transactions contemplated hereby and shall not be contradicted or qualified by any other agreement, oral or written, before the date hereof.

16.8. **Marshaling**. DIP Lender shall not be required to marshal any present or future collateral security (including but not limited to the Collateral) for, or other assurances of payment

of, the Obligations or any of them or to resort to such collateral security or other assurances of payment in any particular order, and all rights and remedies of DIP Lender under the Loan Documents or otherwise in respect of such collateral security and/or other assurances of payment shall be cumulative and in addition to all other rights and remedies, however existing or arising. To the extent that it lawfully may, Borrower hereby agrees that it will not invoke any law relating to the marshaling of collateral which might cause delay in or impede the enforcement of DIP Lender's rights and remedies under this Agreement or any other Loan Document or under any other instrument creating or evidencing any of the Obligations or under which any of the Obligations is outstanding or by which any of the Obligations is secured or payment thereof is otherwise assured, and, to the extent that it lawfully may, Borrower hereby irrevocably waives the benefits of all such laws.

16.9. **Press Releases and Related Matters**. Borrower consents to the publication by DIP Lender of customary advertising material relating to the transactions contemplated by this Agreement and the other Loan Documents using such party's name, product photographs, logo, or trademark.

16.10. **USA PATRIOT Act Notice**. DIP Lender hereby notifies Borrower that pursuant to the requirements of the Patriot Act it is, or may be, required to obtain, verify, and record information that identifies Borrower, which information includes the name and address of Borrower and other information that will allow the DIP Lender to identify Borrower in accordance with the Patriot Act.

16.11. **No Advisory or Fiduciary Responsibility**. In connection with all aspects of each transaction contemplated hereby, each Debtor acknowledges and agrees, and acknowledges its Affiliates' understanding, that: (a) the credit facilities provided for hereunder and any related arranging or other services in connection therewith (including in connection with any amendment, waiver, or other modification hereof or of any other Loan Document) are an arm's-length commercial transaction between Borrower and its Affiliates, on the one hand, and DIP Lender, on the other hand, and each Debtor is capable of evaluating and understanding and understands and accepts the terms, risks, and conditions of the transactions contemplated hereby and by the other Loan Documents (including any amendment, waiver. or other modification hereof or thereof), (b) DIP Lender has not assumed and will not assume an advisory, agency, or fiduciary responsibility in favor of Borrower or any Affiliate of Borrower with respect to any of the transactions contemplated hereby or the process leading thereto, including with respect to any amendment, waiver, or other modification hereof or of any other Loan Document, and DIP Lender shall not have any obligation to Borrower or any Affiliate of the Borrower with respect to the transactions contemplated hereby except those obligations set forth herein and in the other Loan Documents, (c) DIP Lender and its Affiliates may be engaged in a broad range of transactions that involve interests that differ from those of Borrower and the Affiliates of Borrower, and DIP Lender shall not have any obligation to disclose any of such interests by virtue of any advisory, agency, or fiduciary relationship, and (d) DIP Lender has not provided and will not provide any legal, accounting, regulatory, or tax advice with respect to any of the transactions contemplated hereby (including any amendment, waiver, or other modification hereof or of any other Loan Document), and each Debtor has consulted its own legal, accounting, regulatory, and tax advisors to the extent it has deemed appropriate. Each Debtor hereby waives and releases, to the fullest extent permitted

by law, any claims that it may have against DIP Lender with respect to any breach or alleged breach of agency or fiduciary duty.

16.12. **Relationship with DIP Orders**. In the event of any inconsistency between the terms of the DIP Orders and the Loan Documents, the terms of the DIP Orders shall control.

[*Signatures are on the following pages.*]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and delivered as of the date first above written.

BORROWER:

OTB ACQUISITION LLC

By:_____
Name: Jonathan Tibus
Title: Chief Restructuring Officer

GUARANTORS:

OTB HOLDING LLC
OTB ACQUISITION OF NEW JERSEY LLC
MT. LAUREL RESTAURANT OPERATIONS LLC
OTB ACQUISITION OF HOWARD COUNTY LLC
OTB ACQUISITION OF BALTIMORE COUNTY, LLC
OTB ACQUISITION OF KANSAS LLC

By:_____
Name: Jonathan Tibus
Title: Chief Restructuring Officer

DIP LENDER:

OTB LENDER, LLC
as Payee

By: _____
Name: Chris Pappas
Title: Authorized Representative

SCHEDULE 1.1

DEFINITIONS

As used in the Agreement, the following terms shall have the following definitions:

"363 Sale" means sale of all or substantially all of the assets of the Debtors pursuant to Section 363 of the Bankruptcy Code.

"Acceptable Plan" means a Reorganization Plan (and related disclosure statement) that provides for the indefeasible payment in full and in cash of the Obligations and is otherwise in form and substance satisfactory to the DIP Lender.

"Account" means an account (as that term is defined in the UCC).

"Account Debtor" means any Person who is obligated on an Account, chattel paper, or a general intangible.

"Advance" and "Advances" means each cash advance or deemed issuance of a Loan pursuant to Section 2.1.

"Affiliate" means, as applied to any Person, any other Person who Controls, is Controlled by, or is under common Control with, such Person.

"Agreement" means this Secured Super-Priority Debtor-In-Possession Credit Agreement and all Schedules and Exhibits, as modified, amended, supplemented or restated, and in effect from time to time.

"Applicable Law" means as to any Person: (a) all laws, statutes, rules, regulations, orders, codes, ordinances or other requirements having the force of law, and (b) all court orders, decrees, judgments, injunctions, notices, binding agreements and/or rulings, in each case of or by any Governmental Authority which has jurisdiction over such Person, or any property of such Person.

"Approved Budget" means Debtors' statement of sources and uses of cash commencing on the Petition Date and projected through the Maturity Date, broken down by week and including the anticipated uses of the Advances for each week during such period, in the form annexed to the Interim DIP Order, as the same shall be modified or supplemented with the approval of DIP Lender from time to time. The initial Approved Budget and any subsequent modifications or supplements to the initial Approved Budget shall be in form and substance satisfactory to DIP Lender, together with such supporting documentation as may be reasonably requested by DIP Lender.

"Available Commitment Amount" means, on any date of determination, the lesser of (a) the amount required to make the payments required by the Approved Budget to be made during the applicable Budget Period, less cash on hand and (b) the Loan Commitment Amount, less the Prepetition Bridge Loan Amount, less the aggregate principal amount of all Advances that have been extended (in cash, by net funding or deemed issuance) hereunder pursuant to the DIP Orders; provided that any interest, fees, or expenses that has been added to the Principal Amount hereunder

shall be excluded from the calculation of the Principal Amount and therefore have no impact on the Available Commitment Amount.

"Availability Period" means period beginning on the Effective Date and ending on the Termination Date.

"Bankruptcy Code" means title 11 of the United States Code, as in effect from time to time, or any successor thereto.

"Bankruptcy Court" has the meaning provided in the recitals to this Agreement.

"Benefit Plan" means any "employee benefit plan" (as such term is defined in Section 3(3) of ERISA) established, maintained or contributed to by any Debtor, Debtor Subsidiary or any of their ERISA Affiliates for the benefit of any current or former employee or service provider of any Debtor or any Debtor Subsidiary or which is established, maintained contributed to by any Debtor, Debtor Subsidiary or any of their ERISA Affiliates or to which any of the foregoing has or could have any Liability and which is subject to Section 412 of the Code, Title IV of ERISA, Section 302 of ERISA or under the Consolidated Omnibus Budget Reconciliation of 1985, as amended, and any successor thereto and applicable rulings and regulations thereunder "COBRA."

"Bid Procedures Order" is defined in Section 5.18(c)(iv).

"Board of Directors" means the board of directors of the Debtors or any committee thereof duly authorized to act on behalf of the board of directors.

"Borrower" has the meaning specified therefor in the preamble to the Agreement.

"Borrower Designated Account" means the Deposit Account #xxxxxx9889 of Borrower maintained with the Borrower Designated Account Bank.

"Borrower Designated Account Bank" means CrossFirst Bank.

"Borrowing" means a borrowing hereunder consisting of Advances made on the same day by DIP Lender to Borrower.

"Budget Period" means (a) with respect to the Interim Advance, the period beginning on the Petition Date and ending twenty-eight (28) days after the Petition Date; provided that with respect to the amounts required to fund the Professional Fee Reserve (as defined in the DIP Order), the term "Budget Period" shall refer to the period beginning on the Petition Date through the consummation of the 363 Sale of all of Debtors' assets to the DIP Lender and (b) with respect to the Advance anticipated to be requested upon the entry of the Final DIP Order, the period beginning on the date of such Advance through the consummation of the 363 Sale of all of Debtors' assets to the DIP Lender; provided that if the DIP Lender agrees to make more than two (2) Advances hereunder, the Budget Period with respect to any Advance on or after entry of the Final DIP Order shall be for the increments of time as agreed by DIP Lender.

"Business Day" means any day that is not a Saturday, Sunday, or other day on which banks are authorized or required to close in the State of Georgia or the State of Texas.

"Capital Expenditures" means expenditures made or liabilities incurred for the acquisition of any fixed assets or improvements, replacements, substitutions or additions thereto which have a useful life of more than one year, which, in accordance with GAAP, would be classified as capital expenditures.

"Capital Lease" means a lease that is required to be capitalized for financial reporting purposes in accordance with GAAP.

"Capital Stock" shall mean, as to any Person that is a corporation, the authorized shares of such Person's capital stock, including all classes of common, preferred, voting and nonvoting capital stock, and, as to any Person that is not a corporation or an individual, the membership or other ownership interests in such Person, including, without limitation, the right to share in profits and losses, the right to receive distributions of cash and other property, and the right to receive allocations of items of income, gain, loss, deduction and credit and similar items from such Person, whether or not such interests include voting or similar rights entitling the holder thereof to exercise control over such Person, collectively with, in any such case, all warrants, options and other rights to purchase or otherwise acquire, and all other instruments convertible into or exchangeable for, any of the foregoing.

"Carve-Out" shall have the meaning set forth in the DIP Orders.

"Cash Equivalents" means (a) marketable direct obligations issued by, or unconditionally guaranteed by, the United States or issued by any agency thereof and backed by the full faith and credit of the United States, in each case maturing within 1 year from the date of acquisition thereof, (b) marketable direct obligations issued by any state of the United States or any political subdivision of any such state or any public instrumentality thereof maturing within 1 year from the date of acquisition thereof and, at the time of acquisition, having one of the two highest ratings obtainable from either Standard & Poor's Rating Services, a division of The McGraw Hill Companies, Inc. ("S&P") or Moody's Investors Service, Inc. ("Moody's"), -(c) commercial paper maturing no more than 270 days from the date of creation thereof and, at the time of acquisition, having a rating of at least A-1 from S&P or at least P-1 from Moody's, (d) Deposit Accounts maintained with any bank organized under the laws of the United States or any state thereof so long as the amount maintained with any such other bank is less than or equal to $250,000 and is insured by the Federal Deposit Insurance Corporation, and (e) Investments in money market funds substantially all of whose assets are invested in the types of assets described in clauses (a) through (d) above.

"Casualty Event" means the damage, destruction or condemnation, including by process of eminent domain or any transfer or disposition of property in lieu of condemnation, as the case may be, of property of any Person or any of its Subsidiaries, including by process of eminent domain or any transfer or disposition of property in lieu of condemnation.

"CERCLA" means the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9601 et seq.

"Change of Control" means that (a) Border Holdings LLC fails to own and control directly, 100% of the Capital Stock of Holding, (b) Holding fails to own and control directly, 100% of the

Capital Stock of Borrower, (c) Borrower fails to own and control directly, 100% of each other Guarantor, (c) Jonathan Tibus shall cease to be the chief restructuring officer of the Debtors without the appointment of a successor that is acceptable to the DIP Lender, (d) the management company of any Debtor shall cease to function substantially in the same manner as it did prior to the Petition Date, (e) there shall be a material change in the Board of Directors or other governing body of any Debtor since the Petition Date or (f) a sale of all or substantially all of the assets of any Debtor.

"Chapter 11 Cases" has the meaning provided in the recitals to this Agreement.

"Collateral" has the meaning specified therefor in Section 2.8(a).

"Collateral Access Agreement" means a landlord waiver, bailee letter, or acknowledgement agreement of any lessor, warehouseman, processor, consignee, or other Person in possession of, having a Lien upon, or having rights or interests in any Debtor's or any Subsidiaries' books and records, Equipment or Inventory. DIP Lender shall have the right to request any such Collateral Access Agreement with respect to any leases that are not rejected by Debtors pursuant to an order of the Bankruptcy Court.

"Collateral Accounts" means all commodity accounts, deposit accounts and securities accounts (in each case, as defined in the UCC) of Debtors, including the Borrower Designated Account and shall exclude the Excluded Accounts.

"Collections" means *all* cash, checks, notes, instruments, and other items of payment (including insurance proceeds, proceeds of cash sales, rental proceeds, and Tax refunds).

"Control" means the possession, directly or indirectly, of the power (a) to vote at least a majority of the securities having ordinary voting power for the election of directors (or any similar governing body) of a Person, or (b) 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. The terms "Controlling" and "Controlled" have meanings correlative thereto.

"Control Agreement" means any agreement entered into among a depository institution at which a Debtor maintains a Collateral Account, the applicable Debtor and DIP Lender, that purports to grant DIP Lender control (within the meaning of the UCC) over such Collateral Account.

"Creditors' Committee" means any official committee of unsecured creditors formed, appointed or approved in any Chapter 11 Case pursuant to the Bankruptcy Code.

"CrossFirst Liens" is defined in Section 2.8(b)(ii).

"Debtor" is defined in the preamble.

"Default" means an event, condition, or default that, with the giving of notice, the passage of time, or both, would be an Event of Default.

"Default Rate" means a per annum rate of interest equal to 15.00%.

"Deposit Account" means any deposit account (as that term is defined in the UCC).

"DIP Lender" has the meaning specified therefor in the preamble to the Agreement, and shall include each other Person from time to time party hereto as a DIP Lender, and any other Person made a party to the Agreement in accordance with the provisions of Section 14.

"DIP Lender Designated Account" means any account designated by DIP Lender into which the payment or proceeds of Collateral shall be made.

"DIP Lender Expenses" means all (a) reasonable and documented costs or expenses (including Taxes, and insurance premiums) required to be paid by Debtors or their Subsidiaries under any of the Loan Documents that are paid, advanced, or incurred by DIP Lender, (b) reasonable and documented fees or charges paid or incurred by DIP Lender in connection with DIP Lender's transactions with Debtors, including, fees or charges for photocopying, notarization, couriers and messengers, telecommunication, public record searches (including Tax liens, litigation, and UCC searches and including searches with the patent and trademark office, the copyright office, or the department of motor vehicles), other due diligence, filing, recording, publication, appraisal (including periodic collateral appraisals or business valuations), real estate surveys, real estate title policies and endorsements, and environmental audits, (c) reasonable and documented costs and expenses incurred by DIP Lender in the disbursement of funds to Borrower (by wire transfer or otherwise), (d) reasonable and documented costs and expenses paid or incurred by DIP Lender to correct any default or enforce any provision of the Loan Documents, or in gaining possession of, maintaining, handling, preserving, storing, shipping, selling, preparing for sale, or advertising to sell the Collateral, or any portion thereof, irrespective of whether a sale is consummated, (e) audit fees and expenses of DIP Lender related to any inspections or audits to the extent of the fees and charges (and up to the amount of any limitation) contained in the Agreement, (f) reasonable and documented costs and expenses of third party claims or any other suit paid or incurred by DIP Lender in enforcing or defending the Loan Documents or in connection with the transactions contemplated by the Loan Documents or DIP Lender's relationship with Debtors or any Subsidiary, (g) DIP Lender's reasonable and documented costs and expenses (including reasonable and documented attorneys' fees) incurred in conducting its due diligence and in advising, structuring, drafting, negotiating, reviewing, administering, syndicating, or amending the Loan Documents (including the DIP Orders and all motions and other filings related thereto), (h) DIP Lender's reasonable and documented costs and expenses (including reasonable and documented attorneys, accountants, consultants, and other advisors fees and expenses) incurred in terminating, enforcing (including attorneys, accountants, consultants, and other advisors fees and expenses incurred in connection with the Chapter 11 Cases or in exercising rights or remedies under the Loan Documents), exercising its rights or remedies, or defending the Loan Documents, irrespective of whether suit is brought, or in taking any Remedial Action concerning the Collateral, and (i) the reasonable and documented fees and expenses paid or incurred by DIP Lender if it elects to employ the services of one or more third parties to perform financial audits of the Debtors, to appraise any of the Collateral, to establish electronic reporting for Debtors or to assess the Debtors' business valuation.

"DIP Lender-Related Person" means DIP Lender, together with DIP Lender's Affiliates, officers, directors, employees, attorneys, and agents.

"DIP Order" means, collectively, the Interim DIP Order and the Final Order, or either the Interim DIP Order or the Final DIP Order, as the context may imply.

"Disposition" means any sale, assignment, conveyance, transfer or other disposition (by way of merger, casualty, condemnation or otherwise) by a Debtor to any Person of any assets of any Debtor. "Dispose" has a correlative meaning.

"Dollars" or "$" means United States dollars.

"Effect of Bankruptcy" means, with respect to any contractual obligation, contract or agreement to which any Debtor is a party, any default, unenforceability or other legal consequences arising solely on account of the commencement of the Chapter 11 Cases (including by the implementation of the automatic stay) or, as a result of any order of the Bankruptcy Court, including any such order rejecting any such contractual obligation, contract or agreement.

"Effective Date" refers to the date on which the conditions precedent set forth in Section 3.1 have been satisfied or waived by DIP Lender.

"Enforcement Action" means (a) any action to foreclose a Lien as to any Collateral, (b) any action to take possession of, or sell, or otherwise realize upon, or to exercise any other secured creditor rights or remedies with respect to, any Collateral, including a sale or other disposition after the occurrence and during the occurrence of an Event of Default, (c) taking of any other actions against any Collateral, including the taking of control or possession of, or the exercise of any right of setoff with respect to, any Collateral, (d) the filing of a lawsuit to collect or to require performance owed by any Debtor, (e) the commencement of any legal proceedings or actions against or with respect to any Debtor or any of its property or assets or any Collateral after the commencement of the Chapter 11 Cases, including the seeking of relief from the automatic stay or from any other stay in the Chapter 11 Cases, the conversion of any Chapter 11 Case to a case under Chapter 7 of the Bankruptcy Code, the dismissal of any Chapter 11 Case under Section 1112 of the Bankruptcy Code, the appointment of a trustee under Chapter 7 or Chapter 11 of the Bankruptcy Code or of a responsible officer or any examiner with enlarged powers relating to the operation of the business (powers beyond those set forth in Section 1106(a)(3) and (4) of the Bankruptcy Code) under Section 1106(d) of the Bankruptcy Code, (f) the termination of the Loan Commitment under this Agreement or the acceleration of the Obligations hereunder, in either case, as a result of the occurrence of an Event of Default hereunder, or (g) DIP Lender has ceased or refused to fund any requested Advance under this Agreement that is in accordance with Section 6.14 irrespective of a Default or an Event of Default for longer than three (3) Business Days.

"Environmental Actions" means any complaint, summons, citation, notice, directive, order, claim, litigation, investigation, judicial or administrative proceeding, judgment, letter, or other communication from any Governmental Authority, or any third party involving violations of Environmental Laws or releases of Hazardous Materials from (a) any assets, properties, or businesses of any Debtor, any Subsidiary, or any of their predecessors in interest, (b) from adjoining properties or businesses, or (c) from or onto any facilities which received Hazardous Materials generated by any Debtor, any Subsidiary, or any of their predecessors in interest.

"Environmental Law" means any applicable federal, state, provincial, foreign or local statute, law, rule, regulation, ordinance, code, binding and enforceable guideline, binding and enforceable written policy or rule of common law now or hereafter in effect and in each case as amended, or any judicial or administrative interpretation thereof, including any judicial or administrative order, consent decree or judgment, in each case, to the extent binding on any Debtor or any Subsidiary, relating to the environment, the effect of the environment on employee health, or Hazardous Materials, in each case as amended from time to time.

"Environmental Liabilities" means all liabilities, monetary obligations, losses, damages, punitive damages, consequential damages, treble damages, costs and expenses (including all reasonable fees, disbursements and expenses of counsel, experts, or consultants, and costs of investigation and feasibility studies), fines, penalties, sanctions, and interest incurred as a result of any claim or demand, or Remedial Action required, by any Governmental Authority or any third party, and which relate to any Environmental Action.

"Environmental Lien" means any Lien in favor of any Governmental Authority for Environmental Liabilities.

"Equipment" means equipment (as that term is defined in the UCC).

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended, and any successor statute thereto.

"ERISA Affiliate" means any Person whose employees are treated as employed by the same employer as the employees of any Debtor or a Debtor Subsidiary under IRC Section 414 or ERISA Section 4001.

"ERISA Event" means any of the following: (a) a Reportable Event with respect to a Pension Plan; (b) the incurrence by any Debtor, Debtor Subsidiary or any of their ERISA Affiliates of any liability with respect to a withdrawal by a Debtor, Debtor Subsidiary or any of their ERISA Affiliates from a Pension Plan subject to Section 4063 of ERISA during a plan year in which it was a substantial employer (as defined in Section 4001(a)(2) of ERISA) or a cessation of operations that is treated as such a withdrawal under Section 4062(e) of ERISA; (c) the incurrence by any Debtor, Debtor Subsidiary or any their ERISA Affiliates of any liability with respect to a complete or partial withdrawal from a Multiemployer Plan or the receipt by any Debtor, Debtor Subsidiary or any of their ERISA Affiliates of notification that a Multiemployer Plan is in reorganization; (d) the filing of a notice of intent to terminate, the treatment of a Benefit Plan amendment as a termination under Sections 4041 or 4041A of ERISA, or the commencement of proceedings by the PBGC to terminate a Pension Plan or Multiemployer Plan; (e) an event or condition that constitutes grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Pension Plan or Multiemployer Plan; or (f) the imposition of any liability under Title IV of ERISA, other than for PBGC premiums due but not delinquent under Section 4007 of ERISA, upon any Debtor, Debtor Subsidiary or any of their ERISA Affiliates.

"Event of Default" has the meaning specified therefor in Section 7.

"Exchange Act" means the Securities Exchange Act of 1934, as in effect from time to time.

"Excluded Accounts" means (a) Debtors' payroll accounts, (b) Debtors' pension and pension reserve accounts, (c) Debtors' employee benefit account(s) and (d) Debtors' withholding tax and fiduciary accounts.

"Facility Fee" has the meaning specified therefor in Section 2.7.

"Final DIP Order" means an order of the Bankruptcy Court, together with all extensions, modifications and amendments thereto, in form, scope and substance satisfactory to DIP Lender, which, among other matters but not by way of limitation, authorizes Debtors to (i) obtain credit and authorizes each Debtor to incur Obligations, (ii) grant Liens under this Agreement and the other Loan Documents, as the case may be, provides for the super priority of DIP Lender's claims (subject to the Carve-Out), which order is a Final Order.

"Final Order" means an order or judgment of the Bankruptcy Court as entered on the docket of the Clerk of the Bankruptcy Court, that has not been reversed, stayed, modified or amended and as to which the time to appeal, petition for certiorari, reargue or seek rehearing has expired and no proceeding for certiorari, reargument or rehearing is pending or if an appeal, petition for certiorari, reargument, or rehearing has been sought, the order or judgment of the Bankruptcy Court has been affirmed by the highest court to which the order was appealed, from which the reargument or rehearing was sought, or certiorari has been denied and the time to take any further appeal or to seek certiorari or further reargument or rehearing has expired.

"Financial Officer" means, with respect to each Debtor, the chief financial officer or the chief restructuring officer that has responsibility for overseeing financial matters of such Debtor, and also the treasurer, assistant treasurer, controller or assistant controller responsible for such Debtor.

"Fiscal Month" means any fiscal month of the Borrower.

"Fiscal Week" means any fiscal week of the Borrower.

"GAAP" means generally accepted accounting principles as in effect from time to time in the United States, consistently applied.

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

"Governmental Authority" means any federal, state, local, or other governmental or administrative body, instrumentality, board, department, or agency or any court, tribunal,

administrative hearing body, arbitration panel, commission, or other similar dispute-resolving panel or body.

"Hazardous Materials" means (a) substances that are defined or listed in, or otherwise classified pursuant to, any Applicable Laws or regulations as "hazardous substances," "hazardous materials," "hazardous wastes," "toxic substances," or any other formulation intended to define, list, or classify substances by reason of deleterious properties such as ignitability, corrosivity, reactivity, carcinogenicity, reproductive toxicity, or "EP toxicity", (b) oil, petroleum, or petroleum derived substances, natural gas, natural gas liquids, synthetic gas, drilling fluids, produced waters, and other wastes associated with the exploration, development, or production of crude oil, natural gas, or geothermal resources, (c) any flammable substances or explosives or any radioactive materials, (d) asbestos in any form or electrical equipment that contains any oil or dielectric fluid containing levels of polychlorinated biphenyls in excess of 50 parts per million, and (e) and all other substances or wastes of any nature regulated pursuant to any Environmental Law because of their dangerous or deleterious properties, including any material listed as a hazardous substance under Section 101(14) of CERCLA.

"Indebtedness" of any Person means, without duplication: (a) all obligations of such Person for borrowed money, (b) all obligations of such Person evidenced by bonds, debentures, notes, or other similar instruments and all reimbursement or other obligations in respect of letters of credit, bankers acceptances, interest rate swaps, or other financial products, (c) all obligations of such Person under conditional sale or other title retention agreements relating to property acquired by such Person, (d) all obligations of such Person as a lessee under Capital Leases, (e) all obligations or liabilities of others secured by a Lien on any asset of a Person or its Subsidiaries, irrespective of whether such obligation or liability is assumed, (f) all obligations of such Person to pay the deferred purchase price of assets (other than trade payables incurred in the ordinary course of business and repayable in accordance with customary trade practices), (g) all obligations of such Person owing under hedge agreements, (h) all obligations or liabilities of such Person associated with bonds or surety obligations incurred in the ordinary cause of business or required by the laws, rules, regulations and orders of any Governmental Authority, and (h) any obligation of such Person guaranteeing or intended to guarantee (whether directly or indirectly guaranteed, endorsed, co-made, discounted, or sold with recourse) any obligation of any other Person that constitutes Indebtedness under any of clauses (a) through (g) above.

"Indemnified Liabilities" has the meaning specified therefor in Section 11.3.

"Indemnified Person" has the meaning specified therefor in Section 11.3.

"Interim Advance" is defined in the recitals to this Agreement.

"Interim DIP Order" means the *Interim Order (I) Authorizing the Debtors to Obtain Senior Secured Superpriority Postpetition Financing; (II) Granting (A) Liens and Superpriority Administrative Expense Claims and (B) Adequate Protection; (III) Authorizing Use of Cash Collateral; (IV) Modifying the Automatic Stay; (V) Scheduling a Final Hearing; and (VI) Granting Related Relief* entered by the Bankruptcy Court in the Chapter 11 Cases.

"Inventory" means inventory (as that term is defined in the UCC).

"Investment" means, with respect to any Person, any investment by such Person in any other Person (including Affiliates) in the form of loans, guarantees, advances, or capital contributions (excluding (a) commission, travel, and similar advances to officers and employees of such Person made in the ordinary course of business, and (b) bona fide Accounts arising in the ordinary course of business consistent with past practice), purchases or other acquisitions of Indebtedness, Capital Stock, or all or substantially all of the assets of such other Person (or of any division or business line of such other Person), and any other items that are or would be classified as investments on a balance sheet prepared in accordance with GAAP.

"IRC" means the Internal Revenue Code of 1986, as amended from time to time or any successor statute.

"IRS" means the United States Internal Revenue Service.

"Lien" means any interest in an asset securing an obligation owed to, or a claim by, any Person other than the owner of the asset, irrespective of whether (a) such interest is based on the common law, statute, or contract, (b) such interest is recorded or perfected, and (c) such interest is contingent upon the occurrence of some future event or events or the existence of some future circumstance or circumstances. Without limiting the generality of the foregoing, the term "Lien" includes the lien or security interest arising from a mortgage, deed of trust, encumbrance, notice of Lien, levy or assessment, pledge, hypothecation, assignment, deposit arrangement, security agreement, conditional sale or trust receipt, or from a lease, consignment, or bailment for security purposes and also includes reservations, exceptions, encroachments, easements, rights-of-way, covenants, conditions, restrictions, leases, and other title exceptions and encumbrances affecting Real Property.

"Loan Commitment" means commitment of the DIP Lender to make Advances hereunder, as such commitment may be terminated pursuant to Section 8.1.

"Loan Commitment Amount" means $14,000,000 plus all interest, fees and expenses that will be capitalized under this Agreement.

"Loan Documents" means the Agreement, the Security Documents, any Control Agreements executed and delivered by the any Debtor in favor of DIP Lender, any note or notes executed by Borrower in connection with the Agreement and payable to DIP Lender, and any other agreement entered into, now or in the future, by any Debtor and DIP Lender in connection with the Agreement.

"Material Adverse Change" means (a) a material adverse change in or a material adverse effect upon (in either case, irrespective of whether occurring as a result of a specific event or circumstance or otherwise) the business, financial condition or results of operations of either: (i) Borrower; or (ii) the Debtors and Subsidiaries taken as a whole, (b) a material impairment of any Debtor's ability to perform its obligations under the Loan Documents to which it is a party or of DIP Lender's ability to enforce the Obligations or realize upon the Collateral, or (c) a material impairment of the enforceability of this Agreement and any of the other Loan Documents, the enforceability or priority of DIP Lender's Liens with respect to the Collateral, or the rights and remedies of DIP Lender under this Agreement or any of the other Loan Documents; provided that

the following shall not constitute a Material Adverse Change: (i) the filing of the Chapter 11 Cases or any Effect of Bankruptcy as a result thereof shall not constitute a Material Adverse Change; or (ii) any change resulting directly from the anticipated commencement or commencement and continuation of the Chapter 11 Cases.

"Material Contract" means any agreement, the termination or breach of which would reasonably likely result in a Material Adverse Change under clause (a)(ii) of such definition.

"Material Indebtedness" means Indebtedness (other than the Obligations and the Prepetition Bridge Loans) of any Debtor in an aggregate principal amount exceeding $100,000.

"Maturity Date" means the earlier of (a) May 30, 2025, (b) the closing date of a 363 Sale, (c) the effective date of any Reorganization Plan confirmed pursuant to an order entered by the Bankruptcy Court, or (d) the acceleration of the maturity of the Obligations pursuant to this Agreement, any other Loan Document or the DIP Orders.

"Milestones" has the meaning specified therefor in Section 5.18(c).

"Mortgages" means, individually and collectively, one or more mortgages, deeds of trust, or deeds to secure debt, executed and delivered by one or more Debtors in favor of DIP Lender, in form and substance satisfactory to DIP Lender, that encumber the real property that is Collateral.

"Multiemployer Plan" means any employee benefit plan of the type described in Section 4001(a)(3) of ERISA to which Debtor, Debtor Subsidiary or any of their ERISA Affiliates makes or is obligated to make contributions, or during the preceding five plan years, has made or been obligated to make contributions or to which any of the foregoing could have any liability.

"Net Cash Proceeds" means, (a) with respect to any sale or disposition by any Debtor of property or assets, the amount of cash received (directly or indirectly) from time to time (whether as initial consideration or through the payment of deferred consideration) by or on behalf of such Person, in connection therewith after deducting therefrom only (i) the amount of any Indebtedness secured by any prior senior Permitted Lien on any asset and the Carve-Out (other than (A) Indebtedness owing to DIP Lender under this Agreement or the other Loan Documents and (B) Indebtedness assumed by the purchaser of such asset) which is required to be, and is, repaid in connection with such disposition, (ii) reasonable expenses related thereto incurred by such Person in connection therewith, and (iii) taxes paid or payable to any taxing authorities by such Person in connection therewith, and (b) with respect to the issuance or incurrence of any Indebtedness by any Debtor, or the sale or issuance by any Debtor of any shares of its Capital Stock, the aggregate amount of cash received (directly or indirectly) from time to time (whether as initial consideration or through the payment or disposition of deferred compensation) by or on behalf of such Person in connection therewith, after deducting therefrom only (i) reasonable expenses related thereto incurred by such Person in connection therewith, (ii) transfer taxes paid by such Person in connection therewith and (iii) net income taxes to be paid in connection therewith (after taking into account any tax credits or deductions and any tax sharing arrangements); in each case of clause (a) and (b) to the extent, but only to the extent, that the amounts so deducted are (A) actually paid to a Person that, except in the case of reasonable out-of-pocket expenses, is not an Affiliate of such

Person or any of its Subsidiaries and (B) properly attributable to such transaction or to the asset that is the subject thereof.

"Notice of Borrowing" is defined in Section 2.2(a).

"Obligations" means all loans, Advances, debts, the principal amount, interest, premiums, liabilities (including all amounts charged to Borrower by DIP Lender), obligations (including indemnification obligations), fees (including the Facility Fee), charges, costs, DIP Lender Expenses, lease payments, guaranties, covenants, and duties of any kind and description owing by Borrower to DIP Lender pursuant to or evidenced by the Loan Documents and irrespective of whether for the payment of money, whether direct or indirect, absolute or contingent, due or to become due, now existing or hereafter arising, and including all interest not paid when due and all DIP Lender Expenses that Borrower is required to pay or reimburse by the Loan Documents, by law, or otherwise. In addition, the term "Obligations" shall include all obligations of each Guarantor hereunder as a result of the unconditional and continuing guaranty by each Guarantor of the Obligations. Any reference in the Agreement or in the Loan Documents to the Obligations shall include all or any portion thereof and any extensions, modifications, renewals, or alterations thereof. Without limiting the foregoing and subject to the DIP Orders, the Obligations shall constitute allowed administrative expense claims in the Chapter 11 Cases having priority pursuant to Section 364(c)(1) of the Bankruptcy Code over all administrative expense claims and unsecured claims against the Debtors now existing or hereafter arising, of any kind or nature whatsoever, including, without limitation, all administrative expense claims of the kind specified in Sections 105, 326, 328, 330, 331, 503(b), 506(c), 507(a), 507(b), 546(c), 1113 and 1114 of the Bankruptcy Code.

"Paid in Full" and "Payment in Full" means, with respect to any Obligations, the indefeasible payment in full of such Obligations in cash (or otherwise to the written satisfaction, in such holder's discretion, of the holder thereof), and, in the event any such Obligations are paid over time or modified pursuant to Section 1129 of the Bankruptcy Code (or any similar provision of any other applicable bankruptcy law), shall further mean that the holder thereof shall have received the final payment due on account of such Obligations. For purposes of the foregoing, the "holder" of any applicable Obligations shall be deemed to be the Person entitled to receipt of payment thereof. Notwithstanding the foregoing, the Obligations shall not be deemed to have been "paid in full" until the Loan Commitment has expired or been terminated.

"Participant" has the meaning specified therefor in Section 14.3.

"Patriot Act" means the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, P.L. 107-56, as amended.

"PBGC" means the Pension Benefit Guaranty Corporation.

"Pension Plan" means any "employee pension benefit plan" (as that term is defined in Section 3(2) of ERISA), other than a Multiemployer Plan, that is subject to Title IV of ERISA and is sponsored or maintained by Debtor, Debtor Subsidiary or any their ERISA Affiliates or to which any Debtor, Debtor Subsidiary or any their ERISA Affiliates contributes or has an obligation to contribute, or in the case of a multiple employer or other plan described in Section 4064(a) of

ERISA, has made contributions at any time during the immediately preceding five plan years or for which any of the foregoing has or could have any liability.

"Permitted Disposition" means any of the following:

(a) sales or other dispositions of Equipment that is substantially worn, damaged, or obsolete in the ordinary course of business consistent with past business practices;

(b) sales of Inventory to buyers in the ordinary course of business;

(c) the licensing, on a non-exclusive basis, of patents, trademarks, copyrights, and other intellectual property rights in the ordinary course of business;

(d) sales of Inventory;

(e) transactions permitted pursuant to Section 6.3;

(f) Dispositions expressly approved by the Bankruptcy Court that are de minimis in value or are otherwise agreed by the DIP Lender and Debtors; and

(g) Dispositions permitted under Section 6.4.

"Permitted Indebtedness" means each of the following:

(a) Indebtedness created under the Loan Documents;

(b) Prepetition Bridge Loans;

(c) Guarantees by any Debtor of Indebtedness permitted hereunder;

(d) Indebtedness incurred in the ordinary course of business in connection with the financing of insurance premiums; and

(e) Indebtedness relating to surety and appeal bonds, performance bonds and other obligations of a like nature incurred in the ordinary course of business or required by the laws, rules, regulations and orders of any Governmental Authority;

provided, that with respect to Indebtedness in clauses (c) through (e), such Indebtedness arises Post-Petition and is permitted pursuant to the Approved Budget.

"Permitted Investments" means (a) Investments in cash and Cash Equivalents, (b) Investments in negotiable instruments for collection, (c) advances made in connection with purchases of goods or services in the ordinary course of business, (d) to the extent approved by DIP Lender, Investments received in settlement of amounts due to any Debtor or any Subsidiary effected in the ordinary course of business or owing to any Debtor or any Subsidiary as a result of Insolvency Proceedings involving an Account Debtor or upon the foreclosure or enforcement of any Lien in favor of any Debtor or any Subsidiary, (e) Investments in Borrower and (f) Investments made by Borrower or any Subsidiaries in Deposit Accounts or Securities Accounts in which the Lien in favor of DIP Lender has been perfected.

"Permitted Liens" means:

(a) Liens held by DIP Lender to secure the Obligations;

(b) Liens for unpaid taxes, assessments, or other governmental charges or levies that either (i) are not yet delinquent, or (ii) (A) do not have priority over DIP Lender's Liens and (B) with respect to which the underlying taxes, assessments, or charges or levies are the subject of Permitted Protests;

(c) To the extent created prior to the Petition Date, any Lien created in favor of the DIP Lender securing only the Prepetition Bridge Loans;

(d) Liens arising from precautionary UCC filings regarding "true" operating leases or the consignment of goods to Debtors;

(e) Liens arising by operation of law in favor of warehousemen, landlords, carriers, mechanics, materialmen, laborers, or suppliers, incurred in the ordinary course of Debtors' business and not in connection with the borrowing of money, and which Liens either (i) are for sums not yet delinquent, or (ii) are the subject of Permitted Protests;

(f) Banker's Liens, rights of set-off or similar rights and remedies arising in the ordinary course of business and burdening only deposit accounts or other funds maintained with a creditor depository institution, provided that (i) no such deposit account is a dedicated cash collateral account or is subject to restrictions against access by the depository in excess of those set forth by regulations promulgated by Board of Governors of the Federal Reserve System, (ii) no such deposit account is intended by any Debtor or any Subsidiaries to provide collateral to the depository institution to secure Indebtedness to such depository institution and (iii) CrossFirst Liens shall not constitute Permitted Liens;

(g) Non-consensual defects in title (which might otherwise constitute Liens) to the properties of any Debtor or any Subsidiary arising in the ordinary course of such entity's business or incidental to the ownership of their respective properties, including, without limitation, easements, restrictions, servitudes, permits, conditions, covenants, exceptions, zoning restrictions and reservations for purposes of roads, pipelines, transmission lines, transportation lines, distribution lines and other like purposes, provided that no such Liens shall materially detract from the value of marketability of the property subject thereto or materially impair the use or operation thereof in the operation of the business of Debtors;

(h) Liens incurred in the ordinary course of business on amounts deposited in connection with obtaining worker's compensation or other unemployment insurance; and

(i) To the extent that, as of the Petition Date, US Foods holds validly perfected, enforceable and unavoidable Liens on any assets of any Debtor, such Liens.

Notwithstanding anything to the contrary herein, the designation of a prior Lien as a "Permitted Lien" shall not operate in any way to preclude or estop the Borrowers or any other party in interest in the Chapter 11 Cases from objecting to such Lien or the obligation that such Lien secures.

"Permitted Protest" means the right of any Debtor or any Subsidiary to protest any Lien (other than any Lien that secures the Obligations), Taxes (other than payroll taxes or taxes that are the subject of a United States federal tax lien), or rental payment, provided that (a) a reserve with respect to such obligation is established on Debtors' books and records in such amount as is required under GAAP, (b) any such protest is instituted promptly and prosecuted diligently by the Debtors, in good faith, and (c) DIP Lender is satisfied that, while any such protest is pending, there will be no impairment of the enforceability, validity, or priority of any of DIP Lender's Liens.

"Person" means natural persons, corporations, limited liability companies, limited partnerships, general partnerships, limited liability partnerships, joint ventures, trusts, land trusts, business trusts, or other organizations, irrespective of whether they are legal entities, and governments and agencies and political subdivisions thereof.

"Petition Date" has the meaning provided in the recitals to this Agreement.

"Post-Petition" means the time period commencing immediately upon the filing of the Chapter 11 Cases.

"Prepetition Bridge Collateral" means the Collateral pledged to the Prepetition DIP Lender in connection with the Prepetition Secured Note.

"Prepetition Bridge Lender" means the DIP Lender, in its capacity as the lender under the Prepetition Secured Note.

"Prepetition Bridge Loans" is defined in the recitals to this Agreement.

"Prepetition Bridge Loan Amount" is defined in the recitals to this Agreement.

"Prepetition Bridge Loan Roll-Up" is defined in Section 2.1.

"Prepetition Indebtedness" means any or all Indebtedness incurred by Debtors prior to the filing of the Chapter 11 Cases.

"Prepetition Secured Note" is defined in the recitals to this Agreement.

"Principal Amount" means, when determined, the principal balance of all outstanding and unpaid Advances (including both cash Advances, deemed Advances and capitalized amounts (whether such capitalized are interest, fees or expenses).

"Professional Fees and Expenses" means (a) amounts payable pursuant to 28 U.S.C. § 1930(a)(6), and (b) professional fees and expenses of attorneys retained by the Debtors or the Creditors' Committee.

"Real Property" means any estates or interests in real property now owned or hereafter acquired by any Debtor or any Subsidiary and the improvements thereto.

"Record" means information that is inscribed on a tangible medium or which is stored in an electronic or other medium and is retrievable in perceivable form.

"Remedial Action" means all actions taken to (a) clean up, remove, remediate, contain, treat, monitor, assess, evaluate, or in any way address Hazardous Materials in the indoor or outdoor environment, (b) prevent or minimize a release or threatened release of Hazardous Materials so they do not migrate or endanger or threaten to endanger public health or welfare or the indoor or outdoor environment, (c) restore or reclaim natural resources or the environment, (d) perform any pre-remedial studies, investigations, or post-remedial operation and maintenance activities, or (e) conduct any other actions with respect to Hazardous Materials authorized by Environmental Laws.

"Reorganization Plan" means a Chapter 11 plan of reorganization or liquidation filed by any Debtor in any Chapter 11 Case.

"Reportable Event" means any of the events set forth in Section 4043(c) of ERISA, other than events for which the thirty-day notice period has been waived.

"Responsible Officer" of any Person shall mean the chief executive officer, president, any vice president, the chief financial officer, chief restructuring officer, or treasurer of such Person or any other officer having substantially the same authority and responsibility as a chief executive officer or president, or a Financial Officer.

"Restricted Payment" means any dividend or other distribution (whether in cash, securities or other property) with respect to any class of Capital Stock of a Person, 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 Capital Stock of a Person or any option, warrant or other right to acquire any Capital Stock of a Person; provided that " Restricted Payments" shall not include any dividends payable solely in Capital Stock of a Debtor.

"Sale and Bidding Procedures Motion" is defined in Section 5.18(c)(iii).

"Sale Order" is defined in Section 5.18(c)(v).

"Securities Account" means a "securities account" (as that term is defined in the UCC).

"Security Documents" means each security agreement (including Section 2.8 hereof), any Control Agreement, each Mortgage, and all other instruments or documents executed and delivered pursuant to this Agreement or any other Loan Document to secure any of the Obligations, each in form and substance satisfactory to DIP Lender.

"Subsidiary" of a Person means a corporation partnership, limited liability company, or other entity in which that Person directly or indirectly owns or controls the shares of Capital Stock having ordinary voting power to elect a majority of the board of directors (or appoint other comparable managers) of such corporation, partnership, limited liability company, or other entity. Unless the context requires otherwise, "Subsidiary" as used in the Loan Documents refers to a Subsidiary of a Debtor.

"Successor Cases" means any other proceedings superseding or related to the Chapter 11 Cases or in any case under chapter 7 of the Bankruptcy Code upon the conversion of any of the Chapter 11 Cases.

"Tax" and "Taxes" has the meaning specified therefor in Section 10.1(a).

"Termination Date" means the earlier to occur of (a) the Maturity Date and (b) the date of the termination of the Loan Commitment pursuant to Section 8.1.

"UCC" means the Uniform Commercial Code of the State of Delaware, as in effect from time to time, or if the context shall require, the Uniform Commercial Code of the State of New York, or if applicable, the law of the state of formation of the applicable Debtor or the law of the jurisdiction in which the applicable asset that is purported to constitute Collateral hereunder (including any deposit account) is located.

"Unfunded Pension Liability" means the excess of a Pension Plan's benefit liabilities under Section 4001(a)(16) of ERISA, over the current value of that Pension Plan's assets, determined in accordance with the assumptions used for funding the Pension Plan pursuant to Section 412 of the Code for the applicable plan year.

"United States" means the United States of America.

"Variance Report" means a report prepared by Borrower's management which reflects (a) Debtors' actual cash receipts and disbursements, and (b) on a line-item basis the Debtors' actual performance compared to the Approved Budget, in each case for the immediately preceding week and on a cumulative basis for the period after the Effective Date and the percentage variance of Debtors' actual results from those reflected in the then extant Approved Budget, along with management's explanation of such variance.

"Voidable Transfer" has the meaning specified therefor in Section 16.5.

EXHIBIT A

(Reserved)

EXHIBIT B

Form of
NOTICE OF BORROWING

Date: [*], 2025

OTB Lender, LLC, as DIP Lender
under the below-referenced Credit Agreement
c/o Papas Restaurants Inc.
13939 NW Freeway
Houston, Texas 77040-5115
Attn: [_____]

This Notice of Borrowing is executed and delivered by **OTB ACQUISITION LLC**, a Delaware limited liability company, as debtor and debtor in possession under Chapter 11 of the Bankruptcy Code (as defined in the Credit Agreement) (the "Borrower"), pursuant to that certain Secured Super-Priority Debtor-In-Possession Credit Agreement, dated as of March [__], 2025 (as amended or otherwise modified from time to time, the "Credit Agreement"), by and among Borrower, OTB Lender, LLC, as DIP Lender (the "DIP Lender") and certain guarantors party thereto. This Notice of Borrowing hereby gives you notice pursuant to Section 2.2 of the Credit Agreement that the undersigned hereby requests an Advance under the Credit Agreement (the "Proposed Advance"), and in that connection sets forth below the information relating to such Proposed Advance as required by Section 2.2 of the Credit Agreement. All capitalized terms used herein but not defined herein have the same meanings herein as set forth in the Credit Agreement.

(1) The aggregate principal amount of the Proposed Advance is $[*].

(2) The funding date of the Proposed Advance is [*], 2025.

(3) The Budget Period of the Proposed Advance begins on [*], 2025 and ends on [*], 2025[; provided that the Budget Period as it pertains to the Professional Fee Reserve is the entirety of the anticipated Availability Period].

(4) Attached hereto is a reconciliation of the proposed uses of the proceeds of the Proposed Advance to the Approved Budget for the Budget Period.

(5) The representations and warranties contained in the Credit Agreement or in the other Loan Documents are true, correct and complete in all material respects on and as of the date hereof and shall be true, correct and complete on and as of the date of such extension of credit, as though made on and as of such date (except to the extent that such representations and warranties relate solely to an earlier date in which case such representations and warranties shall be true and correct as of such earlier date);

(6) No Default or Event of Default has occurred or is continuing, nor shall either result from the making of the Proposed Advance.

(7) The Proposed Advance does not exceed the amounts permitted in accordance with Section 2.1(d) of the Credit Agreement and the proceeds of the Advances shall be used in strict compliance with Section 6.14 and the Approved Budget.

(8) Each other condition precedent to the funding of the Proposed Advance set forth in Section 3.2 of the Credit Agreement has been satisfied or, with respect to each condition precedent that describes certain facts that must be true, each such fact is true as of the date hereof; provided that the payment of any fees that will be funded with the proceeds of the Advance shall be paid from such proceeds.

Very truly yours,

OTB ACQUISITION LLC, as Borrower

By:_____
Name: Jonathan Tibus
Title: Chief Restructuring Officer