

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

NUMBER HOLDINGS, INC. *et al.*,¹

Debtors.

)

) Chapter 11

)

) Case No. 24-10719 (JKS)

)

) (Jointly Administered)

)

) **Re: D.I. 17, 90, 94, 99, 125 & 131**

)

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

Upon the motion (the “DIP Motion”) of Number Holdings, Inc. (“Holdings”) and its affiliated debtors-in-possession (collectively, the “Debtors”) in the above-captioned chapter 11 cases (collectively, the “Chapter 11 Cases”), seeking entry of an interim order (this “Interim Order”)² and a Final Order (as defined herein) pursuant to sections 105, 361, 362, 363, 364(c)(1), 364(c)(2), 364(c)(3), 364(e), 503, 506, 507 and 552 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (as amended, the “Bankruptcy Code”), Rules 2002, 4001, 6004, 9013, and 9014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Rules 2002-1, 4001-2, and 9013-1 of the Local Rules (the “Local Bankruptcy Rules”) for the United States Bankruptcy Court for the District of Delaware (the “Court” or the “Bankruptcy Court”), *inter alia*:

¹ The Debtors in these Chapter 11 Cases, along with the last four digits of each Debtor’s federal tax identification number, as applicable, are: (i) Number Holdings, Inc. (1463); (ii) 99 Cents HoldCo LLC (3987); (iii) 99 Cents Only Stores LLC (1605); (iv) 99 Cents Only Stores Texas, Inc. (1229); (v) 99 Cents PropCo LLC (7843); (vi) Bargain Wholesale LLC (8030). The Debtors’ principal offices are located at 1730 Flight Way, Suite 100, Tustin, CA 92782.

² Capitalized terms used in this Interim Order but not defined herein shall have the meanings given to them in the DIP Credit Agreement (as defined below).

(i) authorizing, upon entry of this Interim Order, the Debtors to obtain senior secured postpetition financing on a superpriority basis (the “DIP Facility”) consisting of (1) a new money multi-draw term loan facility consisting of \$35.5 million (the “New Money Amount”), of which \$20.5 million shall be available upon entry of this Interim Order and \$15.0 million shall be available upon entry of the Final Order, and (2) upon entry of the Final Order, a roll-up of Prepetition FILO Secured Obligations (as defined below) in the amount of \$25.3 million plus all accrued interest through the date of entry of the Final Order (the “Roll-Up Amount”) pursuant to the terms and conditions of this Interim Order and that certain Senior Secured Super-priority Debtor-in-Possession Term Loan Credit Agreement attached hereto as **Exhibit D** (as the same may be amended, restated, supplemented, or otherwise modified from time to time, the “DIP Credit Agreement”), by and among (a) 99 Cents Only Stores LLC, as borrower (“Borrower”), (b) Holdings and each of Holdings’ subsidiaries (other than Borrower, 99 Cents Only Foundation, and BW Global Logistics (Hong Kong) Ltd.) as guarantors (the “Guarantors” and together with Borrower, the “DIP Loan Parties”), (c) TC Lending, LLC, as administrative agent (in such capacity, the “DIP Agent”), and (d) the lenders party thereto from time to time (the “DIP Lenders,” and together with the DIP Agent, the “DIP Secured Parties”);

(ii) approving the terms of, and authorizing the DIP Loan Parties to execute and deliver, the DIP Credit Agreement and any other agreements, instruments and documents related thereto (collectively, the “DIP Documents”), which shall be on terms consistent with the DIP Credit Agreement and otherwise in form and substance acceptable to the Required DIP Lenders (as defined in the DIP Credit Agreement) (or as otherwise provided in the DIP Documents), and to perform such other acts as may be necessary or desirable in connection with the DIP Documents;

(iii) authorizing the DIP Loan Parties to execute and deliver the DIP Documents, to incur all obligations owing thereunder to the DIP Secured Parties (collectively, the “DIP Obligations”), grant the DIP Agent and DIP Lenders allowed superpriority administrative expense claim status in each of the Chapter 11 Cases and any Successor Cases (as defined below), subject to the relative priorities set forth herein, and otherwise perform all of their respective obligations under the DIP Documents;

(iv) granting to the DIP Agent (on behalf of the DIP Secured Parties) automatically perfected security interests in and liens on all of the DIP Collateral (as defined below), including, without limitation, all property constituting “cash collateral,” as defined in section 363(a) of the Bankruptcy Code (including, without limitation, all cash and cash equivalents and other amounts from time to time on deposit or maintained by the Debtors in any deposit or securities account or accounts as of the Petition Date), of the Prepetition ABL/FILO Secured Parties (as defined below), and any cash or cash equivalents received by the Debtors after the Petition Date as proceeds of the Prepetition ABL Priority Collateral or Postpetition DIP Collateral³ (“Cash Collateral”), which liens shall be subject to the priorities set forth in Exhibit A of this Interim Order;

(v) authorizing the Debtors to use proceeds of the DIP Facility and Cash Collateral⁴ to:

(a) pay the principal, interest, fees, expenses, and other amounts payable and reimbursable under the DIP Documents and this Interim Order as such become earned, due, and payable, including, without limitation, commitment fees and the fees and disbursements of the DIP Lender Professionals (as defined below); (b) make permitted adequate protection payments as specified

³ “Postpetition DIP Collateral” means DIP Collateral that is not Prepetition ABL Priority Collateral, Postpetition ABL Priority Collateral, Prepetition Notes Priority Collateral, Postpetition Notes Priority Collateral, or PropCo Priority Collateral.

below; and (c) provide financing for working capital and other general corporate purposes during the Chapter 11 Cases, including for bankruptcy-related costs and expenses, all to the extent provided in, and in accordance with, the Approved Budget (including the Permitted Variances thereto), this Interim Order and the DIP Documents;

(vi) authorizing the Debtors to use the Prepetition ABL Priority Collateral, Prepetition Notes Priority Collateral, and PropCo Priority Collateral, including all property constituting Cash Collateral on an interim basis in accordance with the Approved Budget, this Interim Order, and the DIP Documents, and providing, among other things, adequate protection to the Prepetition ABL/FILO Secured Parties for any diminution in value of their respective interests in the Prepetition Collateral (including Cash Collateral), including resulting from the imposition of the automatic stay, or the Debtors' use, sale, or lease of the Prepetition Collateral ("Diminution in Value"), subject to the restrictions set forth in the DIP Documents and this Interim Order;

(vii) vacating and modifying the automatic stay imposed by section 362 of the Bankruptcy Code to the extent set forth herein solely to the extent necessary to permit the Debtors, their affiliates, and the Prepetition Secured Parties to implement and effectuate the terms and provisions of the DIP Documents and this Interim Order;

(viii) authorizing payment of the DIP Fees (as defined below);

(ix) waiving any applicable stay (including under Bankruptcy Rule 6004) with respect to the effectiveness and enforceability of this Interim Order and providing for the immediate effectiveness of this Interim Order; and

(x) scheduling a final hearing (the "Final Hearing") to consider the relief requested in the Motion on a final basis and approving the form of notice with respect to the Final Hearing.

The Court having considered the Motion, the exhibits attached thereto, the First Day Declaration, *Declaration of Jeffrey Finger in Support of the Debtors' Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to (A) Obtain Postpetition Financing and (B) Utilize Cash Collateral, (II) Granting Liens and Superpriority Administrative Expense Claims, (III) Granting Adequate Protection, (IV) Modifying the Automatic Stay, (V) Scheduling A Final Hearing, and (VI) Granting Related Relief*] (the "DIP Declaration"), the DIP Credit Agreement and other DIP Documents, and the evidence submitted and arguments made at the interim hearing held on April 9, 2024 (the "Interim Hearing"); and notice of the Interim Hearing having been given in accordance with Bankruptcy Rules 2002, 4001(b), (c) and (d), and all applicable Local Bankruptcy Rules; and the Interim Hearing having been held and concluded; and all objections, if any, to the interim relief requested in the Motion having been withdrawn, resolved or overruled by the Court; and it appearing that approval of the interim relief requested in the Motion is necessary to avoid immediate and irreparable harm to the Debtors and their estates (the "Estates") pending the Final Hearing, and otherwise is fair and reasonable and in the best interests of the Debtors, their Estates and all parties in interest, and is essential for the continued operation of the Debtors' business and the preservation of the value of the Debtors' assets; and after due deliberation and consideration, and good and sufficient cause appearing therefor;

BASED UPON THE RECORD ESTABLISHED AT THE INTERIM HEARING, THE COURT MAKES THE FOLLOWING FINDINGS OF FACT AND CONCLUSIONS OF LAW:⁵

⁵ The findings and conclusions set forth herein constitute the Bankruptcy 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.

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

B. **Petition Date.** On April 7, 2024 (the “Petition Date”), the Debtors commenced filing of voluntary petitions for relief under chapter 11 of the Bankruptcy Code with the Bankruptcy Court.

C. **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. As of the date hereof, no trustee or examiner has been appointed.

D. **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. §§ 157 and 1334. Venue for the Chapter 11 Cases and proceedings on the Motion is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

E. **Committee.** As of the date hereof, the United States Trustee for the District of Delaware (the “U.S. Trustee”) has not appointed an official committee of unsecured creditors in these Chapter 11 Cases pursuant to section 1102 of the Bankruptcy Code (the “Committee”).

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

G. **Debtors' Stipulations.** Subject to the limitations in Paragraph 45, and after consultation with their attorneys and financial advisors, the Debtors, and without prejudice to the rights of parties in interest as set forth in Paragraph 45, admit, stipulate, acknowledge, and agree as follows (Paragraphs G(i) through (viii) below are referred to, collectively, as the "Debtors' Stipulations"):

- (i) *Prepetition ABL and FILO Facilities.* Pursuant to that certain *Amended and Restated Credit Agreement*, dated as of April 24, 2020 (as amended, amended and restated, or otherwise modified from time to time, the "Prepetition Credit Agreement"), and collectively with the Loan Documents (as defined in the Prepetition Credit Agreement) and any other agreements and documents executed or delivered in connection therewith (each as may be amended, restated, supplemented, waived or otherwise modified from time to time, the "Prepetition ABL/FILO Documents"), among (a) the Borrower, Holdings, and other obligors which are Loan Parties (as defined in the Prepetition Credit Agreement) thereto, (b) Royal Bank of Canada, as administrative and collateral agent (in such capacity, the "Prepetition Administrative Agent"), (c) Sixth Street Specialty Lending, Inc. (f/k/a TPG Specialty Lending, Inc.), as FILO Agent (the "Prepetition FILO Agent"), (d) the Revolving Credit Lenders (as defined in the Prepetition Credit Agreement, the "Prepetition ABL Lenders," and together with the Prepetition Administrative Agent, the "Prepetition ABL Secured Parties"), and (e) the FILO Lenders (as defined in the Prepetition Credit Agreement, the "Prepetition FILO Lenders," and together with the Prepetition FILO Agent, the "Prepetition FILO Secured Parties," and collectively with the Prepetition ABL Secured Parties the "Prepetition ABL/FILO Secured Parties"), the Prepetition ABL/FILO Secured Parties provided revolving credit, term loans and other financial accommodations to, and issued letters of credit for the account of, Debtors that are "Loan Parties" under the Prepetition Credit Agreement (the "Prepetition Loan Parties") pursuant to the Prepetition ABL/FILO Documents (the "Prepetition ABL/FILO Facility").
- (ii) *Prepetition ABL/FILO Obligations.* The Prepetition ABL/FILO Facility provided Prepetition Loan Parties with, among other things, (a) Revolving Credit Commitments (as defined in the Prepetition Credit Agreement) of up to \$160,000,000, and (b) the FILO Loan (as defined in the Prepetition Credit Agreement) in the aggregate principal amount of \$32,500,000. As of the Petition Date, (x) the aggregate amount of Outstanding Amount of Revolving Loans (as defined in the Prepetition Credit Agreement) was not less than approximately \$38.2 million and (2) \$25,732,858 of outstanding Letter of Credit Obligations (as defined in the Prepetition Credit Agreement) (collectively, together with accrued and unpaid interest, bankers' acceptances, any reimbursement obligations (contingent or otherwise) in respect of letters of

credit and bankers' acceptances, any fees, expenses and disbursements (including attorneys' fees, accountants' fees, auditor fees, appraisers' fees and financial advisors' fees, and related expenses and disbursements), treasury, cash management, bank product and derivative obligations, indemnification obligations, guarantee obligations, and other charges, amounts and costs of whatever nature owing, whether or not contingent, whenever arising, accrued, accruing, due, owing, or chargeable in respect of any of the Prepetition Loan Parties' obligations owing to the Prepetition ABL Secured Parties pursuant to, or secured by, the Prepetition ABL/FILO Documents, including all "Obligations" as defined in the Prepetition Credit Agreement (excluding any FILO Liabilities as defined in the Prepetition Credit Agreement), and all interest, fees, costs, and other charges allowable under section 506(b) of the Bankruptcy Code, the "Prepetition ABL Secured Obligations"), and (y) the aggregate outstanding principal amount of FILO Loans (as defined in the Prepetition Credit Agreement) was not less than approximately \$25 million (collectively, together with accrued and unpaid interest, any fees, expenses and disbursements (including attorneys' fees, accountants' fees, auditor fees, appraisers' fees and financial advisors' fees, and related expenses and disbursements), indemnification obligations, guarantee obligations, and other charges, amounts and costs of whatever nature owing, whether or not contingent, whenever arising, accrued, accruing, due, owing, or chargeable in respect of any of the Prepetition Loan Parties' obligations owing to the Prepetition FILO Secured Parties pursuant to, or secured by, the Prepetition ABL/FILO Documents, including all "FILO Liabilities" as defined in the Prepetition Credit Agreement, and all interest and fees, costs and other charges allowable under section 506(b) of the Bankruptcy Code, the "Prepetition FILO Secured Obligations," and collectively with the Prepetition ABL Secured Obligations, the "Prepetition ABL/FILO Secured Obligations").

- (iii) *7.500% Senior Secured Notes due 2026*. Pursuant to that certain *Indenture*, dated as of December 22, 2020 (as amended, supplemented, or otherwise modified from time to time, the "Prepetition Notes Indenture") by and among (a) the Borrower, as issuer, (b) the guarantors party thereto (collectively, the "Prepetition Indenture Guarantors"), and together with the Borrower, the "Notes Obligors") and (c) Wilmington Trust, National Association, as trustee and notes collateral agent (in such capacities, the "Prepetition Notes Agent" and, together with the Prepetition Administrative Agent and Prepetition FILO Agent, the "Prepetition Agents"), the Borrower issued certain 7.500% Senior Secured Notes due 2026 (the "Prepetition Notes" and together with any ancillary documents, security agreements, guarantees, pledge agreements, other instruments, including, without limitation, that certain *Security Agreement*, dated as of December 22, 2020, by and among the Borrower, as issuer, Number Holdings, Inc., the Prepetition Indenture Guarantors, and the Collateral Agent, as notes collateral agent, and as each may be amended, restated, supplemented, or otherwise modified from time to time prior to the date hereof, collectively, the "Prepetition Notes Documents" and together with the Prepetition

ABL/FILO Documents, the “Prepetition Credit Documents”) to certain Holders (as defined in the Prepetition Notes Indenture) (each, a “Prepetition Note Holder” and, collectively, the “Prepetition Note Holders” and, together with the Prepetition Notes Agent, the “Prepetition Notes Secured Parties,” and together with the Prepetition ABL/FILO Secured Parties, the “Prepetition Secured Parties”). All amounts owing under the Prepetition Notes and the Prepetition Notes Documents constitute “Obligations” under and as defined in the Prepetition Notes Documents.

(iv) *Prepetition Notes Obligations.* As of the Petition Date, the Notes Obligors were lawfully indebted and liable to the Prepetition Notes Secured Parties in respect of the obligations under the Prepetition Notes Documents in the aggregate principal amount of not less than \$350 million plus all accrued but unpaid interest, penalties and fees thereon (including interest paid in kind, and the Applicable Premium (as defined in the Prepetition Indenture)), fees, expenses, reimbursement obligations, indemnification obligations, guarantee obligations, other contingent obligations, and other charges of whatever nature, whether or not contingent, whenever arising, due, or owing, and all other obligations expressly provided for thereunder, or incurred in connection therewith, including any “Obligations” as defined in the Prepetition Notes Documents (such obligations under the Prepetition Notes Documents, the “Prepetition Notes Secured Obligations” and, together with the Prepetition ABL/FILO Secured Obligations, the “Prepetition Secured Obligations”), and the Debtors are unconditionally liable, without defense, counterclaim, offset or setoff of any kind, with respect to the Prepetition Notes Secured Obligations. The Prepetition Notes Secured Obligations constitute legal, valid, and binding obligations of the Debtors. No offsets, defenses, or counterclaims to, or claims or causes of action that could reduce the amount or ranking of the Prepetition Notes Secured Obligations exist. No portion of the Prepetition Notes Secured Obligations (including any interest owed thereunder) is subject to set-off, avoidance, impairment, disallowance, recharacterization, reduction, subordination (whether equitable, contractual, or otherwise), counterclaims, recoupment, cross-claims, defenses, or any other challenges under or pursuant to the Bankruptcy Code or any other applicable domestic or foreign law or regulation by any person or entity. The Prepetition Notes Documents are valid and enforceable by the Prepetition Notes Secured Parties against each of the Notes Obligors.

(v) *Prepetition Liens and Prepetition Collateral.* As more fully set forth in the Prepetition Credit Documents, prior to the Petition Date, the Prepetition Loan Parties, as applicable, granted: (a) with respect to the lien in favor of the Prepetition ABL/FILO Secured Parties and the Prepetition ABL/FILO Secured Obligations (the “Prepetition ABL/FILO Liens”), to the Prepetition Administrative Agent, for the benefit of itself and the Prepetition ABL/FILO Secured Parties, security interests in and continuing liens as follows: (1) a first priority security interest in and continuing lien for the benefit of the Prepetition

ABL Secured Parties on the Prepetition ABL Priority Collateral⁶ whether then owned or existing or thereafter acquired or arising, subject in terms of priority only to Prepetition Permitted Liens (as defined herein), (2) a second priority security interest in and continuing lien for the benefit of the Prepetition FILO Secured Parties on the Prepetition ABL Priority Collateral, (3) a second priority security interest in and continuing lien for the benefit of the Prepetition ABL Secured Parties on the Prepetition Notes Priority Collateral⁷ (together with the lien described in clause (1) above, the (“Prepetition ABL Liens”)), and (4) a third priority security interest in and continuing lien for the benefit of the Prepetition FILO Secured Parties on the Prepetition Notes Priority Collateral (together with the lien described in clause (2) above, the “Prepetition FILO Liens”)), and (b) with respect to the lien in favor of the Prepetition Notes Secured Parties and the Prepetition Notes Secured Obligations (the “Prepetition Notes Liens” and, together with the Prepetition ABL/FILO Liens, the “Prepetition Liens”), to the Prepetition Notes Agent, for the benefit of itself and the Prepetition Notes Secured Parties, security interests in and continuing liens as follows: (1) a first priority security interest in and continuing lien on the Prepetition Notes Priority Collateral, subject in terms of priority only to Prepetition Permitted Liens (as defined herein), and (2) a third priority security interest in and continuing lien on the Prepetition ABL Priority Collateral, subject in terms of priority, only to the security interest in favor of the Prepetition ABL/FILO Secured Parties on the Prepetition ABL Priority Collateral and Prepetition Permitted Liens.

(vi) *Priority of Prepetition Liens; Intercreditor Agreement and Agreement Among Lenders.* The Prepetition Administrative Agent and Prepetition Notes Agent entered into that certain *Intercreditor Agreement*, dated as of December 22, 2020 (as amended, restated, supplemented, or otherwise modified in accordance with its terms, the “Intercreditor Agreement”) to govern certain rights, interests, obligations, priority, and positions of the Prepetition ABL/FILO Secured Parties and the Prepetition Notes Secured Parties with respect to the assets and properties of the Prepetition Loan Parties. The Prepetition Administrative Agent and Prepetition FILO Agent entered into that certain *Agreement Among Lenders* dated as of September 6, 2017 (as amended, restated, supplemented, or otherwise modified in accordance with its terms, the “AAL”) to govern certain rights of the Prepetition ABL/FILO Secured Parties.

(vii) *The PropCo Loan.* Pursuant to that certain *Secured Promissory Note*, dated as of August 3, 2023 (as amended, amended and restated, or otherwise modified from time to time, the “Prepetition PropCo Note Agreement”) among 99 Cents PropCo LLC, as issuer (the “PropCo Issuer”) and RCB Equities #1, LLC as

⁶ “Prepetition ABL Priority Collateral” means the “ABL Priority Collateral” as defined in the Intercreditor Agreement (as defined below).

⁷ “Prepetition Notes Priority Collateral” means the “Notes Priority Collateral” as defined in the Intercreditor Agreement.

lender (the “Prepetition PropCo Lender”), the PropCo Issuer issued a secured promissory note in the original principal amount of \$21.0 million to the Prepetition PropCo Lender (the “Prepetition PropCo Note,” and the obligations secured under the Prepetition PropCo Note Agreement and the Prepetition PropCo Note, the “Prepetition PropCo Secured Obligations”). Pursuant to the Prepetition PropCo Note, the PropCo Issuer granted the Prepetition PropCo Lender a first priority security interest in and lien on (the “Prepetition PropCo Lien”) certain real property not subject to the Prepetition ABL/FILO Liens or the Prepetition Notes Liens (the “PropCo Priority Collateral”).

- (viii) *Validity, Extent, Perfection and Priority of Prepetition Liens and Prepetition Secured Obligations.* The Debtors acknowledge and agree that as of the Petition Date (a) the Prepetition ABL/FILO Liens on the Prepetition ABL Priority Collateral and the Prepetition Notes Priority Collateral (collectively, the “Prepetition Collateral”) were valid, binding, enforceable, non-avoidable, and properly perfected and were granted to, or for the benefit of, the Prepetition ABL/FILO Secured Parties for fair consideration and reasonably equivalent value; (b) the Prepetition ABL/FILO Liens were (1) senior in priority over any and all other liens on the Prepetition ABL Priority Collateral (and subject to the AAL as between the Prepetition ABL Secured Parties and the Prepetition FILO Secured Parties, and (2) senior in priority over any and all other liens, except the Prepetition Notes Liens, on the Prepetition Notes Priority Collateral, subject in each case to the Intercreditor Agreement and AAL, other than (x) certain other liens and that are permitted to be senior to the Prepetition ABL/FILO Liens under the Prepetition ABL/FILO Documents and (y) other statutory trust rights, such as those established by the Perishable Agricultural Commodities Act, 7 U.S.C. § 499a, *et seq.* (“PACA”) (solely to the extent such liens and statutory trust rights were valid, non-avoidable, and senior in priority to the Prepetition ABL/FILO Liens as of the Petition Date and properly perfected as of the Petition Date, and are either granted by applicable law or indicated as “Prepetition Permitted Liens” on Schedule 9.1 of the DIP Credit Agreement, or perfected subsequent to the Petition Date as permitted by section 546(b) of the Bankruptcy Code (collectively the “Prepetition Permitted Liens”)); (c) the Prepetition ABL/FILO Obligations constitute legal, valid, binding, and non-avoidable obligations of the Prepetition Loan Parties enforceable in accordance with the terms of the applicable Prepetition ABL/FILO Documents; (d) no offsets, recoupments, challenges, objections, defenses, claims, or counterclaims of any kind or nature to any of the Prepetition ABL/FILO Liens or Prepetition ABL/FILO Secured Obligations exist, and no portion of the Prepetition ABL/FILO Liens or Prepetition ABL/FILO Secured Obligations is subject to any challenge or defense including avoidance, disallowance, disgorgement, recharacterization, or subordination (equitable or otherwise) pursuant to the Bankruptcy Code or applicable non-bankruptcy law; (e) the Debtors and their estates have no claims, objections, challenges, causes of action, and/or choses in action, including avoidance claims under Chapter 5 of the Bankruptcy Code or applicable state law equivalents or actions for recovery

or disgorgement, against any of the Prepetition ABL/FILO Secured Parties or any of their respective affiliates, agents, attorneys, advisors, professionals, officers, directors, and employees arising out of, based upon or related to the Prepetition ABL/FILO Facility; (f) the Debtors have waived, discharged, and released any right to challenge any of the Prepetition ABL/FILO Obligations, the priority of the Debtors' obligations thereunder, and the validity, extent, and priority of the liens securing the Prepetition ABL/FILO Secured Obligations; and (g) the Prepetition ABL/FILO Secured Obligations constitute allowed, secured claims within the meaning of sections 502 and 506 of the Bankruptcy Code.

(ix) *Validity, Extent, Perfection and Priority of Prepetition Liens and Prepetition Notes Secured Obligations.* The Debtors acknowledge and agree that as of the Petition Date, in each case subject to the Debtors' ability to seek to surcharge the Prepetition Notes Priority Collateral under sections 506(c) and 552(b) of the Bankruptcy Code (a) the Prepetition Notes Liens on the Prepetition ABL Priority Collateral and the Prepetition Notes Priority Collateral (collectively, the "Prepetition Collateral") were valid, binding, enforceable, non-avoidable, and properly perfected and were granted to, or for the benefit of, the Prepetition Notes Secured Parties for fair consideration and reasonably equivalent value; (b) the Prepetition Notes Liens were (1) senior in priority over any and all other liens on the Prepetition Notes Priority Collateral, and (2) senior in priority over any and all other liens, except the Prepetition ABL/FILO Liens, on the Prepetition ABL Priority Collateral, subject in each case to the Intercreditor Agreement, other than certain other liens that are permitted to be senior to the Prepetition Notes Liens under the Prepetition Notes Documents (solely to the extent such liens were valid, non-avoidable, and senior in priority to the Prepetition Notes Liens as of the Petition Date and properly perfected as of the Petition Date, or perfected subsequent to the Petition Date as permitted by section 546(b) of the Bankruptcy Code); (c) the Prepetition Notes Obligations constitute legal, valid, binding, and non-avoidable obligations of the Prepetition Loan Parties enforceable in accordance with the terms of the applicable Prepetition Notes Documents; (d) no offsets, recoupments, challenges, objections, defenses, claims, or counterclaims of any kind or nature to any of the Prepetition Notes Liens or Prepetition Notes Secured Obligations exist, and no portion of the Prepetition Notes Liens or Prepetition Notes Secured Obligations is subject to any challenge or defense including avoidance, disallowance, disgorgement, recharacterization, or subordination (equitable or otherwise) pursuant to the Bankruptcy Code or applicable non-bankruptcy law; (e) the Debtors and their estates have no claims, objections, challenges, causes of action, and/or choses in action, including avoidance claims under Chapter 5 of the Bankruptcy Code or applicable state law equivalents or actions for recovery or disgorgement, against any of the Prepetition Notes Secured Parties or any of their respective affiliates, agents, attorneys, advisors, professionals, officers, directors, and employees arising out of, based upon or related to the

Prepetition Notes; (f) the Debtors have waived, discharged, and released any right to challenge any of the Prepetition Notes Obligations, the priority of the Debtors' obligations thereunder, and the validity, extent, and priority of the liens securing the Prepetition Notes Secured Obligations; and (g) the Prepetition Notes Secured Obligations constitute allowed, secured claims within the meaning of sections 502 and 506 of the Bankruptcy Code.

H. **Releases.** Subject to paragraph 45 hereof, the Debtors, on behalf of themselves and their respective Estates (including any successor trustee or other estate representative in the Chapter 11 Cases and any Successor Cases (as defined herein), and any party acting by, through or under the Debtors or their Estates), hereby stipulate and agree that they absolutely and unconditionally release and forever and irrevocably discharge and acquit each of the DIP Secured Parties, the Prepetition ABL/FILO Secured Parties, and their respective affiliates and each of their respective former or current officers, partners, directors, managers, owners, members, principals, employees, agents, related funds, investors, financing sources, financial advisors, attorneys, accountants, investment bankers, consultants, representatives and other professionals and the respective successors and assigns thereof (collectively, the "Released Parties") from any and all obligations and liabilities to the Debtors (and their successors and assigns) and from any and all claims, counterclaims, demands, debts, accounts, contracts, disputes, liabilities, allegations, suits, controversies, proceedings, actions and causes of action arising prior to the Petition Date (collectively, the "Released Claims") of any kind, nature or description, whether known or unknown, foreseen or unforeseen or liquidated or unliquidated, arising in law or equity or upon contract or tort or under any state or federal law or regulation or otherwise, arising out of or related to (as applicable) the DIP Documents and the Prepetition ABL/FILO Documents, the negotiation thereof and of the transactions reflected thereby and the obligations and financial obligations made thereunder or otherwise related to the Debtors, in each case that the Debtors at any time had, now

have or may have, or that their successors or assigns hereafter can or may have against any of the Released Parties for or by reason of any act, omission, matter, cause or thing whatsoever arising at any time on or prior to the date of this Interim Order. The Debtors further waive and release any defense, right of counterclaim, right of set-off, or deduction to the payment of the Prepetition ABL/FILO Secured Obligations that the Debtors may now have or may claim to have against the Released Parties, arising out of, connected with, or relating to any and all acts, omissions, or events occurring prior to this Court entering this Interim Order relating to the Debtors' secured lending relationship with the Prepetition ABL/FILO Secured Parties. For the avoidance of doubt, nothing in this release shall relieve the DIP Secured Parties of their obligations under the DIP Documents from and after the date of this Interim Order.

I. Prepetition Permitted Liens. Nothing herein shall constitute a finding or ruling by this Court that any alleged Prepetition Permitted Lien is valid, senior, enforceable, prior, perfected, or non-avoidable.⁸ Moreover, nothing shall prejudice the rights of any party-in-interest, including, but not limited to the Debtors, the DIP Secured Parties, the Prepetition ABL/FILO Secured Parties, or a Committee (if appointed), to challenge the validity, priority, enforceability, seniority, avoidability, perfection, or extent of any alleged Prepetition Permitted Lien. The right of a seller of goods to reclaim such goods under section 546(c) of the Bankruptcy Code is not a Prepetition Permitted Lien, rather, any such alleged claim arising or asserted as a right of reclamation (whether asserted under section 546(c) of the Bankruptcy Code or otherwise) shall

⁸ For the avoidance of doubt, as used in this Interim Order, no reference to the Prepetition Permitted Liens shall refer to or include the Prepetition Liens or the Prepetition PropCo Lien.

have the same rights and priority vis-à-vis the Prepetition ABL/FILO Priority Liens as such claims had on the Petition Date.

J. Intercreditor Agreement; Agreement Among Lenders. Pursuant to section 510 of the Bankruptcy Code, the Intercreditor Agreement, the AAL and any other applicable intercreditor or subordination provisions contained in any of the Prepetition Credit Documents or otherwise (i) shall remain in full force and effect, (ii) shall continue to govern the relative priorities, rights, and remedies of the Prepetition Secured Parties, and (iii) shall not be deemed to be amended, altered, or modified by the terms of this Interim Order.

K. Cash Collateral.

(i) *ABL/FILO Cash Collateral.* All or substantially all of the Debtors' cash and cash equivalents constituting Prepetition ABL Priority Collateral or Postpetition ABL Priority Collateral, including cash on deposit in any account or accounts as of the Petition Date, cash obtained at any time thereafter (including proceeds of the DIP Facility), securities or other property, wherever located, whether subject to control agreements or otherwise, whether as original collateral or proceeds of other Prepetition ABL Priority Collateral or Postpetition ABL Priority Collateral, constitutes Cash Collateral of the Prepetition ABL/FILO Secured Parties.

(ii) *Notes Cash Collateral.* All or substantially all of the Debtors' cash and cash equivalents constituting Prepetition Notes Priority Collateral or Postpetition Notes Priority Collateral, including cash on deposit in any account or accounts as of the Petition Date, cash obtained at any time thereafter, securities or other property, wherever located, whether subject to control agreements or otherwise, whether as original collateral or proceeds of other Prepetition Notes Priority Collateral or Postpetition Notes Priority Collateral, constitutes cash

collateral (as defined in section 363(a) of the Bankruptcy Code) of the Prepetition Notes Secured Parties.

L. Findings Regarding Postpetition Financing

(i) *Request for Postpetition Financing.* The Debtors seek authority to (a) enter into the DIP Facility on the terms described herein and in the DIP Documents, and (b) use Cash Collateral on the terms described herein, in the DIP Credit Agreement, and the other DIP Documents to administer their Chapter 11 Cases and fund their operations in accordance with the Approved Budget (as defined herein). At the Final Hearing, the Debtors will seek final approval of the proposed postpetition financing and use of Cash Collateral arrangements pursuant to a proposed final order (the “Final Order” and, together with the Interim Order, the “DIP Orders”), which shall be in form and substance acceptable to the DIP Lenders, and the DIP Agent, and reasonably acceptable to the Prepetition Administrative Agent. Notice of the Final Hearing and Final Order will be provided in accordance with this Interim Order.

(ii) *Need for Postpetition Financing and Use of Cash Collateral.* The Debtors have an immediate and critical need to obtain the financing pursuant to the DIP Facility and to continue to use the Prepetition ABL Priority Collateral (including Cash Collateral) in order to, among other things, (i) pay the fees, costs, and expenses incurred in connection with the Chapter 11 Cases, (ii) fund any obligations benefitting from the Carve-Out (as defined below), (iii) fund the orderly wind-down of their businesses and the monetization of any remaining assets, (iv) maintain business relationships with customers, vendors and suppliers, (v) make payroll (including funding store closing bonuses for rank-and-file employees), and (vi) satisfy other working capital and operational needs and costs of the restructuring, all to the extent provided in, and in accordance with, the Approved Budget, this Interim Order and the DIP Documents.

The incurrence of new debt under the DIP Documents and use of Cash Collateral is necessary and vital to the preservation and maintenance of the value of the Debtors' Estates. Immediate and irreparable harm will be caused to the Debtors and their Estates if immediate financing is not obtained and permission to use Cash Collateral is not granted. The terms of the proposed financing are fair and reasonable, reflect the Debtors' exercise of prudent business judgment, and are supported by reasonably equivalent value and fair consideration. The adequate protection provided in this Interim Order and other benefits and privileges contained herein are consistent with and authorized by the Bankruptcy Code.

(iii) *No Credit Available on More Favorable Terms.* The DIP Facility, taken as a whole, is the best debtor-in-possession financing option currently available to the Debtors. Given the facts and circumstances of these Chapter 11 Cases, the Debtors are unable to obtain financing from sources other than the DIP Lenders on terms more favorable than the DIP Facility. The Prepetition ABL/FILO Secured Parties have consented to the Debtors incurring debtor-in-possession financing and, as applicable, the use of their Cash Collateral, only on the terms and subject to the conditions set forth in the DIP Documents and this Interim Order. The Prepetition ABL/FILO Secured Parties have consented to the liquidation of the Prepetition ABL Priority Collateral in accordance with the terms of the DIP Documents and this Interim Order. This Interim Order shall serve as an Enforcement Notice under the Intercreditor Agreement. 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 terms more favorable than those set forth in the DIP Documents is not available without granting: (1) perfected security interests in and liens on (each as provided herein) the DIP Collateral with the priorities set forth herein (including subject to the Carve-Out); (2) superpriority claims to the extent set forth in this Interim Order; and (3) the other protections set forth in this Interim Order.

(iv) *Use of Cash Collateral and Proceeds of the DIP Facility.* As a condition to the Debtors' entry into the DIP Documents, the extension of credit under the DIP Facility and the authorization to use Prepetition ABL Priority Collateral, including Cash Collateral, the Debtors and Prepetition ABL/FILO Secured Parties have agreed that Cash Collateral and the proceeds of the DIP Facility shall be used solely in accordance with the terms and conditions of this Interim Order and the DIP Documents and in accordance with the Approved Budget.

(v) *Application of Proceeds of Collateral.* As a condition to entry into the DIP Documents, the extension of credit under the DIP Facility and authorization to use Cash Collateral, the Debtors have agreed that, as of and commencing on the date of entry of this Interim Order, the Debtors shall apply the proceeds of DIP Collateral in accordance with this Interim Order and the DIP Documents.

(vi) *Roll-Up.*

1. Upon entry of the Final Order granting such relief, subject only to paragraph 45 of this Interim Order, Prepetition FILO Secured Obligations in an aggregate amount of up to the Roll-Up Amount shall be converted on a cashless dollar-for-dollar basis into principal

obligations constituting DIP Obligations, without any further action by the Debtors or any other party (collectively, the “DIP Roll-Up Obligations”).⁹

2. If approved upon entry of a Final Order, the Debtors propose that the conversion (or “roll-up”) shall be authorized as compensation for, in consideration for, and solely on account of, the agreement of the Prepetition FILO Secured Parties as DIP Lenders to fund amounts, and provide other consideration to the Debtors under the DIP Facility, and not as payments under, adequate protection for, or otherwise on account of, any Prepetition FILO Secured Obligations. Notwithstanding any other provision of this Interim Order, the Final Order, or the DIP Documents, all rights of the Prepetition FILO Secured Parties shall be fully preserved. The Prepetition FILO Secured Parties would not otherwise consent to the use of their Cash Collateral, and the DIP Agent and the DIP Lenders would not be willing to provide the DIP Facility or extend credit to the Debtors thereunder, without the inclusion of the DIP Roll-Up Obligations in the DIP Obligations upon entry of the Final Order providing such relief. Moreover, the Debtors represent the roll-up of the Prepetition FILO Secured Obligations in the Roll-Up Amount into DIP Obligations will enable the Debtors to obtain urgently needed financing to administer these Chapter 11 Cases to fund their operations.

M. **Adequate Protection**. Until such time as the applicable Prepetition ABL/FILO Secured Obligations are Paid in Full,¹⁰ the Prepetition Administrative Agent, for the benefit of itself

⁹ The DIP Obligations other than the DIP Roll-Up Obligations shall constitute the “New Money DIP Obligations.”

¹⁰ “Paid in Full” or “Payment in Full” means the repayment in full in cash of all obligations (including principal, interest, fees, prepayment premiums, expenses, indemnities, other than contingent indemnification obligations for which no claim has been asserted and obligations which are cash collateralized in accordance with the terms of the applicable credit facility) under the applicable credit facility, the cash collateralization of all treasury and cash management obligations, hedging obligations, and bank product obligations, and the cancellation, replacement, backing, or cash collateralization of letters of credit, in each case, in accordance with the terms of the applicable credit facility. No facility shall be deemed to have been Paid in Full until such time as, with respect to the applicable facility, (a) the commitments to lend thereunder have been terminated and the Debtors and Prepetition Secured Parties acknowledge the commitments with respect to the Revolving Credit Loans were terminated on

and the other Prepetition ABL Secured Parties, and the Prepetition FILO Agent, for the benefit of itself and the Prepetition FILO Secured Parties, and until such time as the Prepetition Notes Secured Obligations are paid in full or there is a discharge of the obligations under the Prepetition Notes the Prepetition Notes Agent, for the benefit of itself and the Prepetition Notes Secured Parties, are each entitled to receive adequate protection, subject to paragraph 45 hereof, as set forth herein to the extent of any Diminution in Value of their respective interests in the Prepetition Collateral. The Prepetition Notes Secured Obligations shall not be deemed to have been paid in full until (i) the Challenged Deadline (as defined in this Interim Order) shall have occurred without the timely and proper commencement of a Challenge or, if a Challenge is timely and properly asserted prior to the expiration of the applicable Challenge Period, upon the final, non-appealable disposition of such Challenge, and (ii) the Prepetition Notes Agent has received releases in form and substance satisfactory to the Prepetition Notes Agent in its sole discretion.

N. **Good Faith of the DIP Secured Parties.**

- (i) *Willingness to Provide Financing.* The DIP Secured Parties have committed to provide financing to the Debtors subject to: (a) entry of this Interim Order and the Final Order; (b) approval of the terms and conditions of the DIP Facility and those set forth in the DIP

the Petition Date; (b) the Challenge Deadline (as defined in this Interim Order) shall have occurred without the timely and proper commencement of a Challenge or, if a Challenge is timely and properly asserted prior to the expiration of the applicable Challenge Period, upon the final, non-appealable disposition of such Challenge; (c) with respect to the Prepetition ABL Secured Obligations, the Prepetition Administrative Agent has received (i) a countersigned payoff letter in form and substance satisfactory to the Prepetition Administrative Agent, (ii) releases in form and substance satisfactory to the Prepetition Administrative Agent, each in its sole discretion and (iii) cash collateral equal to no less than 101% of the face amount of any outstanding Letters of Credit shall have been deposited in the ABL Reserve Account subject to the sole dominion and control of the Prepetition Administrative Agent and subject to no other Liens and such amounts shall remain in such ABL Reserve Account until (x) all such Letters of Credit are returned or terminated or (y) such amount is disbursed to the beneficiary if the applicable Letter of Credit is drawn; and (d) with respect to the Prepetition FILO Secured Obligations, the Prepetition FILO Agent has received releases in form and substance satisfactory to the Prepetition FILO Agent, each in its sole discretion.

Documents; (c) satisfaction (or waiver) of the closing conditions set forth in the DIP Documents; (d) the conversion of the Roll-Up Amount into DIP Roll-Up Obligations upon entry of the Final Order providing for such relief; and (e) findings by this Court that the DIP Facility is essential to the Debtors' estates, that the DIP Lenders are extending credit to the Debtors pursuant to the DIP Documents in good faith, and that the DIP Secured Parties' claims, superpriority claims, security interests and liens and other protections granted pursuant to this Interim Order and the DIP Documents will have the protections provided by section 364(e) of the Bankruptcy Code.

(ii) *Business Judgment and Good Faith Pursuant to Section 364(e)*. Based on the Motion and the DIP Declaration, and the record presented to the Court at the Interim Hearing, (i) the terms of the financing embodied in the DIP Facility, including the fees, expenses and other charges paid and to be paid thereunder or in connection therewith, (ii) the adequate protection authorized by this Interim Order and DIP Documents and (iii) the terms on which the Debtors may continue to use the Prepetition Collateral and Prepetition PropCo Collateral (including Cash Collateral constituting ABL Priority Collateral), in each case pursuant to this Interim Order and the DIP Documents, are fair and reasonable, reflect the Debtors' exercise of prudent business judgment consistent with their fiduciary duties, constitute reasonably equivalent value and fair consideration, and represent the best financing (and terms) available under the circumstances.

(iii) *Good Faith Pursuant to Section 364(e)*. The terms and conditions of the DIP Facility (including the conversion of the Roll-Up Amount into DIP Roll-Up Obligations) and the use of Cash Collateral were negotiated in good faith and at arm's length among the Debtors, the DIP Secured Parties, and the Prepetition ABL/FILO Secured Parties with the assistance and counsel of their respective advisors. Use of Cash Collateral and the credit to be extended under the DIP Facility shall be deemed to have been allowed, advanced, made, or

extended in good faith by the DIP Secured Parties and the Prepetition ABL/FILO Secured Parties within the meaning of section 364(e) of the Bankruptcy Code.

(iv) *Consent to DIP Facility and Use of Cash Collateral.* The Prepetition ABL/FILO Secured Parties and the Debtors have negotiated at arms-length and in good faith regarding the Debtors' use of Cash Collateral as provided herein. The Prepetition ABL/FILO Secured Parties have agreed to permit the Debtors' use of Cash Collateral and other Prepetition ABL Priority Collateral, subject to the terms and conditions set forth herein, and the Debtors' entry into the DIP Documents solely in accordance with and subject to the terms and conditions in this Interim Order and the DIP Documents. Entry of this Interim Order is in the best interests of the Debtors, their estates and their creditors.

O. **Good Cause.** Good cause has been shown for immediate entry of this Interim Order, and the entry of this Interim Order is in the best interests of the Debtors, the Estates and their stakeholders. Among other things, the relief granted herein will minimize disruption of the Debtors' business and permit the Debtors to meet payroll, continue operating their business to facilitate an orderly liquidation and simultaneously conduct a marketing process consistent with the Debtors' proposed bidding procedures and Milestones (as defined herein), pay other expenses necessary to maximize the value of the Estates. The terms of the Debtors' DIP Facility, use of Cash Collateral and proposed adequate protection arrangements, as set forth in this Interim Order, are fair and reasonable under the circumstances, and reflect the Debtors' exercise of prudent business judgment.

P. **Sections 506(c) and 552(b).** In light of (i) the Prepetition ABL/FILO Secured Parties' agreement that their liens shall be subject to the Carve-Out and paragraph 36 below, and (ii) the payment of certain prepetition unsecured claims and administrative expenses as set forth

in the Approved Budget (as defined below) and first day motions in accordance with and subject to the terms and conditions of this Interim Order, (a) the Prepetition ABL/FILO Secured Parties are each entitled to a waiver of any “equities of the case” exception under section 552(b) of the Bankruptcy Code upon entry of a Final Order providing for such relief, and (b) the Prepetition ABL/FILO Secured Parties are each entitled to a waiver of the provisions of section 506(c) of the Bankruptcy Code, in each case effective upon entry of a Final Order providing for such relief.

Q. **Immediate Entry.** Sufficient cause exists for immediate entry of this Interim Order pursuant to Bankruptcy Rule 4001(b)(2). Absent entry of this Interim Order, the Debtors’ businesses, properties and estates would be immediately and irreparably harmed. This Court concludes that entry of this Interim Order is in the best interests of the Debtors’ respective estates and stakeholders.

R. **Interim Hearing.** Notice of the Interim Hearing and the relief requested in the Motion has been provided by the Debtors, whether by facsimile, electronic mail, overnight courier or hand delivery, to certain parties-in-interest, including: (i) the U.S. Trustee; (ii) those entities or individuals included on the Debtors’ list of 30 largest unsecured creditors on a consolidated basis; (iii) counsel to the Prepetition Administrative Agent; (iv) counsel to the Prepetition FILO Agent; (v) counsel to the Prepetition Notes Agent; (vi) counsel to the Prepetition PropCo Lender; and (vii) all other parties entitled to notice under the Bankruptcy Rules and the Local Rules. The Debtors have made reasonable efforts to afford the best notice possible under the circumstances.

Based upon the foregoing findings and conclusions, the Motion, the First Day Declaration, the DIP Declaration, 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 Financing Approved. On an interim basis, entry into the DIP Facility is authorized and approved, and the use of Cash Collateral is authorized, in each case, subject to the terms and conditions set forth in this Interim Order and the DIP Documents. All objections to this Interim Order, to the extent not withdrawn, waived, settled or resolved, and all reservations of rights included therein, are hereby denied and overruled on the merits. This Interim Order shall become effective immediately upon its entry.

DIP Facility Authorization

2. Authorization of the DIP Financing. The Debtors are expressly and immediately authorized and empowered to execute and deliver the DIP Documents, and to incur and to perform the DIP Obligations in accordance with, and subject to, the terms of this Interim Order and the DIP Documents, and to execute, deliver and perform under all instruments, certificates, agreements, and documents which may be required or necessary for the performance by the Debtors under the DIP Documents and the creation and perfection of the DIP Liens described in and provided for by this Interim Order and the DIP Documents. The Debtors are hereby authorized and directed to pay, in accordance with this Interim Order, any principal, interest, fees, expenses, and other amounts described in the DIP Documents and this Interim Order, as such amounts become due and owing, without need to obtain further Court approval (except as otherwise provided herein or in the DIP Documents) subject to, and in accordance with, the terms hereof and thereof, including, without limitation, any closing fees and commitment fees, as well as any reasonable and documented fees and disbursements of persons or firms retained by the DIP Agent, including, but not limited to, Proskauer Rose LLP, Landis Rath & Cobb LLP, and M3 Partners, LP (collectively, the “DIP Professionals”) as set forth herein and in the DIP Documents, whether or not such professional fees and disbursements arose before or after the Petition Date,

and whether or not the transactions contemplated hereby are consummated, to implement all applicable reserves and to take any other actions that may be necessary or appropriate, all to the extent provided in this Interim Order and the DIP Documents. Upon execution and delivery, the DIP Documents shall represent legal, valid, and binding obligations of the Debtors, enforceable against each of the Debtors and their Estates in accordance with their terms. Each officer, sole member, or managing member, as applicable, of a Debtor acting individually is hereby authorized to execute and deliver each of the DIP Documents, and such execution and delivery is conclusive evidence of the respective authority of such officer, sole member, or managing member, as applicable, to act in the name of and on behalf of the Debtors.

3. Authorization to Borrow. To prevent immediate and irreparable harm to the Debtors' Estates, and to enable the Debtors to continue to operate their business in connection with an orderly liquidation and a marketing process consistent with the Debtors' proposed bidding procedures and the Milestones (as defined herein), and to preserve and maximize the value of their Estates, subject to the terms and conditions set forth in the DIP Documents and this Interim Order, the Debtors are hereby authorized to borrow the New Money Amount and, upon entry of the Final Order granting such relief, incur the DIP Roll-Up Obligations, subject to any limitations on, or conditions to, borrowing under the DIP Documents, which borrowings shall be used solely for purposes permitted under the DIP Documents, including, without limitation, to provide working capital for the Debtors and for other general corporate purposes and to pay interest, fees, costs, charges and expenses, in each case, in accordance with this Interim Order, the DIP Documents, and the Approved Budget.

4. DIP Obligations. Upon execution and delivery of the DIP Documents, the DIP Documents and this Interim Order shall constitute and evidence the validity and binding effect

of the Debtors' DIP Obligations. Upon execution and delivery of the DIP Documents and entry of this Interim Order, the DIP Obligations and this Interim Order shall be enforceable against the Debtors, their Estates, and any successors thereto, including without limitation, any trustee appointed in the Chapter 11 Cases, or in any case under Chapter 7 of the Bankruptcy Code upon the conversion of any of the Chapter 11 Cases, or in any other proceedings superseding or related to any of the foregoing (collectively, the "Successor Cases"). Upon execution and delivery of the DIP Documents and entry of this Interim Order, the DIP Obligations will include all loans (subject to the entry of the Final Order with respect to the DIP Roll-Up Obligations), guarantees, reimbursement obligations, and any other indebtedness or obligations, contingent or absolute, which may now or from time to time be owing by any of the Debtors to the DIP Secured Parties, including, without limitation, all principal, accrued interest, costs, charges, fees, expenses and other amounts under the DIP Documents. The Debtors shall be jointly and severally liable for the DIP Obligations. No obligation, payment, transfer, or grant of collateral security hereunder or under the DIP Documents (including any DIP Obligation, DIP Roll-Up Obligation, or DIP Liens) to the DIP Secured Parties, shall be stayed, restrained, voidable, avoidable, or recoverable, under the Bankruptcy Code or under any applicable law (including, without limitation, under sections 502(d), 544, and 547 to 550 of the Bankruptcy Code or under any applicable state Uniform Voidable Transactions Act, Uniform Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act, or similar statute or common law), or be subject to any disgorgement, avoidance, reduction, setoff, recoupment, offset, recharacterization, subordination (whether equitable, contractual, or otherwise), claim, counterclaim, charge, assessment, cross-claim, defense, or any other liability or challenge under the Bankruptcy Code or any applicable law or regulation by any person or entity for any reason.

5. DIP Collateral. Subject and subordinate to the Carve-Out, to secure the DIP Obligations, effective immediately upon entry of this Interim Order and execution and delivery of the DIP Documents, pursuant to sections 361, 362, 364(c)(2), and 364(c)(3) of the Bankruptcy Code, the DIP Agent (for the benefit of the DIP Lenders), is hereby granted, continuing, valid, binding, enforceable, non-avoidable, and automatically and properly perfected postpetition security interests in and liens on (collectively, the “DIP Liens”) all the DIP Collateral.¹¹

6. DIP Liens. Upon execution and delivery of the DIP Documents, the DIP Liens securing the DIP Obligations are valid, automatically perfected, non-avoidable, senior in priority, and superior to any security, mortgage, collateral interest, lien or claim to any of the DIP Collateral, except that the DIP Liens shall be subject to the Carve-Out and shall have the priorities set forth in Exhibit A hereto. Other than as set forth herein or in the DIP Documents, the DIP Liens shall not be made subject to or *pari passu* with any lien or security interest heretofore or

¹¹ “DIP Collateral” means: all property of the estate under section 541 of the Bankruptcy Code, including all real and personal property, whether now existing or hereafter arising and wherever located, tangible and intangible, of each of the Debtors, including: (a) all cash, cash equivalents, deposit accounts, securities accounts, accounts, other receivables (including credit card receivables), chattel paper, contract rights, inventory (wherever located), instruments, documents, securities (whether or not marketable) and investment property (including all of the issued and outstanding capital stock of each of its subsidiaries), hedge agreements, real estate, furniture, fixtures, equipment (including documents of title), goods, franchise rights, trade names, trademarks, servicemarks, copyrights, patents, license rights, intellectual property, general intangibles (including, for the avoidance of doubt, payment intangibles), rights to the payment of money (including tax refunds and any other extraordinary payments), supporting obligations, guarantees, letter of credit rights, commercial tort claims, causes of action, and all substitutions, indemnification rights, all present and future intercompany debt, books and records related to the foregoing, accessions and proceeds of the foregoing, wherever located, including insurance or other proceeds; (b) all proceeds of leased real property; (c) subject to entry of a Final Order providing for such relief, the proceeds of any avoidance actions brought pursuant to Chapter 5 of the Bankruptcy Code or applicable state law equivalents; (d) proceeds of the Debtors’ rights under section 506(c) and 550 of the Bankruptcy Code; (e) all Prepetition Collateral, (f) all PropCo Priority Collateral, (g) all property of the Debtors that was not otherwise subject to valid, perfected, enforceable, and unavoidable liens on the Petition Date, and (h) all proceeds from the sale, assignment, or other disposition of (i) any commercial real estate leases and (ii) the Debtors’ right to select, identify, and designate which commercial leases may be assumed and assigned under section 365 of the Bankruptcy Code. Notwithstanding the foregoing, DIP Collateral shall not include the Debtors’ real property leases (but shall include all proceeds of such leases) solely to the extent that the grant of a DIP Lien is prohibited or restricted by the terms of such real property lease or applicable nonbankruptcy law to attach to any such real property lease.

hereinafter granted in the Chapter 11 Cases or any Successor Cases, and shall be valid and enforceable against any trustee appointed in the Chapter 11 Cases or any Successor Cases, upon the conversion of any of the Chapter 11 Cases to a case under Chapter 7 of the Bankruptcy Code (or in any other Successor Case), and/or upon the dismissal of any of the Chapter 11 Cases or Successor Cases. The DIP Liens shall not be subject to section 510, 549, or 550 of the Bankruptcy Code. No lien or interest avoided and preserved for the benefit of any Estate pursuant to section 551 of the Bankruptcy Code shall be *pari passu* with or senior to the DIP Liens with respect to the DIP Collateral.

7. DIP Superpriority Claims. Subject and subordinate to the Carve-Out, upon entry of this Interim Order, the DIP Secured Parties are hereby granted, pursuant to section 364(c)(1) of the Bankruptcy Code, allowed superpriority administrative expense claims in each of the Chapter 11 Cases and any Successor Cases (collectively, the “DIP Superpriority Claims”) for all DIP Obligations, except with respect to the Carve-Out, with priority over any and all administrative expense claims and any claims of any kind against the Debtors or their Estates in any of the Chapter 11 Cases and any Successor Cases, at any time existing or arising, of any kind or nature whatsoever, including, without limitation, administrative expenses of the kinds specified in or ordered pursuant to sections 105, 326, 328, 330, 331, 364, 503(a), 503(b), 507(a), 507(b), 546(c), 546(d), 726, 1113, and 1114 of the Bankruptcy Code, and any other provision of the Bankruptcy Code, as provided under section 364(c)(1) of the Bankruptcy Code and no such administrative expenses or claims shall be paid without the consent of the DIP Agent until the DIP Obligations are Paid in Full. Notwithstanding anything contained herein or in any of the DIP Documents to the contrary, the DIP Superpriority Claims shall at all times be, in respect of (i)

Prepetition ABL Priority Collateral or Postpetition ABL Priority Collateral¹², junior in right of payment to the Prepetition ABL Superpriority Claims (as defined below) and the Prepetition ABL Secured Obligations, (ii) Prepetition Notes Priority Collateral or Postpetition Notes Priority Collateral¹³, junior in right of payment to the Prepetition Notes Superpriority Claims (as defined below), the Prepetition Notes Secured Obligations, the Prepetition ABL Superpriority Claims, and the Prepetition ABL Secured Obligations, and (iii) PropCo Priority Collateral, junior in right of payment to the Prepetition PropCo Secured Obligations.

8. DIP Roll-Up Obligations. Upon entry of the Final Order and subject to paragraph 45, Prepetition FILO Secured Obligations in an aggregate amount equal to the Roll-Up Amount shall be converted into DIP Roll-Up Obligations, without any further action by the Debtors or any other party.

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

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

¹² “Postpetition ABL Priority Collateral” means DIP Collateral that would constitute Prepetition ABL Priority Collateral if it existed immediately prior to the Petition Date.

¹³ “Postpetition Notes Priority Collateral” means DIP Collateral that would constitute Prepetition Notes Priority Collateral if it existed immediately prior to the Petition Date.

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

Authorization to Use Cash Collateral

12. Authorization to Use Cash Collateral. Subject to the terms and conditions of this Interim Order and the DIP Documents, and in accordance with the Approved Budget (subject to the Permitted Variances), the Debtors are authorized to use Cash Collateral. Nothing in this Interim Order shall authorize the disposition of any DIP Collateral outside the ordinary course of business, except as permitted by this Interim Order and (including the Carve-Out) the DIP Documents, and in accordance with the Approved Budget (subject to the Permitted Variances), as applicable. From and after the Petition Date, the Debtors shall use Cash Collateral only for the purposes specifically set forth in this Interim Order, and only in compliance with the Approved Budget (subject to the Permitted Variances). The Prepetition ABL/FILO Secured Parties shall have no obligation or responsibility to monitor the Debtors' use of the Cash Collateral, and the Prepetition ABL/FILO Secured Parties may rely upon the Debtors' representation that the use of the Cash Collateral at any time is in accordance with the requirements of this Interim Order.

13. Consent of Prepetition ABL/FILO Secured Parties. The Prepetition ABL/FILO Secured Parties hereby consent to (a) the provisions of this Interim Order including the Debtors' entry into the DIP Facility on an interim basis, (b) the granting of the DIP Liens and DIP Superpriority Claims on the terms and subject to the conditions set forth herein, (c) the Approved Budget, and (d) the DIP Roll-Up Obligations.

14. Adequate Protection for Prepetition Secured Parties. As adequate protection for any Diminution in Value of the Prepetition Secured Parties' interest in the Prepetition Collateral resulting from the subordination of the Prepetition Liens to the Carve-Out, as applicable, and the use of the Prepetition Collateral, including the Cash Collateral, the Prepetition Administrative Agent, Prepetition FILO Agent, and Prepetition Notes Agent shall receive, for the benefit of the respective Prepetition Secured Parties (the "Adequate Protection Obligations") subject to paragraph 45 hereof:

i. Adequate Protection Liens.

(i) *Prepetition ABL AP Liens.* Subject to the Carve-Out, pursuant to sections 361 and 363(e) of the Bankruptcy Code, as adequate protection of the interests of the Prepetition ABL Secured Parties in the Prepetition Collateral to the extent of any Diminution in Value of such interests in the Prepetition Collateral, the Debtors hereby grant to the Prepetition Administrative Agent, for the benefit of itself and the Prepetition ABL Secured Parties, a continuing, valid, binding, enforceable, and perfected postpetition security interest in and lien on all DIP Collateral subject to the priorities set forth in **Exhibit A** hereto (the "Prepetition ABL AP Liens").

(ii) *Prepetition FILO AP Liens.* Subject to the Carve-Out, pursuant to sections 361 and 363(e) of the Bankruptcy Code, as adequate protection of the interests of the Prepetition FILO Secured Parties in the Prepetition Collateral, to the extent of any Diminution in Value of such interests in the Prepetition Collateral, the Debtors hereby grant to the Prepetition FILO Agent, for the benefit of itself and the Prepetition FILO Secured Parties, a continuing, valid, binding, enforceable, and perfected postpetition security interest in and lien on all of the DIP Collateral subject to the priorities set forth in **Exhibit A** hereto (the "Prepetition FILO AP Liens").

(iii) *Prepetition Notes AP Liens.* Pursuant to sections 361 and 363(e) of the Bankruptcy Code, as adequate protection of the interests of the Prepetition Notes Secured Parties in the Prepetition Collateral, to the extent of any Diminution in Value of such interests in the Prepetition Collateral, the Debtors hereby grant to the Prepetition Notes Agent, for the benefit of itself and the Prepetition Notes Secured Parties, a continuing, valid, binding, enforceable, and perfected postpetition security interest in and lien on all of the DIP Collateral subject to the priorities set forth in **Exhibit A** hereto (the “Prepetition Notes AP Liens,” and, together with the Prepetition ABL AP Liens and the Prepetition FILO AP Liens, the “Adequate Protection Liens”).

ii. Relative Priority of DIP Liens and Adequate Protection Liens.

(i) Notwithstanding anything herein to the contrary, the DIP Liens, Adequate Protection Liens, Prepetition Liens, and Prepetition PropCo Lien shall have the relative priority on the DIP Collateral set forth in **Exhibit A** hereto.

(ii) Except as provided herein (including with respect to the Carve-Out, as applicable), and except as set forth in **Exhibit A** hereto, the Adequate Protection Liens shall not be made subject to or *pari passu* with any lien or security interest heretofore or hereinafter in the Chapter 11 Cases or any Successor Cases, and shall be valid and enforceable against any trustee appointed in any of the Chapter 11 Cases or any Successor Cases, or upon the dismissal of any of the Chapter 11 Cases or Successor Cases. The Adequate Protection Liens shall not be subject to 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 Prepetition ABL/FILO Liens or the Adequate Protection Liens.

iii. Adequate Protection Superpriority Claims.

(i) *Prepetition ABL Superpriority Claim.* Subject and subordinate to the Carve-Out, as further adequate protection of the interests of the Prepetition ABL Secured Parties in the Prepetition Collateral, to the extent of any Diminution in Value of such interests in the Prepetition Collateral, the Prepetition Administrative Agent, on behalf of itself and the Prepetition ABL Secured Parties, is hereby granted pursuant to section 507(b) of the Bankruptcy Code, an allowed superpriority administrative expense claim in each of the Chapter 11 Cases and any Successor Cases (the “Prepetition ABL Superpriority Claim”).

(ii) *Prepetition FILO Superpriority Claim.* Subject and subordinate to the Carve-Out, as further adequate protection of the interests of the Prepetition FILO Secured Parties in the Prepetition Collateral, to the extent of any Diminution in Value of such interests in the Prepetition Collateral, the Prepetition FILO Agent, on behalf of itself and the Prepetition FILO Secured Parties, is hereby granted pursuant to section 507(b) of the Bankruptcy Code, an allowed superpriority administrative expense claim in each of the Chapter 11 Cases and any Successor Cases (the “Prepetition FILO Superpriority Claim”).

(iii) *Prepetition Notes Superpriority Claim.* As further adequate protection of the interests of the Prepetition Notes Secured Parties in the Prepetition Collateral, to the extent of any Diminution in Value of such interests in the Prepetition Notes Priority Collateral, the Prepetition Notes Agent, on behalf of itself and the Prepetition Notes Secured Parties, is hereby granted pursuant to section 507(b) of the Bankruptcy Code, an allowed superpriority administrative expense claim in each of the Chapter 11 Cases and any Successor Cases (the “Prepetition Notes Superpriority Claim,” and together with the Prepetition ABL Superpriority Claim and the Prepetition FILO Superpriority Claim, the “Adequate Protection Superpriority Claims”).

(iv) Priority of Adequate Protection Superpriority Claims. Except as set forth herein (including with respect to the Carve-Out, as applicable), the Adequate Protection Superpriority Claims shall have priority over all administrative expense claims and unsecured claims against the Debtors or their estates, now existing or hereafter arising, of any kind or nature whatsoever, including administrative expenses of the kinds specified in or ordered pursuant to sections 105, 326, 328, 330, 331, 503(a), 503(b), 507(a), 506(c) (subject to entry of the Final Order granting such relief), 507(b), 546(c), 546(d), 726, 1113, and 1114 of the Bankruptcy Code. Notwithstanding anything herein to the contrary, the Adequate Protection Superpriority Claims shall follow the order of priority of the respective Adequate Protection Lien set forth in **Exhibit A** hereto.

(v) Additional Adequate Protection for Prepetition ABL Secured Parties. As further adequate protection, the Debtors shall pay the following: (a) interest on the Prepetition ABL Secured Obligations at the default rate due under the Prepetition ABL/FILO Documents, payable in cash (but subject to the Challenge rights to the extent preserved in Paragraph 45 below), (b) immediately upon entry of this Interim Order, the reasonable and documented fees, out-of-pocket fees and expenses, and disbursements (including the reasonable and documented fees, out-of-pocket fees and expenses, and disbursements of counsel, financial advisors, auditors, third-party consultants, and other vendors) incurred by the Prepetition Administrative Agent and, to the extent payable pursuant to the Prepetition Credit Agreement, the Prepetition ABL Lenders arising prior to the Petition Date and reimbursable under the Prepetition ABL/FILO Documents (the “ABL Advisor Prepetition Fees and Expenses”), including, without limitation, the fees and expenses of Sidley Austin LLP, Young Conaway Stargatt & Taylor, LLP, and FTI Consulting, Inc. and any successors thereto (collectively, the “Prepetition Administrative Agent Advisors”), (c) subject to

the procedures set forth in Paragraph 39, in accordance with this Interim Order, the reasonable and documented fees, out-of-pocket fees and expenses, and disbursements (including the reasonable and documented fees, out-of-pocket fees and expenses, and disbursements of counsel, financial advisors, auditors, third-party consultants, and other vendors) incurred by the Prepetition Administrative Agent and, to the extent payable pursuant to the Prepetition Credit Agreement, the Prepetition ABL Lenders on and subsequent to the Petition Date and reimbursable under the Prepetition ABL/FILO Documents, including the fees and expenses of the Prepetition Administrative Agent Advisors, subject to the procedures set forth in Paragraph 39 hereto, and (d) the Prepetition ABL Secured Obligations (other than professional fees) in accordance with Paragraph 25 of this Interim Order.

(vi) Prepetition ABL Indemnity Reserve. The Debtors shall fund to the Prepetition Administrative Agent, for the benefit of the Prepetition ABL Secured Parties, \$250,000 into a segregated non-interest bearing account maintained with a depository institution that is a party to a Uniform Depository Agreement with the U.S. Trustee for the District of Delaware and is acceptable to the Prepetition Administrative Agent and subject to no other liens, which amount may be increased to an amount to be specified in the Final Order in the event that a Challenge is filed against the Prepetition Administrative Agent or the Prepetition ABL Lenders related to the Prepetition ABL/FILO Documents, the Prepetition ABL Secured Obligations, or the Prepetition ABL Liens before the expiration of the Challenge Period (as may be extended in accordance with this Interim Order) (the “Prepetition ABL Indemnity Reserve”). The Prepetition ABL Indemnity Reserve shall secure contingent indemnification, reimbursement, or similar continuing obligations to the Prepetition ABL Secured Parties arising under or related to the Prepetition ABL/FILO Documents (the “Prepetition ABL Indemnity Obligations”) and shall be funded with the

application of first available cash proceeds of Prepetition ABL Priority Collateral to the Prepetition ABL Secured Obligations provided for in Paragraph 25. The Prepetition ABL Indemnity Reserve shall secure all costs, expenses, and other amounts (including reasonable and documented attorneys' fees) owed to or incurred by the Prepetition Administrative Agent and the Prepetition ABL Lenders related to the Prepetition ABL/FILO Documents, the Prepetition ABL Secured Obligations, or the Prepetition ABL Liens, as applicable. The Prepetition ABL Indemnity Obligations shall be secured by a first priority lien on the Prepetition ABL Indemnity Reserve and the funds therein (which shall not be subject to the Carve-Out) and by a lien on the Prepetition ABL Priority Collateral and the Postpetition ABL Priority Collateral (subject in all respects to the AAL). Subject to Paragraph 34 below, the Debtors shall pay all Prepetition ABL Indemnity Obligations as and when they become fixed and are no longer contingent; *provided*, that the Prepetition Administrative Agent shall have authority, but not an obligation, to apply amounts in the Prepetition ABL Indemnity Reserve to any Prepetition ABL Indemnity Obligations, without further notice to or consent from the Debtors, a Committee (if appointed), or any other parties in interest and without further order of this Court; *provided* that the Prepetition Administrative Agent shall provide seven (7) Business Days' advance notice to the Debtors, the Committee, and counsel to the U.S. Trustee of any payments to be made from the Prepetition ABL Indemnity Reserve on account of Prepetition ABL Indemnity Obligations, during which period the Debtors, the Committee, and the U.S. Trustee shall have the right to object to any such payment of Prepetition ABL Indemnity Obligations; *provided, further*, that any such indemnification claims shall be subject to (a) the terms of the Prepetition ABL/FILO Documents (including with respect to application of proceeds) and (b) the rights of parties in interest with requisite standing to object to such indemnification claim(s) to the extent set forth in Paragraph 34 hereof. The Prepetition

Administrative Agent shall not apply amounts in the Prepetition ABL Indemnity Reserve to any Prepetition ABL Indemnity Obligations unless and until such objection is resolved by agreement or by order of the Court. The Prepetition Administrative Agent (for itself and on behalf of the Prepetition ABL Secured Parties) shall retain and maintain the Prepetition ABL Liens and the Prepetition ABL AP Liens granted to the Prepetition Administrative Agent as security for the amount of any Prepetition ABL Indemnity Obligations in excess of funds on deposit in the Prepetition ABL Indemnity Reserve. The Prepetition ABL Indemnity Reserve shall be released to the Debtors at the earlier of (x) expiration of the Challenge Period (as may be extended in accordance with this Interim Order) in the event no Challenge is made or (ii) the Prepetition ABL Indemnity Obligations (including any contingent indemnity obligations) have been Paid in Full after being fixed in amount and liquidated pursuant to agreement or a final court order that has not have been reversed, vacated, stayed or subject to appeal (“Allowed Prepetition ABL Indemnity Obligations” and, together with all other payments required by this Paragraph, collectively, the “Prepetition ABL AP Payments”); *provided* that any Allowed Prepetition ABL Indemnity Obligations must first be paid from the Prepetition ABL Indemnity Reserve.

(vii) Covenant in Favor of Prepetition ABL Secured Parties.

(a) Letter of Credit Cash Collateralization. No later than the date that is twenty-one (21) calendar days following the entry of the this Interim Order, the Debtors hereby agree to open a segregated deposit account with an depository that is a party to a Uniform Depository Agreement with the U.S. Trustee for the District of Delaware and is acceptable to the Prepetition Administrative Agent, subject to the sole dominion and control of the Prepetition Administrative Agent and subject to no other Liens, to hold cash

collateral for the Letter of Credit Obligations (as defined in the Prepetition Credit Agreement) outstanding on and after the date of this Interim Order, cash collateral equal to no less than 101% of the face amount of the Letters of Credit outstanding on and after the date of this Interim Order; *provided, however*, that upon the return or termination of any Letter of Credit such cash collateral shall be returned to the Debtors' estates and shall constitute Prepetition ABL Priority Collateral and be subject to application in accordance with the Approved Budget and this DIP Order including paragraph 25 if applicable, and shall be subject to liens consistent with Exhibit A hereto.

- (b) Interim Letter of Credit Reimbursement. Notwithstanding the foregoing, to the extent, any Letter of Credit is drawn prior to the Debtors opening the account referred to in clause (a) above and cash collateralizing the remaining Letter of Credit Obligations, upon notice of such Letter of Credit being drawn to the Debtors, the U. S. Trustee, the Prepetition Notes Agent, the Prepetition FILO Agent and the DIP Agent, the Debtors shall remit and reimburse the Prepetition Administrative Agent for such drawing with proceeds of Prepetition ABL Priority Collateral or Postpetition ABL Priority Collateral in accordance with the Approved Budget and this Interim Order including paragraph 25 if applicable within two (2) business days. The Debtors acknowledge that the Prepetition Administrative Agent has received a drawing notice with respect to that certain Letter of Credit No. 10012585 with beneficiary Yacoel 2021 Partners, LP and Katy Mission,

LLC for a draw in the amount of (x) \$2,133,986.58 plus (y) the drawing fee thereunder in an amount equal to \$500.00 and the Debtors agree to remit such amount to the Prepetition Administrative Agent promptly upon entry of this Interim Order.

(viii) Conditions Precedent to Prepetition ABL Secured Parties' Consent to Use of Cash Collateral. The Prepetition ABL Secured Parties' consent to the Debtors' use of their Cash Collateral is subject to the following conditions precedent:

1. The Prepetition Administrative Agent shall have consented to the form of initial Approved Budget, which shall show the Prepetition ABL Secured Obligations being Paid in Full by no later than April 30th, 2024; and
2. The DIP Documents, this Interim Order and any Final Order, and all orders approving first-day motions filed by the Debtors shall be reasonably acceptable to the Prepetition Administrative Agent.

(ix) Additional Adequate Protection for Prepetition FILO Secured Parties.

Subject to the Carve-Out, as further adequate protection, in accordance with this Interim Order, the Debtors shall (a) pay in cash all interest on the Prepetition FILO Secured Obligations at the default rate due under the Prepetition ABL/FILO Documents (but subject to the Challenge rights to the extent preserved in Paragraph 45 below), (b) immediately upon entry of this Interim Order, the reasonable and documented fees, out-of-pocket fees and expenses, and disbursements (including the reasonable and documented fees, out-of-pocket fees and expenses, and disbursements of counsel, financial advisors, auditors, third-party consultants, and other vendors) incurred by the Prepetition Administrative Agent arising prior to the Petition Date and reimbursable under the Prepetition ABL/FILO Documents, including, without limitation, the fees

and expenses of Proskauer Rose LLP, Landis Rath & Cobb LLP, and M3 Partners, LP, and any real estate advisor (the “Prepetition FILO Agent Advisors”), and (c) pay in cash the reasonable and documented fees, out-of-pocket fees and expenses, and disbursements (including the reasonable and documented fees, out-of-pocket fees and expenses, and disbursements of counsel, financial advisors, auditors, third-party consultants, and other vendors) incurred by the Prepetition FILO Agent and Prepetition FILO Lenders on, prior to, and subsequent to the Petition Date and reimbursable under the Prepetition ABL/FILO Documents, subject to the procedures set forth in Paragraph 39 of this Interim Order.

(x) Additional Adequate Protection for Prepetition Notes Secured Parties. As further adequate protection, the Debtors shall establish the Notes Reserve (as defined below) for the proceeds of Prepetition Notes Priority Collateral and Postpetition Notes Priority Collateral. Notwithstanding anything to the contrary herein, the Debtors shall concurrently provide to the Prepetition Notes Agent and the Ad Hoc Group of Secured Noteholders represented by Weil, Gotshal & Manges, LLP (the “Ad Hoc Group”) copies of all reporting provided to the DIP Lenders, DIP Agent, and any Prepetition Agent pursuant to this Interim Order.

(xi) Adequate Protection Reservation. Subject to the Carve-Out, as applicable, nothing herein shall impair or modify the application of section 507(b) of the Bankruptcy Code in the event that the adequate protection provided to the Prepetition Secured Parties hereunder is insufficient to compensate for any Diminution in Value of their respective interests in the Prepetition Collateral during the Chapter 11 Cases or any Successor Cases. The receipt by the Prepetition Secured Parties of the adequate protection provided herein shall not be deemed an admission that the interests of the Prepetition Secured Parties are adequately protected. Further,

this Interim Order shall not prejudice or limit the rights of the Prepetition Secured Parties to seek additional relief with respect to the use of Cash Collateral or for additional adequate protection.

Provisions Common to DIP Financing and Use of Cash Collateral

15. Amendment of the DIP Documents. The Debtors and the DIP Agent and Required DIP Lenders (or as otherwise provided in the DIP Documents) may enter into one or more amendments, waivers, consents, or other modifications to and under the DIP Documents, in each case in accordance with the terms of the applicable DIP Documents and in such form as the Debtors and the Required DIP Lenders (or as otherwise provided in the DIP Documents) agree and no further approval of this Court shall be required for any amendment, waiver, consent, or other modification to and under the DIP Documents (and any fees paid in connection therewith) that does not materially and adversely affect the Debtors or the Prepetition ABL Secured Parties or (A) which does not (i) shorten the maturity of the DIP Facility, (ii) increase the principal amount of, the rate of interest on, priority of, or the fees payable in connection with the DIP Facility, or (iii) change any event of default, add any covenants, or amend the covenants to be materially more restrictive or (B) which is (i) immaterial or non-adverse to the Debtors and the Prepetition ABL Secured Parties and (ii) in accordance with the DIP Documents; *provided, however*, any such amendment, waiver, consent, or other modification shall be filed with the Court and served by the Debtors on the U.S. Trustee, counsel to the Committee, counsel to the Prepetition Administrative Agent, counsel to the Ad Hoc Group, and counsel to the Prepetition Notes Agent two days in advance of its effectiveness, to the extent reasonably practicable. No consent to any such amendment, waiver, consent, or modification shall be implied by any action, inaction, or acquiescence of the DIP Secured Parties.

16. Approved Budget.

(i) Attached to this Interim Order as **Exhibit B** is a 13-week budget approved by the DIP Agent, Required DIP Lenders, and Prepetition FILO Agent, and reasonably acceptable to the Prepetition Administrative Agent, which sets forth, among other things, projected cash receipts and cash disbursements (the “Approved Budget”). Commencing at 5:00 P.M. (Eastern Time) on each Thursday beginning with the week of April 14, 2024, and continuing at 5:00 P.M. (Eastern Time) on each Thursday of every second calendar week thereafter, the Debtors shall deliver to the DIP Agent, the Prepetition FILO Agent, the Prepetition Administrative Agent, the Prepetition Notes Agent, and counsel to the Ad Hoc Group an updated budget, and if such updated budget is in form and substance satisfactory to the DIP Agent and Required DIP Lenders, and reasonably satisfactory to the Prepetition Administrative Agent, it shall become the “Approved Budget” for purposes of the DIP Documents, the DIP Order, and to the extent such updated budget is not satisfactory to the DIP Agent and reasonably satisfactory to the Prepetition Administrative Agent, the previous Approved Budget shall continue to be the “Approved Budget.” Any amendments, supplements or modifications to the Approved Budget or a Variance Report (as defined below) shall be subject to the prior written approval of the DIP Agent (acting at the direction of the Required DIP Lenders), and the reasonable approval of the Prepetition Administrative Agent prior to the implementation thereof. Upon the prior written consent of the DIP Agent, and the reasonable approval of the Prepetition Administrative Agent, to a proposed updated budget, or an amendment, supplement or modification to the Approved Budget or a Variance Report, such proposed updated budget, amendment, supplement or modification shall be effective. Until any such updated budget, amendment, supplement or modification has been affirmatively approved (as provided in the immediately preceding sentence), the Debtors shall be

subject to and be governed by the terms of the Approved Budget then in effect. Any such Approved Budgets shall be served on the U.S. Trustee and counsel to the Committee.

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

(iii) Other than with respect to the Carve-Out, and except as provided in Paragraphs 32 through 36(ii), none of the DIP Secured Parties' and the Prepetition ABL/FILO Secured Parties' consent (deemed or otherwise) to, or acknowledgement of, the Approved Budget shall be construed as consent to use the proceeds of the DIP Facility or Cash Collateral beyond the Maturity Date of the DIP Facility or the occurrence of the Termination Date, regardless of whether the aggregate funds shown on the Approved Budget have been expended.

(iv) Notwithstanding anything to the contrary herein, the Debtors shall pay the fees, costs and expenses of the DIP Professionals, the Prepetition Administrative Agent Advisors, and the Prepetition ABL/FILO Secured Parties in accordance with the DIP Documents and this Interim Order without reference to the Approved Budget but subject to the review procedures set forth in paragraph 39 hereof.

17. Budget Reporting. The Debtors shall at all times comply with the Approved Budget. By not later than 5:00 p.m. (Eastern Time) on Thursday, April 11, 2024 (which shall not be a Testing Date, as defined below), and no later than 5:00 p.m. (Eastern Time) on each Thursday thereafter (each, a "Testing Date"), the Debtors shall deliver to the DIP Agent, Prepetition FILO Agent, Prepetition Administrative Agent, Prepetition Notes Agent, counsel to the Ad Hoc Group, counsel to the Committee, and the U.S. Trustee, a variance report for the applicable Testing Period

(as defined below) in form and detail consistent to such prepetition reporting and reasonably acceptable to the DIP Agent and Prepetition FILO Agent (a “Variance Report”) showing comparisons of (a) aggregate actual cash receipts since the Petition Date and for the Testing Period then most recently ended on a line by line basis, compared to the aggregate projected cash receipts of the Debtors since the Petition Date on a line by line basis and for such Testing Period as set forth in the Approved Budget (any such difference on an aggregate basis, a “Receipts Variance”) and (b) actual cash disbursements on a line by line basis of the Debtors since the Petition Date and for such Testing Period compared to the projected cumulative cash disbursements on a line by line basis since the Petition Date and for such Testing Period as set forth in the Approved Budget (any such difference on an aggregate basis, a “Disbursements Variance” and together with the Receipts Variance, a “Variance”). Each Variance Report shall indicate whether there are any adverse variances that exceed the Permitted Variances (as defined below) and shall provide a written explanation for such variances. “Permitted Variances” shall mean, as of the applicable Testing Date, (i) for the first two full calendar weeks following the Petition Date, a cumulative Receipts Variance up to 12.5% or a cumulative Disbursements Variance up to 12.5% on an aggregate basis contained in the Approved Budget (excluding professional fees and payments made pursuant to Paragraph 25 of this Interim Order); (ii) for the first three full calendar weeks following the Petition Date, a cumulative Receipts Variance up to 12.5% or a cumulative Disbursements Variance up to 12.5% on an aggregate basis contained in the Approved Budget (excluding professional fees and payments made pursuant to Paragraph 25 of this Interim Order); (iii) for the first four full calendar weeks (on a Saturday to Friday basis, but including the period from the Petition Date through the following Friday) following the Petition Date (the “Initial Full Testing Period”), and each consecutive four-week period ending on a Saturday following the Initial Full Testing Period, a

cumulative Receipts Variance up to 12.5% or a cumulative Disbursements Variance up to 12.5% on an aggregate basis contained in the Approved Budget (excluding professional fees) (the two, three, and four-week periods set forth in these clauses (i)–(iii), each, a “Testing Period”). Each Testing Period shall begin on a Saturday and end on the following Friday. The Testing Period with respect to any Testing Date shall be the Testing Period most recently ended as of such Testing Date.

18. Additional Reporting. The Debtors shall deliver to the DIP Agent and Prepetition Administrative Agent, Prepetition Notes Agent, and the Ad Hoc Group each of the reports and other information set forth in Section 7.1 of the DIP Credit Agreement within the timeframe set forth therein, in form and detail reasonably acceptable to the DIP Agent. The Debtors shall also make the Debtor Professionals and their other advisors available upon reasonable notice, for in-person, telephonic or virtual meetings to update the DIP Agent, Prepetition Administrative Agent, Prepetition Notes Agent, the Ad Hoc Group, and their respective advisors on all matters affecting the Debtors and the Chapter 11 Cases, including with respect to (i) the status and results of store closing sales, and (ii) the efforts to market and sell DIP Collateral, including owned and leased real estate. The Debtors shall provide the Prepetition Administrative Agent, Prepetition Notes Agent, and the Ad Hoc Group with the same reporting provided to the DIP Agent contemporaneously with such reporting provided to the DIP Agent.

19. Modification of Automatic Stay. The automatic stay imposed under section 362 of the Bankruptcy Code is hereby modified and vacated to the extent necessary to permit the Debtors, the DIP Secured Parties, and the Prepetition ABL/FILO Secured Parties to accomplish the transactions contemplated by this Interim Order, including to: (a) permit the Debtors to grant the DIP Liens, the DIP Superpriority Claims, the Adequate Protection Liens, and the Adequate Protection Superpriority Claims; (b) permit the Debtors to perform such acts as the DIP Agent or

Prepetition Administrative Agent 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 Secured Parties and the Prepetition ABL/FILO Secured Parties under this Interim Order and the DIP Documents; and (d) authorize the Debtors to pay, and the DIP Secured Parties and the Prepetition ABL/FILO Secured Parties to retain and apply, payments made in accordance with the terms of this Interim Order.

20. Perfection of DIP Liens and Adequate Protection Liens. This Interim Order shall be sufficient and conclusive evidence of the creation, validity, perfection, and priority of all liens granted herein, including the DIP Liens and the Adequate Protection Liens, without the necessity of filing or recording any financing statement, mortgage, deed of trust, notice, or other instrument or document which may otherwise be required under the law or regulation of any jurisdiction or the taking of any other action (including, for the avoidance of doubt, entering into any deposit account control agreement) to validate or perfect (in accordance with applicable non-bankruptcy law) the DIP Liens and the Adequate Protection Liens or to entitle the DIP Secured Parties and the Prepetition Secured Parties to the priorities granted herein. Notwithstanding the foregoing, the DIP Agent and the Prepetition Agents (for the benefit of the DIP Secured Parties and the Prepetition Secured Parties, respectively) are authorized, but not required, to file, as each deems necessary or advisable, such financing statements, security agreements, mortgages, notices of liens and other similar documents to perfect in accordance with applicable non-bankruptcy law or to otherwise evidence the DIP Liens and the Adequate Protection Liens, and all such financing statements, mortgages, notices and other documents shall be deemed to have been filed or recorded as of the Petition Date; *provided, however*, that no such filing or recordation shall be necessary or required in order to create or perfect the DIP Liens or the Adequate Protection Liens. The Debtors

are authorized and directed to execute and deliver promptly upon demand to the DIP Agent and the Prepetition Agents all such financing statements, mortgages, notices and other documents as each may reasonably request. The DIP Agent and the Prepetition Agents may each, in its discretion, file a photocopy of this Interim Order as a financing statement with any filing or recording office or with any registry of deeds or similar office in addition to or in lieu of such financing statements, notices of lien or similar instruments. To the extent that any Prepetition Agent is, with respect to the DIP Collateral, the secured party under any security agreement, mortgage, leasehold mortgage, landlord waiver, credit card processor notices or agreements, bailee letters, custom broker agreements, financing statement, account control agreements or any other Prepetition Credit Documents or is listed as loss payee, lenders' loss payee or additional insured under any of the Debtors' insurance policies, the DIP Agent (for the benefit of the DIP Secured Parties), with respect to the DIP Liens, and each other Prepetition Agent (for the benefit of the applicable Prepetition Secured Parties), with respect to the applicable Adequate Protection Liens, shall also be deemed to be the secured party or mortgagee, as applicable, under such documents or to be the loss payee or additional insured, as applicable. The Prepetition Agents shall act as agent for the DIP Secured Parties and for the other Prepetition Agent solely for purposes of perfecting the DIP Secured Parties' DIP Liens and the Prepetition Secured Parties' Adequate Protection Liens on all DIP Collateral that, without giving effect to the Bankruptcy Code and this Interim Order, is of a type such that perfection of a lien therein may be accomplished only by possession or control by a secured party (including any deposit account control agreement), and all of the Prepetition Agents' respective rights in such DIP Collateral (other than, with respect to the Prepetition Administrative Agent, the Prepetition ABL Priority Collateral and the Postpetition ABL Priority Collateral and, with respect to the Prepetition Notes Agent, the Prepetition Notes Priority Collateral

and the Postpetition Notes Priority Collateral) shall inure to the benefit of and be exercisable exclusively by the DIP Agent until the DIP Obligations have been repaid in full in cash; *provided*, that the DIP Agent may, except with respect to the Prepetition ABL Priority Collateral, the Postpetition ABL Priority Collateral, the Prepetition Notes Priority Collateral, and the Postpetition Notes Priority Collateral, in its sole discretion, require the Debtors to (and the Debtors shall) use commercially reasonable efforts to provide the DIP Agent with such possession or control as is necessary to perfect the DIP Obligations and DIP Liens.

21. Access to Books and Records. The Debtors will (i) maintain books, records, and accounts to the extent and as required by the DIP Documents, (ii) cooperate with, consult with, and provide to the DIP Secured Parties and the Prepetition Secured Parties, all such information and documents that any or all of the Debtors are obligated to provide under the DIP Documents or the provisions of this Interim Order, or the Prepetition Credit Documents, as applicable or as otherwise reasonably requested by the DIP Secured Parties or the Prepetition Secured Parties, (iii) during normal business hours, upon reasonable advance notice, permit consultants, advisors and other representatives (including third party representatives) of the DIP Secured Parties and the Prepetition Secured Parties to visit and inspect any of the Debtors' respective properties, to examine and make abstracts or copies from any of their respective books and records, to conduct a collateral audit and analysis of their respective inventory and accounts, to tour the Debtors' business premises and other properties, and to discuss, and provide advice with respect to, their respective senior management independent public accountants to the extent required by the DIP Documents or the Prepetition Credit Documents, and (iv) permit the DIP Secured Parties, the Prepetition Secured Parties, and their consultants, advisors and other representatives, to consult

with the Debtors' management and advisors on matters concerning the Debtors' businesses, financial condition, operations and assets, as provided for in the DIP Documents.

22. 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 Bankruptcy Code sections 364(b), 364(c) or 364(d) or in violation of the DIP Documents at any time prior to the Payment in Full of all DIP Obligations and the termination of the DIP Lenders' obligation to extend credit under the DIP Facility, including subsequent to the confirmation of any plan with respect to any or all of the Debtors and the Debtors' Estates, then all cash proceeds derived from such credit or debt shall immediately be turned over to the DIP Agent (for the benefit of the DIP Secured Parties) to be distributed in accordance with this Interim Order, including Exhibit A hereof, and the DIP Documents. For the avoidance of doubt, if the Debtors, any trustee, any examiner with expanded powers, or any responsible officer subsequently appointed in the Chapter 11 Cases, or any Successor Cases, shall obtain credit or incur debt (other than the DIP Facility) pursuant to Bankruptcy Code section 364(d) at any time prior to the Payment in Full of the Prepetition ABL/FILO Secured Obligations, the Prepetition ABL/FILO Parties' rights to object to the Debtors' use of Cash Collateral and assert a lack of adequate protection shall be fully preserved.

23. Cash Management. The Debtors shall maintain their cash management system consistent with the terms and conditions of any interim and/or final order granting the Debtors authorization to continue their cash management systems and certain related relief (as amended, supplemented or otherwise modified, the "Cash Management Order"), the DIP Documents, and this Interim Order unless such cash management system is modified with the written consent of the DIP Agent, the Prepetition Administrative Agent, and the Prepetition FILO

Agent (such consents not to be unreasonably withheld) or modified as a result of entry of any order by the Court.

24. Maintenance of DIP Collateral. Until the Payment in Full of all DIP Obligations, the Payment in Full of all Prepetition ABL/FILO Secured Obligations, and the termination of the DIP Lenders' obligation to extend credit under the DIP Facility, the Debtors shall: (a) insure the DIP Collateral as required under the DIP Documents or the Prepetition Credit Documents, as applicable; and (b) maintain the cash management system consistent with the terms and conditions of the Cash Management Order and the DIP Documents unless such cash management system is modified with the consent of the DIP Agent, the Prepetition Administrative Agent, and the Prepetition FILO Agent (such consents not to be unreasonably withheld) or modified as a result of entry of any order by the Court.

25. Weekly True-Up and Application of DIP Collateral Proceeds. Subject to the Carve-Out and to provisions in this Interim Order related to the Notes Reserve Account, and except to the extent the Debtors are permitted to use any Cash Proceeds or Extraordinary Receipts (each as defined in the DIP Credit Agreement) as cash collateral in accordance with the Approved Budget as permitted herein, on the second Business Day following the end of each week (commencing April 16, 2024) (each a "Payment Application Date"), the Debtors shall remit the (x) Cash Proceeds of Dispositions (as defined in the DIP Credit Agreement) or a Recovery Event (as defined in the DIP Credit Agreement) or (y) Extraordinary Receipts received by the Debtors (which have yet to be applied pursuant to this paragraph 25) to the DIP Agent for application in accordance with the waterfall in Exhibit A of this Interim Order until Payment in Full of the DIP Obligations, and thereafter, to the Debtors' Estates; provided, that to the extent such Cash Proceeds or Extraordinary Receipts constitute (a) Prepetition ABL Priority Collateral or Postpetition ABL

Priority Collateral, the Debtors shall remit such Cash Proceeds or Extraordinary Receipts to (i) the Prepetition Administrative Agent for application in accordance with Section 10.3 (other than Prepetition ABL Secured Obligations described in clause *Thirteenth* of Section 10.3 of the Prepetition Credit Agreement, the “Specified ABL Obligations”) of the Prepetition Credit Agreement and the waterfall in Exhibit A of this Interim Order until Payment in Full of the Prepetition ABL Secured Obligations (other than the Specified ABL Obligations); provided that if any Letters of Credit (as defined in the Prepetition Credit Agreement) issued under the Prepetition Credit Agreement have been drawn since the prior Payment Application Event, such Cash Proceeds or Postpetition ABL Priority Collateral shall first be applied by the Prepetition Administrative Agent to such Letter of Credit Obligations until paid in full prior to application in accordance with Section 10.3 of the Prepetition Credit Agreement, (ii) thereafter, the DIP Agent for application in accordance with Section 10.3 of the DIP Credit Agreement and the waterfall in Exhibit A of this Interim Order until Payment in Full of the DIP Obligations, (iii) thereafter, the Prepetition FILO Agent for application in accordance with Section 10.3 of the Prepetition Credit Agreement and the waterfall in Exhibit A of this Interim Order until Payment in Full of the Prepetition FILO Secured Obligations, (iv) the Prepetition Administrative Agent to be applied to the Specified ABL Obligations, and (v) thereafter, to the Debtors’ Estates; and (b) the PropCo Priority Collateral, the Debtors shall remit such Cash Proceeds or Extraordinary Receipts (i) to the Prepetition PropCo Lender for application in accordance with Section 3 of the Prepetition PropCo Note Agreement and the waterfall in Exhibit A of this Interim Order until payment in full of the obligations under the Prepetition PropCo Note Agreement, (ii) thereafter, the DIP Agent for application in accordance with Section 10.3 of the DIP Credit Agreement and the waterfall in Exhibit A of this Interim Order, and (iii) thereafter, to the Debtors’ Estates. The distributions

described in the immediately preceding sentence shall be subject only to the Carve-Out (including the Pre-Carve Out Trigger Notice Reserve Account), and the Debtors maintaining a minimum cash balance (exclusive of the proceeds of Prepetition Notes Priority Collateral, Postpetition Notes Priority Collateral, and PropCo Priority Collateral, and the adequate assurance utility account) of (i) \$15 million as of each Payment Application Date occurring on or prior to June 4, 2024 and (ii) \$10 million as of each Payment Application Date occurring thereafter (the amount of such excess, the “Weekly True-Up”, which minimum cash balance shall be reflected as a separate line item on the Approved Budget); *provided, however* that there shall be no Weekly True-Up with respect to the New Money Amount until June 11, 2024.

26. Milestones. As a condition to the DIP Facility and the use of Cash Collateral, the Debtors have agreed to the milestones set forth on **Exhibit B** hereto (the “Milestones”). For the avoidance of doubt, unless extended or waived in writing (email being sufficient) by the DIP Agent (at the direction of the Required DIP Lenders in their sole discretion) and the Prepetition Administrative Agent (subject to the seven-day period set forth on **Exhibit D** hereto), the failure of the Debtors to meet the Milestones by the applicable specified deadlines set forth therefor shall constitute an “Event of Default” and a Termination Event under the DIP Documents and this Interim Order, subject to paragraphs 28(ii), 30, and 31 hereof.

27. Termination Date. On the Termination Date (as defined below), all DIP Obligations shall be immediately due and payable, and the Prepetition ABL/FILO Secured Parties’ consent to use of Cash Collateral shall terminate, and all commitments to extend credit under the DIP Facility will terminate.

28. Termination Events.

(i) Until the DIP Obligations are Paid in Full and all commitments thereunder are terminated (the “DIP Repayment”), the occurrence and continuation of any of the following events, unless waived by the Required DIP Lenders (or as otherwise provided in the DIP Documents) in writing (which may be by electronic mail) and in accordance with the terms of the DIP Documents, shall constitute an event of default (collectively, the “Termination Events”): the occurrence and continuation of any “Event of Default” under, and as defined in, the DIP Credit Agreement or any other DIP Documents.

(ii) Exercise of Remedies. Upon the occurrence and during the continuation of a Termination Event, notwithstanding the provisions of section 362 of the Bankruptcy Code, without any application, motion or notice to, hearing before, or order from the Bankruptcy Court, subject only to the terms of this Interim Order: (a) the DIP Agent (at the direction of the Required DIP Lenders or as otherwise provided in the DIP Documents) may send a written notice to the Debtors, counsel to the Committee (if appointed), counsel to each of the Prepetition Agents, and the U.S. Trustee (any such declaration shall be referred to herein as a “Termination Declaration”), which shall be filed on the docket of the Chapter 11 Cases, declaring (1) all DIP Obligations owing under the DIP Documents to be immediately due and payable, (2) the commitment of each DIP Lender to make loans under the DIP Facility to be terminated, whereupon such commitments and obligation shall be terminated to the extent any such commitment remains under the DIP Facility, (3) the termination of the DIP Facility and the DIP Documents as to any future liability or obligation of the DIP Secured Parties, but without affecting any of the DIP Liens or the DIP Obligations, and (4) the application of the Carve-Out has occurred following the delivery of the Carve-Out Trigger Notice (as defined below) to the Borrower; (b) interest,

including, where applicable, default interest, shall accrue and be paid as set forth in the DIP Documents; (c) the DIP Agent (with the consent or at the direction of the Required DIP Lenders) may declare a termination, reduction, or restriction on the ability of the Debtors to use Cash Collateral, other than to pay expenses set forth in the Approved Budget that are necessary to avoid immediate and irreparable harm to the Estates; and (d) subject to paragraph 34 hereof, the DIP Agent shall be entitled to enforce any and all remedies provided under the DIP Documents and this Interim Order. The earliest date on which a Termination Declaration is delivered by the DIP Agent (at the direction of the Required DIP Lenders) and filed on the Docket shall be referred to herein as the “Termination Date.” Following a Termination Date, neither the DIP Secured Parties nor the Prepetition ABL/FILO Secured Parties shall be required to consent to the use of any Cash Collateral or provide any loans or other financial accommodations under the DIP Facility. The Termination Declaration shall be given by electronic mail (or other electronic means) to counsel to the Debtors, counsel to the Committee (if appointed), counsel to each of the Prepetition Agents, counsel to the Prepetition PropCo Lender, and the U.S. Trustee.

29. No Waiver by Failure to Seek Relief. The rights and remedies of the DIP Secured Parties and the Prepetition ABL/FILO Secured Parties are cumulative and not exclusive of any rights or remedies that the DIP Secured Parties or the Prepetition ABL/FILO Secured Parties may have under the DIP Documents, the Prepetition ABL/FILO Documents, applicable law, or otherwise. The failure or delay on the part of any of the DIP Secured Parties or the Prepetition ABL/FILO Secured Parties to seek relief or otherwise exercise their rights and remedies under this Interim Order, the DIP Documents, the Prepetition ABL/FILO Documents, or applicable law, as the case may be, shall not constitute a waiver of any of their respective rights or be deemed to be an admission that no Event of Default has occurred. No delay on the part of any party in the

exercise of any right or remedy under this Interim Order, the DIP Documents, or the Prepetition ABL/FILO Documents shall preclude any other or further exercise of any such right or remedy or the exercise of any other right or remedy. Except as expressly set forth herein, none of the rights or remedies of any party under this Interim Order, the DIP Documents, or the Prepetition ABL/FILO Documents shall be deemed to have been amended, modified, suspended, or waived unless such amendment, modification, suspension, or waiver is express, in writing and signed by the requisite parties under the DIP Documents and the requisite parties under the Prepetition ABL/FILO Documents, as applicable. No consents required hereunder by any of the DIP Secured Parties or the Prepetition ABL/FILO Secured Parties shall be implied by any inaction or acquiescence by any of the DIP Secured Parties or the Prepetition ABL/FILO Secured Parties (as applicable).

30. Emergency Hearing. Upon the delivery of a Termination Declaration, the Debtors, the Prepetition Administrative Agent, the Prepetition FILO Agent, the Prepetition Notes Agent, the Committee (if any), and the U.S. Trustee consent to, and may seek, an emergency hearing (an “Emergency Hearing”) during the three (3) business days following the date a Termination Declaration is delivered (such three (3) business day period, the “Remedies Notice Period”). During the Remedies Notice Period, the Debtors shall continue to have the right to use Cash Collateral in accordance with the terms of this Interim Order, solely to pay necessary expenses set forth in the Approved Budget to avoid immediate and irreparable harm to the Estates. At the end of the Remedies Notice Period, unless the Bankruptcy Court has entered an order to the contrary, the Debtors’ right to use Cash Collateral shall immediately cease, unless otherwise provided herein, and the DIP Agent and DIP Lenders shall have the rights set forth in paragraphs 33 through 35 below.

31. Enforcement of Remedies: The DIP Agent shall not be required to seek or obtain relief from the automatic stay under section 362 of the Bankruptcy Code to enforce any of its remedies under the DIP Documents or this Interim Order. The automatic stay imposed by section 362 of the Bankruptcy Code is hereby modified and vacated to the extent necessary to permit the DIP Agent and the DIP Secured Parties, without any application, motion or notice to, hearing before, or order from the Bankruptcy Court, except to the extent otherwise provided in this Interim Order, to take any action authorized or contemplated by this Interim Order or the DIP Documents, including, but not limited to, foreclosing on the DIP Collateral under applicable nonbankruptcy law; *provided*, that this Court shall retain exclusive jurisdiction to hear and resolve any disputes and enter any orders required by the provisions of this paragraph relating to the application, reimposition, or continuance of the automatic stay as provided hereunder.

32. Certain Rights and Remedies Following Termination Date. Following a Termination Date and the expiration of the Remedies Notice Period, the DIP Agent shall be entitled to (i) exercise all rights and remedies in accordance with the DIP Documents, this Interim Order, the AAL, the Intercreditor Agreement, and applicable law and shall be permitted to satisfy the relevant DIP Obligations and DIP Superpriority Claims, to be applied in accordance with the priorities set forth in Exhibit A, and (ii) except as otherwise ordered by the Court: (a) the Debtors are hereby authorized and directed to, with the exclusion of the Carve-Out, remit to the DIP Agent (for the benefit of the DIP Secured Parties and Prepetition Secured Parties) one-hundred percent (100%) of all collections, remittances, and proceeds of the DIP Collateral (other than the Prepetition ABL Priority Collateral, the Postpetition ABL Priority Collateral, the Prepetition Notes Priority Collateral, the Postpetition Notes Priority Collateral, and the PropCo Priority Collateral) in accordance with the DIP Documents and this Interim Order; (b) the DIP Agent (at the direction

of the Required DIP Lenders or as otherwise provided in the DIP Documents) may direct the Debtors (and the Debtors shall comply with such direction) to, (i) sell or otherwise dispose of all or any portion of the DIP Collateral (or any other property of the Debtors to the extent a lien is not permitted by law to attach to such property, the proceeds which are DIP Collateral), subject to (1) the consent of the Prepetition Administrative Agent with respect to the Prepetition ABL Priority Collateral and Postpetition ABL Priority Collateral, (2) the consent of the Prepetition Notes Agent with respect to the Prepetition Notes Priority Collateral and Postpetition Notes Priority Collateral, and (3) the consent of the Prepetition PropCo Lender with respect to the Propco Priority Collateral, pursuant to section 363 (or any other applicable provision) of the Bankruptcy Code on terms and conditions pursuant to sections 363, 365, and other applicable provisions of the Bankruptcy Code, and (ii) assume and assign any lease or executory contract included in the DIP Collateral to the DIP Agent's designees in accordance with and subject to section 365 of the Bankruptcy Code; (c) the DIP Agent (at the direction of the Required DIP Lenders) may direct the Debtors to (and the Debtors shall comply with such direction to) dispose of or liquidate the DIP Collateral (or any other property of the Debtors to the extent a lien is not permitted by law to attach to such property, the proceeds which are DIP Collateral), subject to (1) the consent of the Prepetition Administrative Agent with respect to the Prepetition ABL Priority Collateral and Postpetition ABL Priority Collateral, (2) the consent of the Prepetition Notes Agent with respect to the Prepetition Notes Priority Collateral and Postpetition Notes Priority Collateral, and (3) the consent of the Prepetition PropCo Lender with respect to the PropCo Priority Collateral, via one or more sales of such DIP Collateral or property and/or the monetization of other DIP Collateral or property; (d) the DIP Agent may take any other actions or exercise any other rights or remedies permitted under this Interim Order, the DIP Documents, or applicable law to effect the repayment of the DIP

Obligations, including, but not limited to, foreclosure on the DIP Collateral; (e) the DIP Agent is authorized to exercise all other rights and remedies provided for in the DIP Documents and under applicable law, subject to (1) the rights of the Prepetition Administrative Agent with respect to the Prepetition ABL Priority Collateral and Postpetition ABL Priority Collateral, (2) the rights of the Prepetition Notes Agent with respect to the Prepetition Notes Priority Collateral and Postpetition Notes Priority Collateral, and (3) the rights of the Prepetition PropCo Lender with respect to the PropCo Priority Collateral; (f) the DIP Agent (for the benefit of the DIP Lenders) shall be authorized to succeed to any of the Debtors' rights and interests under any licenses for the use of any intellectual property in order to complete the production and sale of any inventory with respect to the DIP Collateral; and (g) the Debtors shall take all action that is reasonably necessary to cooperate with the DIP Secured Parties in the exercise of their rights and remedies and to facilitate the realization of the DIP Collateral by the DIP Secured Parties and Prepetition ABL/FILO Secured Parties.

33. Access to DIP Collateral. Notwithstanding anything contained herein to the contrary and without limiting any other rights or remedies of the DIP Secured Parties or Prepetition ABL/FILO Secured Parties under this Interim Order, the DIP Documents and applicable law, after the occurrence of a Termination Date, and subject to Paragraph 36, for the purpose of exercising any remedy with respect to any of the DIP Collateral, (subject to (i) the rights of the Prepetition Administrative Agent with respect to the Prepetition ABL Priority Collateral and Postpetition ABL Priority Collateral, (ii) the rights of the Prepetition Notes Agent with respect to the Prepetition Notes Priority Collateral and Postpetition Notes Priority Collateral, and (iii) the rights of the Prepetition PropCo Lender with respect to the PropCo Priority Collateral) at the sole cost and expense of the Debtors (or any of each such agent's employees, agents, consultants, contractors,

or other professionals) (collectively, the “Enforcement Agents”), shall have the right (to be exercised at the direction of the Required DIP Lenders, Requisite FILO Lenders (as defined in the Prepetition Credit Agreement), or Requisite Revolving Credit Lenders (as defined in the Prepetition Credit Agreement), as applicable), to: (i) enter upon, occupy, and use any real or personal property, fixtures, equipment, leasehold interests, or warehouse arrangements owned or leased by the Debtors, (ii) enter into the premises of any Debtor in connection with the orderly sale or disposition of the applicable DIP Collateral (including, without limitation, to complete any work in process), and (iii) exercise any rights of the Debtors to access the applicable DIP Collateral (including inventory) held by any third party; *provided, however*, the Enforcement Agents may only be permitted to do so in accordance with (a) existing rights under applicable non-bankruptcy law, including, without limitation, applicable leases, (b) any prepetition (and, if applicable, post-petition) landlord waivers or consents, or (c) further order of this Court on motion and notice appropriate under the circumstances; and (ii) use any and all trademarks, tradenames, copyrights, licenses, patents, equipment or any other similar assets of the Debtors, or assets which are owned by or subject to a lien of any third party and which are used by the Debtors in their businesses; *provided, however*, the Enforcement Agents may use such assets to the extent permitted by applicable non-bankruptcy law and the Intercreditor Agreement. Nothing contained herein shall require the Enforcement Agents to assume any lease as a condition to the rights afforded in this Paragraph 33. For the avoidance of doubt, nothing in this Paragraph 33 is intended to, and shall not in any way, modify (i) the priorities of the liens and claims set forth **Exhibit A** or (ii) the rights of the Prepetition Secured Parties set forth in the Intercreditor Agreement.

34. Cash Collateral Termination Events. The occurrence of and continuance of any of the termination events set forth in **Exhibit D** attached hereto shall each constitute a “Cash

Collateral Termination Event,” and the date on which such Cash Collateral Termination Event occurs, the “Cash Collateral Termination Date,” unless waived in writing by the Prepetition Administrative Agent.

35. Remedies Upon a Cash Collateral Termination Event.

(i) Upon the occurrence or continuation of a Cash Collateral Termination Event, unless such Cash Collateral Termination Event has been waived in writing by the Prepetition Administrative Agent, the Prepetition Administrative Agent, shall, and any automatic stay, whether arising under section 362 of the Bankruptcy Code or otherwise is hereby modified, without further notice to, hearing of, or order from this Court, to the extent necessary to permit the Prepetition Administrative Agent to, upon the delivery of written notice (which may include electronic mail) to the Remedies Notice Parties (as defined below): (i) terminate and/or revoke the Debtors’ right under this Interim Order and the Prepetition ABL/FILO Documents to use any Cash Collateral of the Prepetition ABL Secured Parties; and (ii) freeze monies or balances in any accounts subject to a Control Agreement (as defined in the Prepetition Credit Agreement) or otherwise subject to a senior lien in favor of the Prepetition Administrative Agent pursuant to the terms of this Interim Order; *provided* that prior to the exercise of any right in clauses (i) and (ii) of this paragraph, the Prepetition Administrative Agent shall be required to file a motion with the Court seeking emergency relief from the automatic stay (the “Stay Relief Motion”) on five (5) days’ prior written notice to the Debtors, counsel to the DIP Agent, counsel to the other Prepetition Agents, counsel to the Ad Hoc Group, counsel to the Prepetition Notes Agent, counsel to the Prepetition PropCo Lender, counsel to any Committee (if appointed), and the U.S. Trustee (collectively, the “Remedies Notice Parties”) of the Prepetition Administrative Agent’s intent to exercise its rights and remedies (the “ABL Remedies Notice Period”) and, during the ABL

Remedies Notice Period, the Debtors can object to the termination of the consensual use of Cash Collateral on any basis and can seek the non-consensual use of Cash Collateral subject to the Prepetition ABL Secured Parties' rights to object to, or otherwise oppose, any such non-consensual use and seek adequate protection in connection therewith; *provided*, that, notwithstanding anything herein to the contrary, the Prepetition Administrative Agent shall be required to file an emergency motion with the Court to terminate the stay or to file the written notice using a CM/ECF emergency event code. Subject to the terms and conditions of this Interim Order and in accordance with the Approved Budget, the Debtors are authorized to use Cash Collateral until the Cash Collateral Termination Date; *provided, however*, that during the ABL Remedies Notice Period, the Debtors may use Cash Collateral solely in accordance with the terms and provisions of the Approved Budget and solely to meet payroll obligations and pay expenses critical to the administration of the Debtors' estates in accordance with the Approved Budget, as agreed by the Prepetition Administrative Agent in its reasonable discretion; *provided, further, however*, that the Debtors may use Cash Collateral that is not Prepetition ABL Priority Collateral to fund the Carve Out consistent with the terms of this Interim Order; *provided, further, however*, that nothing in this Interim Order shall prejudice the rights of the Debtors to seek non-consensual use of Cash Collateral, subject to the Prepetition ABL Secured Parties' rights to object to, or otherwise oppose, any such non-consensual use and seek adequate protection in connection therewith.

(ii) So long as there are any Prepetition ABL Secured Obligations (including any Prepetition ABL Superpriority Claim) outstanding and prior to the payment in full, in cash, of the Prepetition ABL Secured Obligations (including any Prepetition ABL Superpriority Claim and cash collateralization of all Letters of Credit required under the Prepetition Credit Agreement), then with respect to the Prepetition Collateral, all parties shall: (i) have no right to and shall not

take any action to foreclose upon, or recover in connection with, any liens granted to the Prepetition ABL Secured Parties which are senior to the liens held by such party, or otherwise seek to exercise or enforce any rights or remedies against such Prepetition Collateral, including in connection with the Adequate Protection Liens, except to the extent required by an order of this Court; (ii) be deemed to have consented to any transfer, disposition or sale of, or release of liens on, such Prepetition Collateral or proceeds thereof (until payment in full in cash of all Prepetition ABL Secured Obligations), to the extent the Prepetition ABL Secured Parties hold a senior lien on such Prepetition Collateral and such transfer, disposition, sale, or release is authorized under the applicable Prepetition Credit Documents; and (iii) not file any further financing statements, trademark filings, copyright filings, mortgages, notices of lien, or similar instruments on any Prepetition Collateral on which the Prepetition ABL Secured Parties have a senior lien, or otherwise take any action to perfect their security interests in such Prepetition Collateral unless, solely as to this clause (iii), any of the applicable Prepetition ABL Secured Parties have filed financing statements or other documents to perfect the liens granted pursuant to this Interim Order or as may be required by applicable state law to continue the perfection of valid and unavoidable liens or securities interests as of the Petition Date.

36. Carve-Out. As used in this Interim Order, the “Carve-Out” means the sum of (a) all fees required to be paid to the Clerk of the Court and to the Office of the U.S. Trustee under section 1930(a) of title 28 of the United States Code plus interest at the statutory rate (without regard to the notice set forth in (c) below); (b) all reasonable fees and expenses up to \$50,000 incurred by a trustee under section 726(b) of the Bankruptcy Code (without regard to the notice set forth in (c) below); (c) all unpaid fees and expenses of the Debtors or, subject to the Approved Budget, any Committee (excluding any M&A Transaction Fee as defined in the

engagement letter by and between the Debtors, through counsel, and Jefferies LLC, dated as of April 7, 2024) (the “Allowed Professional Fees”) incurred by persons or firms retained by the Debtors pursuant to section 327, 328, or 363 of the Bankruptcy Code (the “Debtor Professionals”) and the Committee, if any, pursuant to section 328 or 1103 of the Bankruptcy Code (the “Committee Professionals” and, together with the Debtor Professionals, the “Professional Persons”) at any time before or on the first business day following delivery by the DIP Agent of a Carve-Out Trigger Notice (as defined below), whether allowed by the Court prior to or after delivery of a Carve-Out Trigger Notice and, with respect to Committee Professionals not to exceed the aggregate amounts set forth for Committee Professionals in the Approved Budget; and (d) Allowed Professional Fees of Debtor Professionals in an aggregate amount not to exceed \$2.5 million incurred after the first business day following delivery by the DIP Agent of the Carve-Out Trigger Notice, to the extent allowed at any time, whether by interim order, procedural order, or otherwise (the amounts set forth in this clause (d) being the “Post-Carve-Out Trigger Notice Cap”). For purposes of the foregoing, “Carve-Out Trigger Notice” shall mean a written notice delivered by email (or other electronic means) by the DIP Agent or Prepetition Administrative Agent, as applicable, to the Debtors, their restructuring counsel, the U.S. Trustee, and counsel to the Committee (if any), DIP Agent (if applicable), Prepetition ABL Secured Parties (if applicable), and Prepetition FILO Secured Parties (if applicable), which notice may be delivered (i) by the DIP Agent, following the occurrence and during the continuation of an Event of Default and acceleration of the DIP Obligations under the DIP Credit Agreement or (ii) by the Prepetition Administrative Agent, following the occurrence and during the continuation of a Cash Collateral Termination Event, in each case stating that the Post-Carve-Out Trigger Notice Cap has been invoked.

(i) Fee Estimates. Not later than 7:00 p.m. New York time on the third business day of each week starting with the first full calendar week following the Petition Date, each Professional Person shall deliver to the Debtors a statement setting forth a good-faith estimate of the amount of fees and expenses (collectively, “Estimated Fees and Expenses”) incurred during the preceding week by such Professional Person (through Saturday of such week, the “Calculation Date”), along with a good-faith estimate of the cumulative total amount of unreimbursed fees and expenses incurred through the applicable Calculation Date and a statement of the amount of such fees and expenses that have been paid to date by the Debtors (each such statement, a “Weekly Statement”); *provided, that* within one business day of the occurrence of the Termination Declaration Date (as defined below), each Professional Person shall deliver one additional statement (the “Final Statement”) setting forth a good-faith estimate of the amount of fees and expenses incurred during the period commencing on the calendar day after the most recent Calculation Date for which a Weekly Statement has been delivered and concluding on the Termination Declaration Date (and the Debtors shall cause such Weekly Statement and Final Statement to be delivered on the same day received to the DIP Agent, Prepetition Administrative Agent, and Prepetition FILO Agent). If any Professional Person fails to deliver a Weekly Statement within three calendar days after such Weekly Statement is due, such Professional Person’s entitlement (if any) to any funds in the Pre-Carve-Out Trigger Notice Reserve (as defined below) with respect to the aggregate unpaid amount of Allowed Professional Fees for the applicable period(s) for which such Professional Person failed to deliver a Weekly Statement covering such period shall be limited to the aggregate unpaid amount of Allowed Professional Fees included in the Approved Budget for such period for such Professional Person

(ii) Carve-Out Reserves. Commencing with the week ended April 20, 2024, and on or before the Friday of each week thereafter, the Debtors shall utilize all cash on hand as of such date and any available cash thereafter held by any Debtor to fund a reserve in an amount equal to the greater of (x) the aggregate amount of all Estimated Fees and Expenses reflected in the Weekly Statement delivered on the immediately prior Wednesday to the Debtors, the DIP Agent, the Prepetition Administrative Agent, and the Prepetition FILO Agent, and (y) the aggregate amount of Allowed Professional Fees contemplated to be incurred in the Approved Budget during such week. The Debtors shall deposit and hold such amounts in a segregated account in trust (the “Pre-Carve Out Trigger Notice Reserve Account”) to pay such Allowed Professional Fees (the “Pre-Carve Out Trigger Notice Reserve”) prior to any and all other claims, and all payments of Allowed Professional fees incurred prior to the Termination Declaration Date shall be paid first from such Pre-Carve Out Trigger Notice Reserve Account.

(iii) On the day on which a Carve Out Trigger Notice is properly given by the DIP Agent or Prepetition Administrative Agent (the “Termination Declaration Date”), the Carve Out Trigger Notice shall constitute a demand to the Debtors to, and the Debtors shall, utilize all cash on hand as of such date and any available cash thereafter held by any Debtor to fund, to the extent not already funded, (A) the Pre-Carve Out Trigger Notice Reserve Account in an amount equal to the aggregate amount of all Estimated Fees and Expenses reflected in the Final Statements delivered to Debtors, the DIP Agent, the Prepetition Administrative Agent, and the Prepetition FILO Agent, plus the amounts set forth in (a)(i) and (a)(ii) of this paragraph above, and (B) after funding the Pre-Carve Out Trigger Notice Reserve Account, a reserve in an amount equal to the Post-Carve Out Trigger Notice Cap (the “Post-Carve Out Trigger Notice Reserve” and, together with the Pre-Carve Out Trigger Notice Reserve, the “Carve Out Reserves”) prior to any and all

other claims. The DIP Agent, Prepetition Administrative Agent, and Prepetition FILO Agent reserve their respective rights as to the allocation of proceeds used to fund the Carve-Out as among the Prepetition ABL Priority Collateral, Postpetition ABL Priority Collateral, Prepetition Notes Priority Collateral, and Postpetition Notes Priority Collateral. For avoidance of doubt, to the extent funds in the Carve- Out Reserves constitute Prepetition Note Priority Collateral, the Prepetition Note Liens shall remain in such cash notwithstanding the funding of the Carve-Out Reserves.

(iv) Application of Carve-Out Reserves.

(a) All funds in the Pre-Carve-Out Trigger Notice Reserve shall be used first to pay the obligations set forth in clauses 36(i) through 36(iii) of the definition of Carve-Out set forth above (the “Pre-Carve-Out Amounts”), but not, for the avoidance of doubt, the Post-Carve-Out Trigger Notice Cap, until paid in full. If the Pre-Carve-Out Trigger Notice Reserve has not been reduced to zero, subject to clause (c), below, all remaining funds shall be distributed *first* to the DIP Agent on account of the applicable DIP Obligations until Paid in Full, and *thereafter* to the Prepetition Secured Parties in accordance with their rights and priorities as set forth in this Interim Order.

(b) All funds in the Post-Carve-Out Trigger Notice Reserve shall be used first to pay the obligations set forth in clause (d) of the definition of Carve-Out set forth above (the “Post-Carve-Out Amounts”). If the Post-Carve-Out Trigger Notice Reserve has not been reduced to zero, subject to clause (d), below, all remaining funds shall be distributed *first* to the DIP Agent on account of the applicable DIP Obligations until Paid in Full, and *thereafter* to the Prepetition Secured Parties in accordance with their rights and priorities as set forth in this Interim Order, including **Exhibit A** hereto.

(c) Notwithstanding anything to the contrary in the Prepetition Credit Documents or this Interim Order, if either of the Carve-Out Reserves is not funded in full in the amounts set forth in this Paragraph 36, then, any excess funds in one of the Carve-Out Reserves following the payment of the Pre-Carve-Out Amounts and Post-Carve-Out Amounts, respectively, shall be used to fund the other Carve-Out Reserve to the extent of any shortfall.

(d) Notwithstanding anything to the contrary in the Prepetition Credit Documents or this Interim Order, following delivery of a Carve-Out Trigger Notice, the DIP Agent, and the Prepetition Agents shall not sweep or foreclose on cash (including cash received as a result of the sale or other disposition of any assets) of the Debtors until the Carve-Out Reserves have been fully funded, but shall have a security interest in any residual interest in the Carve-Out Reserves, with any excess paid as provided in Paragraphs 36(iv)(a)-(c) above.

(e) Notwithstanding anything to the contrary in this Interim Order, (A) the failure of the Carve-Out Reserves to satisfy in full the Allowed Professional Fees shall not affect the priority of the Carve-Out with respect to any shortfall (as described below), and (B) subject to the limitations with respect to the DIP Agent, DIP Lenders, and Prepetition Secured Parties set forth in Paragraph 36(iv) above, in no way shall any Approved Budget, Carve-Out, Post-Carve-Out Trigger Notice Cap or Carve-Out Reserves be construed as a cap or limitation on the amount of the Allowed Professional Fees due and payable by the Debtors. For the avoidance of doubt and notwithstanding anything to the contrary in this Interim Order or in the DIP Documents, the Carve-Out shall be senior to all liens and claims securing the DIP Obligations, the Adequate Protection Liens, and the DIP Superpriority Claims, and any and all other forms of adequate protection, liens, or claims securing the DIP Obligations or the Prepetition Secured Obligations.

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

(vi) Payment of Allowed Professional Fees After the Termination Declaration Date. Any payment or reimbursement made on or after the occurrence of the Termination Declaration Date in respect of any Allowed Professional Fees shall permanently reduce the Carve-Out on a dollar-for-dollar basis.

37. Good Faith Under Section 364(e) of the Bankruptcy Code; No Modification or Stay of this Interim Order. The DIP Secured Parties and the Prepetition ABL/FILO Secured Parties have acted in good faith in connection with this Interim Order and are entitled to rely upon the protections granted herein and by section 364(e) of the Bankruptcy Code. Based on the findings set forth in this Interim Order and the record made during the Interim Hearing, and in accordance with section 364(e) of the Bankruptcy Code, in the event any or all of the provisions of this Interim Order are hereafter reversed or modified on appeal by a subsequent order of this Court or any other court, the DIP Secured Parties and Prepetition ABL/FILO Secured Parties are entitled to the protections provided in section 364(e) of the Bankruptcy Code. Any such reversal or modification shall not affect the validity and enforceability of any advances previously made or

made hereunder, or lien, claim (including the DIP Roll-Up Obligations) or priority authorized or created hereby.

38. Approval of DIP Fees. In consideration for the DIP Facility and the consent to the use of Cash Collateral in accordance with the terms of this Interim Order, the DIP Secured Parties shall be paid all prepetition and postpetition fees (including the DIP Origination Fee and the Exit Premium as defined in the DIP Credit Agreement), expenses, and other amounts payable under the DIP Documents as such become due, including, without limitation, commitment fees, facility fees, extension fees and the reasonable and documented fees and expenses of the DIP Secured Parties in connection with the DIP Facility, without regard to whether or not the transactions contemplated hereby are consummated (all such fees, together, the “DIP Fees”), subject to the review procedures set forth in paragraph 39. The DIP Fees shall be fully earned and payable in accordance with the terms of the DIP Documents, without the need for any further order of this Court. The DIP Fees shall be part of the DIP Obligations. Any and all DIP Fees paid prior to the Petition Date by any of the Debtors to the DIP Secured Parties in connection with or with respect to the DIP Facility in each case is hereby approved in full.

39. Lender Professionals’ Fees. Professionals for the DIP Secured Parties and Prepetition ABL/FILO Secured Parties (the “Lender Professionals”) shall not be required to comply with the U.S. Trustee fee guidelines or file applications or motions with, or obtain approval of, this Court for compensation and reimbursement of fees and expenses. The Lender Professionals shall submit copies of summary invoices to the Debtors, the U.S. Trustee, and counsel for any Committee. The summary invoices shall provide the specific individuals providing the services, the total number of hours billed for each individual, the hourly fee for such individual, and a summary description of services provided by the applicable Lender Professional (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 or any other confidential information), and shall be subject to all applicable privilege and work product doctrines. If the Debtors, U.S. Trustee, or any Committee object to the reasonableness of the fees and expenses of any Lender Professional and cannot resolve such objection within ten (10) days after receipt of such invoices, then the Debtors, U.S. Trustee, or the Committee, as the case may be, shall file with this Court and serve on such Lender Professional an objection (the “Fee Objection”), and any failure by any such party to file a Fee Objection within such ten (10) day period shall constitute a waiver of any right of such party to object to the applicable invoice. Notwithstanding any provision herein to the contrary, any objection to, and any hearing on an objection to, payment of any fees, costs, and expenses set forth in a professional fee invoice in respect of the Lender Professionals shall be limited to the reasonableness of the particular items or categories of the fees, costs, and expenses that are the subject of such objection. The Debtors shall timely pay in accordance with the terms and conditions of this Interim Order (a) the undisputed fees, costs, and expenses reflected on any invoice to which a Fee Objection has been timely filed and (b) all fees, costs and expenses on any invoice to which no Fee Objection has been timely filed.

40. Indemnification. The Debtors shall indemnify and hold harmless the DIP Secured Parties in accordance with, and subject to, the terms and conditions of the DIP Documents.

41. Right to Credit Bid. In connection with any sale or other disposition of the DIP Collateral or Prepetition Collateral including any sales occurring under or pursuant to section 363 of the Bankruptcy Code, any plan of reorganization or plan of liquidation under section 1129 of the Bankruptcy Code, or a sale or disposition by a chapter 7 trustee for any of the Debtors under section 725 of the Bankruptcy Code (any of the foregoing sales or dispositions, a “Sale”), subject

to the AAL and Intercreditor Agreement, the DIP Agent (at the direction of the Required DIP Lenders), with respect to the DIP Collateral, and the Prepetition Administrative Agent, with respect to the Prepetition ABL Priority Collateral until Payment in Full of the Prepetition ABL Secured Obligations, shall, subject to paragraph 45 hereof, be authorized to credit bid on a dollar-for-dollar basis the full amount of the outstanding DIP Obligations (including the Roll-Up Obligations), Prepetition ABL Secured Obligations, and/or Prepetition FILO Secured Obligations, as applicable, including any accrued interest and expenses, in a Sale (including any deposit in connection with such sale) of any DIP Collateral or Prepetition ABL Priority Collateral, whether such sale is effectuated through section 363 or 1129 of the Bankruptcy Code, by a Chapter 7 trustee under section 725 of the Bankruptcy Code, or otherwise; *provided* that no DIP Obligations or Prepetition FILO Secured Obligations may be credit bid in any disposition of any Prepetition ABL Priority Collateral unless such Sale provides for Payment in Full of the Prepetition ABL Secured Obligations to the Prepetition Administrative Agent on behalf of the Prepetition ABL Secured Parties; *provided, further*, that no Prepetition ABL/FILO Secured Obligations may be credit bid until entry of the Final Order.

42. Proofs of Claim. Each of the Prepetition Secured Parties shall not be required to file proofs of claim in the Chapter 11 Cases or any Successor Case in order to assert claims on behalf of themselves or the other Prepetition Secured Parties for payment of the applicable Prepetition Credit Obligations arising under the Prepetition Credit Documents, including, without limitation, any principal, unpaid interest, fees, expenses and other amounts under the Prepetition Secured Documents; *provided* that, notwithstanding any order entered by the Court establishing a bar date in any of the Chapter 11 Cases or any Successor Cases to the contrary, the DIP Agent, on behalf of the DIP Secured Parties, the Prepetition Administrative Agent, or

Prepetition FILO Agent, or the Prepetition Notes Agent on behalf of the applicable Prepetition Secured Parties, may (but are not required) in their discretion file (and amend and/or supplement) a proof of claim and/or aggregate proofs of claim in each of the Chapter 11 Cases or any Successor Cases for any claim allowed herein, and any such proof of claim may (but is not required to be) filed as one consolidated proof of claim against all of the Debtors, rather than as separate proofs of claim against each Debtor. The statements of claim in respect of such indebtedness set forth in this Interim Order are deemed sufficient to and do constitute proofs of claim in respect of such debt and such secured status. The DIP Agent and the DIP Secured Parties shall similarly not be required to file proofs of claim with respect to their DIP Obligations under the DIP Documents, and the evidence presented with the Motion and the record established at the Interim Hearing are deemed sufficient to, and do, constitute proofs of claim with respect to their obligations, secured status, and priority. Any proof of claim filed by the DIP Secured Parties or any of the Prepetition Secured Parties shall be deemed to be in addition to (and not in lieu of) any other proof of claim that may be filed by any such persons. The provisions set forth in this paragraph are intended solely for the purpose of administrative convenience and shall not affect the substantive rights of any party-in-interest or their respective successors-in-interest

43. Limitations on Use of DIP Proceeds, Cash Collateral and Carve-Out.

Except as otherwise permitted in this Interim Order and the Approved Budget (including with respect to the Investigation), the DIP Facility, the DIP Collateral, the Prepetition ABL Priority Collateral, the Cash Collateral, and the Carve-Out may not be used in connection with: (a) except to contest the occurrence of an Event of Default, preventing, hindering, or delaying the DIP Secured Parties' or the Prepetition ABL/FILO Secured Parties' enforcement or realization upon any of the DIP Collateral or Prepetition Collateral; (b) using or seeking to use Cash Collateral or

selling or otherwise disposing of DIP Collateral except as otherwise provided in the DIP Documents and this Interim Order; (c) using or seeking to use, outside the ordinary course of business, any insurance proceeds constituting DIP Collateral without the prior written consent of the Required DIP Lenders, except to the extent permitted under the DIP Documents, including the Approved Budget, or using or seeking to use any Prepetition Collateral without the prior written consent of the Prepetition Administrative Agent, except to the extent permitted by the Prepetition ABL/FILO Documents; (d) incurring any indebtedness without the prior written consent of the Required DIP Lenders, except to the extent permitted under the DIP Documents, or without the prior written consent of the Prepetition Administrative Agent; (e) seeking to amend or modify any of the rights granted to the DIP Secured Parties or the Prepetition ABL/FILO Secured Parties under this Interim Order, the DIP Documents, or the Prepetition ABL/FILO Documents; (f) objecting to or challenging in any way the DIP Liens, the DIP Obligations, the Prepetition ABL/FILO Liens, the Prepetition ABL/FILO Secured Obligations, or the Adequate Protection Obligations, the DIP Collateral (including Cash Collateral) or, as the case may be, Prepetition Collateral, or any other claims or liens, held by or on behalf of any of the DIP Secured Parties or the Prepetition ABL/FILO Secured Parties, respectively; (g) asserting, commencing or prosecuting any claims or causes of action whatsoever, including, without limitation, any actions under Chapter 5 of the Bankruptcy Code, applicable state law equivalents, any so-called “lender liability” claims and causes of action or other actions to recover or disgorge payments against the DIP Secured Parties, the Prepetition ABL/FILO Secured Parties, or any of their respective affiliates, successors and assigns and the partners, shareholders, controlling persons, directors, officers, employees, agents, attorneys, advisors, and professionals); (h) litigating, objecting to, challenging, contesting in any manner, or raising any defenses to, the validity, extent, amount, perfection, priority, or enforceability of any

of the DIP Obligations, the DIP Liens, the Prepetition ABL/FILO Liens, the Prepetition ABL/FILO Secured Obligations, the Adequate Protection Obligations, or any other rights or interests of the DIP Secured Parties or the Prepetition ABL/FILO Secured Parties; or (i) seeking to subordinate, recharacterize, disallow or avoid the DIP Obligations, the Prepetition ABL/FILO Secured Obligations, or the Adequate Protection Obligations.

44. Turn Over. Prior to the Payment in Full of all DIP Obligations and termination of the commitment in accordance with the DIP Documents, any party who holds a lien or security interest in DIP Collateral that is junior and/or subordinate to the DIP Liens or a claim that is subordinate to the DIP Superpriority Claims (including any of the Prepetition ABL/FILO Secured Parties) receives or is paid the proceeds of any DIP Collateral other than as expressly permitted in the DIP Documents and this Interim Order, such party shall be deemed to have received, and shall hold, such proceeds or payments in trust for the DIP Secured Parties and shall immediately turn over such amounts to the DIP Agent for distribution to the DIP Lenders to repay the DIP Obligations in accordance with the DIP Documents and this Interim Order until paid in full in cash.

45. Effect of Stipulations on Third Parties. The Debtors' Stipulations contained in Paragraph G and releases in Paragraph H hereof shall be binding in all circumstances upon the Debtors upon entry of this Interim Order and upon their Estates upon entry of the Final Order. The Debtors' Stipulations shall be binding upon each other party-in-interest, including the Committee, except to the extent a party in interest (including any chapter 11 trustee or if the Chapter 11 Cases are converted to cases under chapter 7 prior to the expiration of the Challenge Period (as defined below) the chapter 7 trustee in such Successor Case; provided, however, the Debtors' stipulations and releases will not apply to a chapter 7 or chapter 11 trustee until the Challenge Period

Termination Date with no Challenge filed) obtains any necessary standing and properly files a contested matter, adversary proceeding, or other matter, by no later than 75 calendar days following entry of the Interim Order (the “Challenge Period,” and the date that is the next calendar day after the termination of the Challenge Period in the event that either (i) no Challenge (as defined below) is properly raised during the Challenge Period or (ii) with respect only to those parties who properly file a contested matter, adversary proceeding, or other matter challenging or otherwise objecting to the admissions, stipulations, findings, or releases included in the Debtors’ Stipulations (each, a “Challenge”), such Challenge is fully and finally adjudicated, (i) and (ii) shall be referred to as the “Challenge Period Termination Date”) and *second*, obtains a final, non-appealable order in favor of such party-in-interest sustaining any such Challenge in any such timely-filed contested matter, adversary proceeding, or other action (any such Challenge timely brought for which such a final and non-appealable order is so obtained, a “Successful Challenge”). Except as otherwise expressly provided herein, from and after the Challenge Period Termination Date and for all purposes in these Chapter 11 Cases and any Successor Cases (and after the dismissal of these Chapter 11 Cases or any Successor Cases), and without further notice, motion, or application to, order of, or hearing before this Court, (i) any and all payments made to or for the benefit of the Prepetition ABL/FILO Secured Parties or otherwise authorized by this Interim Order (whether made prior to, on, or after the Petition Date) shall not be subject to counterclaim, set-off, subordination, recharacterization, defense, disallowance, recovery or avoidance by any party in interest, (ii) any and all such Challenges by any party-in-interest shall be deemed to be forever released, waived, and barred, (iii) all of the Prepetition Secured Obligations shall be deemed to be fully allowed claims within the meaning of section 506 of the Bankruptcy Code, and (iv) the Debtors’ Stipulations shall be binding on all parties in interest in these Chapter 11 Cases or any

Successor Cases, including any Committee or chapter 11 or chapter 7 trustee. Notwithstanding the foregoing, to the extent any Challenge is timely asserted, the Debtors' Stipulations and the other provisions in clauses (i) through (iv) in the immediately preceding sentence shall nonetheless remain binding and preclusive on any Committee and on any other party-in-interest from and after the Challenge Period Termination Date, except to the extent that such Debtors' Stipulations or the other provisions in clauses (i) through (iv) of the immediately preceding sentence were expressly challenged in such Challenge and such Challenge becomes a Successful Challenge; *provided*, that all other stipulations (other than those subject to a Successful Challenge) shall remain binding on any Committee or other party-in-interest. Notwithstanding any provision to the contrary herein, nothing in this Interim Order shall be construed to grant standing on any party in interest, including any Committee, to bring any Challenge on behalf of the Debtors' Estates. The failure of any party-in-interest, including any Committee, to obtain an order of this Court prior to the Challenge Period Termination Date granting standing to bring any Challenge on behalf of the Debtors' estates shall not be a defense to failing to commence a Challenge prior to the Challenge Period Termination Date as required under this Paragraph 45 or to require or permit an extension of the Challenge Period Termination Date. No portion of the Carve-Out, any Cash Collateral, any other DIP Collateral, or any proceeds of the DIP Facility, including any disbursements set forth in the Approved Budget or obligations benefitting from the Carve-Out, shall be used for the payment of Allowed Professional Fees, disbursements, costs or expenses incurred by any person, including, without limitation, any Committee, in connection with challenging the DIP Secured Parties' or the Prepetition ABL/FILO Secured Parties' liens or claims, preventing, hindering or delaying any of the DIP Secured Parties' or the Prepetition ABL/FILO Secured Parties' enforcement or realization upon any of the DIP Collateral, or initiating or prosecuting any claim or action against any DIP

Secured Party or Prepetition ABL/FILO Secured Party; provided that, notwithstanding the foregoing, proceeds from the DIP Facility and/or Cash Collateral not to exceed \$25,000 in the aggregate may be used on account of Allowed Professional Fees incurred by Committee Professionals (if any) in connection with the investigation of avoidance actions or any other claims or causes of action (but not the prosecution of such actions) on account of the Obligations, under the Prepetition ABL/FILO Documents and Prepetition ABL/FILO Secured Parties (but not the DIP Facility and DIP Secured Parties). For the avoidance of doubt, any trustee appointed or elected in these Chapter 11 Cases shall, until the Challenge Period Termination Date (or if a Challenge is then pending, the resolution of such Challenge), the trustee shall be deemed to be a party other than the Debtors and shall not, for purposes of any such Challenge, be bound by the acknowledgements, admissions, confirmations, and stipulations of the Debtors in this Interim Order.

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

47. No Lender Liability. In determining to make any loan (whether under the DIP Documents or otherwise) or to permit the use of Cash Collateral, none of the DIP Secured Parties or Prepetition ABL/FILO Secured Parties shall (i) be deemed to be in control of the operations of the Debtors or to be acting as a “responsible person” or “owner or operator” with respect to the operation or management of the Debtors (as such terms, or any similar terms, are used in the *United States Comprehensive Environmental Response, Compensation and Liability Act*, 42 U.S.C. §§ 9601 *et seq.*, as amended, or any similar federal, state or local statute or regulation), (ii) be liable to any current or former employee of the Debtors under any applicable

law, including, without limitation, the Workers Adjustment and Retraining Notification Act and similar state laws, or (iii) owe any fiduciary duty to the Debtors, their respective creditors, shareholders, or estates. Furthermore, nothing in this Interim Order shall in any way be construed or interpreted to impose or allow the imposition upon any of the DIP Secured Parties or the Prepetition ABL/FILO Secured Parties of any liability for any claims arising from the prepetition or postpetition activities of any of the Debtors and their respective affiliates (as defined in section 101(2) of the Bankruptcy Code).

48. Section 506(c) Claims.

(i) Subject to entry of a Final Order granting such relief, (a) except to the extent of the Carve-Out, no costs or expenses of administration of the Chapter 11 Cases or any Successor Cases shall be charged against or recovered from or against any or all of the DIP Secured Parties or the Prepetition ABL/FILO Secured Parties with respect to the DIP Collateral or the Prepetition Collateral, in each case pursuant to section 105 or section 506(c) of the Bankruptcy Code or otherwise, without the prior written consent of the DIP Secured Parties or the Prepetition ABL/FILO Secured Parties, as applicable and (b) no such consent shall be implied from any other action, inaction, or acquiescence of any or all of the DIP Secured Parties or the Prepetition ABL/FILO Secured Parties.

(ii) Notwithstanding anything herein to the contrary, all proceeds of Prepetition Notes Priority Collateral and Postpetition Notes Priority Collateral shall be deposited into a segregated account maintained by the Debtors (the “Notes Reserve”) and all Prepetition Liens of the Prepetition Secured Parties shall attach to funds in the Notes Reserve to the same extent as such Prepetition Liens attached to the Prepetition Notes Priority Collateral and Postpetition Notes Priority Collateral and the Debtors shall not make any distributions to the Prepetition Notes Agent

on account of the Prepetition Notes Secured Obligations, or any distributions from the Notes Reserve without further Court order (the “Note Reserve Release Order”). The Debtors reserve the right to seek as part of the Final Order the following language: “Unless the DIP Obligations (including the Roll-Up Amount) and the Prepetition ABL/FILO Secured Obligations are indefeasibly Paid in Full, the Debtors reserve the right, in the good faith exercise of their fiduciaries duties, to request that, as part of the Note Reserve Release Order, the Court determine whether and to what extent any costs and expenses of preserving or disposing of the Prepetition Notes Priority Collateral and Postpetition Notes Priority Collateral, including Allowed Professional Fees of estate-retained Professional Persons paid or payable as part of the Carve-Out, should be payable from the Notes Reserve or otherwise from Prepetition Notes Priority Collateral or Postpetition Notes Priority Collateral.” All estate retained Professional Persons shall clearly indicate in their respective Weekly Statements, Final Statements, interim fee applications and/or final fee applications whether any fees or expenses were incurred in connection with preserving or disposing of the Prepetition Notes Priority Collateral and the Postpetition Notes Priority Collateral. For avoidance of doubt, there is no waiver in this Interim Order of any rights under Section 506(c) relative to the Prepetition Notes Secured Parties, the Prepetition Notes Secured Obligations, Prepetition Notes Priority Collateral or Postpetition Notes Priority Collateral. All parties’ rights under this paragraph are reserved.

49. No Marshalling. The DIP Secured Parties and the Prepetition ABL/FILO Secured Parties shall not be subject to the equitable doctrine of “marshalling” or any other similar doctrine with respect to any of the DIP Collateral or the Prepetition Collateral.

50. Section 552(b). The DIP Secured Parties and, subject to entry of the Final Order, the Prepetition ABL/FILO Secured Parties shall each be entitled to all of the rights and

benefits of section 552(b) of the Bankruptcy Code, and the “equities of the case” exception under section 552(b) of the Bankruptcy Code shall not apply to the DIP Secured Parties or the Prepetition ABL/FILO Secured Parties, as applicable with respect to proceeds, product, offspring or profits of any of the Prepetition Collateral or DIP Collateral, as applicable.

51. Limitation on Liability. Nothing in this Interim Order or the DIP Documents shall in any way be construed or interpreted to impose or allow the imposition upon the DIP Secured Parties or Prepetition ABL/FILO Secured Parties any liability for any claims arising from the prepetition or postpetition activities of the Debtors, including with respect to the operation of their businesses, in connection with their restructuring efforts or administration of these Chapter 11 Cases. In addition, the DIP Secured Parties shall not in any way or manner be liable or responsible for: (i) the safe-keeping of the DIP Collateral, (ii) any loss or damage thereto occurring or arising in any manner or fashion from any cause, (iii) any Diminution in Value thereof, or (iv) any act or default of any carrier, servicer, bailee, custodian, forwarding agency or other person.

52. Preservation of Rights Granted under this Interim Order

(i) Other than those claims and liens expressly granted or permitted by this Interim Order, no claim or lien having a priority superior to or *pari passu* with those granted by this Interim Order to the DIP Secured Parties or the Prepetition Secured Parties shall be permitted while any of the DIP Obligations or the Adequate Protection Obligations remain outstanding, and, except as otherwise expressly provided in or permitted under this Interim Order, the DIP Liens and the Adequate Protection Liens shall not be: (i) subject or junior to any lien or security interest that is avoided and preserved for the benefit of the Debtors’ estates under section 551 of the Bankruptcy Code; (ii) subordinated to or made *pari passu* with any other lien or security interest, whether

under section 364(d) of the Bankruptcy Code or otherwise; (iii) subordinated to or made *pari passu* with any liens arising after the Petition Date including, without limitation, any liens or security interests granted in favor of any federal, state, municipal or other domestic or foreign governmental unit (including any regulatory body), commission, board or court for any liability of the DIP Loan Parties; or (iv) subject or junior to any intercompany or affiliate liens or security interests of the DIP Loan Parties.

(ii) Notwithstanding any order that may be entered dismissing any of the Chapter 11 Cases under section 1112 of the Bankruptcy Code or converting these Chapter 11 Cases to cases under chapter 7: (A) the DIP Superpriority Claims, the Adequate Protection Superpriority Claims, the DIP Liens, and the Adequate Protection Liens, and any claims related to the foregoing, shall continue in full force and effect and shall maintain their priorities as provided in this Interim Order until all DIP Obligations and Adequate Protection Obligations shall have been Paid in Full (and that such DIP Superpriority Claims, Adequate Protection Superpriority Claims, DIP Liens and Adequate Protection Liens shall, notwithstanding such dismissal, remain binding on all parties in interest); (B) the other rights granted by this Interim Order, including with respect to the Carve-Out, shall not be affected; and (C) this Court shall retain jurisdiction, notwithstanding such dismissal, for the purposes of enforcing the claims, liens and security interests referred to in this Paragraph 52 and otherwise in this Interim Order

(iii) If any or all of the provisions of this Interim Order are reversed or modified on appeal, such reversal or modification shall not affect: (i) the validity, priority or enforceability of any DIP Obligations or Adequate Protection Obligations incurred prior to the actual receipt of written notice by the DIP Agent, the Prepetition Administrative Agent, the Prepetition FILO Agent, Prepetition Notes Agent, or the other Prepetition Secured Parties, as applicable, of the effective

date of such reversal, modification, vacatur or stay; or (ii) the validity, priority or enforceability of the DIP Liens, the Adequate Protection Liens, or the Carve-Out. Notwithstanding any such reversal or modification of any use of Cash Collateral, any DIP Obligations, DIP Liens, Adequate Protection Obligations, or Adequate Protection Liens incurred by the DIP Loan Parties and granted to the DIP Agent, the DIP Secured Parties, the Prepetition Administrative Agent, the Prepetition FILO Agent, Prepetition Notes Agent, or the other Prepetition Secured Parties, as the case may be, prior to the actual receipt of written notice by the DIP Agent, the Prepetition Administrative Agent, the Prepetition FILO Agent, the Prepetition Notes Agent, or the other Prepetition Secured Parties, as applicable, of the effective date of such reversal, modification, vacatur or stay shall be governed in all respects by the original provisions of this Interim Order, and the DIP Agent, the DIP Secured Parties, the Prepetition Administrative Agent, the Prepetition FILO Agent, the Prepetition Notes Agent, and the other Prepetition Secured Parties shall be entitled to, and are hereby granted, all the rights, remedies, privileges and benefits arising under sections 364(e) and 363(m) of the Bankruptcy Code, this Interim Order and the DIP Documents with respect to all uses of Cash Collateral, DIP Obligations, and Adequate Protection Obligations.

(iv) Except as expressly provided in this Interim Order or in the DIP Documents, the DIP Liens, the DIP Superpriority Claims, the Adequate Protection Liens, the Adequate Protection Obligations, the Adequate Protection Superpriority Claims and all other rights and remedies of the DIP Agent, the DIP Secured Parties, the Prepetition Administrative Agent, the Prepetition FILO Agent, Prepetition Notes Agent, and the other Prepetition Secured Parties granted by the provisions of this Interim Order and the DIP Documents and the Carve-Out shall survive, and shall not be modified, impaired or discharged by: (a) the entry of an order converting any of the Chapter 11 Cases to a case under chapter 7 of the Bankruptcy Code, dismissing any of the

Chapter 11 Cases or terminating the joint administration of these Chapter 11 Cases or by any other act or omission; (b) the entry of an order approving the sale of any DIP Collateral pursuant to section 363(b) of the Bankruptcy Code (except, with respect to the DIP Liens and DIP Superpriority Claims, to the extent permitted by the DIP Documents); (c) the entry of an order confirming a chapter 11 plan in any of the Chapter 11 Cases and, pursuant to section 1141(d)(4) of the Bankruptcy Code, the DIP Loan Parties and the Prepetition Loan Parties, as applicable, have waived any discharge as to any remaining DIP Obligations and/or Adequate Protection Obligations. The terms and provisions of this Interim Order and the DIP Documents shall continue in these Chapter 11 Cases, in any Successor Cases if these Chapter 11 Cases cease to be jointly administered and in any superseding chapter 7 cases under the Bankruptcy Code, and the DIP Liens, the DIP Superpriority Claims, the Adequate Protection Liens and the Adequate Protection Obligations and all other rights and remedies of the DIP Agent, the DIP Secured Parties, the Prepetition Administrative Agent, the Prepetition FILO Agent, Prepetition Notes Agent, and the other Prepetition Secured Parties granted by the provisions of this Interim Order and the DIP Documents shall continue in full force and effect until the DIP Repayment and the Payment in Full of the Prepetition ABL Superpriority Claims, the Prepetition FILO Superpriority Claims, the Prepetition Notes Superpriority Claim, the Prepetition ABL/FILO Secured Obligations, and Prepetition Notes Secured Claims, as applicable, as set forth herein and in the DIP Documents (and in the case of rights and remedies of the Prepetition Administrative Agent, the Prepetition FILO Agent, Prepetition Notes Agent, and the other Prepetition Secured Parties, shall remain in full force and effect thereafter, subject to the terms of this Interim Order), and the Carve-Out shall continue in full force and effect. For the avoidance of doubt, the foregoing sections 52(i)-(iv) shall not prohibit the Court from providing different prospective relief in the Final Order

(v) So long as there are any Prepetition ABL Secured Obligations or any Adequate Protection Obligations with respect to the Prepetition ABL Secured Parties outstanding and prior to the indefeasible Payment in Full, in cash of the Prepetition ABL Secured Obligations and any Adequate Protection Obligations with respect to the Prepetition ABL Secured Parties and cash collateralization of all Letters of Credit, in each case with respect to the Prepetition ABL Priority Collateral or Postpetition ABL Priority Collateral, the DIP Secured Parties or Prepetition FILO Secured Parties (other than the Prepetition ABL Secured Parties) shall have no right to and shall not take any action to foreclose upon, or recover in connection with, the liens granted thereto pursuant to the Prepetition ABL/FILO Documents, the DIP Documents or this Interim Order, or otherwise seek to exercise or enforce any rights or remedies against such Prepetition ABL Priority Collateral or Postpetition ABL Priority Collateral, except in accordance with the Prepetition ABL/FILO Documents, including the AAL and the Intercreditor Agreement.

53. Release of DIP Secured Parties and Prepetition ABL/FILO Secured Parties.

Upon entry of this Interim Order, the Debtors, on their own behalf and their Estates, forever and irrevocably: (i) release, discharge, and acquit each of the DIP Secured Parties and, subject to entry of a Final Order providing such relief, the Prepetition ABL/FILO Secured Parties and each of their former or current officers, employees, directors, agents, representatives, owners, members, partners, financial advisors, legal advisors, shareholders, managers, consultants, accountants, attorneys, affiliates, and predecessors-in-interest of and from any and all claims, demands, liabilities, responsibilities, disputes, remedies, causes of action, indebtedness and obligations, of every type, including, without limitation, any so-called “lender liability” or equitable subordination claims or defenses, solely with respect to or relating to the negotiation and entry into the DIP Documents and the use of Cash Collateral; and (ii) waive, discharge and release any and

all defenses (including, without limitation, offsets and counterclaims of any nature or kind) as to the validity, perfection, priority, enforceability, and avoidability of the DIP Liens and the DIP Obligations other than any Challenge with respect to the Roll-Up Amount.

54. Insurance Proceeds and Policies. Upon entry of this Interim Order, and to the fullest extent provided by applicable law, the Prepetition Administrative Agent (on behalf of the Prepetition ABL Secured Parties), the Prepetition FILO Agent (on behalf of the Prepetition FILO Secured Parties), and the DIP Agent (for the benefit of the DIP Lenders), shall be, and shall be deemed to be, without any further action or notice, named as additional insured and loss payee on each insurance policy maintained by the Debtors that in any way relates to the DIP Collateral.

55. No Superior Rights of Reclamation. The right of a seller of goods to reclaim such goods under section 546(c) of the Bankruptcy Code is not a Prepetition Permitted Lien; rather, any such alleged claims arising or asserted as a right of reclamation (whether asserted under section 546(c) of the Bankruptcy Code or otherwise) shall have the same rights and priority with respect to the Prepetition Liens as such claim had on the Petition Date.

56. Rights Preserved. Notwithstanding anything herein to the contrary, the entry of this Interim Order is without prejudice to, and does not constitute a waiver of, expressly or implicitly, subject to the Prepetition Credit Documents, the AAL, and the Intercreditor Agreement: (a) the Prepetition Secured Parties' right to seek any other or supplemental relief in respect of the Debtors; (b) any of the rights of any of the Prepetition Secured Parties under the Bankruptcy Code or under non-bankruptcy law, including the right to (i) request modification of the automatic stay of section 362 of the Bankruptcy Code, (ii) 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, 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 any of the Prepetition Secured Parties. Notwithstanding anything herein to the contrary, the entry of this Interim Order is without prejudice to, and does not constitute a waiver of, expressly or implicitly, the Debtors', a Committee's (if appointed), or any party in interest's right to oppose any of the relief requested in accordance with the immediately preceding sentence except as expressly set forth in this Interim Order. Entry of this Interim Order is without prejudice to any and all rights of any party in interest with respect to the terms and approval of the Final Order and, unless otherwise set forth in this Interim Order or the Final Order, any other position which any party in interest deems appropriate to raise in the Chapter 11 Cases. Nothing in this Interim Order shall limit, subordinate, or constitute a waiver of any rights and priorities of claimants with Prepetition Permitted Liens.

57. No Waiver by Failure to Seek Relief. The failure of the DIP Secured Parties or Prepetition Secured Parties to seek relief or otherwise exercise their rights and remedies under this Interim Order, the DIP Documents, the Prepetition ABL/FILO Documents or applicable law, as the case may be, shall not constitute a waiver of any of the rights hereunder, thereunder, or otherwise. To the extent the Prepetition Notes Secured Parties seek additional adequate protection on a *nunc pro tunc* basis, each of the Debtors, the DIP Secured Parties and the Prepetition ABL/FILO Secured Parties agree and acknowledge that they agree that, if the Court determines such additional adequate relief is appropriate, they will not object to such relief being granted on a *nunc pro tunc* basis effective as of the Petition Date.

58. Binding Effect of Interim Order. Immediately upon entry of this Interim Order by this Court, the terms and provisions of this Interim Order shall become valid and binding

upon and inure to the benefit of the Debtors, the DIP Secured Parties, the Prepetition Secured Parties, the Prepetition PropCo Lender, all other creditors of any of the Debtors, any Committee (or any other court appointed committee) appointed in the Chapter 11 Cases, and all other parties-in-interest and their respective successors and assigns, including any trustee or other fiduciary hereafter appointed in any of the Chapter 11 Cases, any Successor Cases, or upon dismissal of any Chapter 11 Case or Successor Case. For the avoidance of doubt, the terms and provisions of this Interim Order shall apply to the Debtors' use of cash collateral after the Petition Date and prior to entry of this Interim Order.

59. Discharge. Except as otherwise agreed in writing by the DIP Agent (acting at the direction of the Required DIP Lenders) and the Prepetition Administrative Agent (acting at the direction of the Requisite Revolving Credit Lenders (as defined in the Prepetition Credit Agreement) or Requisite FILO Lenders, as applicable, as those terms are defined in the Prepetition Credit Agreement), the DIP Obligations, Prepetition ABL/FILO Secured Obligations and Adequate Protection 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 such obligations have been Paid in Full, on or before the effective date of such confirmed plan of reorganization. If any of the Debtors propose or support any plan of reorganization or sale of all or substantially all of the Debtors' assets, or order confirming such plan or approving such sale, that is not conditioned upon the Payment in Full (including by credit bid) of the DIP Obligations, Prepetition ABL/FILO Secured Obligations, and Adequate Protection Obligations owed to the Prepetition ABL/FILO Secured Parties (a "Prohibited Plan or Sale") without the reasonable written consent of the DIP Agent (acting at the direction of the Required DIP Lenders) and the Prepetition Administrative Agent (acting at the

direction of the Requisite FILO Lenders with respect to the Prepetition ABL Priority Collateral or at the direction of the Requisite Revolving Credit Lenders with respect to the Prepetition ABL Priority Collateral), the Debtors' proposal or support of a Prohibited Plan or Sale, or the entry of an order with respect thereto, shall constitute an Event of Default under the DIP Documents, a Termination Event, and a Cash Collateral Termination Event.

60. Joint and Several. The Debtors are jointly and severally liable for the DIP Obligations and all other obligations hereunder.

61. Survival. The provisions of this Interim Order and any actions taken pursuant hereto shall survive entry of any order which may be entered: (a) confirming any plan of reorganization in any of the Chapter 11 Cases; (b) converting any of the Chapter 11 Cases to a case under Chapter 7 of the Bankruptcy Code; (c) dismissing any of the Chapter 11 Cases or any Successor Cases; or (d) pursuant to which this Court abstains from hearing any of the Chapter 11 Cases or Successor Cases. The terms and provisions of this Interim Order, including the claims, liens, security interests and other protections granted to the DIP Secured Parties and the Prepetition Secured Parties pursuant to this Interim Order and the DIP Documents, shall continue in the Chapter 11 Cases, in any Successor Cases, or following dismissal of the Chapter 11 Cases or any Successor Cases, and shall maintain their priority as provided by this Interim Order until: (i) in respect of the DIP Facility, all the DIP Obligations, pursuant to the DIP Documents and this Interim Order, have been Paid in Full (such payment being without prejudice to any terms or provisions contained in the DIP Facility which survive such discharge by their terms), and all commitments to extend credit under the DIP Facility are terminated; (ii) in respect of the Prepetition ABL/FILO Facility, all of the Prepetition ABL/FILO Secured Obligations pursuant to the Prepetition ABL/FILO Documents and this Interim Order, have been Paid in Full (such payment being without

prejudice to any terms or provisions contained in the Prepetition ABL/FILO Facility which survive such discharge by their terms), and (iii) in respect of the Prepetition Notes, all of the Prepetition Notes Secured Obligations pursuant to the Prepetition Notes Documents and this Interim Order, have been paid in full (such payment being without prejudice to any terms or provisions contained in the Prepetition Notes Documents which survive such discharge by their terms). The terms and provisions concerning the indemnification of the DIP Secured Parties shall continue in the Chapter 11 Cases, in any Successor Cases, following dismissal of the Chapter 11 Cases or any Successor Cases, following termination of the DIP Documents and/or the repayment of the DIP Obligations. In addition, the terms and provisions of this Interim Order shall continue in full force and effect for the benefit of the Prepetition ABL/FILO Secured Parties notwithstanding the repayment in full or termination of the DIP Obligations until such time as the Prepetition ABL/FILO Secured Obligations have been Paid in Full.

62. Final Hearing. The Final Hearing on the Motion shall be held on May 7, 2024, at 11:00 a.m., prevailing Eastern Time; *provided* that the Final Hearing may be adjourned or otherwise postponed upon the Debtors filing a notice of such adjournment with the consent of the DIP Agent (acting at the direction of the Required DIP Lenders). The Debtors shall promptly serve copies of this Interim Order (which shall constitute adequate notice of the Final Hearing) to the parties having been given notice of the Interim Hearing, and to any other party that has filed a request for notices with this Court. Any objections or responses to entry of the Final Order shall be filed on or before 4:00 p.m., prevailing Eastern Time, on April 24, 2024.

63. Necessary Action. The Debtors are authorized to take any and all such reasonable actions and to make, execute and deliver any and all instruments as may be reasonably

necessary to implement the terms and conditions of this Interim Order and the transactions contemplated hereby.

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

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

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

67. Retention of Jurisdiction. This Court retains jurisdiction (i) with respect to all matters arising from or related to the DIP Documents and the implementation of this Interim Order and (ii) to enforce the same.

Dated: April 10th, 2024
Wilmington, Delaware


J. KATE STICKLES
UNITED STATES BANKRUPTCY JUDGE

EXHIBIT A**Relative Priorities**

Prepetition Collateral		Postpetition Collateral			
<u>Prepetition ABL Priority Collateral</u>	<u>Prepetition Notes Priority Collateral</u>	<u>Postpetition ABL Priority Collateral</u>	<u>Postpetition Notes Priority Collateral</u>	<u>PropCo Priority Collateral</u>	<u>Postpetition DIP Collateral</u>
Carve-Out	Prepetition Permitted Liens	Carve-Out	Prepetition Note AP Liens	Prepetition PropCo Lien	Carve-Out
Prepetition Permitted Liens	Prepetition Note AP Liens	Prepetition ABL AP Liens	Prepetition Note Liens	Carve-Out	DIP Liens
Prepetition ABL AP Liens	Prepetition Note Liens	Prepetition ABL Liens	Carve-Out	DIP Liens	Prepetition ABL AP Liens
Prepetition ABL Liens	Carve-Out	DIP Liens	Prepetition ABL AP Liens	Prepetition ABL AP Liens	Prepetition FILO AP Liens
DIP Liens	Prepetition ABL AP Liens	Prepetition FILO AP Liens	Prepetition ABL Liens	Prepetition FILO AP Liens	Prepetition Note AP Liens
Prepetition FILO AP Liens	Prepetition ABL Liens	Prepetition FILO Liens	DIP Liens	Prepetition Note AP Liens	
Prepetition FILO Liens	DIP Liens	Prepetition Note AP Liens	Prepetition FILO AP Liens		
Prepetition Note AP Liens	Prepetition FILO AP Liens	Prepetition Note Liens	Prepetition FILO Liens		
Prepetition Note Liens	Prepetition FILO Liens				

EXHIBIT B

MILESTONES

1. Within 1 business day of the Petition Date, the Debtors shall have filed (i) the DIP Motion, (ii) a motion seeking authority to continue going out of business (“GOB”) sales at all retail locations, and (iii) a motion seeking approval of procedures for the rejection of the Debtors’ leases.
2. On or before 3 days after the Petition Date, the Debtors shall have filed a motion seeking entry of an order approving a bidding and sale process with respect to the sale by the Debtors of all or substantially all of the Debtors’ assets not subject to GOB sales which, for the avoidance of doubt, shall include all owned real property, intellectual property, and other assets not consisting of leases (the “Additional Assets”) and leases not rejected within 30 days after the Petition Date (the “Leases”) (the “Bidding Procedures Order”), each of which shall be in form and substance acceptable to the DIP Agent.
3. On or before 3 days after the Petition Date, the Bankruptcy Court shall have entered the Interim Order and the Cash Management Order.
4. On or before 30 days after the Petition Date, the Court shall have entered the Final Order, the final Cash Management Order, and the Bidding Procedures Order.
5. On or before 40 days after the Petition Date, the deadline for submission of bids for the Leases shall have occurred pursuant to the Bidding Procedures Order.
6. On or before May 20, 2024, the Debtors shall conduct an auction(s) for the Leases pursuant to the Bidding Procedures Order.
7. On or before May 24, 2024, the Bankruptcy Court shall have entered an order or orders approving the sale(s) of the Leases.
8. On or before May 31, 2024, the Debtors shall have completed GOB sales at all retail locations.
9. On or before 55 days after the Petition Date, the sale(s) of substantially all of the Leases shall have been consummated.
10. On or before 80 days after the Petition Date, the deadline for submission of bids for the Additional Assets shall have occurred pursuant to the Bidding Procedures Order.
11. On or before 105 days after the Petition Date, the Debtors shall conduct an auction(s) for all or substantially all of the Debtors’ Additional Assets pursuant to the Bidding Procedures Order.

12. On or before 115 days after the Petition Date, the Bankruptcy Court shall have entered an order or orders approving the sale(s) of substantially all of the Debtors' Additional Assets.
13. On or before 125 days after the Petition Date, the sale(s) of substantially all of the Debtors' Additional Assets shall have been consummated.

EXHIBIT C

Approved Budget

99 Cents Only Stores

Debtor-In Possession Financing Initial Approved Budget

April 9, 2024

(\$ in thousands)

Week Number	1	2	3	4	5	6	7	8	9	10	11	12	13	14	FCST
Actual / Forecast	FCST	FCST	FCST	FCST	FCST	FCST	FCST	FCST	FCST	FCST	FCST	FCST	FCST	FCST	FCST
Week Ending	4/12/24	4/19/24	4/26/24	5/3/24	5/10/24	5/17/24	5/24/24	5/31/24	6/7/24	6/14/24	6/21/24	6/28/24	7/5/24	7/12/24	14 Weeks
Operating Receipts	\$ 46,268	\$ 43,078	\$ 36,354	\$ 29,234	\$ 19,817	\$ 13,573	\$ 10,108	\$ 7,370	\$ 1,212	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 207,015
Operating Disbursements	(14,722)	(13,443)	(17,258)	(17,876)	(10,140)	(7,003)	(20,015)	(3,206)	(2,991)	(731)	(851)	(2,873)	(1,788)	(6,802)	(119,697)
Operating Cash Flow	31,546	29,635	19,096	11,359	9,678	6,571	(9,907)	4,164	(1,779)	(731)	(851)	(2,873)	(1,788)	(6,802)	87,318
Non-Operating Income / (Disbursements)															
Asset Sales ⁽¹⁾	-	-	-	-	-	-	-	-	-	-	-	-	-	-	50,000
Adequate Protection/DIP Fees	(710)	-	-	(549)	-	(295)	-	(503)	-	-	-	(279)	(1,003)	-	(3,339)
Restructuring Professionals	(2,636)	(1,915)	(1,915)	(1,515)	(1,211)	(1,085)	(1,085)	(1,085)	(1,105)	(1,344)	(1,344)	(1,344)	(1,760)	-	(19,342)
Other Restructuring Costs	(16,881)	(4,709)	(454)	(454)	-	-	-	-	-	-	-	-	-	-	(12,624)
Liquidator Fees	(1,521)	(1,431)	(1,314)	(1,194)	(1,028)	(937)	(886)	(841)	300	-	-	-	-	-	(8,851)
Total Non-Operating Disbursements	(21,747)	(8,055)	(3,683)	(3,713)	(2,239)	(2,316)	(1,971)	(2,429)	(805)	(1,344)	(1,344)	(1,623)	47,237	(12,624)	(16,655)
Net Cash Flow	\$ 9,798	\$ 21,580	\$ 15,414	\$ 7,646	\$ 7,438	\$ 4,254	\$ (11,878)	\$ 1,735	\$ (2,584)	\$ (2,074)	\$ (2,194)	\$ (4,496)	\$ 45,449	\$ (19,426)	\$ 70,663
Cash Balance and Liquidity															
Cash Balance															
Beginning Cash Balance	\$ 17,048	\$ 15,000	\$ 15,000	\$ 15,000	\$ 15,000	\$ 15,000	\$ 30,998	\$ 19,120	\$ 20,855	\$ 10,000	\$ 7,926	\$ 5,732	\$ 1,236	\$ 19,456	\$ 17,048
Net Cash Flow	9,798	21,580	15,414	7,646	7,438	4,254	(11,878)	1,735	(2,584)	(2,074)	(2,194)	(4,496)	45,449	(19,426)	70,663
Δ Float	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Cash Before Revolver Activity	26,847	36,580	30,414	22,646	22,438	19,254	19,120	20,855	18,271	7,926	5,732	1,236	46,684	30	87,711
ABL Draw / (Paydown) ⁽²⁾	(32,347)	(21,580)	(8,445)	-	-	(3,257)	-	-	-	-	-	-	-	-	(62,372)
FILo Paydown ⁽²⁾	-	-	(6,968)	(7,646)	(7,438)	-	-	-	-	-	-	-	-	-	(25,309)
Cash After FILo/Revolver Activity	(5,500)	15,000	15,000	15,000	15,000	15,998	19,120	20,855	18,271	7,926	5,732	1,236	46,684	30	30
(plus) DIP Draw	20,500	-	-	-	-	15,000	-	-	-	-	-	-	-	-	35,500
(less) DIP Paydown	-	-	-	-	-	-	-	-	(8,271)	-	-	-	-	-	(27,229)
Ending Cash Balance	\$ 15,000	\$ 15,000	\$ 15,000	\$ 15,000	\$ 15,000	\$ 30,998	\$ 19,120	\$ 20,855	\$ 10,000	\$ 7,926	\$ 5,732	\$ 1,236	\$ 19,456	30	30
Minimum Cash Balance	15,000	15,000	15,000	15,000	15,000	15,000	15,000	15,000	10,000	10,000	10,000	10,000	10,000	10,000	-
ABL Balance															
Beginning Revolver Balance + Collateralized L/Cs	\$ 62,372	\$ 30,026	\$ 8,445	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 62,372
ABL Draw / (Paydown) ⁽²⁾	(32,347)	(21,580)	(8,445)	-	-	-	-	-	-	-	-	-	-	-	(62,372)
Ending ABL Balance	\$ 30,026	\$ 8,445	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
FILo Roll-Up Balance															
Beginning Balance	\$ 25,309	\$ 25,309	\$ 25,309	\$ 18,341	\$ 10,695	\$ 3,257	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 25,309
FILo Paydown ⁽²⁾	-	-	(6,968)	(7,646)	(7,438)	(3,257)	-	-	-	-	-	-	-	-	(25,309)
Ending Roll-Up FILo Balance	\$ 25,309	\$ 25,309	\$ 18,341	\$ 10,695	\$ 3,257	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
New Money DIP Balance															
Beginning Balance	\$ -	\$ 20,500	\$ 20,500	\$ 20,500	\$ 20,500	\$ 20,500	\$ 35,500	\$ 35,500	\$ 35,500	\$ 27,229	\$ 27,229	\$ 27,229	\$ 27,229	\$ -	\$ -
(plus) DIP Draw	20,500	-	-	-	-	15,000	-	-	-	-	-	-	-	-	35,500
(less) DIP Paydown	-	-	-	-	-	-	-	-	(8,271)	-	-	-	(27,229)	-	(35,500)
Ending DIP Balance	\$ 20,500	\$ 20,500	\$ 20,500	\$ 20,500	\$ 20,500	\$ 35,500	\$ 35,500	\$ 35,500	\$ 27,229	\$ 27,229	\$ 27,229	\$ 27,229	\$ -	\$ -	\$ -

(1) Excludes Sales of Perpetuation Notes Priority Collateral; DIP Lien proceeds on sale of PropCo Loan Collateral are included

(2) Paydowns will be made on Tuesday's based on actual results for the prior week; the budget shows same week paydowns for convenience

EXHIBIT D

Cash Collateral Termination Events

Any of the following shall constitute a Cash Collateral Termination Event under the Interim Order:

- (i) The failure to comply with the Milestones within 7 days of the specified Milestone;
- (ii) The failure to timely file a motion to extend the time period to assume or reject leases pursuant to Section 365(d)(4) of the Bankruptcy Code to not less than 210 calendar days following the Petition Date;
- (iii) If the Debtors use the Cash Collateral of the Prepetition ABL Secured Parties in a manner that is not permitted by any Approved Budget;
- (iv) The failure of the Debtors to comply with Paragraph 17 of the Interim Order, after taking into account the Permitted Variances plus an additional 10% variance;
- (v) The delivery of a Termination Declaration;
- (vi) The failure to (a) timely make any payments to the Prepetition ABL Secured Parties or Prepetition Administrative Agent as required under the Interim Order for a period of one (1) business day after delivery of a notice by the Prepetition Administrative Agent to the DIP Agent, any Committee, the other Prepetition Agents, and the U.S. Trustee specifying such missed payment or (b) for a period of five (5) days after delivery of a notice by the Prepetition Administrative Agent to the DIP Agent, any Committee, the other Prepetition Agents, and the U.S. Trustee specifying such failure, comply with any covenant in favor of the Prepetition ABL Secured Parties or any obligation owed to the ABL Secured Parties under the Interim Order;
- (vii) This Interim Order (unless replaced by the Final Order, in which case, the Final Order) ceases to be in full force and effect for any reason;

(viii) The dismissal of any of the Chapter 11 Cases, the conversion of any Chapter 11 Case to a case under chapter 7 of the Bankruptcy Code, the appointment in any Chapter 11 Case of a trustee or examiner with expanded powers under chapter 11 of the Bankruptcy Code, the Court shall abstain from hearing any of the Chapter 11 Cases in accordance with section 305 of the Bankruptcy Code, or any of the Debtors shall file a motion or other pleading, or support any motion or other pleading filed by any other party, seeking any of the foregoing relief;

(ix) An order of the Court is entered (or any of the Debtors shall seek an order) reversing, staying, or vacating this Interim Order or the Final Order without the prior written consent of the Prepetition Administrative Agent;

(x) The Debtors shall create, incur, or suffer to exist any claim or lien on Prepetition ABL Priority Collateral that is pari passu with or senior to the Prepetition ABL AP Liens or the Prepetition ABL Superpriority Claim while any portion of the Prepetition ABL Secured Obligations or the Prepetition ABL AP Payments remain outstanding, or the Court shall grant any application by any party seeking payment of any claim on a superpriority administrative claim basis with respect to Prepetition Collateral pari passu with or senior to the Prepetition ABL Secured Obligations or Prepetition ABL Superpriority Claim, without the consent of the Prepetition Administrative Agent or as otherwise provided by this Interim Order and **Exhibit A** hereto;

(xi) The Prepetition ABL AP Liens or the Prepetition ABL Superpriority Claim shall cease to be valid, perfected, and enforceable in all respects or the filing by any Debtor of any motion, pleading, application, or adversary proceeding challenging the validity, enforceability, perfection, or priority of the Prepetition ABL Liens securing the Prepetition ABL Secured Obligations or asserting any other cause of action against and/or with respect to the Prepetition ABL Secured Obligations, any Prepetition ABL Secured Party's claim in respect of such

Prepetition ABL Secured Obligations, or the Prepetition Collateral securing such Prepetition ABL Secured Obligations (or if the Debtors support any such motion, pleading, application, or adversary proceeding commenced by any third party);

(xii) The Debtors shall file or the Court shall grant any application, motion or borrowing request (other than pursuant to the Interim Order or the Final Order) seeking to: (i) incur, without the consent of the Prepetition Administrative Agent, any indebtedness from any party secured by a lien on, or, otherwise having a claim against or recourse to, as the case may be, the Debtors, the Prepetition Collateral or the DIP Collateral, unless such liens or claims are junior and subordinated in all respects to the Prepetition ABL Liens, the Prepetition ABL Secured Obligations, the Prepetition ABL AP Liens, and the Prepetition ABL Superpriority Claim; or (ii) use Cash Collateral on a nonconsensual basis;

(xiii) The Debtors' exclusive right to file and solicit acceptance of a chapter 11 plan of reorganization terminates;

(xiv) Any modification shall be made to this Interim Order or the Final Order that is materially adverse to the Prepetition Administrative Agent without the consent of the Prepetition Administrative Agent;

(xv) The filing by any Debtor or any DIP Secured Party seeking an order, or the entry of an order by the Court or any other court having jurisdiction to do so approving claims for recovery of amounts under section 506(c) of the Bankruptcy Code or otherwise arising from the preservation or the disposition of Prepetition ABL Priority Collateral, other than as explicitly provided in this Interim Order;

(xvi) The filing by any Debtor of a motion seeking an order, or the entry of an order by the Court or any other court having jurisdiction to do so, avoiding or requiring repayment or

disgorgement of any portion of the Prepetition ABL AP Payments made by or on behalf of the Debtors hereunder;

(xvii) The DIP Lenders fail to fund (i) any amounts required to be funded under the DIP Facility (“DIP Loans”) after entry of this Interim Order and on the applicable funding date therefor in the DIP Credit Agreement (as in effect on the date of entry of this Interim Order without giving effect to any amendments, waiver, or other modifications) or (ii) the amount of DIP Loans required to be funded after entry of the Final Order and on the applicable funding date therefor in the DIP Credit Agreement (as in effect on the date of entry of this Interim Order without giving effect to any amendments, waiver, or other modifications), and, in each case, such failure has not been cured within seven (7) days thereof;

(xviii) The delivery by the DIP Agent of a Carve-Out Trigger Notice.

EXHIBIT E

DIP Credit Agreement

FILING VERSION

**SENIOR SECURED SUPER-PRIORITY DEBTOR-IN-POSSESSION
TERM LOAN CREDIT AGREEMENT,**

dated as of April [__], 2024

among

99 CENTS ONLY STORES LLC,

as the Borrower,

NUMBER HOLDINGS, INC.,

as Holdings,

CERTAIN SUBSIDIARIES OF HOLDINGS,

as Guarantors,

TC LENDING, LLC,

as Administrative Agent

and

THE OTHER LENDERS PARTY HERETO

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Annex A	-	Additional Reporting
Annex B	-	Initial Budget
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This SENIOR SECURED SUPER-PRIORITY DEBTOR-IN-POSSESSION TERM LOAN CREDIT AGREEMENT, dated as of April [], 2024, among 99 CENTS ONLY STORES LLC, a California limited liability company (the “*Company*” or the “*Borrower*”), NUMBER HOLDINGS, INC., a Delaware corporation (“*Holdings*”), certain other Subsidiaries of Holdings party hereto, TC LENDING, LLC, as administrative agent (in such capacity, including any successor thereto, the “*Administrative Agent*”) and as collateral agent (in such capacity, including any successor thereto, the “*Collateral Agent*”) under the Loan Documents, and each lender from time to time party hereto (collectively, the “*Lenders*” and individually, a “*Lender*”).

RECITALS

WHEREAS, on April 7, 2024 (the “Petition Date”), Holdings and certain of its subsidiaries, commenced Chapter 11 case numbers 24-10719 (JKS) through 24-10723 (JKS), as jointly administered for procedural purposes at Chapter 11 case number 24-10719 (JKS) (each a “Case” and collectively, the “Cases”) by filing with United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”) voluntary petitions for relief under Chapter 11 of the Bankruptcy Code and the Debtors have continued to operate their business as debtor-in-possession pursuant to Sections 1107 and 1108 thereof.

WHEREAS, prior to the Petition Date, the Prepetition Lenders (as hereinafter defined), provided financing to the Prepetition Borrower (as hereinafter defined), guaranteed by each Prepetition Loan Guarantor (as hereinafter defined), pursuant to that certain Amended and Restated Credit Agreement, dated as of April 24, 2020 (as amended by Amendment No. 1, dated as of October 14, 2020, as further amended and restated by Amendment No. 2, dated as of December 22, 2020, as further amended by Amendment No. 3, dated as of December 9, 2021, as waived by Waiver No. 1, dated as of December 23, 2022, as further amended by Amendment No. 3, dated as of December 9, 2021, as waived by Waiver No. 2, dated as of February 27, 2023, as further amended by Amendment No. 4, dated as of May 15, 2023, as further amended by Amendment No. 5, dated as of August 1, 2023, and as further amended, restated, supplemented, modified or waived prior to the date of this Agreement, the “Prepetition Credit Agreement”), by and among the Company (the “Prepetition Borrower”), the Prepetition Loan Guarantors, the lenders and issuers from time to time party thereto (the “Prepetition Lenders”), ROYAL BANK OF CANADA, as administrative agent and collateral agent, and SIXTH STREET SPECIALTY LENDING, INC. (f/k/a TPG Specialty Lending, Inc.), as FILO agent; and

WHEREAS, the Borrower has requested and the Lenders have agreed to provide the Borrower with a senior secured superpriority debtor-in-possession term loan credit facility in an aggregate principal amount not to exceed \$60,800,000 subject to the terms and conditions set forth in this Agreement and the DIP Orders (as defined herein), as applicable.

The parties hereto agree as follows:

ARTICLE I.

DEFINITIONS, INTERPRETATION AND ACCOUNTING TERMS

SECTION 1.1 Defined Terms.

As used in this Agreement, the following terms have the following meanings (such meanings to be equally applicable to both the singular and plural forms of the terms defined):

“*A&M*” means Alvarez & Marsal North America, LLC.

“*Accommodation Payment*” has the meaning assigned to such term in SECTION 13.7.

“*Allocable Amount*” has the meaning assigned to such term in SECTION 13.7.

“*ACOF III*” means Ares Corporate Opportunities Fund III, L.P., and its Affiliates.

“*Adjusted Daily Simple SOFR*” an interest rate per annum equal to Daily Simple SOFR.

“*Adjusted Term SOFR*” means, for purposes of any calculation, the rate per annum equal to Term SOFR for such calculation; provided that, (i) if the Interest Period with respect to the applicable SOFR Loan is a SOFR Non-Standard Interest Period, then the Adjusted Term SOFR shall be the SOFR Interpolated Rate, and (ii) if the Adjusted Term SOFR as so determined shall ever be less than the Floor on any day, then the Adjusted Term SOFR shall be deemed to be the Floor for such day for the purposes of this Agreement.

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

“*Administrative Agent’s Office*” means 2100 McKinney Avenue, Suite 1500, Dallas, Texas 75201 or such other address or account as the Administrative Agent may from time to time notify the Borrower and the Lenders.

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

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

“*Agent Parties*” has the meaning specified in SECTION 12.8(d).

“*Agent’s Advisors*” means any financial advisor, attorney, accountant, appraiser, auditor, business valuation expert, environmental engineer or consultant, turnaround consultant, and other consultants, professionals and experts retained by the Administrative Agent or the attorneys or other advisors of the Administrative Agent.

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

“*Agents*” means, collectively, the Administrative Agent, the Collateral Agent, and each co-agent or sub-agent (if any) appointed by the Administrative Agent from time to time pursuant to *SECTION 11.5*.

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

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

“*Applicable Margin*” means a percentage per annum equal to (a) for SOFR Loans, 7.50%, and (b) for Base Rate Loans, 6.50%.

“*Approved Budget*” has the meaning specified in the DIP Orders (as updated in accordance with the DIP Orders).

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

“*Approved Plan*” has the meaning specified in SECTION 10.1(k)(ii).

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

“*Assignment and Assumption*” means an assignment and assumption entered into by a Lender and an Eligible Assignee, and accepted by the Administrative Agent, in substantially the form of *Exhibit A* or any other form approved by the Administrative Agent.

“*Attorney Costs*” means all reasonable fees, expenses and disbursements of any law firm or other external legal counsel.

“*Automatic Stay*” means the automatic stay imposed under Section 362 of the Bankruptcy Code.

“*Available Tenor*” means, as of any date of determination and with respect to the then-current Benchmark, as applicable, (x) if such Benchmark is a term rate, any tenor for such Benchmark (or component thereof) that is or may be used for determining the length of an Interest Period pursuant to this Agreement or (y) otherwise, any payment period for interest calculated with reference to such Benchmark (or component thereof) that is or may be used for determining any frequency of making payments of interest calculated with reference to such Benchmark, in each case, as of such date, and not including, for the avoidance of doubt, any tenor for such Benchmark that is then-removed from the definition of “Interest Period” pursuant to clause (d) of SECTION 3.3.

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

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

“*Bankruptcy Code*” has the meaning specified in the DIP Orders.

“*Bankruptcy Court*” has the meaning specified in the recitals to this Agreement.

“*Base Rate*” means, for any day, a fluctuating rate per annum equal to the highest of (a) the Federal Funds Rate plus 1/2 of 1%, (b) the rate of interest in effect for such day as announced from time to time by the Administrative Agent as its “prime rate” at its principal office in New York City, and (c) the Adjusted Term SOFR on such day for an Interest Period of one (1) month plus 1.00%, provided that to the extent such highest rate as calculated above shall, at any time, be less than 2.00%, such rate shall be deemed to be 2.00% for purposes of this Agreement. The “prime rate” is a rate set by the Administrative Agent based upon various factors including the Administrative Agent’s costs and desired return, general economic conditions and other factors, and is used as a reference point for pricing some loans, which may be priced at, above, or below such announced rate. Any change in the Base Rate due to a change in such rate announced by the Administrative Agent or in the Federal Funds Rate or Adjusted Term SOFR shall take effect at the opening of business on the day specified in the announcement of such change.

“*Base Rate Loan*” means any Loan during any period in which it bears interest based on the Base Rate.

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

“*Benchmark*” means, initially, Adjusted Term SOFR; provided that if a Benchmark Transition Event has occurred with respect to Adjusted Term SOFR or the then-current Benchmark, then “*Benchmark*” means the applicable Benchmark Replacement to the extent that such Benchmark Replacement has replaced such prior benchmark rate pursuant to clause (b) of SECTION 3.3.

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

(a) Adjusted Daily Simple SOFR; or

(b) the sum of: (i) the alternate benchmark rate that has been selected by the Administrative Agent and the Borrower giving due consideration to (A) any selection or recommendation of a replacement benchmark rate or the mechanism for determining such a rate by the Relevant Governmental Body or (B) any evolving or then-prevailing market convention for determining a benchmark rate as a replacement to the then-current Benchmark for Dollar-denominated syndicated credit facilities and (ii) the related Benchmark Replacement Adjustment.

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

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

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

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

(2) in the case of clause (3) of the definition of “*Benchmark Transition Event*,” the first date on which such Benchmark (or the published component used in the calculation thereof) has been determined and announced by the regulatory supervisor for the

administrator of such Benchmark (or such component thereof) to be non-representative; provided, that such non-representativeness will be determined by reference to the most recent statement or publication referenced in such clause (3) and even if any Available Tenor of such Benchmark (or such component thereof) continues to be provided on such date.

For the avoidance of doubt, the “Benchmark Replacement Date” will be deemed to have occurred in the case of clause (1) or (2) with respect to any Benchmark upon the occurrence of the applicable event or events set forth therein with respect to all then-current Available Tenors of such Benchmark (or the published component used in the calculation thereof).

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

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

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

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

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

“*Benchmark Unavailability Period*” means, with respect to any Benchmark, the period (if any) (x) beginning at the time that a Benchmark Replacement Date has occurred if, at such time, no Benchmark Replacement has replaced the then-current Benchmark for all purposes hereunder and under any Loan

Document in accordance with SECTION 3.3 and (y) ending at the time that a Benchmark Replacement has replaced such then-current Benchmark for all purposes hereunder and under any Loan Document in accordance with SECTION 3.3.

“*Beneficial Owner*” has the meaning given to such term in Rules 13(d)-3 and 13(d)-5 under the Exchange Act. “*Beneficially Owned*” has the meaning correlative thereto.

“*Beneficial Ownership Certification*” means, to the extent the Borrower qualifies as a “legal entity customer” under the Beneficial Ownership Regulation, a certification regarding beneficial ownership in relation to the Borrower, as required by the Beneficial Ownership Regulation.

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

“*Board of Directors*” means, as to any Person, the board of directors or managers, as applicable, of such Person (or, if such Person is a partnership, the board of directors or other governing body of the general partner of such Person) or any duly authorized committee thereof.

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

“*Borrower Materials*” means materials and/or information provided by or on behalf of the Borrower under this Agreement.

“*Borrowing*” means (a) the borrowing consisting of the Term Loans made by the Lenders as provided in SECTION 2.1(a) or (b) a roll-up of a Prepetition Rolled Term Loan into a Roll-Up Term Loan on the Final Order Entry Date, as the context may require.

“*Business Day*” shall mean any day other than a Saturday or a Sunday or a legal holiday on which commercial banks are authorized or required by law to be closed for business in New York, New York; provided, that, when used in connection with a SOFR Loan, or any other calculation or determination involving SOFR, the term “*Business Day*” means any day that is also a U.S. Government Securities Business Day.

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

“*Capitalized Leases*” means all leases that have been or are required to be, in accordance with GAAP, recorded as capitalized leases; *provided* that for all purposes hereunder the amount of obligations under any Capitalized Lease shall be the amount thereof accounted for as a liability in accordance with GAAP.

“*Carve-Out*” has the meaning specified in the DIP Orders, as applicable.

“*Case*” or “*Cases*” has the meaning specified in the recitals to this Agreement.

“*Cash Equivalents*” means:

(a) Dollars, Canadian dollars, pounds sterling, euros, or such local currencies held by it from time to time in the ordinary course of business and not for speculation;

(b) readily marketable direct obligations issued or directly and fully and unconditionally guaranteed or insured by the United States government or any agency or instrumentality thereof the securities of which are unconditionally guaranteed as a full faith and credit obligation of such government with maturities of two (2) years or less from the date of acquisition;

(c) certificates of deposit, time deposits and eurodollar time deposits with maturities of one year or less from the date of acquisition, or bankers' acceptances, in each case, with maturities not exceeding one year and overnight bank deposits, in each case with any commercial bank having capital and surplus of not less than \$250,000,000 and whose long-term debt is rated at least "A-2" or the equivalent thereof by Moody's or at least "A" or the equivalent thereof by S&P (or reasonably equivalent ratings of another internationally recognized rating agency);

(d) repurchase obligations for underlying securities of the types described in *clauses (b) and (c)* above entered into with any financial institution meeting the qualifications specified in *clause (c)* above;

(e) commercial paper issued by a corporation (other than an Affiliate of the Borrower) rated at least P-1 by Moody's or A-1 by S&P (or, if at any time neither Moody's nor S&P shall be rating such obligations, an equivalent rating from another internationally recognized rating agency), in each case maturing within 12 months after the date of acquisition thereof;

(f) readily marketable direct obligations issued by any state of the United States or any political subdivision thereof having one of the two highest rating categories obtainable from either Moody's or S&P (or, if at any time neither Moody's nor S&P shall be rating such obligations, an equivalent rating from another internationally recognized rating agency), in each case with maturities of two (2) years or less from the date of acquisition; and

(g) any other Cash Equivalents (as defined in the Prepetition Credit Agreement as in effect on the Petition Date) held by the Loan Parties or any of their respective Subsidiaries on the Petition Date.

"*Cash Management Order*" means an order entered by the Bankruptcy Court, in form and substance reasonably acceptable to the Administrative Agent, governing the Debtors' cash management system.

"*Cash Proceeds*" means with respect to the Disposition of any asset by the Borrower or any of the Subsidiaries or with respect to any Recovery Event, the excess, if any, of the sum of cash and Cash Equivalents received in connection with such Disposition (including any cash and Cash Equivalents received by way of deferred payment pursuant to, or by monetization of, a note receivable or otherwise, but only as and when so received) or Recovery Event, net of reasonable, documented and out-of-pocket costs and taxes required to be paid to a Person that is not an Affiliate of the Debtors in connection with such Disposition or Recovery Event that are properly and directly attributable to such transaction or to the asset that is the subject thereof.

"*Change in Law*" means the occurrence, after the date of this Agreement, of any of the following: (a) the adoption or taking effect of any law, rule, regulation or treaty (excluding the taking effect after the date of this Agreement of a law, rule, regulation or treaty adopted prior to the date of this Agreement), (b) any change in any law, rule, regulation or treaty or in the administration, interpretation or application thereof by any Governmental Authority or (c) the making or issuance of any request, guideline or directive (whether or not having the force of law) by any Governmental Authority. It is understood and agreed that (i) (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act (Pub.L. 111-203, H.R. 4173), all Laws relating thereto, all interpretations and applications thereof and any compliance by a Lender with any

request or directive relating thereto and (y) all rules or directives and, any compliance by a Lender with any requests or guidelines promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall, in each case, for the purposes of this Agreement, be deemed to be adopted subsequent to the Effective Date and (ii) for purposes of this Agreement, the adoption of a successor provision that is substantially equivalent to the promulgation of Treasury regulations in respect of or the issuance of official interpretations of FATCA shall be deemed not an occurrence described in the preceding sentence.

“*Code*” means the United States Internal Revenue Code of 1986, as amended from time to time, and the Treasury regulations promulgated thereunder.

“*Collateral*” has the meaning assigned to such term in SECTION 2.14(a).

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

“*Collateral Documents*” means, collectively, the DIP Orders, this Agreement and each of the other agreements, instruments or documents executed and delivered by one or more Loan Parties that creates or purports to create a Lien or Guarantee in favor of the Collateral Agent for the benefit of the Secured Parties to secure or Guarantee the Obligations.

“*Commitment*” means the Initial Term Loan Commitment and the Delayed Draw Term Loan Commitment.

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

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

“*Conforming Changes*” means, with respect to either the use or administration of Term SOFR or the use, administration, adoption or implementation of any Benchmark Replacement, any technical, administrative or operational changes (including changes to the definition of “Base Rate,” the definition of “Business Day,” the definition of “U.S. Government Securities Business Day,” the definition of “Interest Period” or any similar or analogous definition (or the addition of a concept of “interest period”), timing and frequency of determining rates and making payments of interest, timing of borrowing requests or prepayment, conversion or continuation notices, the applicability and length of lookback periods, the applicability of SECTION 3.3 and other technical, administrative or operational matters) that the Administrative Agent decides, in consultation with the Borrower, may be appropriate to reflect the adoption and implementation of any such rate or to permit the use and administration thereof by the Administrative Agent in a manner substantially consistent with market practice (or, if the Administrative Agent decides that the adoption of any portion of such market practice is not administratively feasible or if the Administrative Agent determines, in consultation with the Borrower, that no market practice for the administration of any such rate exists, in such other manner of administration as the Administrative Agent decides, in consultation with the Borrower, is necessary in connection with the administration of this Agreement and the other Loan Documents).

“*Constituent Documents*” means (a) with respect to any corporation, the certificate or articles of incorporation and the bylaws (or equivalent or comparable constitutive documents with respect to any non-U.S. jurisdiction); (b) with respect to any limited liability company, the certificate or articles of formation or organization and operating agreement; and (c) with respect to any partnership, joint venture, trust or other form of business entity, the partnership, joint venture or other applicable agreement of formation or

organization and any agreement, instrument, filing or notice with respect thereto filed in connection with its formation or organization with the applicable Governmental Authority in the jurisdiction of its formation or organization and, if applicable, any certificate or articles of formation or organization of such entity.

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

“*Control*” means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, by contract or otherwise. “*Controlling*” and “*Controlled*” have meanings correlative thereto. For the avoidance of doubt, none of the Agents or their respective lending affiliates shall be deemed to be an Affiliate of Holdings, the Borrower or any of their respective Subsidiaries.

“*Credit Extension*” means a Borrowing.

“*CRO*” means the chief restructuring officer of the Company.

“*Daily Simple SOFR*” means, for any day, a rate per annum equal to SOFR for the day (such day, the “*SOFR Determination Day*”), with the conventions for this rate (which will include a lookback) being established by the Administrative Agent in accordance with the conventions for this rate selected or recommended by the Relevant Governmental Body for determining “*Daily Simple SOFR*” for syndicated business loans; *provided*, that if the Administrative Agent decides that any such convention is not administratively feasible for the Administrative Agent, then the Administrative Agent may establish another convention in consultation with the Borrower.

“*DDTL Funding Date*” has the meaning specified in SECTION 2.1(a).

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

“*Debtors*” has the meaning specified in the DIP Orders. For the avoidance of doubt, Loan Parties, in their capacity as debtors and debtors-in-possession, are Debtors.

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

“*Default Rate*” means an interest rate equal to the interest rate (including any Applicable Margin) applicable to Term Loan (giving effect to SECTION 2.11, if applicable) plus 2.0% per annum, in each case, to the fullest extent permitted by applicable Laws.

“*Defaulting Lender*” means, subject to SECTION 2.15(b), any Lender that, (a) has failed to perform any of its funding obligations hereunder, within three (3) Business Days of the date required to be funded by it hereunder, (b) has notified the Borrower or the Administrative Agent that it does not intend to comply with its funding obligations or has made a public statement to that effect with respect to its funding obligations hereunder or generally under other agreements in which it commits to extend credit, (c) has failed, within three (3) Business Days after request by the Administrative Agent, to confirm in a manner satisfactory to the Administrative Agent that it will comply with its funding obligations (*provided* that any Lender that has failed to give such timely confirmation shall cease to be a Defaulting Lender under this

clause (c) upon receipt of such confirmation by the Administrative Agent), or (d) has, or has a direct or indirect parent company that has, (i) become the subject of a proceeding under any Debtor Relief Law, (ii) had a receiver, conservator, trustee, administrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or a custodian appointed for it, (iii) taken any action in furtherance of, or indicated its consent to, approval of or acquiescence in any such proceeding or appointment or (iv) become the subject of a Bail-In Action; provided that a Lender shall not be a Defaulting Lender solely by virtue of the ownership or acquisition of any equity interest in that Lender or any direct or indirect parent company thereof by a Governmental Authority so long as such ownership interest does not result in or provide such Lender with immunity from the jurisdiction of courts within the United States or from the enforcement of judgments or writs of attachment on its assets or permit such Lender (or such Governmental Authority) to reject, repudiate, disavow or disaffirm any contracts or agreements made with such Lender.

“*Delayed Draw Term Loan*” means a Term Loan funded on the DDTL Funding Date pursuant to SECTION 2.1(a)(ii), if any.

“*Delayed Draw Term Loan Commitment*” means the commitment of a Lender to make or otherwise fund a Delayed Draw Term Loan and “*Delayed Draw Term Loan Commitments*” means such commitments of all such Lenders in the aggregate. The amount of each Lender’s Delayed Draw Term Loan Commitment, if any, is set forth on Schedule I or in the applicable Assignment and Assumption, subject to any adjustment or reduction pursuant to the terms and conditions hereof. The aggregate amount of the Delayed Draw Term Loan Commitments as of the Effective Date is \$15,000,000.

“*Delayed Draw Term Loan Commitment Termination Date*” means the earliest to occur of (a) the date the Delayed Draw Term Loan Commitments are permanently reduced to zero in accordance with and pursuant to SECTION 10.2 and (b) the Maturity Date.

“*DIP Lien*” has the meaning specified in the DIP Orders.

“*DIP Orders*” means the Interim DIP Order and/or the Final DIP Order, as each may be amended, restated, amended and restated, supplemented or otherwise modified with the prior written consent of the Administrative Agent.

“*DIP Origination Fee*” has the meaning specified in SECTION 2.12(a).

“*DIP Superpriority Claims*” has the meaning specified in the DIP Orders.

“*Discharge of Obligations*” means the time at which all the Secured Obligations (other than contingent indemnification and reimbursement obligations as to which no claim has been asserted by the Person entitled thereto) have been paid in full in cash and all Commitments have been terminated.

“*Disposition*” means the sale, transfer, license, lease or other disposition (including any sale and leaseback transaction and any sale or issuance of Equity Interests in a Subsidiary) of any property by any Person, including any sale, assignment, transfer or other disposal, with or without recourse, of any notes or accounts receivable or any rights and claims associated therewith. “*Dispose*” shall have a meaning correlative to the foregoing.

“*Disqualified Equity Interests*” means any Equity Interest that, by its terms (or by the terms of any security or other Equity Interests into which it is convertible or for which it is redeemable or exchangeable), or upon the happening of any event or condition (a) matures or is mandatorily redeemable (other than solely for Qualified Equity Interests), pursuant to a sinking fund obligation or otherwise (except as a result of a

change of control or asset sale to the extent that (i) such Equity Interest provides that such Equity Interest shall not be required to be repurchased or redeemed until the Maturity Date has occurred, determined as of the time of issuance of such Equity Interest, or (ii) such repurchase or redemption is otherwise permitted by this Agreement (including as a result of a waiver hereunder)) or (b) is redeemable at the option of the holder thereof (other than (i) solely for Qualified Equity Interests, (ii) as a result of a change of control or asset sale to the extent that such Equity Interest provides that such Equity Interest shall not be required to be repurchased or redeemed until the Maturity Date has occurred, determined as of the time of issuance of such Equity Interest, or (iii) such repurchase or redemption is otherwise permitted by this Agreement (including as a result of a waiver hereunder)), in whole or in part, (c) provides for the scheduled payments of dividends in cash, or (d) is or becomes convertible into or exchangeable for Indebtedness or any other Equity Interests that would constitute Disqualified Equity Interests, in each case, prior to the date that is ninety-one (91) days after the Maturity Date of the Loans determined as of the time of issuance of such Equity Interest; *provided* that if such Equity Interests are issued pursuant to any equity or incentive compensation or benefit plan or arrangement of Holdings, the Borrower or any of its Subsidiaries, such Equity Interests shall not constitute Disqualified Equity Interests solely because they may be required to be repurchased by Holdings, the Borrower or any of its Subsidiaries in order to satisfy applicable statutory or regulatory obligations or as a result of such employee's termination, death or disability.

"Document" has the meaning set forth in Article 9 of the UCC.

"Dollars" and "\$" mean lawful money of the United States.

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

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

"EEA Resolution Authority" means any public administrative authority or any person entrusted with public administrative authority of any EEA Member Country (including any delegatee) having responsibility for the resolution of any EEA Financial Institution.

"Effective Date" means the date on which the conditions specified in SECTION 4.1 are satisfied (or waived in accordance with SECTION 12.1).

"Eligible Assignee" means any Person that meets the requirements to be an assignee under SECTION 12.2(b)(iii) and (v) (subject to such consents, if any, as may be required under SECTION 12.2(b)(iii)).

"Environmental Claim" means any and all administrative, regulatory or judicial actions, suits, demands, demand letters, claims, liens, notices of noncompliance or violation, investigations (other than reports prepared for internal purposes by or on behalf of any Loan Party or any of the Subsidiaries (a) in the ordinary course of such Person's business or (b) as required in connection with a financing transaction or an acquisition or disposition of real estate) or proceedings with respect to any Environmental Liability (hereinafter "Claims"), including (i) any and all Claims by governmental or regulatory authorities for enforcement, cleanup, removal, response, remedial or other actions or damages pursuant to any

Environmental Law and (ii) any and all Claims by any third party seeking damages, contribution, indemnification, cost recovery, compensation or injunctive relief pursuant to any Environmental Law.

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

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

“Environmental Permit” means any permit, approval, identification number, license or other authorization required under any Environmental Law in connection with the operation of the business or the real property of each Loan Party and each of the Subsidiaries.

“Equity Interests” means, with respect to any Person, all of the shares, interests, rights, participations or other equivalents (however designated) of capital stock of (or other ownership or profit interests or units in) such Person and all of the warrants, options or other rights for the purchase, acquisition or exchange from such Person of any of the foregoing (including through convertible securities).

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

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

“ERISA Event” means (a) a Reportable Event with respect to a Pension Plan; (b) a withdrawal by any Loan Party or any of their respective ERISA Affiliates from a Pension Plan subject to Section 4063 of ERISA during a plan year in which it was a substantial employer (as defined in Section 4001(a)(2) of ERISA) or a cessation of operations that is treated as a termination under Section 4062(e) of ERISA; (c) a complete or partial withdrawal by any Loan Party or any of their respective ERISA Affiliates from a Multiemployer Plan, written notification of any Loan Party or any of their respective ERISA Affiliates concerning the imposition of Withdrawal Liability or written notification that a Multiemployer Plan is insolvent or is in reorganization within the meaning of Title IV of ERISA; (d) the filing under Section 4041(c) of ERISA of a notice of intent to terminate a Pension Plan, the treatment of a Pension Plan or Multiemployer Plan amendment as a termination under Sections 4041 or 4041A of ERISA, or the commencement of proceedings by the PBGC to terminate a Pension Plan or Multiemployer Plan; (e) the imposition of any liability under Title IV of ERISA with respect to the termination of any Pension Plan or Multiemployer Plan, other than for the payment of plan contributions or PBGC premiums due but not delinquent under Section 4007 of ERISA, upon any Loan Party or any of their respective ERISA Affiliates, (f) the application for a minimum funding waiver under Section 302(c) of ERISA with respect to a Pension Plan, (g) the imposition of a lien under Section 303(k) of ERISA with respect to any Pension Plan or (h) a determination that any Pension Plan is in “at risk” status (within the meaning of Section 303 of ERISA).

“EU Bail-In Legislation Schedule” means the EU Bail-In Legislation Schedule published by the Loan Market Association (or any successor person), as in effect from time to time.

“*Event of Default*” has the meaning specified in SECTION 10.1.

“*Exchange Act*” means the Securities Exchange Act of 1934, as amended.

“*Exit Premium*” means an amount equal to 2.00% of the aggregate Commitment of all the Lenders on the Effective Date (\$35,500,000).

“*Extraordinary Receipts*” means any Cash Proceeds received by Holdings or any of its Subsidiaries not in the ordinary course of business (and not consisting of proceeds described in SECTION 2.9(a)(i) or SECTION 2.9(a)(ii) hereof), including, without limitation, (a) foreign, United States, state or local Tax refunds, (b) pension plan reversions, (c) judgments, proceeds of settlements or other consideration of any kind in connection with any cause of action (including, without limitation, infringement proceeds, breach of contract claims, damages (including treble damages), settlement amounts and other payments), (d) indemnity payments not received in the ordinary course of business, (e) business interruption insurance proceeds and (f) any purchase price adjustment received in connection with any purchase agreement entered into in connection with the acquisition by a Loan Party of (i) any Equity Interests of another Person or (ii) all or substantially all of the assets of another Person.

“*Fair Market Value*” means, with respect to any asset or property, the price which could be negotiated in an arm’s-length transaction, for cash, between a willing seller and a willing and able buyer, neither of whom is under undue pressure or compulsion to complete the transaction.

“*FATCA*” means Sections 1471 through 1474 of the Code as in effect on the Effective Date or any successor provision that is substantively the equivalent thereof and not materially more onerous to comply with (and, in each case, any regulations promulgated thereunder or official interpretations thereof).

“*Federal Funds Rate*” means, for any period, a fluctuating interest rate per annum equal to, for each day during such period, the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System, as published on the next succeeding Business Day by the Federal Reserve Bank of New York (and, if any such rate is below zero, then the rate determined pursuant to this definition shall be deemed to be zero).

“*Federal Reserve Bank of New York’s Website*” means the website of the Federal Reserve Bank of New York at <http://www.newyorkfed.org>, or any successor source.

“*Federal Reserve Board*” means the Board of Governors of the United States Federal Reserve System, or any successor thereto.

“*Final DIP Order*” means an order of the Bankruptcy Court approving the Loans, this Agreement and the other Loan Documents on a final basis, which order shall be (a) in form and substance reasonably acceptable to the Administrative Agent, and (b) in full force and effect and shall not have been reversed, vacated, stayed or subject to appeal.

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

“*Financial Advisor*” means A&M.

“*Financial Officer*” means the chief financial officer, chief restructuring officer, principal financial officer, principal accounting officer, treasurer, vice president of finance, controller or chief restructuring officer of any Loan Party.

“*Floor*” means 1.00% per annum.

“*Foreign Lender*” has the meaning specified in SECTION 3.1(b).

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

“*Funding Date*” means the date of making of a Loan.

“*GAAP*” means generally accepted accounting principles in the United States, as in effect from time to time; *provided, however*, that (a) if the Borrower notifies the Administrative Agent that the Borrower requests an amendment to any provision hereof to eliminate the effect of any change occurring after the Effective Date in GAAP or in the application thereof (including through the adoption of IFRS) on the operation of such provision (or if the Administrative Agent notifies the Borrower that the Required DIP Lenders request an amendment to any provision hereof for such purpose), regardless of whether any such notice is given before or after such change in GAAP or in the application thereof (including through the adoption of IFRS), then such provision shall be interpreted on the basis of GAAP as in effect and applied immediately before such change shall have become effective until such notice shall have been withdrawn or such provision amended in accordance herewith, and (b) unless any such notice delivered pursuant to clause (a) above has been withdrawn, the Borrower and the Required DIP Lenders under SECTION 12.1 shall negotiate in good faith to amend the provisions of this Agreement that relate to the operation of such provision with the intent of having the respective positions of the Borrower and the Lenders after such change in GAAP or the application thereof conform as nearly to their respective positions as of the Effective Date.

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

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

determinable amount of the related primary obligation, or portion thereof, in respect of which such Guarantee is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof as determined by the guaranteeing Person in good faith. The term “Guarantee” as a verb has a corresponding meaning.

“*Guaranteed Obligations*” mean “Obligations”.

“*Guarantors*” means Holdings and each of its Subsidiaries (other than Borrower and the Specified Subsidiaries).

“*Guaranty*” means the guaranty made by Holdings and the other Guarantors in favor of the Administrative Agent on behalf of the Secured Parties pursuant Article XIII.

“*Hazardous Materials*” means all explosive or radioactive substances or wastes, all hazardous or toxic substances, and all wastes or pollutants, including petroleum or petroleum distillates, friable asbestos or friable asbestos-containing materials, polychlorinated biphenyls, radon gas and infectious or medical wastes in each case that are regulated pursuant to any applicable Environmental Law.

“*Holdings*” has the meaning specified in the preamble to this Agreement and shall include any Permitted Holdings Successor.

“*IFRS*” means international accounting standards within the meaning of the IAS Regulation 1606/2002 to the extent applicable to the relevant financial statements.

“*Indebtedness*” means, as to any Person at a particular time, without duplication, all of the following:

- (a) all obligations of such Person for borrowed money and all obligations of such Person evidenced by bonds, debentures, notes, loan agreements or other similar instruments;
- (b) the maximum amount (after giving effect to any prior drawings or reductions that may have been reimbursed) of all letters of credit (including standby and commercial) or bankers’ acceptances issued or created for the account of such Person;
- (c) net obligations of such Person under any Swap Contract;
- (d) all obligations of such Person to pay the deferred purchase price of property or services (other than (i) trade accounts and accrued expenses payable in the ordinary course of business, (ii) any earn-out obligation until both (A) such obligation is not paid within thirty (30) days after becoming due and payable and (B) such obligation becomes a liability on the balance sheet (excluding the footnotes thereto) of such Person prepared in accordance with GAAP, and (iii) accruals for payroll and other liabilities accrued in the ordinary course of business);
- (e) indebtedness (excluding prepaid interest thereon) secured by a Lien on property owned by such Person (including indebtedness arising under conditional sales or other title retention agreements and mortgage, industrial revenue bond, industrial development bond and similar financings), whether or not such indebtedness shall have been assumed by such Person or is limited in recourse;
- (f) all Capitalized Lease Obligations;

(g) all obligations of such Person in respect of Disqualified Equity Interests;
and

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

For all purposes hereof, the Indebtedness of any Person (A) shall include the Indebtedness of any partnership or Joint Venture (other than a Joint Venture that is itself a corporation or limited liability company) in which such Person is a general partner or a joint venturer, except to the extent such Person's liability for such Indebtedness is otherwise limited and (B) in the case of Subsidiaries that are not Loan Parties, shall exclude loans and advances made by Loan Parties having a term not exceeding 364 days (inclusive of any roll over or extensions of terms) and made in the ordinary course of business solely to the extent that such intercompany loans and advances are evidenced by one or more notes in form and substance reasonably satisfactory to the Administrative Agent and pledged as Collateral. The amount of any net obligation under any Swap Contract on any date shall be deemed to be the Swap Termination Value thereof as of such date. The amount of Indebtedness of any Person for purposes of clause (e) shall be deemed to be equal to the lesser of (i) the aggregate unpaid amount of such Indebtedness and (ii) the Fair Market Value (as determined by such Person in good faith) of the property encumbered thereby.

"Indemnified Liabilities" has the meaning specified in SECTION 12.4.

"Indemnitees" has the meaning specified in SECTION 12.4.

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

"Information" has the meaning specified in SECTION 12.16.

"Initial Budget" means the budget attached hereto as Annex B.

"Initial Funding Date" has the meaning specified in SECTION 2.1.

"Initial Term Loan" means the Term Loan funded on the Initial Funding Date pursuant to SECTION 2.1(a)(i).

"Initial Term Loan Commitment" means the commitment of a Lender to make or otherwise fund the Initial Term Loan and *"Initial Term Loan Commitments"* means such commitments of all such Lenders in the aggregate. The amount of each Lender's Initial Term Loan Commitment, if any, is set forth on Schedule I or in the applicable Assignment and Assumption, subject to any adjustment or reduction pursuant to the terms and conditions hereof. The aggregate amount of the Initial Term Loan Commitments as of the Effective Date is \$20,500,000.

"Intercreditor Agreement" means the intercreditor agreement, dated as of December 22, 2020, among Prepetition ABL Agent and Senior Notes Collateral Agent, as amended, restated, supplemented or otherwise modified from time to time prior to the Effective Date.

"Interest Payment Date" means (a) the first Business Day of each month, commencing on the first such date to occur after the Effective Date and (b) the Maturity Date.

"Interest Period" means, in respect of each SOFR Loan, with respect to the Term Loan, the period commencing on the date the relevant portion of the Term Loan is disbursed and ending on the date that is

one month thereafter; provided that (i) the Interest Period shall commence on the date of an advance of or a conversion to a SOFR Loan and, in the case of immediately successive Interest Periods, each successive Interest Period shall commence on the date on which the next preceding Interest Period expires; (ii) if any Interest Period would otherwise expire on a day that is not a Business Day, such Interest Period shall expire on the next succeeding Business Day; provided, that if any Interest Period with respect to a SOFR Loan would otherwise expire on a day that is not a Business Day but is a day of the month after which no further Business Day occurs in such month, such Interest Period shall expire on the next preceding Business Day; (iii) any Interest Period with respect to a SOFR Loan that begins on the last Business Day of a calendar month (or on a day for which there is not numerically corresponding day in the calendar month at the end of such Interest Period) shall end on the last Business Day of the relevant calendar month at the end of such Interest Period; (iv) no Interest Period shall extend beyond the Maturity Date; and (v) no tenor that has been removed from this definition pursuant to SECTION 3.3 shall be available for specification in such Notice of Borrowing or interest election.

“*Interim DIP Order*” means an interim order of the Bankruptcy Court approving the Loans, this Agreement and the other Loan Documents on an interim basis, which order shall be substantially in the form attached hereto as Annex C (or in form and substance reasonably acceptable to the Required DIP Lenders).

“*Interim Facility Maturity Date*” means May [],¹ 2024 to the extent that the Final DIP Order has not been entered on or prior to such date.

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

“*Inventory*” has the meaning given to such term in Article 9 of the UCC.

“*Investment*” means, as to any Person, any direct or indirect acquisition or investment by such Person in any other Person, in the form of (a) the purchase or other acquisition (including without limitation by merger or otherwise) of Equity Interests or debt or other securities of another Person, (b) a loan, advance or capital contribution to, Guarantee or assumption of Indebtedness of, or purchase or other acquisition of any other debt or equity participation or interest in, another Person, including any partnership or joint venture interest in such other Person (excluding, in the case of the Borrower and the Subsidiaries, intercompany loans, advances, or Indebtedness having a term not exceeding 364 days (inclusive of any roll-over or extensions of terms) and made in the ordinary course of business) or (c) the purchase or other acquisition (in one transaction or a series of transactions, including without limitation by merger or otherwise) of all or substantially all of the property and assets or business of another Person or assets constituting a business unit, line of business or division of such Person. For purposes of covenant compliance, the amount of any Investment at any time shall be the amount actually invested (measured at the time made), without adjustment for subsequent changes in the value of such Investment, net of any return representing a return of capital with respect to such Investment.

“*Investment Advisor*” means Jefferies LLC or another financial advisor reasonably acceptable to the Administrative Agent.

“*IP Rights*” has the meaning specified in SECTION 5.14.

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

¹ 35 days from the entry of the Interim Order

“*Joint Venture*” means a business enterprise comprised of the Borrower or any of the Subsidiaries and one or more Persons, whether in the form of a partnership, corporation, limited liability company or other entity or joint ownership or operating arrangement, in which 50% or less of the partnership interests, outstanding voting stock or other Equity Interests is owned, directly or indirectly, by the Borrower and/or any of the Subsidiaries.

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

“*Leases*” means, with respect to any Person, all of those leasehold estates in real property of such Person, as lessee, as such may be amended, supplemented or otherwise modified from time to time.

“*Lender*” means each financial institution or entity that (a) is listed on the signature pages hereof as a “*Lender*” or (b) from time to time becomes a party hereto by execution of an Assignment and Assumption.

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

“*Lien*” means any mortgage, pledge, hypothecation, assignment, deposit arrangement, encumbrance, lien (statutory or other), charge, or preference, priority or other security interest or preferential arrangement of any kind or nature whatsoever (including any conditional sale or other title retention agreement, any easement, right of way or other encumbrance on title to real property, and any Capitalized Lease having substantially the same economic effect as any of the foregoing); *provided*, that in no event shall an operating lease in and of itself be deemed a Lien.

“*Loan*” means any Term Loan.

“*Loan Documents*” means, collectively, (a) this Agreement, (b) the DIP Term Notes, (c) the Collateral Documents and (d) each other agreement or document that the Administrative Agent and the Borrower shall designate in writing as a Loan Document.

“*Loan Parties*” means, collectively, (a) Holdings, (b) the Borrower and (c) each other Guarantor.

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

“*Master Agreement*” has the meaning specified in the definition of “*Swap Contract*.”

“*Material Adverse Effect*” means any event, circumstance or condition that has had a materially adverse effect on (a) the business, operations, assets or financial condition of Holdings and its Subsidiaries, taken as a whole, (b) the ability of the Loan Parties (taken as a whole) to perform their respective payment obligations under any Loan Document to which any of the Loan Parties is a party or (c) the rights and remedies of the Lenders, the Collateral Agent or the Administrative Agent under any Loan Document (in each case, other than the commencement of a proceeding under chapter 11 of the Bankruptcy Code and the commencement of the Cases, the events that lead to the commencement of the Cases, and events that

reasonably result from the commencement of the Case (in each case other than matters affecting the Loan Parties that are not subject to the automatic stay provisions of the Bankruptcy Code)).

“*Maturity Date*” means the earliest of (a) the Interim Facility Maturity Date, (b) August 15, 2024, (c) the filing of a motion by the Loan Parties seeking dismissal of any of the Cases, the dismissal of any of the Cases, or the filing of a motion by the Loan Parties seeking to convert any of the Cases to a case under Chapter 7 of the Bankruptcy Code, (d) the effective date of a chapter 11 plan of any Loan Party, which has been confirmed by an order entered by the Bankruptcy Court in any of the Cases, (e) the date a sale of all or substantially all of the Loan Parties’ assets is consummated under Section 363 of the Bankruptcy Code, (f) the acceleration of the Obligations and the termination of all Commitments hereunder upon the occurrence of an Event of Default in accordance with the DIP Orders and the other Loan Documents, and (g) the date on which the Bankruptcy Court orders the conversion of any of the Cases to a case under Chapter 7 of the Bankruptcy Code; provided that, if any such day described above is not a Business Day, the Maturity Date shall be the Business Day immediately preceding such day.

“*Maximum Rate*” has the meaning specified in SECTION 12.23.

“*Milestone*” has the meaning assigned to such term in paragraph 26 of the Interim DIP Order.

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

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

“*Non-Consenting Lender*” has the meaning specified in SECTION 3.7.

“*Non-Loan Party*” means any Subsidiary of the Borrower that is not a Loan Party.

“*Notes Priority Collateral*” means Prepetition Notes Priority Collateral and Postpetition Notes Priority Collateral.

“*Notice of Borrowing*” has the meaning specified in SECTION 2.2(a).

“*Notice of Conversion or Continuation*” has the meaning specified in SECTION 2.11(a).

“*Obligations*” means all advances to, and debts, liabilities, obligations, covenants and duties of, any Loan Party arising under any Loan Document or otherwise with respect to any Loan, whether direct or indirect (including those acquired by assumption), absolute or contingent, due or to become due, now existing or hereafter arising and including interest and fees that accrue after the commencement by or against any Loan Party of any proceeding under any Debtor Relief Laws naming such Person as the debtor in such proceeding, regardless of whether such interest and fees are allowed claims in such proceeding. Without limiting the generality of the foregoing, the Obligations of the Loan Parties under the Loan Documents (and any of their Subsidiaries to the extent they have obligations under the Loan Documents to which such Subsidiaries are party) include the obligation (including guarantee obligations) to pay principal, interest, reimbursement obligations, charges, expenses, fees (including the DIP Origination Fee and the Exit Premium), Attorney Costs, indemnities and other amounts payable by any Loan Party under any Loan Document.

“*OFAC*” has the meaning specified in SECTION 5.17(b).

“*OID*” means “original issue discount” within the meaning of Section 1273 of the Code.

“*Other Taxes*” has the meaning specified in SECTION 3.1(f).

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

“*Participant*” has the meaning specified in SECTION 12.2(d).

“*Participant Register*” has the meaning specified in SECTION 12.2(e).

“*PBGC*” means the Pension Benefit Guaranty Corporation or any successor thereto.

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

“*Permitted Holder*” means any of the Sponsors.

“*Permitted Variance*” has the meaning specified in the DIP Orders.

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

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

“*Petitions*” means the voluntary petitions for relief under Chapter 11 of the Bankruptcy Code filed by the Debtors with the Bankruptcy Court.

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

“*Postpetition ABL Priority Collateral*” means Collateral that would constitute Prepetition ABL Priority Collateral if it existed immediately prior to the Petition Date.

“*Prepetition ABL Priority Collateral*” has the meaning specified in the DIP Orders.

“*Prepetition Administrative Agent*” means ROYAL BANK OF CANADA, in its capacity as administrative agent for the Prepetition Secured Parties under the Prepetition Credit Agreement.

“*Prepetition Borrower*” means the “Borrower” under and as defined in the Prepetition Credit Agreement.

“*Prepetition Collateral*” has the meaning specified in the DIP Orders.

“*Prepetition Credit Agreement*” has the meaning set forth in the recitals hereto.

“*Prepetition Credit Documents*” means the Prepetition Credit Agreement and the “Loan Documents” under and as defined in the Prepetition Credit Agreement as such Prepetition Credit Documents have been amended, restated, amended and restated, supplemented or otherwise modified prior to the Petition Date.

“*Prepetition FILO Secured Obligations*” has the meaning specified in the DIP Orders.

“*Prepetition Lenders*” has the meaning set forth in the recitals hereto.

“*Prepetition Liens*” has the meaning specified in the DIP Orders.

“*Prepetition Loan Guarantors*” means the “Guarantors” under and as defined in the Prepetition Credit Agreement as in effect on the date hereof.

“*Prepetition Permitted Liens*” has the meaning specified in the DIP Orders.

“*Prepetition Rolled Term Loans*” means the Prepetition FILO Secured Obligations held by the Lenders (or their Affiliates and Approved Funds), in their capacities as Prepetition Secured Parties, in an aggregate principal amount of \$25,300,000 plus any accrued and unpaid interest thereon.

“*Prepetition Secured Parties*” means the “Secured Parties” as defined in the Prepetition Credit Agreement as in effect on the date hereof.

“*Proceeds*” has the meaning given to such term in Article 9 of the UCC.

“*PropCo Issuer*” means 99 Cents PropCo LLC, a California limited liability company.

“*PropCo Note*” means that certain Secured Promissory Note, dated as of August 3, 2023, issued by PropCo Issuer in favor of RCB Equities #1, LL, as the same may be amended, restated, modified, supplemented, replaced or refinanced from time to time to the extent not prohibited by this Agreement.

“*PropCo Priority Collateral*” has the meaning specified in the DIP Orders.

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

“*Ratable Portion*”, “*Pro Rata Share*”, “*ratable share*” or (other than in the expression “equally and ratably”) “*ratably*” means

(a) (i) a Lender’s obligation to make the Initial Term Loan, the percentage obtained by dividing (A) such Lender’s Initial Term Loan Commitment by (B) the Total Initial Term Loan Commitment; (ii) a Lender’s obligation to make a Delayed Draw Term Loan, the percentage obtained by dividing (A) such Lender’s Delayed Draw Term Loan Commitment by (B) the Total Delayed Draw Term Loan Commitment; and (iii) a Lender’s right to receive payment of the DIP Origination Fee, the percentage obtained by dividing (A) such Lender’s Commitment by (B) the aggregate Commitments of all Lenders;

(b) a Lender’s right to receive payments of interest, fees (other than the DIP Origination Fee), premium and principal with respect to a Term Loan, the percentage obtained by dividing (i) the aggregate unpaid principal amount of such Lender’s portion of the Term Loan, by (ii) the aggregate unpaid principal amount of the Term Loan; and

(c) all other matters the percentage obtained by dividing (i) the sum of such Lender's Commitment and the unpaid principal amount of such Lender's portion of the Term Loan, by (ii) the sum of the Commitments of all Lenders and the aggregate unpaid principal amount of the Term Loan.

"Recovery Event" means the receipt by Holdings or any of its Subsidiaries of any cash insurance proceeds (other than proceeds of business interruption insurance) or condemnation awards payable by reason of theft, loss, physical destruction, damage, taking or any other similar event with respect to any property or assets of the Borrower or any of its Subsidiaries included in the Collateral.

"Register" has the meaning specified in SECTION 12.2(c).

"Related Indemnified Person" of an Indemnitee means (a) any controlling person (including any member or other equity holders) or controlled affiliate of such Indemnitee, (b) the respective directors, officers, or employees of such Indemnitee or any of its controlling persons or controlled affiliates and (c) the respective agents, advisors or other representatives of such Indemnitee or any of its controlling persons or controlled affiliates, in the case of this *clause (c)*, acting at the instructions of such Indemnitee, controlling person or such controlled affiliate; *provided* that each reference to a controlled affiliate or controlling person in this definition shall pertain to a controlled affiliate or controlling person involved in the negotiation of the Loans.

"Related Parties" means, with respect to any Person, such Person's Affiliates and the partners, directors, officers, employees, agents, trustees and advisors of such Person and of such Person's Affiliates.

"Relevant Governmental Body" means the Federal Reserve Board and/or the Federal Reserve Bank of New York, or a committee officially endorsed or convened by the Federal Reserve Board and/or the Federal Reserve Bank of New York or any successor thereto.

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

"Required DIP Lenders" means Lenders having an outstanding principal amount of Term Loans and Commitments representing more than 50% of the sum of the aggregate outstanding principal amount of Term Loans and Commitments of all Lenders at such time; *provided* that the portion of the Term Loans held by any Defaulting Lender shall be excluded for purposes of making a determination of Required DIP Lenders.

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

"Restricted Payment" means any dividend or other distribution (whether in cash, securities or other property) with respect to any Equity Interest of the Borrower or any of the Subsidiaries, or any payment (whether in cash, securities or other property), including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, defeasance, acquisition, cancellation or termination of any such

Equity Interest, or on account of any return of capital to the Borrower's or Holdings' stockholders, partners or members (or the equivalent Persons thereof).

"Revolver Priority Collateral" means Prepetition ABL Priority Collateral and Postpetition ABL Priority Collateral.

"Roll-Up Effective Time" means the moment in time immediately following entry of the Final DIP Order by the Bankruptcy Court approving the roll-up of the Prepetition Rolled Term Loans into the Roll-Up Term Loans as contemplated in this Agreement and in the Final DIP Order.

"Roll-Up Term Lender" means each Lender that has Roll-Up Term Loans outstanding.

"Roll-Up Term Loans" has the meaning specified in SECTION 2.1(b).

"S&P" means Standard & Poor's Financial Services LLC and any successor thereto.

"Same Day Funds" means disbursements and payments in immediately available funds.

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

"Secured Obligations" means the Obligations.

"Secured Parties" means, collectively, the Lenders, the Administrative Agent, the Collateral Agent, and each co-agent or sub-agent (if any) appointed by the Administrative Agent from time to time pursuant to SECTION 11.5.

"Securities Act" means the Securities Act of 1933, as amended.

"Security" means any Equity Interest, voting trust certificate, bond, debenture, note or other evidence of Indebtedness, whether secured, unsecured, convertible or subordinated, or any certificate of interest, share or participation in, any temporary or interim certificate for the purchase or acquisition of, or any right to subscribe to, purchase or acquire, any of the foregoing, but shall not include any evidence of the Obligations.

"Senior Notes" means the Borrower's senior secured notes due 2026.

"Senior Notes Collateral Agent" means the Notes Collateral Agent (as defined in the Senior Notes Indenture).

"Senior Notes Indenture" means the Indenture for the Senior Notes, dated December 22, 2020, between the Borrower, the Guarantors and Wilmington Trust, National Association, as trustee, as the same may be amended, restated, modified, supplemented, replaced or refinanced from time to time to the extent not prohibited by this Agreement.

"Shareholders Agreement" means the Voting Agreement, dated as of the Effective Date, among the Company, Holdings and ACOF III.

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

“*SOFR Administrator*” means the Federal Reserve Bank of New York (or a successor administrator of the secured overnight financing rate).

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

“*SOFR Determination Day*” has the meaning set forth in the definition of “Daily Simple SOFR”.

“*SOFR Interpolated Rate*” means, for any SOFR Non-Standard Interest Period, the rate per annum determined by the Administrative Agent (which determination shall be presumed correct absent manifest error) to be equal to the rate that results from interpolating on a linear basis between: (a) the sum of Term SOFR for the longest term for which the Term SOFR is available that is shorter than such SOFR Non-Standard Interest Period for such longest term and (b) the Term SOFR for the shortest term for which the Term SOFR is available that exceeds such SOFR Non-Standard Interest Period for such shortest term, in each case, at such time; provided that when determining the SOFR Interpolated Rate for a SOFR Non-Standard Interest Period which is less than one (1) month, the SOFR Interpolated Rate shall be the Adjusted Term SOFR for SOFR Loans with an Interest Period of one (1) month.

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

“*SOFR Non-Standard Interest Period*” means, with respect to a SOFR Loan, an Interest Period which is for a term other than 1, 3, 6 or 12 months.

“*Solvent*” and “*Solvency*” mean, with respect to any Person on any date of determination, that on such date (a) the fair value of the assets of such Person exceeds its debts and liabilities, subordinated, contingent or otherwise, (b) the present fair saleable value of the property of such Person is greater than the amount that will be required to pay the probable liability of its debts and other liabilities, subordinated, contingent or otherwise, as such debts and other liabilities become absolute and matured, (c) such Person is able to pay its debts and liabilities, subordinated, contingent or otherwise, as such liabilities become absolute and matured and (d) such Person is not engaged in, and is not about to engage in, business for which it has unreasonably small capital. The amount of any contingent liability at any time shall be computed as the amount that, in light of all of the facts and circumstances existing at such time, would reasonably be expected to become an actual and matured liability.

“*Specified Liquidation Agent*” means (a) Hilco Merchant Resources, LLC, Hilco Real Estate, LLC and any other Person approved by the Administrative Agent, together with their respective Affiliates acting with respect to the Specified Store Closing Sales and RE Sales and (b) an intellectual property disposition firm reasonably acceptable to the Administrative Agent.

“*Specified Liquidation Agreements*” means (a) the Consulting and Marketing Services Agreement for Multiple Asset Categories, dated as of March 29, 2024, by and among Hilco Merchant Resources, LLC, Hilco Real Estate, LLC and Parent and its Subsidiaries party thereto and (b) an agreement, in form and substance reasonably satisfactory to the Administrative Agent, with the Specified Liquidation Agent described in clause (b) of the definition thereof in respect of Disposition of Loan Parties’ intellectual property.

“*Specified PropCo Properties*” means the real properties listed on Schedule 4.1(b).

“*Specified Subsidiaries*” means BW Global Logistics (Hong Kong) Ltd. and 99 Cents Only Foundation.

“*Specified Unencumbered Properties*” means the real properties listed on Schedule 4.1(a).

“*Specified Store Closing Sales and RE Sales*” means the closure of the Loan Parties’ Stores and the liquidation of assets related thereto by the Specified Liquidation Agents pursuant to the Specified Liquidation Agreements.

“*Sponsor*” means any of (a) ACOF III, the Canada Pension Plan Investment Board, and any of their respective Affiliates and funds or partnerships managed or advised by any of them or any of their respective Affiliates, but not including any portfolio company of any of the foregoing and (b) any Person that forms a group (within the meaning of Section 13(d)(3) or Section 14(d)(2) of the Exchange Act, or any successor provision) with ACOF III, Canada Pension Plan Investment Board or any of their respective Affiliates and funds or partnerships managed or advised by any of them or any of their respective Affiliates, but not including any portfolio company of any of the foregoing.

“*Sponsor Management Agreement*” means any management services agreement by and among ACOF Operating Manager III, LLC and/or Canada Pension Plan Investment Board or certain of the management companies associated with each of them or their advisors and Holdings and/or the Borrower, as the same may be amended, restated, supplemented or otherwise modified from time to time in accordance with its terms.

“*Store*” means any retail store (which includes any real property, fixtures, equipment, Inventory and other property related thereto) operated, or to be operated, by the Borrower or any Subsidiary.

“*Subsidiary*” means, with respect to any Person (a) any corporation, association or other business entity (other than a partnership, joint venture or limited liability company) of which more than 50% of the total voting power of shares of Equity Interests entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers or trustees thereof is at the time of determination owned or Controlled, directly or indirectly, by such Person or one or more of the other Subsidiaries of that Person or a combination thereof, and (b) any partnership, joint venture or limited liability company of which (i) more than 50% of the capital accounts, distribution rights, total equity and voting interests or general and limited partnership interests, as applicable, are owned or controlled, directly or indirectly, by such Person or one or more of the other Subsidiaries of that Person or a combination thereof, whether in the form of membership, general, special or limited partnership interests or otherwise, and (ii) such Person or any Subsidiary of such Person is a controlling general partner or otherwise Controls such entity. Unless otherwise specified, all references herein to a “Subsidiary” or to “Subsidiaries” shall refer to a Subsidiary or Subsidiaries of Holdings.

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

agreement (any such master agreement, together with any related schedules, a “*Master Agreement*”), including any such obligations or liabilities under any Master Agreement.

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

“*Taxes*” has the meaning specified in SECTION 3.1(a).

“*Term Loan*” means, collectively, the Initial Term Loan, the Delayed Draw Term Loan and the Roll-Up Term Loans.

“*Term SOFR*” means:

- (a) for any Interest Period for a duration of one-month, three-months, six-months, or twelve-months (in each case, subject to the availability thereof) for a SOFR Loan, the greater of (i) the Term SOFR Reference Rate for a tenor comparable to the applicable Interest Period on the day (the “*Term SOFR Determination Day*”) that is two (2) U.S. Government Securities Business Days prior to the first day of such Interest Period, as such rate is published by the Term SOFR Administrator and (ii) the Floor; provided, however, that if as of 5:00 p.m. (New York City time) on any Term SOFR Determination Day the Term SOFR Reference Rate for the applicable tenor has not been published by the Term SOFR Administrator and a Benchmark Replacement Date with respect to the Term SOFR Reference Rate has not occurred, then Term SOFR will be the Term SOFR Reference Rate for such tenor as published by the Term SOFR Administrator on the first preceding U.S. Government Securities Business Day for which such Term SOFR Reference Rate for such tenor was published by the Term SOFR Administrator so long as such first preceding U.S. Government Securities Business Day is not more than three (3) U.S. Government Securities Business Days prior to such Term SOFR Determination Day, and
- (b) for any calculation with respect to an Base Rate Loan on any day, the greater of (i) the Term SOFR Reference Rate for a tenor of one month on the day (such day, the “*Base Rate Term SOFR Determination Day*”) that is two (2) U.S. Government Securities Business Days prior to the such day, as such rate is published by the Term SOFR Administrator and (ii) the Floor; provided, however, that if as of 5:00 p.m. (New York City time) on any Base Rate Term SOFR Determination Day the Term SOFR Reference Rate for the applicable tenor has not been published by the Term SOFR Administrator and a Benchmark Replacement Date with respect to the Term SOFR Reference Rate has not occurred, then Term SOFR will be the Term SOFR Reference Rate for such tenor as published by the Term SOFR Administrator on the first preceding U.S. Government Securities Business Day for which such Term SOFR Reference Rate for such tenor was published by the Term SOFR Administrator so long as such first preceding U.S. Government Securities Business Day is not more than three (3) U.S. Government Securities Business Days prior to such Base Rate SOFR Determination Day.

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

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

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

“*Total Delayed Draw Term Loan Commitment*” means the sum of the amounts of the Lenders’ Delayed Draw Term Loan Commitments.

“*Total Initial Term Loan Commitment*” means the sum of the amounts of the Lenders’ Initial Term Loan Commitments.

“*Transaction*” means the execution, delivery and performance by the Borrower of this Agreement and the other Loan Documents, the borrowing of Loans and other credit extensions, the Roll-Up Term Loans under and in accordance with the Loan Documents and the DIP Orders, and the use of the proceeds thereof.

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

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

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

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

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

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

“*U.S. Lender*” has the meaning specified in SECTION 3.1(d).

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

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

SECTION 1.2 Other Interpretive Provisions. With reference to this Agreement and each other Loan Document, unless otherwise specified herein or in such other Loan Document:

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

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

(i) References in this Agreement to an Exhibit, Schedule, Article, Section, clause or sub-clause refer (A) to the appropriate Exhibit or Schedule to, or Article, Section, clause or sub-clause in this Agreement or (B) to the extent such references are not present in this Agreement, to the Loan Document in which such reference appears,

(ii) The term “including” is by way of example and not limitation, subject, in the case of computations of time periods, to *clause (d)* below,

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

(iv) Unless otherwise expressly indicated herein, the words “above” and “below”, when following a reference to a clause or a sub-clause of any Loan Document, refer to a clause or sub-clause within, respectively, the same Section or clause; and

(v) The words “assets” and “property” shall be construed to have the same meaning and effect.

(c) The terms “Lender,” “Collateral Agent” and “Administrative Agent” include, without limitation, their respective successors.

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

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

SECTION 1.3 Accounting Terms. All accounting terms not specifically or completely defined herein shall be construed in conformity with, and all financial data (including financial ratios and other financial calculations) required to be submitted pursuant to this Agreement shall be prepared in conformity with, GAAP, except as otherwise specifically prescribed herein. Notwithstanding any other provision contained herein, (a) with respect to leases entered into prior to January 29, 2022, the definitions set forth in the Loan Documents and any financial calculations required by the Loan Documents shall be computed to exclude any change to lease accounting rules from those in effect pursuant to Financial Accounting Standards Board Accounting Standards Codification 840 (Leases) and other related lease accounting guidance as in effect on the Effective Date and (b) with respect to leases entered into on or after January 29, 2022, the definitions set forth in the Loan Documents and any financial calculations required by the Loan Documents shall be computed to include any change to lease accounting rules from those in effect pursuant to Financial Accounting Standards Board Accounting Standards Codification 840 (Leases) and other related lease accounting guidance as in effect on the Effective Date; *provided* that ASU No. 2016-02 Leases (Topic 842) (or any other Financial Accounting Standard having a similar result or effect) shall

be deemed a change in GAAP, lease accounting rules and lease accounting guidance, in each case, after the Effective Date, regardless of the date enacted, adopted or issued and regardless of any delayed implementation thereof.

SECTION 1.4 Rounding. Any financial ratios required to be satisfied in order for a specific action to be permitted under this Agreement shall be calculated by dividing the appropriate component by the other component, carrying the result to one place more than the number of places by which such ratio is expressed herein and rounding the result up or down to the nearest number (with a rounding-up if there is no nearest number).

SECTION 1.5 References to Agreements, Laws, Etc. Unless otherwise expressly provided herein, (a) references to Constituent Documents, agreements (including the Loan Documents) and other contractual instruments shall be deemed to include all appendices, exhibits and schedules thereto and all subsequent amendments, restatements, extensions, supplements and other modifications thereto (but only to the extent that such amendments, restatements, extensions, supplements and other modifications are permitted by any Loan Document); and (b) references to any Law shall include all statutory and regulatory provisions consolidating, amending, replacing, supplementing or interpreting such Law.

SECTION 1.6 Times of Day. Unless otherwise specified, all references herein to times of day shall be references to Eastern time (daylight or standard, as applicable).

SECTION 1.7 [Reserved].

SECTION 1.8 Interest Rates; Benchmark Notification. The interest rate on a Loan denominated in Dollars may be derived from an interest rate benchmark that may be discontinued or is, or may in the future become, the subject of regulatory reform. Upon the occurrence of a Benchmark Transition Event, SECTION 3.3 provides a mechanism for determining an alternative rate of interest. The Administrative Agent does not warrant or accept any responsibility for, and shall not have any liability with respect to, (a) the continuation of, the administration of, submission of, calculation of, performance of or any other matter related to any interest rate used in this Agreement (including, without limitation, the Base Rate, SOFR, the Term SOFR Reference Rate, Adjusted Term SOFR or Term SOFR) or any component definition thereof or rates referred to in the definition thereof, or with respect to any alternative or successor rate thereto, or replacement rate thereof (including any Benchmark Replacement), including without limitation, whether the composition or characteristics of any such alternative, successor or replacement reference rate will be similar to, or produce the same value or economic equivalence of, or have the same value or economic equivalence of as the existing interest rate (or any component thereof) being replaced or have the same volume or liquidity as did any existing interest rate (or any component thereof) prior to its discontinuance or unavailability. The Administrative Agent and its affiliates and/or other related entities may engage in transactions that affect the calculation of any interest rate (or component thereof) used in this Agreement or any alternative, successor or alternative rate (including any Benchmark Replacement) and/or any relevant adjustments thereto, in each case, in a manner adverse to the Borrower. The Administrative Agent may select information sources or services in its reasonable discretion to ascertain any interest rate used in this Agreement, any component thereof, or rates referred to in the definition thereof, in each case pursuant to the terms of this Agreement, and shall have no liability to the Borrower, any Lender or any other person or entity for damages of any kind, including direct or indirect, special, punitive, incidental or consequential damages, costs, losses or expenses (whether in tort, contract or otherwise and whether at law or in equity), for any error or calculation of any such rate (or component thereof) provided by any such information source or service.

ARTICLE II.
THE FACILITY

SECTION 2.1 Term Loan; Commitments.

(a) Commitments. Subject to the terms and conditions hereof:

(i) each Lender severally agrees to make, on the Initial Funding Date, an Initial Term Loan to Borrower in an amount equal to such Lender's Initial Term Loan Commitment; and

(ii) each Lender severally agrees to make, on the DDTL Funding Date, a Delayed Draw Term Loan to the Borrower in an aggregate amount equal to such Lender's Delayed Draw Term Loan Commitment.

Borrower may make only one borrowing under the Initial Term Loan Commitment which shall be on the date on which all conditions set forth in SECTION 4.1 and all applicable conditions set forth in SECTION 4.2 are satisfied (the "Initial Funding Date"). Borrower may make only one borrowing under the Delayed Draw Term Loan Commitment which shall be the date on which all conditions set forth in SECTION 4.2 are satisfied (the "DDTL Funding Date").

Any amount borrowed under this SECTION 2.1(a) and subsequently repaid or prepaid may not be reborrowed. All amounts owed hereunder with respect to the Term Loan shall be paid in full no later than the Maturity Date. Each Lender's Initial Term Loan Commitment shall terminate immediately and without further action on the Initial Funding Date after giving effect to the funding of such Lender's Initial Term Loan Commitment on such date in an amount equal to such Lender's Pro Rata Share (calculated in accordance with clause (a)(i) of the definition thereof) of such funded Initial Term Loan. Each Lender's Delayed Draw Term Loan Commitment shall terminate immediately and without further action on the DDTL Funding Date after giving effect to the funding of such Lender's Delayed Draw Term Loan Commitment on such date in an amount equal to such Lender's Pro Rata Share (calculated in accordance with clause (a)(ii) of the definition thereof) of such funded Delayed Draw Term Loan. Each Lender's Delayed Draw Term Loan Commitment shall terminate immediately and without further action on the Delayed Draw Term Loan Commitment Termination Date.

(b) Roll-Up Term Loans. Effective upon the Final Order Entry Date, without any further action by any party to this Agreement or any other Person, the Prepetition Rolled Term Loans held by the Lenders shall be automatically "rolled-up" and substituted and exchanged for (and repaid on a cashless basis by) loans issued hereunder (the "Roll-Up Term Loans"), and such Roll-Up Term Loans shall be allocated among the Lenders on a pro rata basis in accordance with such Lender's Pro Rata Share (calculated in accordance with clause (c) of the definition thereof), shall be deemed funded on and as of the Final Order Entry Date, shall constitute and be deemed to be Loans hereunder, and shall constitute a portion of the outstanding Obligations owing to the Secured Parties hereunder. The aggregate principal amount of the Roll-Up Term Loans deemed funded hereunder shall be \$25,300,000 plus any accrued and unpaid interest on the Prepetition FILO Secured Obligations as of the Final Order Entry Date. Schedule I sets forth as of the Effective Date the portion of the Prepetition FILO Secured Obligations owing to each Roll-Up Term Lender to be deemed Roll-Up Term Loans upon the Roll-Up Effective Time.

SECTION 2.2 Borrowing Procedures.

(a) Borrower shall deliver to Administrative Agent a fully executed notice of borrowing no later than 4:00 p.m. one Business Day prior to the applicable Funding Date (or such shorter period permitted by Administrative Agent). Each such notice shall be in substantially the form of *Exhibit B*

(a “*Notice of Borrowing*”), specifying (A) the date of such proposed Borrowing, which shall be a Business Day, (B) the aggregate amount of such proposed Borrowing, and (C) whether any portion of the proposed Borrowing will be of Base Rate Loans or SOFR Loans. Promptly upon receipt by Administrative Agent of such Notice of Borrowing, Administrative Agent shall notify each Lender of the proposed borrowing. Administrative Agent and Lenders (a) may act without liability upon the basis of written or facsimile notice believed by Administrative Agent in good faith to be from Borrower (or from any Responsible Officer thereof designated in writing purportedly from Borrower to Administrative Agent), (b) shall be entitled to rely conclusively on any Responsible Officer’s authority to request the Term Loan on behalf of Borrower until Administrative Agent receives written notice to the contrary, and (c) shall have no duty to verify the authenticity of the signature appearing on any written Notice of Borrowing. If no election as to the Type of Borrowing is specified, then the requested Borrowing shall be Base Rate Loans.

(b) Each Lender shall make its Term Loan available to Administrative Agent not later than 12:00 p.m. New York City time, on the applicable Funding Date, by wire transfer of same day funds in Dollars, at Administrative Agent’s Office. Upon satisfaction or waiver of the conditions precedent specified herein, Administrative Agent shall make the proceeds of the Term Loans available to Borrower on the applicable Funding Date by causing an amount of same day funds in Dollars equal to the proceeds of all such Loans received by Administrative Agent from Lenders to be credited to the account of Borrower at Administrative Agent’s Office or to such other account as may be designated in writing to Administrative Agent by Borrower.

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

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

(e) With respect to the Borrowing described in SECTION 2.1(a), at the commencement of each Interest Period for any SOFR Loans, such Borrowing shall be in an aggregate amount that is an integral multiple of \$1,000,000, as applicable, and not less than \$5,000,000, or such lesser amount that is available under the applicable Commitment. With respect to the Borrowing described in SECTION 2.1(a), at the time that the Borrowing is made for any Base Rate Loan, such Borrowing shall be in an aggregate amount that is an integral multiple of \$1,000,000, and not less than \$5,000,000, or such lesser amount that is available under the applicable Commitment.

(f) The failure of any Defaulting Lender to make on the date specified any Loan shall not relieve any other Lender of its obligations to make such Loan or payment on such date no such other Lender shall be responsible for the failure of any Lender to make a Loan under this Agreement.

SECTION 2.3 [Reserved].

SECTION 2.4 [Reserved].

SECTION 2.5 [Reserved].

SECTION 2.6 Repayment of Loans. The Borrower shall repay to the Administrative Agent for the ratable account of the Lenders the aggregate unpaid principal amount of all Obligations and all other Obligations on the Maturity Date or earlier, if otherwise required by the terms hereof.

SECTION 2.7 Evidence of Indebtedness.

(a) The Loans made by each Lender shall be evidenced by one or more accounts or records maintained by such Lender and evidenced by one or more entries in the Register maintained by the Administrative Agent, acting solely for purposes of Treasury Regulation Section 5f.103-1(c), as non-fiduciary agent for the Borrower, in each case in the ordinary course of business. The accounts or records maintained by the Administrative Agent and each Lender shall be *prima facie* evidence absent manifest error of the amount of the Loans made by the Lenders to the Borrower and the interest and payments thereon. Any failure to so record or any error in doing so shall not, however, limit or otherwise affect the obligation of the Borrower hereunder to pay any amount owing with respect to the Obligations. In the event of any conflict between the accounts and records maintained by any Lender and the accounts and records of the Administrative Agent in respect of such matters, the accounts and records of the Administrative Agent shall control in the absence of manifest error.

(b) Entries made in good faith by the Administrative Agent in the Register pursuant to SECTION 2.7(a) and by each Lender in its account or accounts pursuant to SECTION 2.7(a) shall be *prima facie* evidence of the amount of principal and interest due and payable or to become due and payable from the Borrower to, in the case of the Register, each Lender and, in the case of such account or accounts, such Lender, under this Agreement and the other Loan Documents, absent manifest error; *provided* that the failure of the Administrative Agent or such Lender to make an entry, or any finding that an entry is incorrect, in the Register or such account or accounts shall not limit or otherwise affect the obligations of the Borrower under this Agreement and the other Loan Documents.

(c) The entries made in the Register and in the accounts therein maintained pursuant to *clauses (a) and (b)* above and SECTION 12.2 hereof shall, to the extent permitted by applicable Law, be *prima facie* evidence of the existence and amounts of the obligations recorded therein; *provided, however,* that the failure of any Lender or the Administrative Agent to maintain such accounts or any error therein shall not in any manner affect the obligations of the Borrower to repay the Loans in accordance with their terms. In addition, the Loan Parties, the Administrative Agent, and the Lenders shall treat each Person whose name is recorded in the Register as a Lender for all purposes of this Agreement. Information contained in the Register with respect to any Lender shall be available for inspection by the Borrower, the Administrative Agent or such Lender (as to its interest only) at any reasonable time and from time to time upon reasonable prior notice.

(d) Notwithstanding any other provision of the Agreement, in the event that any Lender requests that the Borrower execute and deliver a promissory note or notes payable to such Lender in order to evidence the Indebtedness owing to such Lender by the Borrower hereunder, the Borrower shall promptly execute and deliver a note (the “*DIP Term Note*”) to such Lender evidencing the Loans of such Lender in form reasonably acceptable to the Lender. Each Lender may attach schedules to its DIP Term Note and endorse thereon the date, Type (if applicable), amount and maturity of its Loans and payments with respect thereto; *provided* that the failure to do so shall in no way affect the obligations of the Borrower or any other Loan Party under any Loan Document.

SECTION 2.8 Optional Prepayments.

The Borrower may, upon written notice to the Administrative Agent, at any time or from time to time voluntarily prepay all or any portion of the Term Loan; *provided* that each prepayment under this SECTION 2.8 shall be accompanied by payment of all accrued and unpaid interest on the amount prepaid in connection with such prepayment of the Term Loan. Each such notice shall specify the date and amount of such prepayment. Any voluntary prepayment shall be in a principal amount of \$100,000 or a whole multiple of \$100,000 in excess thereof or, if less, the entire principal amount thereof then outstanding.

Any prepayment of the outstanding principal amount of the Term Loans in full shall be accompanied by the Exit Premium in cash.

SECTION 2.9 Mandatory Prepayments.

(a) Except as provided in the last paragraph of this SECTION 2.9(a),

(i) the Borrower shall prepay the Loans in an amount equal to 100% of any Cash Proceeds received by Loan Parties in connection with any Disposition by Loan Parties (other than Dispositions from a Loan Party to another Loan Party), in accordance with paragraph 25 of the Interim DIP Order;

(ii) the Borrower shall prepay the Loans in an aggregate amount equal to 100% of any Cash Proceeds received by Loan Parties, or Administrative Agent as loss payee, in connection with any Recovery Event in accordance with paragraph 25 of the Interim DIP Order; and

(iii) Borrower shall prepay the Loans an aggregate amount equal to 100% of Extraordinary Receipts received by Loan Parties in accordance with paragraph 25 of the Interim DIP Order;

provided, that, to the extent any Cash Proceeds or Extraordinary Receipts required to prepay the Loans pursuant to this SECTION 2.9 constitute Revolver Priority Collateral, Notes Priority Collateral or PropCo Priority Collateral, such Cash Proceeds or Extraordinary Receipts shall be applied in accordance with paragraph 25 of the Interim DIP Order.

Each prepayment of the Loan pursuant to SECTION 2.8 or 2.9 shall be applied in accordance with SECTION 10.3.

(b) Any prepayment of the outstanding principal amount of the Term Loans in full shall be accompanied by the Exit Premium in cash. All interest accrued on the principal amount of the Loans paid pursuant to this SECTION 2.9 shall be paid in cash on the date of such payment. Interest shall accrue and be due, until the next Business Day, if the amount so paid by the Borrower to the bank account designated by the Administrative Agent for such purpose is received in such bank account after 3:00 p.m.

SECTION 2.10 Interest.

(a) Rate of Interest. All Loans and the outstanding amount of all other Obligations owing under the Loan Documents shall bear interest on the unpaid principal amount thereof from the date such Loans are made until paid in full, except as otherwise provided in *clause (c)* below, as follows:

(i) if a Base Rate Loan, at a rate per annum equal to the sum of (1) the Base Rate as in effect from time to time and (2) the Applicable Margin for Base Rate Loans; and

(ii) if a SOFR Loan, at a rate per annum equal to the sum of (1) the Adjusted Term SOFR determined for the applicable Interest Period and (2) the Applicable Margin for SOFR Loans in effect from time to time during such Interest Period.

(b) Interest Payments. Accrued interest on each Loan shall be payable in cash in arrears on each Interest Payment Date for such Loan and the Maturity Date; provided that (i) in the event

of any repayment or prepayment of any Loan, accrued interest on the principal amount repaid or prepaid shall be payable on the date of such repayment or prepayment and (ii) in the event of any conversion of any Term Benchmark Loan prior to the end of the current Interest Period therefor, accrued interest on such Loan shall be payable on the effective date of such conversion.

(c) Default Interest. Following the occurrence and during the continuation of an Event of Default, upon Required DIP Lenders' written notice to the Borrower, the Borrower shall pay interest on the Obligations at a fluctuating interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by applicable Laws. Accrued and unpaid interest on past due amounts (including interest on past due interest) shall be due and payable upon demand.

SECTION 2.11 Conversion/Continuation Option.

(a) The Borrower may elect (i) at any time on any Business Day, to convert Base Rate Loans or any portion thereof to SOFR Loans, and (ii) at the end of any applicable Interest Period, to convert SOFR Loans or any portion thereof into Base Rate Loans, or to continue such SOFR Loans or any portion thereof for an additional Interest Period; *provided, however*, that the aggregate amount of the SOFR Loans for each Interest Period and Base Rate Loans converted or continued must be in the amount of at least \$500,000 or an integral multiple of \$100,000 in excess thereof. Each conversion or continuation shall be made on notice given by the Borrower to the Administrative Agent not later than (i) 12:00 p.m. on the same Business Day as the proposed conversion or continuation of any Loan into a Base Rate Loan, and (ii) 1:00 p.m. three (3) Business Days prior to the date of the proposed conversion or continuation of any Loan into a SOFR Loan, in each case prior to the date of the proposed conversion or continuation. Each conversion or continuation shall be allocated among the Loans of each Lender in accordance with such Lender's Ratable Portion. Each such election shall be in substantially the form of *Exhibit C* (a "Notice of Conversion or Continuation") and shall be made by giving the Administrative Agent prior written notice specifying (A) the amount and type of Loan being converted or continued, (B) in the case of a conversion to or a continuation of SOFR Loans, the applicable Interest Period and (C) in the case of a conversion, the date of such conversion.

(b) The Administrative Agent shall promptly notify each Lender of its receipt of a Notice of Conversion or Continuation and of the options selected therein. Notwithstanding the foregoing, the Administrative Agent may require by notice to the Borrower that no conversion in whole or in part of Base Rate Loans to SOFR Loans, and no continuation in whole or in part of SOFR Loans upon the expiration of any applicable Interest Period shall be permitted at any time at which (A) an Event of Default shall have occurred and be continuing or (B) the continuation of, or conversion into, a SOFR Loan would violate any provision of SECTION 3.3. If, within the time period required under the terms of this SECTION 2.11, the Administrative Agent does not receive a Notice of Conversion or Continuation from the Borrower containing a permitted election to continue any SOFR Loans for an additional Interest Period or to convert any such Loans, then, upon the expiration of the applicable Interest Period, such Loans shall be automatically converted to Base Rate Loans. Each Notice of Conversion or Continuation shall be irrevocable.

SECTION 2.12 Fees.

(a) DIP Origination Fee. The Borrower agrees to pay to the Administrative Agent, for the benefit of the Lenders in accordance with their Pro Rata Share, a non-refundable origination fee equal to 2.00% of the aggregate amount of the sum of the Total Initial Term Loan Commitment and the Total Delayed Draw Term Loan Commitment (the "DIP Origination Fee"), which is fully earned on the Effective Date and such DIP Origination Fee shall be paid in cash on the Initial Funding Date.

(b) Exit Premium.

(i) The Borrower agrees to pay to the Administrative Agent, for the benefit of the Lenders in accordance with their Pro Rata Share, the Exit Premium which shall be (i) fully earned on the Effective Date, (ii) due and payable in cash on the earlier of (A) the Maturity Date and (B) the date on which the outstanding principal amount of the Term Loans is paid in full and (iii) non-refundable.

(ii) Without limiting the generality of the foregoing, it is understood and agreed that if the Obligations are accelerated for any reason, including because of default, sale, disposition or encumbrance (including that by operation of law or otherwise), the Exit Premium will also be due and payable in cash as though the Term Loan was voluntarily prepaid in full as of such date and shall constitute part of the Obligations, in view of the impracticability and extreme difficulty of ascertaining actual damages and by mutual agreement of the parties as to a reasonable calculation of each Lender's lost profits as a result thereof. Exit Premium payable in accordance with the immediately preceding sentence shall be presumed to be the liquidated damages sustained by each Lender as the result of the early termination and the Borrower agrees that it is reasonable under the circumstances currently existing. Exit Premium shall also be payable (i) in the event the Obligations (and/or this Agreement) are satisfied or released by foreclosure (whether by power of judicial proceeding or otherwise), deed in lieu of foreclosure or by any other means and/or (ii) upon the satisfaction, release, payment, restructuring, reorganization, replacement, reinstatement, defeasance or compromise of any of the Obligations (and/or the Credit Agreement) in any insolvency proceeding or other proceeding pursuant to any Debtor Relief Laws, foreclosure (whether by power of judicial proceeding or otherwise), deed in lieu of foreclosure or by any other means or the making of a distribution of any kind in any Insolvency Proceeding or other proceeding pursuant to any Debtor Relief Laws to the Administrative Agent, for the account of the Lenders, in full or partial satisfaction of the Obligations. THE BORROWER EXPRESSLY WAIVES THE PROVISIONS OF ANY PRESENT OR FUTURE STATUTE OR LAW THAT PROHIBITS OR MAY PROHIBIT THE COLLECTION OF THE FOREGOING EXIT PREMIUM IN CONNECTION WITH ANY SUCH ACCELERATION INCLUDING IN CONNECTION WITH ANY VOLUNTARY OR INVOLUNTARY ACCELERATION OF OBLIGATIONS PURSUANT TO ANY INSOLVENCY PROCEEDING OR OTHER PROCEEDING PURSUANT TO ANY DEBTOR RELIEF LAWS OR PURSUANT TO A PLAN OF REORGANIZATION. The Borrower expressly agrees that: (A) the Exit Premium is reasonable and is the product of an arm's length transaction between sophisticated business people, ably represented by counsel; (B) the Exit Premium shall be payable notwithstanding the then prevailing market rates at the time payment is made; (C) there has been a course of conduct between Lenders and the Borrower giving specific consideration in this transaction for such agreement to pay the Exit Premium; and (D) the Borrower shall be estopped hereafter from claiming differently than as agreed to in this paragraph. The Borrower expressly acknowledges that its agreement to pay the Exit Premium to the Lenders as herein described is a material inducement to the Lenders to provide the Commitments and make the Loans.

(c) All fees payable hereunder shall be paid on the dates due, in Dollars in immediately available funds, to the Administrative Agent for distribution to the Lenders. Fees paid shall not be refundable under any circumstances.

SECTION 2.13 Payments and Computations.

(a) All payments to be made by the Borrower shall be made without condition or deduction for any counterclaim, defense, recoupment or setoff. The Borrower shall make each payment and prepayment hereunder (including fees and expenses) not later than 3:00 p.m. on the day when due, in Dollars, in each case to the Administrative Agent for the account of the respective Appropriate Lenders to which such payment is owed, at the applicable Administrative Agent's Office for payment and in Same

Day Funds without condition or deduction for any defense, recoupment, set-off or counterclaim. The Administrative Agent will promptly distribute to each Appropriate Lender its Pro Rata Share (or other applicable share as provided herein) of such payment in like funds as received by wire transfer to such Lender's Lending Office. All payments received by the Administrative Agent after 3:00 p.m. may, in each case be deemed received on the next succeeding Business Day and any applicable interest or fee shall continue to accrue.

(b) All computations of interest for Base Rate Loans shall be made on the basis of a year of 365 days or 366 days, as the case may be, and actual days elapsed. All other computations of fees and interest shall be made on the basis of a 360-day year and actual days elapsed (which results in more fees or interest, as applicable, being paid than if computed on the basis of a 365-day year). Interest shall accrue on each Loan for the day on which the Loan is made, and shall not accrue on a Loan, or any portion thereof, for the day on which the Loan or such portion is paid; *provided* that any Loan that is repaid on the same day on which it is made shall bear interest for one (1) day. Each determination by the Administrative Agent of an interest rate or fee hereunder shall be conclusive and binding for all purposes, absent manifest error.

(c) Whenever any payment hereunder shall be stated to be due on a day other than a Business Day, the due date for such payment shall be extended to the next succeeding Business Day, and such extension of time shall in such case be included in the computation of payment of interest or fees, as the case may be; *provided, however*, that if such extension would cause payment of interest on or principal of any SOFR Loan to be made in the next calendar month, such payment shall be made on the immediately preceding Business Day. All repayments of any Loans shall be applied as follows: *first*, to repay any such Loans outstanding as Base Rate Loans and *then*, to repay any such Loans outstanding as SOFR Loans, with those SOFR Loans, as applicable, having earlier expiring Interest Periods being repaid prior to those having later expiring Interest Periods.

SECTION 2.14 Security and Administrative Priority.

(a) Collateral; Grant of Lien and Security Interest.

(i) As security for the full and timely payment and performance of all of the Obligations, each of the Debtors, as of the Interim Order Entry Date, and pursuant to and to the extent permitted in the Interim DIP Order and the Final DIP Order, assigns, pledges and grants (or causes the assignment, pledge and grant in respect of any indirectly owned assets) to the Administrative Agent, for the benefit of the Secured Parties, a security interest in and to, and Liens on, all property of the estate under section 541 of the Bankruptcy Code including all real and personal property, whether now existing or hereafter arising and wherever located, tangible and intangible, of each of the Debtors, including: (A) all cash, cash equivalents, deposit accounts, securities accounts, accounts, other receivables (including credit card receivables), chattel paper, contract rights, inventory (wherever located), instruments, documents, securities (whether or not marketable) and investment property (including all of the issued and outstanding capital stock of each of its subsidiaries), hedge agreements, real estate, furniture, fixtures, equipment (including documents of title), goods, franchise rights, trade names, trademarks, servicemarks, copyrights, patents, license rights, intellectual property, general intangibles (including, for the avoidance of doubt, payment intangibles), rights to the payment of money (including tax refunds and any other extraordinary payments), supporting obligations, guarantees, letter of credit rights, commercial tort claims, causes of action, and all substitutions, indemnification rights, all present and future intercompany debt, books and records related to the foregoing, accessions and proceeds of the foregoing, wherever located, including insurance or other proceeds; (B) all proceeds of leased real property; (C) subject to entry of a Final DIP Order, the proceeds of any avoidance actions brought pursuant to Chapter 5 of the Bankruptcy Code or applicable state law equivalents; (D) proceeds of the Debtors' rights under section 506(c) and 550 of the

Bankruptcy Code; (E) all Prepetition Collateral; (F) all PropCo Priority Collateral; (G) all property of the Debtors that was not otherwise subject to valid, perfected, enforceable, and unavoidable liens on the Petition Date; and (H) all proceeds from the sale, assignment, or other disposition of (i) any commercial real estate leases and (ii) the Debtors' right to select, identify, and designate which commercial leases may be assumed and assigned under section 365 of the Bankruptcy Code. Notwithstanding the foregoing, Collateral shall not include (x) the Debtors' real property leases (but shall include all proceeds of such leases) solely to the extent a Lien in favor of the Administrative Agent is not permitted by the Bankruptcy Code to attach to any such real property lease and (y) subject to clause (C) above, avoidance actions brought pursuant to Chapter 5 of the Bankruptcy Code or applicable state law equivalents until the entry of a Final DIP Order (all property of the Debtors subject to the security interest referred to in this SECTION 2.14(a)(i) being hereafter collectively referred to as the "Collateral").

(ii) Upon entry of the Interim DIP Order or Final DIP Order, and pursuant to and to the extent permitted in the Interim DIP Order and Final DIP Order, each as the case may be, the Liens and security interests in favor of the Administrative Agent referred to in SECTION 2.14(a)(i) shall be valid and perfected Liens on, and security interests in, the Collateral pursuant to Section 364(c)(2), Section 364(c)(3) and Section 364(d)(1) of the Bankruptcy Code. Such Liens and security interests and their priority shall be governed by the DIP Orders and remain in effect until the Commitments shall have been terminated and all Obligations shall have been repaid in cash in full.

(iii) Notwithstanding anything herein to the contrary (A) all proceeds received by the Administrative Agent and the Lenders from the Collateral subject to the Liens granted in SECTION 2.14(a)(i) and in each other Loan Document and by the DIP Orders shall be subject to the Carve-Out and (B) no Person entitled to the Carve-Out shall be entitled to sell or otherwise dispose, or seek or object to the sale or other disposition, of any Collateral.

(b) Grants; Rights and Remedies. The Liens and security interests granted pursuant to SECTION 2.14(a)(i) may be independently granted by the Loan Documents and by other Loan Documents hereafter entered into. This Agreement, the DIP Orders and such other Loan Documents supplement each other, and the grants, priorities, rights and remedies of the Administrative Agent and the Lenders hereunder and thereunder are cumulative.

(c) No Filings Required. The Liens and security interests referred to herein shall be deemed to be valid and perfected by entry of the Interim DIP Order or the Final DIP Order, as the case may be. The Administrative Agent shall not be required to file any financing statements, mortgages, certificates of title, notices of Lien or similar instruments in any jurisdiction or filing office or to take any other action in order to validate or perfect the Lien and security interest granted by or pursuant to this Agreement, the Interim DIP Order or the Final DIP Order, as the case may be, or any other Loan Document; provided, that the Administrative Agent shall be permitted to file any financing statements, mortgages, certificates of title, notices of Lien or similar instruments in any jurisdiction or filing office or to take any other action with respect to the Lien and security interest granted by or pursuant to this Agreement.

(d) Further Assurances. The Loan Parties shall take any other actions reasonably requested by the Administrative Agent from time to time to cause the attachment, perfection and priority as set forth in the DIP Orders of, and the ability of the Administrative Agent and the Lenders to enforce, the security interest of the Administrative Agent and the Lenders in any and all of the Collateral, including, without limitation, (a) executing and delivering any requested security agreement, pledge agreement or mortgage, (b) executing, delivering and, where appropriate, filing financing statements and amendments relating thereto under the Uniform Commercial Code or other applicable law, to the extent, if any, that any Loan Party's signature thereon is required therefor, (c) causing the Administrative Agent's

name to be noted as secured party on any certificate of title for a titled good if such notation is a condition to attachment, perfection or priority of, or ability of the Administrative Agent to enforce, the security interest of the Administrative Agent in such Collateral, (d) complying with any provision of any statute, regulation or treaty of the United States as to any Collateral if compliance with such provision is a condition to attachment, perfection or priority of, or ability of the Administrative Agent to enforce, the security interest of the Administrative Agent in such Collateral, and (e) obtaining the consents and approvals of any Governmental Authority or third party and taking all actions required by the Uniform Commercial Code or by other law, as applicable in any relevant jurisdiction.

SECTION 2.15 Defaulting Lenders.

(a) *Adjustments.* Notwithstanding anything to the contrary contained in this Agreement, if any Lender becomes a Defaulting Lender, then, until such time as that Lender is no longer a Defaulting Lender, to the extent permitted by applicable Law:

(i) *Waivers and Amendments.* That Defaulting Lender's right to approve or disapprove any amendment, waiver or consent with respect to this Agreement shall be restricted as set forth in *Section 12.1*.

(ii) *Reallocation of Payments.* Any payment of principal, interest, fees or other amounts received by the Administrative Agent for the account of that Defaulting Lender (whether voluntary or mandatory, at maturity, pursuant to *Article X* or otherwise, and including any amounts made available to the Administrative Agent by that Defaulting Lender pursuant to *Section 12.6*), shall be applied at such time or times as may be determined by the Administrative Agent as follows: *first*, to the payment of any amounts owing by that Defaulting Lender to the Administrative Agent hereunder; *second*, as the Borrower may request (so long as no Default or Event of Default exists), to the funding of any Loan in respect of which that Defaulting Lender has failed to fund its portion thereof as required by this Agreement, as determined by the Administrative Agent; *third*, if so determined by the Administrative Agent and the Borrower, to be held in a non-interest bearing deposit account and released in order to satisfy obligations of that Defaulting Lender to fund Loans under this Agreement; *fourth*, to the payment of any amounts owing to the Lenders as a result of any judgment of a court of competent jurisdiction obtained by any Lender against that Defaulting Lender as a result of that Defaulting Lender's breach of its obligations under this Agreement; *fifth*, so long as no Default or Event of Default exists, to the payment of any amounts owing to the Borrower as a result of any judgment of a court of competent jurisdiction obtained by the Borrower against that Defaulting Lender as a result of that Defaulting Lender's breach of its obligations under this Agreement; and *sixth*, to that Defaulting Lender or as otherwise directed by a court of competent jurisdiction; *provided* that if (x) such payment is a payment of the principal amount of any Loans in respect of which that Defaulting Lender has not fully funded its appropriate share and (y) such Loans were made at a time when the conditions set forth in *Section 4.2* were satisfied or waived, such payment shall be applied solely to pay the Loans of all non-Defaulting Lenders on a pro rata basis prior to being applied to the payment of any Loans of that Defaulting Lender. Any payments, prepayments or other amounts paid or payable to a Defaulting Lender that are applied (or held) to pay amounts owed by a Defaulting Lender or to post cash collateral pursuant to this *Section 2.15(a)(ii)* shall be deemed paid to and redirected by that Defaulting Lender, and each Lender irrevocably consents hereto.

(b) *Defaulting Lender Cure.* If the Borrower and the Administrative Agent agree in writing in their sole discretion that a Defaulting Lender should no longer be deemed to be a Defaulting Lender, the Administrative Agent will so notify the parties hereto, whereupon as of the effective date specified in such notice and subject to any conditions set forth therein, that Lender will, to the extent applicable, purchase that portion of outstanding Loans of the other Lenders or take such other actions as the Administrative Agent may determine to be necessary to cause the Loans to be held on a pro rata basis

by the Lenders in accordance with their Pro Rata Share, whereupon that Lender will cease to be a Defaulting Lender; *provided* that no adjustments will be made retroactively with respect to fees accrued or payments made by or on behalf of the Borrower for the period that such Lender was a Defaulting Lender; and *provided further* that except to the extent otherwise expressly agreed by the affected parties, no change hereunder from Defaulting Lender to Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender.

ARTICLE III. **TAXES, INCREASED COSTS PROTECTION AND ILLEGALITY**

SECTION 3.1 Taxes.

(a) Except as required by law, any and all payments by the Borrower or any Guarantor to or for the account of any Agent or any Lender under any Loan Document shall be made free and clear of and without deduction for any and all present or future taxes, duties, levies, imposts, deductions, assessments, fees, withholdings or similar charges, and all liabilities (including additions to tax, penalties and interest) with respect thereto, excluding, in the case of each Agent and each Lender, (i) taxes imposed on or measured by net income (however denominated, and including branch profits and similar taxes), and franchise or similar taxes, in each case (A) imposed by the jurisdiction under the laws of which it is organized or in which its principal office is located or, in the case of any Lender, in which its applicable lending office is located or (B) taxes imposed by reason of any connection between such Agent or Lender and the taxing jurisdiction imposing such tax (other than a connection arising solely by executing or entering into any Loan Document, receiving payments thereunder or having been a party to, performed its obligations under, received or perfected a security interest under, engaged in any other transaction pursuant to or enforced, any Loan Documents), (ii) subject to SECTION 3.1(e), any U.S. federal tax that is (or would be) required to be withheld with respect to amounts payable hereunder in respect of an interest arising under any Loan Document that is assigned to an Eligible Assignee (pursuant to an assignment under SECTION 12.2) on the date such assignee becomes an Eligible Assignee to the extent such tax is in excess of the tax that would have been applicable had such assigning Lender not assigned its interest arising under any Loan Document (unless such assignment is made at the express written request of the Borrower), (iii) in the case of any Foreign Lender, any U.S. federal withholding taxes imposed as a result of the failure of any Agent or Lender to comply with the provisions of SECTIONS 3.1(b) and 3.1(c), (iv) in the case of any U.S. Lender, any U.S. federal withholding taxes imposed as a result of the failure of any Agent or Lender to comply with the provisions of SECTION 3.1(d), (v) any taxes imposed on any amount payable to or for the account of any Agent or Lender as a result of the failure of such recipient to comply with its obligations under SECTION 3.1(l), (vi) amounts excluded pursuant to SECTION 3.1(e) hereto, and (vii) penalties and interest on the foregoing amounts (all such non excluded taxes, duties, levies, imposts, deductions, assessments, fees, withholdings or similar charges and liabilities being hereinafter referred to as "*Taxes*"). If the Borrower, Guarantor or other applicable withholding agent is required to deduct any Taxes or Other Taxes (as defined below) from or in respect of any sum payable under any Loan Document to any Agent or any Lender, (i) the sum payable shall be increased as necessary so that after making all required deductions (including deductions applicable to additional sums payable under this SECTION 3.1(a)), each of such Agent and such Lender receives an amount equal to the sum it would have received had no such deductions been made, (ii) the Borrower, Guarantor or other applicable withholding agent shall make such deductions, (iii) the Borrower, Guarantor or other applicable withholding agent shall pay the full amount deducted to the relevant taxing authority, and (iv) within thirty (30) days after the date of such payment (or, if receipts or evidence are not available within thirty (30) days, as soon as practicable thereafter), the Borrower or Guarantor shall furnish to such Agent or Lender (as the case may be) the original or a facsimile copy of a receipt evidencing payment thereof to the extent such a receipt has been made available to the Borrower or Guarantor (or other evidence of payment reasonably satisfactory to the Administrative Agent). If the Borrower or Guarantor fails to pay any Taxes or Other Taxes when due to the appropriate taxing

authority or fails to remit to any Agent or any Lender the required receipts or other required documentary evidence that has been made available to the Borrower or Guarantor, the Borrower or Guarantor shall indemnify such Agent and such Lender for any incremental Taxes that may become payable by such Agent or such Lender arising out of such failure.

(b) To the extent it is legally able to do so, each Agent or Lender (including an Eligible Assignee to which a Lender assigns its interest in accordance with SECTION 12.2) that is not a “United States person” within the meaning of Section 7701(a)(30) of the Code (each, a “*Foreign Lender*”) agrees to complete and deliver to the Borrower and the Administrative Agent on or prior to the date on which the Agent or Lender (or Eligible Assignee) becomes a party hereto, two (2) accurate, complete and original signed copies of whichever of the following is applicable: (i) in the case of a Foreign Lender claiming the benefits under an income tax treaty to which the United States is a party, an IRS Form W-8BEN-E certifying that it is entitled to such benefits; (ii) in the case of a Foreign Lender claiming that the income receivable pursuant to any Loan Document is effectively connected with the conduct of a trade or business in the United States, an IRS Form W-8ECI certifying to this effect; (iii) if the Foreign Lender is claiming the benefits of the exemption for portfolio interest under either Section 871(h) or Section 881(c) of the Code and is not (A) a bank described in Section 881(c)(3)(A) of the Code, (B) a 10-percent shareholder described in Section 871(h)(3)(B) of the Code, or (C) a controlled foreign corporation related to the Borrower within the meaning of Section 864(d) of the Code, a certificate to that effect in substantially the form attached hereto as *Exhibit D* (a “*Non-Bank Certificate*”) and an IRS Form W-8BEN-E, certifying that the Foreign Lender is not a United States person; (iv) to the extent a Lender is not the beneficial owner for U.S. federal income tax purposes, an IRS Form W-8IMY (or any successor form thereto) of the Lender, accompanied by, as and to the extent applicable, an IRS Form W-8BEN or an IRS Form W-8BEN-E, an IRS Form W-8ECI, Non-Bank Certificate, an IRS Form W-9, additional IRS Forms W-8IMY (further accompanied by required attachments thereto) and any other required supporting information from each beneficial owner (it being understood that a Lender need not provide certificates or supporting documentation from beneficial owners if (x) the Lender is a “qualified intermediary” or “withholding foreign partnership” for U.S. federal income tax purposes and (y) such Lender is as a result able to establish, and does establish, that payments to such Lender are, to the extent applicable, entitled to an exemption from or, if an exemption is not available, a reduction in the rate of, U.S. federal withholding taxes without providing such certificates or supporting documentation); or (v) any other form prescribed by applicable requirements of U.S. federal income tax law as a basis for claiming exemption from or a reduction in U.S. federal withholding tax duly completed together with such supplementary documentation as may be prescribed by applicable requirements of law to permit the Borrower and the Administrative Agent to determine the withholding or deduction required to be made except, and solely for the purposes of this clause (v), to the extent, in the Agent or Lender’s reasonable judgment, such completion, execution, or submission would subject such Agent or Lender to any material unreimbursed costs or expenses or would materially prejudice the legal or commercial position of such Agent or Lender.

(c) In addition, each such Lender shall, to the extent it is legally entitled to do so, (i) promptly submit to the Borrower and the Administrative Agent two (2) accurate, complete and original signed copies of such other or additional forms or certificates (or such successor forms or certificates as shall be adopted from time to time by the relevant taxing authorities) as may then be applicable or available to secure an exemption from or reduction in the rate of U.S. federal withholding tax (A) on or before the date that such Lender’s most recently delivered form, certificate or other evidence expires or becomes obsolete or inaccurate in any material respect, (B) after the occurrence of a change in the Foreign Lender’s circumstances requiring a change in the most recent form, certificate or evidence previously delivered by it to the Borrower and the Administrative Agent, and (C) from time to time thereafter if reasonably requested by the Borrower or the Administrative Agent, and (ii) promptly notify the Borrower and the Administrative Agent in writing of any change in the Foreign Lender’s circumstances which would modify or render invalid any claimed exemption or reduction.

(d) Each Agent or Lender that is a “United States person” (within the meaning of Section 7701(a)(30) of the Code) (each a “*U.S. Lender*”) agrees to complete and deliver to the Borrower and the Administrative Agent two (2) original copies of accurate, complete and signed IRS Form W-9 or successor form certifying that such Agent or Lender is not subject to United States backup withholding (i) on or prior to the Effective Date (or on or prior to the date it becomes a party to this Agreement), (ii) on or before the date that such form expires or becomes obsolete or inaccurate in any material respect, (iii) after the occurrence of a change in the Agent’s or Lender’s circumstances requiring a change in the most recent form previously delivered by it to the Borrower and the Administrative Agent, and (iv) from time to time thereafter if reasonably requested by the Borrower or the Administrative Agent.

(e) Notwithstanding anything else herein to the contrary (but subject to the succeeding sentence), if a Lender, Eligible Assignee or Agent is subject to any U.S. federal tax that is required to be withheld with respect to amounts payable hereunder at a rate in excess of zero percent at the time such Lender, Eligible Assignee or Agent becomes a party to this Agreement or otherwise acquires an interest in the Loan, or pursuant to a law or other legal requirement in effect at such time, such tax (including additions to tax, penalties and interest imposed with respect to such tax) shall be considered excluded from Taxes (unless and until such time as such Lender, Eligible Assignee or Agent subsequently provides forms and certifications that establish to the reasonable satisfaction of Borrower and the Administrative Agent that such Lender, Eligible Assignee or Agent is subject to a lower rate of tax, at which time tax at such lower rate (including additions to tax, penalties and interest imposed with respect to such tax) shall be considered so excluded for periods during which such forms and certifications remain valid and are sufficient, under the law in effect at the time such forms and certifications are provided (including any law with a delayed effective date), to establish that such Lender, Eligible Assignee or Agent is subject to such lower rate of tax) except, in the case of an Eligible Assignee, to the extent the Lender’s assignor was entitled to additional amounts or indemnity payments immediately prior to the assignment. Further, the Borrower shall not be required pursuant to this SECTION 3.1 to pay any additional amount to, or to indemnify, any Lender, Eligible Assignee or Agent, as the case may be, to the extent that such Lender, Eligible Assignee or Agent becomes subject to Taxes subsequent to the Effective Date (or, if later, the date such Lender, Eligible Assignee or Agent becomes a party to this Agreement or otherwise acquires an interest in the Loan) solely as a result of a change in the place of organization or place of doing business of such Lender, Eligible Assignee or Agent (or any applicable beneficial owner), a change in the Lending Office of such Lender or Eligible Assignee (or any applicable beneficial owner) (other than at the written request of the Borrower to change such Lending Office), or a change that results in such Lender or Eligible Assignee (or any applicable beneficial owner) being described in clauses (A), (B) or (C) of SECTION 3.1(b)(iii), occurring after the date that such Lender, Eligible Assignee or Agent becomes a party to this Agreement or otherwise acquires an interest in the Loan. If an Eligible Assignee acquires an additional interest in a Loan after the date on which it became a party to this Agreement or previously acquired an interest in any Loan, the provisions of this SECTION 3.1(e) shall apply to such additional interest as of the date such additional interest was acquired.

(f) The Borrower agrees to pay any and all present or future stamp, court or documentary taxes and any other excise, property, intangible or mortgage recording taxes or charges or similar levies which arise from any payment made under any Loan Document or from the execution, delivery, performance, enforcement or registration of, or otherwise with respect to, any Loan Document (including additions to tax, penalties and interest related thereto) excluding, in each case, such amounts that result from an Assignment and Assumption, grant of a participation, transfer or assignment to or designation of a new applicable Lending Office or other office for receiving payments under any Loan Document, except to the extent that any such Assignment and Assumption, grant of a participation, transfer, assignment or designation is requested in writing by the Borrower subsequent to the Effective Date (all such non-excluded taxes described in this SECTION 3.1(f) being hereinafter referred to as “*Other Taxes*”).

(g) If any Taxes or Other Taxes are directly asserted against any Agent or Lender with respect to any payment received by such Agent or Lender in respect of any Loan Document, such Agent or Lender may pay such Taxes or Other Taxes and the Borrower will promptly indemnify and hold harmless such Agent or Lender for the full amount of such Taxes and Other Taxes (and any Taxes and Other Taxes imposed on amounts payable under this SECTION 3.1), and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes or Other Taxes were correctly or legally imposed or asserted. Payments under this SECTION 3.1(g) shall be made within ten (10) days after the date Borrower receives written demand for payment from such Agent or Lender.

(h) A Participant shall not be entitled to receive any greater payment under SECTION 3.1 than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant, unless (i) the sale of the participation to such Participant is made with the Borrower's express written consent to such participation at the time such participation is sold to such Participant or (ii) such entitlement to a greater payment results from a change in any law after the sale of the participation takes place.

(i) If the Borrower determines in good faith that a reasonable basis exists for contesting any taxes for which indemnification has been demanded hereunder, the relevant Lender or the relevant Agent, as applicable, shall cooperate with the Borrower in a reasonable challenge of such taxes if so requested by the Borrower, provided that (a) such Lender or Agent determines in its reasonable discretion that it would not be prejudiced by cooperating in such challenge, (b) the Borrower pays all related expenses of such Agent or Lender and (c) the Borrower indemnifies such Lender or Agent for any liabilities or other costs incurred by such party in connection with such challenge.

(j) If any Agent or any Lender has received or is entitled to receive a refund in respect of any Taxes or Other Taxes as to which it has been indemnified by the Borrower or Holdings, as the case may be or with respect to which the Borrower or Holdings, as the case may be has paid additional amounts pursuant to this SECTION 3.1, it shall use commercially reasonable efforts to obtain such refund (to the extent not yet received) (provided that doing so would not otherwise materially disadvantage the Agent or Lender) and it shall promptly remit such refund (but only to the extent of indemnity payments made, or additional amounts paid, by the Borrower or Holdings, as the case may be under this SECTION 3.1 with respect to the Taxes or Other Taxes giving rise to such refund), net of all reasonable out-of-pocket expenses incurred by the Administrative Agent or such Lender and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund), provided that the Borrower or Holdings, as the case may be, upon the written request of the Administrative Agent or such Lender, agrees to repay the amount paid over to the Borrower or Holdings (plus any penalties, interest or other charges imposed by the relevant Governmental Authority), as the case may be, to the Administrative Agent or such Lender in the event the Administrative Agent or such Lender is required to repay such refund to such Governmental Authority (provided that such Lender or the Administrative Agent may delete any information therein that such Lender or the Administrative Agent deems confidential in its reasonable discretion). The Administrative Agent or such Lender, as the case may be, shall provide the Borrower with a copy of any notice of assessment or other evidence reasonably available of the requirement to repay such refund received from the relevant Governmental Authority. This subsection shall not be construed to require the Administrative Agent or any Lender to make available its tax returns (or any other information relating to its taxes that is reasonably deems confidential) to the Borrower, Holdings or any other Person.

(k) Each Lender agrees that, upon the occurrence of any event giving rise to the operation of SECTION 3.1(a) or (g) with respect to such Lender, it will, if requested by the Borrower, use commercially reasonable efforts (subject to legal and regulatory restrictions) to mitigate the effect of any such event, including by designating another Lending Office for any Loan affected by such event and by completing and delivering or filing any tax-related forms which such Lender is legally able to deliver

and which would reduce or eliminate any amount of Taxes or Other Taxes required to be deducted or withheld or paid by the Borrower; provided that such efforts are made at the Borrower's expense and on terms that, in the reasonable judgment of such Lender, cause such Lender and its Lending Office(s) to suffer no material economic, legal or regulatory disadvantage, and provided further that nothing in this SECTION 3.1(k) shall affect or postpone any of the Obligations of the Borrower or the rights of such Lender pursuant to SECTION 3.1(a) or (g).

(l) If a payment made to a recipient under any Loan Document would be subject to United States federal withholding tax imposed by FATCA if such recipient were to fail to comply with the applicable reporting requirements of FATCA, such recipient shall deliver to the Borrower and the Administrative Agent, at the time or times prescribed by FATCA and at such time or times reasonably requested by the Borrower or the Administrative Agent, such documentation prescribed by FATCA requested by the Borrower or the Administrative Agent as may be necessary for the Borrower and the Administrative Agent to comply with their respective obligations under FATCA, to determine that such recipient has or has not complied with such recipient's obligations under FATCA and, as necessary, to determine the amount to deduct and withhold from such payment.

(m) Notwithstanding any other provision of this Agreement, the Borrower and the Administrative Agent may deduct and withhold any taxes required by any Laws to be deducted and withheld from any payment under any of the Loan Documents, subject to the provisions of this SECTION 3.1.

(n) With respect to any Lender's claim for compensation under this SECTION 3.1, the Borrower shall not be required to compensate such Lender for any amount incurred more than one hundred eighty (180) days prior to the date that such Lender notifies the Borrower in writing of the event that gives rise to such claim; provided that, if the circumstance giving rise to such claim is retroactive, then such 180-day period referred to above shall be extended to include the period of retroactive effect thereof.

(o) The agreements in this SECTION 3.1 shall survive the termination of this Agreement and the payment of the Loans and all other amounts payable hereunder.

SECTION 3.2 Illegality

If any Lender reasonably determines that any Law has made it unlawful or that any Governmental Authority has asserted that it is unlawful for any Lender or its applicable Lending Office to make, maintain or fund Loans (and, in the reasonable opinion of such Lender (subject to overall policy considerations of such Lender), the designation of a different applicable Lending Office or the assignment by such Lender of its rights hereunder to another of its offices, branches or affiliates would either not avoid such unlawfulness or would be disadvantageous to such Lender in any economic, legal or regulatory respect) whose interest is determined by reference to Term SOFR, or to determine or charge interest rates based upon the Term SOFR or Adjusted Term SOFR, or any Governmental Authority has imposed material restrictions on the authority of such Lender to purchase or sell, then, on notice thereof within a reasonable time thereafter (if by telephone, confirmed in writing) by such Lender to the Borrower through the Administrative Agent, (i) any obligation of such Lender to make or continue SOFR Loan, or to convert Base Rate Loans to SOFR Loans, shall be suspended, and (ii) if such notice asserts the illegality of such Lender making or maintaining Base Rate Loans the interest rate on which is determined by reference to the Adjusted Term SOFR component of the Base Rate, the interest rate on which Base Rate Loans of such Lender shall, if necessary to avoid such illegality, be determined by the Administrative Agent without reference to the Adjusted Term SOFR component of the Base Rate, in each case until such Lender notifies the Administrative Agent and the Borrower that the circumstances giving rise to such determination no longer exist (which notice such Lender agrees to give at such time when such circumstances no longer exist). Upon receipt of such notice within a

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

SECTION 3.3 Inability to Determine Rates; Effect of Benchmark Transition Event.

(a) If the Required DIP Lenders reasonably determine that for any reason in connection with any request for a SOFR Loan, or a conversion to or continuation thereof that adequate and reasonable means do not exist for determining Term SOFR for any requested Interest Period with respect to a proposed SOFR Loan or in connection with an existing or proposed Base Rate Loan, or Term SOFR for any requested Interest Period with respect to a proposed SOFR Loan does not adequately and fairly reflect the cost to such Lenders of funding such Loan, the Administrative Agent will promptly so notify the Borrower and each Lender. Thereafter, (x) each SOFR Loan shall automatically, on the last day of the current Interest Period for such Loan, convert into a Base Rate Loan, (y) the obligation of the Lenders to make or maintain SOFR Loans shall be suspended, and (z) in the event of a determination described in the preceding sentence with respect to the Adjusted Term SOFR component of the Base Rate, the utilization of the Adjusted Term SOFR component in determining the Base Rate shall be suspended, in each case until the Administrative Agent (upon the instruction of the Required DIP Lenders) notifies the Borrower and the Lenders that the circumstances giving rise to such notice no longer exist (which notice the Administrative Agent agrees to give at such time when such circumstances no longer exist). Upon receipt of such notice, the Borrower may revoke any pending request for a Borrowing of, conversion to or continuation of SOFR Loans, or, failing that, will be deemed to have converted such request into a request for a Borrowing of Base Rate Loans in the amount specified therein.

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

(c) Benchmark Replacement Conforming Changes. In connection with the use, administration, adoption or implementation of a Benchmark Replacement, the Administrative Agent will have the right to make Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Loan Document, any amendments implementing such Conforming Changes will become effective without any further action or consent of any other party to this Agreement or any other Loan Document, except to the extent required by this SECTION 3.3 (including by any of the defined terms used herein).

(d) Notices; Standards for Decisions and Determinations. The Administrative Agent will promptly notify the Borrower and the Lenders of (i) the implementation of any Benchmark Replacement and (ii) the effectiveness of any Conforming Changes in connection with the use, administration, adoption or implementation of a Benchmark Replacement. The Administrative Agent will promptly notify the Borrower of (x) the removal or reinstatement of any tenor of a Benchmark pursuant to SECTION 3.3(e) and (y) the commencement of any Benchmark Unavailability Period. Any determination, decision or election that may be made by the Administrative Agent or, if applicable, any Lender (or group of Lenders) pursuant to this SECTION 3.3, including any determination with respect to a tenor, rate or adjustment or of the occurrence or non-occurrence of an event, circumstance or date and any decision to take or refrain from taking any action or any selection, will be conclusive and binding absent manifest error and may be made in its or their sole discretion and without consent from any other party to this Agreement or any other Loan Document, except, in each case, as expressly required pursuant to this SECTION 3.3.

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

SECTION 3.4 Increased Cost and Reduced Return; Capital Adequacy; Reserves.

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

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

(ii) subject any Lender to any tax of any kind whatsoever with respect to this Agreement or any SOFR Loan made by it, or change the basis of taxation of payments to such Lender in respect thereof (except for Taxes covered by SECTION 3.1 and any taxes and other amounts described in clauses (i) through (viii) of the first sentence of SECTION 3.1(a) that are imposed with respect to

payments for or on account of any Agent or any Lender under any Loan Document, and except for Other Taxes); or

(iii) impose on any Lender any other condition, cost or expense affecting this Agreement or SOFR Loans made by such Lender, in each case that is not otherwise accounted for in the definition of Adjusted Term SOFR or this *clause (a)*;

and the result of any of the foregoing shall be to increase the cost to such Lender of making or maintaining any Loan the interest on which is determined by reference to Term SOFR (or of maintaining its obligation to make any such Loan), or to increase the cost to such Lender, or to reduce the amount of any sum received or receivable by such Lender (whether of principal, interest or any other amount) then, from time to time within fifteen (15) days after demand by such Lender setting forth in reasonable detail such increased costs (with a copy of such demand to the Administrative Agent), the Borrower will pay to such Lender such additional amount or amounts as will compensate such Lender for such additional costs incurred or reduction suffered.

(b) *Capital Requirements.* If any Lender reasonably determines that any Change in Law affecting such Lender or any Lending Office of such Lender or such holding company, if any, regarding capital requirements has or would have the effect of reducing the rate of return on such capital or on the capital of such holding company, if any, as a consequence of this Agreement, the Commitments of such Lender or the Loans made by such Lender, to a level below that which such Lender or such Lender's holding company could have achieved but for such Change in Law (taking into consideration such policies and the policies of such holding company with respect to capital adequacy), then from time to time promptly following demand of such Lender setting forth in reasonable detail the charge and the calculation of such reduced rate of return (with a copy of such demand to the Administrative Agent), the Borrower will pay to such Lender, as the case may be, such additional amount or amounts as will compensate such Lender or such holding company for any such reduction suffered.

(c) *Certificates for Reimbursement.* A certificate of a Lender setting forth the amount or amounts necessary to compensate such Lender or its holding company, as the case may be, as specified in subsection (a) or (b) of this SECTION 3.4 and delivered to the Borrower shall be conclusive absent manifest error. The Borrower shall pay such Lender, as the case may be, the amount shown as due on any such certificate within ten (10) days after receipt thereof.

(d) *Delay in Requests.* Failure or delay on the part of any Lender to demand compensation pursuant to the foregoing provisions of this SECTION 3.4 shall not constitute a waiver of such right to demand such compensation, provided that the Borrower shall not be required to compensate a Lender pursuant to the foregoing provisions of this SECTION 3.4 for any increased costs incurred or reductions suffered more than one hundred eighty (180) days prior to the date that such Lender, as the case may be, notifies the Borrower in writing of the Change in Law giving rise to such increased costs or reductions and of such intention to claim compensation therefor (except that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the 180-day period referred to above shall be extended to include the period of retroactive effect thereof).

(e) *Reserves.* The Borrower shall pay to each Lender, as long as such Lender shall be required to comply with any reserve ratio requirement or analogous requirement of any central banking or financial regulatory authority imposed in respect of the maintenance of the Aggregate Commitments or the funding of the SOFR Loans, such additional costs (expressed as a percentage per annum and rounded upwards, if necessary, to the nearest five decimal places) equal to the actual costs allocated to such Commitment or Loan by such Lender (as determined by such Lender in good faith, which determination shall be conclusive absent manifest error), which shall be due and payable on each date on

which interest is payable on such Loan, provided the Company shall have received at least fifteen (15) days' prior notice (with a copy to the Administrative Agent) of such additional costs from such Lender. If a Lender fails to give notice fifteen (15) days prior to the relevant interest payment date, such additional costs shall be due and payable fifteen (15) days from receipt of such notice.

SECTION 3.5 [Reserved].

SECTION 3.6 Matters Applicable to All Requests for Compensation.

(a) *Designation of a Different Lending Office.* If any Lender requests compensation under SECTION 3.4, or the Borrower is required to pay any additional amount to any Lender, or any Governmental Authority for the account of any Lender pursuant to SECTION 3.1 or if any Lender gives a notice pursuant to SECTION 3.2, then such Lender shall, as applicable, use reasonable efforts to designate a different Lending Office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the judgment of such Lender, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to SECTION 3.1 or 3.4, as the case may be, in the future, or eliminate the need for the notice pursuant to SECTION 3.2, as applicable, and (ii) in each case, would not subject such Lender, as the case may be, to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender, as the case may be in any material economic, legal or regulatory respect.

(b) *Suspension of Lender Obligations.* If any Lender requests compensation by the Borrower under SECTION 3.4, the Borrower may, by notice to such Lender (with a copy to the Administrative Agent), suspend the obligation of such Lender to make or continue SOFR Loans from one Interest Period to another Interest Period, or to convert Base Rate Loans into SOFR Loans, until the event or condition giving rise to such request ceases to be in effect (in which case the provisions of SECTION 3.6(c) shall be applicable); provided that such suspension shall not affect the right of such Lender to receive the compensation so requested.

(c) *Conversion of SOFR Loans.* If any Lender gives notice to the Borrower (with a copy to the Administrative Agent) that the circumstances specified in SECTION 3.3 or 3.4 hereof that gave rise to the conversion of such Lender's SOFR Loans no longer exist (which such Lender agrees to do promptly upon such circumstances ceasing to exist) at a time when SOFR Loans made by other Lenders are outstanding, such Lender's Base Rate Loans shall be automatically converted, on the first day(s) of the next succeeding Interest Period(s) for such outstanding SOFR Loans, to the extent necessary so that, after giving effect thereto, all Loans are held pro rata (as to principal amounts, interest rate basis, and Interest Periods) in accordance with their respective Pro Rata Shares.

SECTION 3.7 Replacement of Lenders under Certain Circumstances. If (i) any Lender requests compensation under SECTION 3.4 or ceases to make SOFR Loans as a result of any condition described in SECTION 3.2, SECTION 3.3, or SECTION 3.4, (ii) the Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to SECTION 3.1, (iii) any Lender is a Non-Consenting Lender, (iv) any Lender is a Defaulting Lender or (v) any other circumstance exists hereunder that gives the Borrower the right to replace a Lender as a party hereto, then the Borrower may, at its sole expense and effort, upon notice to such Lender and the Administrative Agent, require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in, and consents required by, SECTION 12.2), all of its interests, rights and obligations under this Agreement and the related Loan Documents to one or more Eligible Assignees that shall assume such obligations (any of which assignee may be another Lender, if a Lender accepts such assignment), *provided that*:

(a) the Borrower shall have paid to the Administrative Agent the assignment fee (if any) specified in SECTION 12.2(b)(iv);

(b) such Lender shall have received payment of an amount equal to the outstanding principal of its Loans, accrued interest thereon, accrued fees and all other amounts payable to it hereunder and under the other Loan Documents from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrower (in the case of all other amounts);

(c) such Lender being replaced pursuant to this SECTION 3.7 shall (i) execute and deliver an Assignment and Assumption with respect to such Lender's Commitment and outstanding Loans, and (ii) deliver any DIP Term Notes evidencing such Loans to the Borrower or Administrative Agent (or a lost or destroyed note indemnity in lieu thereof); provided that the failure of any such Lender to execute an Assignment and Assumption or deliver such DIP Term Notes shall not render such sale and purchase (and the corresponding assignment) invalid and such assignment shall be recorded in the Register and the DIP Term Notes shall be deemed to be canceled upon such failure;

(d) the Eligible Assignee shall become a Lender hereunder and the assigning Lender shall cease to constitute a Lender hereunder with respect to such assigned Loans, Commitments and participations, except with respect to indemnification provisions under this Agreement, which shall survive as to such assigning Lender;

(e) in the case of any such assignment resulting from a claim for compensation under SECTION 3.4 or payments required to be made pursuant to SECTION 3.1, such assignment will result in a reduction in such compensation or payments thereafter; and

(f) such assignment does not conflict with applicable Laws.

In the event that (i) the Borrower or the Administrative Agent has requested that the Lenders consent to a departure or waiver of any provisions of the Loan Documents or agree to any amendment thereto, (ii) the consent, waiver or amendment in question requires the agreement of each Lender or all affected Lenders and (iii) the Required DIP Lenders have agreed to such consent, waiver or amendment, then any Lender who does not agree to such consent, waiver or amendment shall be deemed a "*Non-Consenting Lender*."

A Lender shall not be required to make any such assignment or delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling the Borrower to require such assignment and delegation cease to apply.

SECTION 3.8 Survival. All of the Borrower's obligations under this *Article III* shall survive termination of the Aggregate Commitments, repayment of all other Obligations hereunder and resignation of the Administrative Agent or the Collateral Agent.

ARTICLE IV. **CONDITIONS PRECEDENT**

SECTION 4.1 Effective Date. The effectiveness of this Agreement is subject to the satisfaction (or waiver in accordance with SECTION 12.1) of each of the following conditions:

(a) Credit Agreement and Other Loan Documents. The Administrative Agent (or its counsel) shall have received (i) from each party hereto either (A) a counterpart of this Agreement signed on behalf of such party or (B) written evidence reasonably satisfactory to the Administrative Agent (which may include facsimile or other electronic transmission of a signed signature page of this Agreement)

that such party has signed a counterpart of this Agreement and (ii) either (A) a counterpart of each other Loan Document signed on behalf of each party thereto or (B) written evidence reasonably satisfactory to the Administrative Agent (which may include facsimile or other electronic transmission of a signed signature page thereof) that each such party has signed a counterpart of such Loan Document.

(b) Closing Certificates; Certified Certificate of Incorporation; Good Standing Certificates. The Administrative Agent shall have received (i) a certificate of each Loan Party, dated as of the Effective Date and executed by its Secretary or Assistant Secretary, which shall (A) certify the resolutions of its Board of Directors, members or other body authorizing the execution, delivery and performance of the Loan Documents to which it is a party, (B) identify by name and title and bear the signatures of the officers of such Loan Party authorized to sign the Loan Documents to which it is a party and, in the case of each Borrower, its Financial Officers, (C) attach true, correct and complete copies of the Specified Liquidation Agreements as in effect on the Effective Date, together with all exhibits, schedules, amendments, supplements and modifications thereto and (D) attach the certificate or articles of incorporation or organization of each Loan Party certified by the relevant authority of the jurisdiction of organization of such Loan Party and certify that such certificate or articles of incorporation or organization are in full force and effect and there have been no amendments or modifications of such certificate or articles of incorporation or organization approved by the Loan Parties' stockholders or members or filed with the appropriate authority in each Loan Party's jurisdiction or incorporation or organization, as applicable, and (ii) a good standing certificate for each Loan Party from its jurisdiction of organization or the substantive equivalent available in the jurisdiction of organization for each Loan Party from the appropriate governmental officer in such jurisdiction.

(c) No Default Certificate. The Administrative Agent shall have received a certificate, signed by a Financial Officer of the Company, dated as of the Effective Date (i) stating that no Event of Default has occurred and is continuing and (ii) stating that the representations and warranties contained in the Loan Documents are true and correct in all material respects with the same effect as though made on and as of the date of such Funding Date (it being understood and agreed that any representation or warranty which by its terms is made as of a specified date is true and correct in all material respects only as of such specified date, and that any representation or warranty which is subject to any materiality qualifier or Material Adverse Effect is true and correct in all respects).

(d) Initial Budget. The Administrative Agent and the Lenders shall have received, and the Administrative Agent shall have approved, the Initial Budget.

(e) First Day Motions and Orders. All filed "first day" pleadings and "first day" orders filed on the Petition Date, shall be in form and substance reasonably acceptable to the Administrative Agent, and shall not be inconsistent, in any material respect, with the terms hereof. The Administrative Agent shall be satisfied that the Loan Documents and the Interim DIP Order shall be effective to create in favor of the Administrative Agent, for the benefit of the Secured Parties, a legal, valid, perfected and enforceable security interest and Lien upon the Collateral, with the priority set forth in the Interim DIP Order and the terms thereof.

(f) Interim DIP Order. (i) The Interim DIP Order shall be in full force and effect and shall not have been vacated, stayed, reversed, overturned, modified or amended in any respect without the prior written consent of the Administrative Agent and (ii) the Debtors shall be in compliance in all respects with the Interim DIP Order. Upon entry of the Interim DIP Order, the entry into this Agreement shall not violate any Law and shall not be enjoined, temporarily, preliminarily or permanently.

(g) Trustee or Examiner. No trustee or examiner with enlarged powers (beyond those set forth in Bankruptcy Code sections 1106(a)(3) and (4)) shall have been appointed with respect to the Debtors or their respective properties.

(h) Cash Management Order. The Cash Management Order reasonably acceptable to the Administrative Agent shall be in full force and effect and shall not have been reversed, vacated, stayed or subject to appeal, and shall not have been amended, restated, amended and restated, supplemented or otherwise modified without the prior written consent of the Administrative Agent (such consent not to be unreasonably withheld).

(i) Specified Liquidation Agreements. The Specified Liquidation Agreements (i) shall have been approved by the Bankruptcy Court and (ii) shall be in full force and effect.

(j) KYC. (i) The Administrative Agent shall have received all documentation and other information regarding the Borrower reasonably requested by it at least two (2) Business Days prior to the Petition Date in connection with applicable “know your customer” and anti-money laundering rules and regulations, including the USA PATRIOT Act and the Proceeds of Crime Act, and (ii) to the extent the Borrower qualifies as a “legal entity customer” under the Beneficial Ownership Regulation any Lender that has reasonably requested a Beneficial Ownership Certification in relation to the Borrower at least two (2) Business Days prior to the Petition Date shall have received such Beneficial Ownership Certification.

(k) Liens. The Administrative Agent shall have received the results of UCC, tax and judgment lien searches from each jurisdiction reasonably requested by the Administrative Agent, and such searches shall reveal no Liens (i) on the Specified Unencumbered Properties other than Liens (not securing Indebtedness for borrowed money) securing obligations in an aggregate amount not to exceed \$35,000, (ii) on Specified PropCo Properties other than a Lien securing obligations of PropCo Issuer under the PropCo Note and other Liens (not securing Indebtedness for borrowed money) securing obligations in an aggregate amount not to exceed \$35,000 and (iii) on any of the other assets of the Loan Parties except for Liens permitted by SECTION 9.1.

(l) Insurance. The Administrative Agent shall have received evidence of insurance coverage in form, scope, and substance reasonably satisfactory to the Administrative Agent and otherwise in compliance with the terms of SECTION 5.20 hereof.

SECTION 4.2 Each Credit Event. The obligation of each Lender to honor any request for a Borrowing is subject to the satisfaction, or waiver in accordance with SECTION 12.1, of the following conditions precedent:

(a) The Interim Funding Date shall occur on or prior to April [12], 2024.

(b) At the time of and immediately after giving effect to such Borrowing, the representations and warranties of the Loan Parties set forth in the Loan Documents shall be true and correct in all material respects with the same effect as though made on and as of the date of such Borrowing (it being understood and agreed that any representation or warranty which by its terms is made as of a specified date shall be required to be true and correct in all material respects only as of such specified date, and that any representation or warranty which is subject to any materiality qualifier or Material Adverse Effect shall be required to be true and correct in all respects).

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

(d) The Administrative Agent shall have received a fully executed and delivered Notice of Borrowing in accordance with the requirements hereof.

(e) The Lenders and the Administrative Agent shall have received all fees required to be paid on the Funding Date, and all reasonable expenses for which invoices have been presented (including the reasonable fees and expenses of legal counsel) within one (1) Business Day before the Funding Date (or such later date as the Borrower may reasonably agree).

(f) The Administrative Agent shall have received a certificate, signed by a Financial Officer of the Borrower, certifying as to clauses (b) and (c) above.

(g) With respect to the Borrowing of the Delayed Draw Term Loan only, in addition to the conditions set forth above, the following conditions:

(i) The Final Order Entry Date shall have occurred;

(ii) The Final DIP Order (x) shall have been entered on the docket of the Bankruptcy Court on the date that is on or before the Interim Facility Maturity Date, and (y) shall be in full force and effect and shall not have been vacated, stayed, reversed, overturned or modified in any respect without the written consent of the Administrative Agent; and

(iii) The Debtors shall be in compliance with the Final DIP Order.

Each Borrowing shall be deemed to constitute a representation and warranty by the Borrower on the date thereof as to the matters specified in this Section.

ARTICLE V. **REPRESENTATIONS AND WARRANTIES**

To induce the Lenders and the Administrative Agent to enter into this Agreement, each of Holdings and the Borrower represents and warrants each of the following to the Lenders and the Administrative Agent:

SECTION 5.1 Existence, Qualification and Power; Compliance with Laws. Each Loan Party and each of the Subsidiaries (a) is a Person duly organized or formed, validly existing and in good standing under the Laws of the jurisdiction of its incorporation or organization (to the extent such concept exists in such jurisdiction), (b) has all corporate or other organizational power and authority to, subject to the entry of the Interim DIP Order (and Final DIP Order, when applicable), (i) own its assets and carry on its business and (ii) execute, deliver and perform its obligations under the Loan Documents to which it is a party, (c) is duly qualified and in good standing (to the extent such concept exists) under the Laws of each jurisdiction where its ownership, lease or operation of properties or the conduct of its business requires such qualification, (d) is in compliance with all applicable Laws, orders, writs, injunctions and orders and (e) has all requisite governmental licenses, authorizations, consents and approvals to operate its business as currently conducted; except in each case referred to in clause (c), (d) or (e), to the extent that failure to do so would not reasonably be expected to result in, individually or in the aggregate, a Material Adverse Effect.

SECTION 5.2 Authorization; No Contravention.

(a) Upon entry of the Interim DIP Order (and Final DIP Order, when applicable), the execution, delivery and performance by each Loan Party of each Loan Document to which

such Person is a party have been duly authorized by all necessary corporate or other organizational action by such Person; and

(b) Neither the execution, delivery and performance by each Loan Party of each Loan Document to which such Person is a party nor the consummation of the Transaction will (i) contravene the terms of any of such Person's Constituent Documents, (ii) result in any breach or contravention of, or the creation of any Lien upon any of the property or assets of such Person or any of the Subsidiaries (other than as permitted by SECTION 9.1) under (A) any Contractual Obligation to which such Person is a party or by which such Person or its properties are bound or (B) any order, injunction, writ or decree of any Governmental Authority or any arbitral award to which such Person or its property is subject; or (iii) violate any applicable Law; except with respect to any breach, contravention or violation (but not creation of Liens) referred to in *clauses (ii) and (iii)*, to the extent that such breach, contravention or violation would not reasonably be expected to result in, individually or in the aggregate, a Material Adverse Effect.

SECTION 5.3 Governmental Authorization. No material approval, consent, exemption, authorization, or other action by, or notice to, or filing with, any Governmental Authority is required in connection with the execution, delivery or performance by, or enforcement against, any Loan Party of this Agreement or any other Loan Document, except for the entry of, and pursuant to the terms of, the Interim DIP Order (and Final DIP Order, when applicable).

SECTION 5.4 Binding Effect. This Agreement and each other Loan Document to which a Loan Party is a party has been duly executed and delivered by each Loan Party that is party thereto. Upon entry of the Interim DIP Order (and Final DIP Order, when applicable), this Agreement and each other Loan Document to which a Loan Party is a party constitutes a legal, valid and binding obligation of such Loan Party, enforceable against such Loan Party that is party thereto in accordance with its terms, except as such enforceability may be limited by Debtor Relief Laws and by general principles of equity and principles of good faith and fair dealing.

SECTION 5.5 [Reserved].

SECTION 5.6 Litigation. Except for the Cases, there are no actions, suits or proceedings by or before any arbitrator or Governmental Authority pending against or, to the knowledge of any Loan Party, threatened in writing against or affecting any Loan Party or any Subsidiary that is not subject to the automatic stay provisions of the Bankruptcy Code.

SECTION 5.7 Ownership of Property; Liens. Each Loan Party and each of the Subsidiaries has good record and marketable title in fee simple to, or valid leasehold interests in, or easements or other limited property interests in, all real property necessary in the ordinary conduct of its business, free and clear of all Liens except for (i) Liens permitted by SECTION 9.1 and (ii) where the failure to have such title or other interest would not reasonably be expected to result in, individually or in the aggregate, a Material Adverse Effect.

SECTION 5.8 Environmental Matters.

(a) Except as would not reasonably be expected to result in, individually or in the aggregate, a Material Adverse Effect, (i) each Loan Party and each of its Subsidiaries is in compliance with all Environmental Laws (including having obtained all Environmental Permits) and (ii) none of the Loan Parties or any of their respective Subsidiaries is subject to any pending, or to the knowledge of the Borrower, threatened Environmental Claim or any other Environmental Liability that remains outstanding or unresolved.

(b) None of the Loan Parties or any of their respective Subsidiaries has treated, stored, transported or disposed of Hazardous Materials at or from any currently or formerly operated real estate or facility relating to its business in a manner that would reasonably be expected to have a Material Adverse Effect.

SECTION 5.9 Taxes. Holdings, the Borrower and its Subsidiaries have timely filed all Federal and state and other tax returns and reports required to be filed under applicable Law, and have timely paid all Federal and state and other taxes, assessments, fees and other governmental charges (including satisfying their withholding tax obligations) levied or imposed on their properties, income or assets that have become due and payable which are not subject to the automatic stay provisions of the Bankruptcy Code.

SECTION 5.10 ERISA Compliance.

(a) Except as would not reasonably be expected to result in, individually or in the aggregate, a Material Adverse Effect, each Plan is in compliance with the applicable provisions of ERISA, the Code and other federal or state Laws.

(b) (i) No ERISA Event has occurred within the one-year period prior to the date on which this representation is made or deemed made; (ii) no Pension Plan has failed to satisfy the minimum funding standards (within the meaning of Section 412 of the Code or Section 302 of ERISA) applicable to such Pension Plan; (iii) none of the Loan Parties or any of their respective ERISA Affiliates has incurred, or reasonably expects to incur, any liability (and no event has occurred which, with the giving of notice under Section 4219 of ERISA, would result in such liability) under Sections 4201 et seq. or 4243 of ERISA with respect to a Multiemployer Plan; (iv) none of the Loan Parties or any of their respective ERISA Affiliates has engaged in a transaction that is subject to Sections 4069 or 4212(c) of ERISA; and (v) neither any Loan Party nor any ERISA Affiliate has been notified by the sponsor of a Multiemployer Plan that such Multiemployer Plan is in reorganization (within the meaning of Section 4242 of ERISA), insolvent (within the meaning of Section 4245 of ERISA) or has been determined to be in “endangered” or critical status (within the meaning of Section 432 of the Code or Section 305 of ERISA) and no such Multiemployer Plan is expected to be in reorganization, insolvent or endangered or critical status, except, with respect to each of the foregoing clauses of this SECTION 5.10(b), as would not reasonably be expected to result in, individually or in the aggregate, a Material Adverse Effect.

SECTION 5.11 Subsidiaries. As of the Effective Date, neither Holdings nor any other Loan Party has any Subsidiaries other than those specifically disclosed in *Schedule 5.11*, and all of the outstanding Equity Interests in the Borrower and the Subsidiaries (in each case, to the extent constituting Collateral) have been validly issued and are fully paid and (if applicable) nonassessable, and all Equity Interests owned by Holdings or any other Loan Party are owned free and clear of all security interests of any person except (i) those created under the Collateral Documents, under the Notes Collateral Documents (as defined in the Senior Notes Indenture) (which Liens shall be subject to the Intercreditor Agreement) and (ii) any other Lien that is permitted under SECTION 9.1. As of the Effective Date, *Schedule 5.11* (a) sets forth the name and jurisdiction of each Subsidiary and (b) sets forth the ownership interest of Holdings, the Borrower and any other Subsidiary in each Subsidiary, including the percentage of such ownership. Holdings and all of its Subsidiaries are Loan Parties except for the Specified Subsidiaries.

SECTION 5.12 Margin Regulations; Investment Company Act.

(a) As of the Effective Date, none of the Collateral is comprised of any Margin Stock. No Loan Party is engaged, principally or as one of its important activities, in the business of purchasing or carrying margin stock (within the meaning of Regulation U issued by the Federal Reserve

Board), or extending credit for the purpose of purchasing or carrying margin stock, and no proceeds of any Borrowings will be used for any purpose that violates Regulation U.

(b) Neither the Borrower nor any Guarantor is an “investment company” under the Investment Company Act of 1940.

SECTION 5.13 Disclosure. None of the written information and written data heretofore or contemporaneously furnished in writing by or on behalf of any Loan Party to any Agent or any Lender in connection with the transactions contemplated hereby and the negotiation of this Agreement or delivered hereunder or any other Loan Document when furnished and when taken as a whole contains any untrue statement of a material fact or omits to state any material fact necessary to make the statements contained therein, when taken as a whole, in the light of the circumstances under which such statements were made, not materially misleading; it being understood that for purposes of this SECTION 5.13, such information and data shall not include projections and pro forma financial information (including financial estimates, financial models, forecasts and other forward-looking information) or information of a general economic or general industry nature.

SECTION 5.14 Intellectual Property; Licenses, Etc. The Borrower and the Subsidiaries have good and marketable title to, or a valid license or right to use, all patents, patent rights, trademarks, servicemarks, trade names, copyrights, technology, software, know-how database rights, rights of privacy and publicity, licenses and other intellectual property rights that are necessary for the operation of their respective businesses as currently conducted and as proposed to be conducted (collectively, “*IP Rights*”), except where the failure to have any such title, license or other rights would not reasonably be expected to have a Material Adverse Effect. To the knowledge of the Borrower, the operation of the respective businesses of the Borrower or any of the Subsidiaries as currently conducted does not infringe upon, misuse, misappropriate or violate any rights held by any Person except for such infringements, misuses, misappropriations or violations that would not reasonably be expected to result in, individually or in the aggregate, a Material Adverse Effect.

SECTION 5.15 [Reserved]

SECTION 5.16 [Reserved].

SECTION 5.17 USA PATRIOT Act; Beneficial Ownership Certification.

(a) To the extent applicable, each of Holdings, the Borrower and its Subsidiaries is in compliance, in all material respects, with (i) the 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 (ii) the USA PATRIOT Act. No part of the proceeds of the Loans will be used by Holdings, the Borrower or any of their Subsidiaries, 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.

(b) None of the Borrower or any Subsidiary nor, to the knowledge of the Borrower, any director, officer, agent, employee or Affiliate of the Borrower or any Subsidiary, (i) is a person on the list of “Specially Designated Nationals and Blocked Persons” or (ii) is currently subject to any U.S. sanctions administered by the Office of Foreign Assets Control of the U.S. Treasury Department (“*OFAC*”); and the Borrower will not directly or indirectly use the proceeds of the Loans or the Letters of

Credit or otherwise knowingly make available such proceeds to any person, for the purpose of financing the activities of any person currently subject to any U.S. sanctions administered by OFAC.

(c) The information included in the Beneficial Ownership Certification with respect to any beneficial owner of the Borrower provided to the Administrative Agent or any Lender on the Effective Date is true and correct in all material respects.

SECTION 5.18 [Reserved].

SECTION 5.19 Use of Proceeds. The proceeds of Loans have been used and will be used in accordance with SECTION 8.9.

SECTION 5.20 Insurance. The insurance maintained by the Loan Parties complies with the requirements set forth in SECTION 8.5.

SECTION 5.21 Other Bankruptcy Matters.

(a) The Cases were commenced on the Petition Date, in accordance with applicable law and proper notice thereof under the circumstances, and proper notice under the circumstances of (i) the motion seeking approval of the Loan Documents and (ii) entry of the DIP Orders, as applicable, and the hearings for the approval of the Interim DIP Order have been held by the Bankruptcy Court.

(b) Upon the entry of the DIP Orders, each such DIP Order and the Loan Documents are sufficient to provide that the Obligations will constitute superpriority administrative expense claims and the Liens and security interests securing the Obligations shall be senior secured, valid, enforceable and automatically and properly perfected liens, having the priorities set forth herein and the DIP Orders.

(c) Each DIP Order, once entered, is in full force and effect and has not been reversed, modified, amended, stayed or vacated absent the written consent of the Administrative Agent.

SECTION 5.22 Administrative Priority. Pursuant to the terms of the applicable DIP Orders, the joint and several Obligations of the Loan Parties under this Agreement constitute DIP Superpriority Claims and shall be allowed superpriority administrative expense claims in the Cases under section 364(c)(1) of the Bankruptcy Code, having priority over all administrative expense claims, and unsecured claims against such Loan Parties now existing or hereafter arising, of any kind whatsoever, including, without limitation, all administrative expense claims of the kind specified in sections 503(b) and 507(a) of the Bankruptcy Code and all super-priority administrative expense claims granted to any other Person, subject only to the terms of the applicable DIP Orders and the Carve-Out.

SECTION 5.23 Prepetition Permitted Liens. All Prepetition Permitted Liens (other than Liens arising as a matter of law that are valid, non-avoidable, and senior in priority to the Prepetition ABL/FILO Liens (as defined in the DIP Orders) as of the Petition Date and properly perfected as of the Petition Date) are set forth on Schedule 9.1 hereto. None of the Liens permitted under SECTION 9.1 (other than Prepetition Permitted Liens and except as otherwise set forth in the DIP Orders) is senior to or *pari passu* with the Liens securing the Obligations.

ARTICLE VI.
[INTENTIONALLY OMITTED]

ARTICLE VII.
REPORTING COVENANTS

Until the Discharge of Obligations, Holdings and the Borrower shall, and shall cause each of the Subsidiaries to:

SECTION 7.1 Certain Reporting Requirements.

(a) Deliver to the Administrative Agent for prompt further distribution to each Lender each of the following and shall take the following actions:

(i) promptly on or before the deadlines specified in Annex A hereto, each of the reports and other information set forth on Annex A hereto;

(ii) promptly, within 2 Business Days (or such longer period agreed to by the Administrative Agent in its sole discretion), deliver all sales and marketing materials related to the sales process related to Dispositions of any real property of the Loan Parties;

(iii) promptly notify, within 3 Business Days (or such longer period agreed to by the Administrative Agent in its sole discretion), the Administrative Agent in writing of any party seeking relief from the Automatic Stay other than as expressly authorized under the DIP Orders;

(iv) as soon as reasonably practicable, but in no event less than two (2) days (or such shorter period agreed to by the Administrative Agent in its sole discretion) prior to any filing, copies of all material proposed pleadings, motions, applications, orders, financial information and other documents to be filed by or on behalf of the Loan Parties with the Bankruptcy Court that affect or may affect the Administrative Agent or the Lenders (other than the “first day” motions and proposed orders, any retention applications, declarations, or other similar pleadings), or distributed by or on behalf of the Loan Parties to any official or unofficial committee appointed or appearing in the Cases or any other party in interest;

(v) if not otherwise provided through the Bankruptcy Court’s electronic docketing system, as soon as reasonably available, promptly, within 2 Business Days (or such longer period agreed to by the Administrative Agent in its sole discretion), deliver to the Administrative Agent and the Lenders, copies of all final pleadings, motions, applications, orders, financial information and other documents (excluding privileged information, attorney work product, personally identifiable data, or other commercially sensitive information) distributed by or on behalf of the Loan Parties to any official or unofficial committee appointed or appearing in the Cases;

(vi) promptly, within 2 Business Days (or such longer period agreed to by the Administrative Agent in its sole discretion), upon the reasonable request of Administrative Agent from time to time, additional information relating to the Collateral, the business, legal, financial or corporate affairs of any Loan Party or any Subsidiary or compliance by any such Person with the terms of the Loan Documents to which it is a party, as the Administrative Agent may from time to time on its own behalf or on behalf of any Lender reasonably request in writing (it being agreed that the Borrower shall cooperate (and shall cause its CRO and other officers, Investment Advisor, Financial Advisor, Specified Liquidation Agents and its other advisors and representatives to cooperate) with Administrative Agent and Agent’s Advisors in connection with the foregoing, including granting access to information and records;

(vii) promptly, within 2 Business Days (or such longer period agreed to by the Administrative Agent in its sole discretion), following the Borrower's receipt thereof, copies of all reports delivered by the Specified Liquidation Agent pursuant to the Specified Liquidation Agreements; and

(viii) promptly, within 2 Business Days (or such longer period agreed to by the Administrative Agent in its sole discretion), deliver information and documentation reasonably requested by the Administrative Agent or any Lender in connection with the Beneficial Ownership Certification.

SECTION 7.2 Certificates; Other Information. Deliver to the Administrative Agent for prompt further distribution to each Lender:

(a) promptly after the same are publicly available, copies of all annual, regular, periodic and special reports, proxy statements and registration statements which Holdings or the Borrower or any Subsidiary files with the SEC or with any Governmental Authority that may be substituted therefor or with any national securities exchange, as the case may be (other than amendments to any registration statement (to the extent such registration statement, in the form it became effective, is delivered to the Administrative Agent), exhibits to any registration statement and, if applicable, any registration statement on Form S-8), and in any case not otherwise required to be delivered to the Administrative Agent pursuant to any other clause of this SECTION 7.2.

SECTION 7.3 Notices. Promptly, within 2 Business Days (or such longer period agreed to by the Administrative Agent in its sole discretion), after a Responsible Officer obtains actual knowledge thereof, notify the Administrative Agent:

- (a) of the occurrence of any Default;
- (b) any loss, damage, or destruction to the Collateral in the amount of \$1,000,000 or more, whether or not covered by insurance;
- (a) any indication that credit card issuers or credit card processors are implementing holdbacks or reserves of amounts due to any Loan Party; and
- (b) of (i) any dispute, litigation, investigation or proceeding between any Loan Party and any arbitrator or Governmental Authority, (ii) the filing or commencement of, or any material development in, any litigation or proceeding against any Loan Party or any Subsidiary, including pursuant to any applicable Environmental Laws or in respect of IP Rights, the occurrence of any noncompliance by any Loan Party or any of its Subsidiaries with, or liability under, any Environmental Law or Environmental Permit, or (iii) the occurrence of any ERISA Event that, in any such case referred to in *clauses (i), (ii) or (iii)*, has resulted or would reasonably be expected to result in a Material Adverse Effect.

Each notice pursuant to this SECTION 7.3 shall be accompanied by a written statement of a Responsible Officer of the Borrower setting forth details of the occurrence referred to therein and stating what action the Borrower has taken and proposes to take with respect thereto.

ARTICLE VIII. **AFFIRMATIVE COVENANTS**

Until the Discharge of Obligations, Holdings and the Borrower shall, and shall cause each of the Subsidiaries to:

SECTION 8.1 Preservation of Existence, Etc. (a) Preserve, renew and maintain in full force and effect its legal existence under the Laws of the jurisdiction of its organization and (b) take all reasonable action to obtain, preserve, renew and keep in full force and effect the rights, licenses, permits, privileges, franchises, patents, copyrights, trademarks and trade names material to the conduct of its business, except in the case of *clause (a)* or *(b)* to the extent (other than with respect to the preservation of the existence of Holdings and the Borrower) that failure to do so would not reasonably be expected to result in, individually or in the aggregate, a Material Adverse Effect or pursuant to any merger, consolidation, liquidation, dissolution or Disposition permitted by *Article IX*.

SECTION 8.2 Compliance with Laws, Etc. Comply in all material respects with its Constituent Documents and the requirements of all Laws (including, without limitation, ERISA and the USA PATRIOT Act), and all orders, writs, injunctions and decrees of any Governmental Authority applicable to it or to its business or property, except (a) if the failure to comply therewith would not reasonably be expected to result in, individually or in the aggregate, a Material Adverse Effect or (b) such compliance is subject to the automatic stay provisions of the Bankruptcy Code or any order of the Bankruptcy Court.

SECTION 8.3 [Reserved].

SECTION 8.4 Payment of Taxes, Etc. Subject to the Approved Budget (and any Permitted Variances), each Loan Party will, and will cause each Subsidiary to, pay or discharge all Taxes that are not subject to the automatic stay provisions of the Bankruptcy Code.

SECTION 8.5 Maintenance of Insurance. Maintain with insurance companies that the Borrower believes (in the good faith judgment of its management) are financially sound and reputable at the time the relevant coverage is placed or renewed, insurance with respect to its properties and business against loss or damage of the kinds customarily insured against by Persons engaged in the same or similar business, of such types and in at least such amounts (after giving effect to any self-insurance the Borrower believes (in the good faith judgment of its management) as is reasonable and prudent in light of the size and nature of its business), and will furnish to the Administrative Agent (for further delivery to the Lenders), upon written request from the Administrative Agent, information presented in reasonable detail as to the insurance so required to be carried. Each such policy of insurance shall, as appropriate, (i) name the Collateral Agent, on behalf of the Lenders, as an additional insured thereunder as its interests may appear with respect to any such required general liability insurance and/or (ii) in the case of each casualty insurance policy, contain a loss payable clause or endorsement that names the Collateral Agent, on behalf of the Lenders as mortgagee and the lender's loss payable thereunder.

SECTION 8.6 Inspection Rights. Permit officers, employees and designated representatives of the Administrative Agent and each Lender to visit and inspect any of its properties, to examine its corporate, financial and operating records, and make copies thereof or abstracts therefrom and to discuss its affairs, finances and accounts with its directors, officers, and independent public accountants (subject to such accountants' customary policies and procedures), all at the reasonable expense of the Borrower and at such reasonable times during normal business hours and as often as may be reasonably desired, upon reasonable advance notice to the Borrower. The Administrative Agent and the Lenders shall give the Borrower the opportunity to participate in any discussions with the Borrower's independent public accountants. Notwithstanding anything to the contrary in this SECTION 8.6, none of Holdings, the Borrower or any of the Subsidiaries will be required to disclose, permit the inspection, examination or making copies or abstracts of, or discussion of, any document, information or other matter that (a) in respect of which disclosure to the Administrative Agent or any Lender (or their respective representatives or contractors) is prohibited by Law or any bona fide arm's length third party contract or (b) is subject to attorney-client or similar privilege or constitutes attorney work product.

SECTION 8.7 Books and Records. Maintain proper books of record and account (a) in which entries that are full, true and correct in all material respects shall be made of all material financial transactions and matters involving the assets and business of Holdings, the Borrower or such Subsidiary, as the case may be, and (b) that permit financial statements in conformity with GAAP to be derived therefrom.

SECTION 8.8 Maintenance of Properties. Except if the failure to do so would not reasonably be expected to result in, individually or in the aggregate, a Material Adverse Effect, keep and maintain all of its material properties and equipment used in the operation of its business in good working order, repair and condition, ordinary wear and tear excepted and casualty or condemnation excepted.

SECTION 8.9 Use of Proceeds. The Company shall use the proceeds of the Loans in accordance with the Approved Budget (subject to any Permitted Variances) and the DIP Orders. Subject to entry of the Final DIP Order, the Company shall use the proceeds of the Roll-Up Term Loans to partially repay the Prepetition FILO Secured Obligations held by the Lenders (or their Affiliates and Approved Funds), in their capacities as Prepetition Secured Parties, in an amount equal to the amount of such proceeds, which shall reduce the principal amount of the Prepetition FILO Secured Obligations under the Prepetition Credit Agreement on a dollar-for-dollar basis.

SECTION 8.10 Compliance with Environmental Laws. Except, in each case, to the extent that the failure to do so would not reasonably be expected to result in, individually or in the aggregate, a Material Adverse Effect, (a) comply, and take all commercially reasonable actions to cause any lessees, tenants and subtenants to comply with all applicable Environmental Laws and Environmental Permits; (b) obtain and renew all Environmental Permits necessary for its operations and properties; and, (c) in each case to the extent required by applicable Environmental Laws, conduct any investigation, study, sampling and testing, and undertake any cleanup, removal, remedial or other action necessary to remove and clean up all Hazardous Materials from any of its properties, in accordance with the requirements of all applicable Environmental Laws.

SECTION 8.11 [Reserved].

SECTION 8.12 Further Assurances. At the reasonable expense of the Loan Parties, promptly upon reasonable request by the Administrative Agent or the Collateral Agent or as may be required by applicable law (i) correct any material defect or error that is discovered in the execution, acknowledgment, filing or recordation of any Collateral Document or other document or instrument relating to any Collateral, and (ii) do, execute, acknowledge, deliver, record, re-record, file, re-file, register and re-register any and all such further acts, deeds, certificates, assurances and other instruments as the Administrative Agent or Collateral Agent may reasonably request from time to time, in order to grant, preserve and perfect the security interests created or intended to be created by the Collateral Documents.

SECTION 8.13 Milestones. Each Loan Party will, and will cause each Subsidiary to, comply with the Milestones by the required dates set forth in Exhibit B to the Interim DIP Order. Other Bankruptcy Matters. Each Debtor shall comply with (a) the Approved Budget (subject to any Permitted Variances) and (b) all of the requirements and obligations set forth in (i) the DIP Orders (including, without limitation, paragraph 17 of the Interim DIP Order) and (ii) any other orders entered in the Cases to the extent relevant to the interests of the Lenders, in each case of clauses (i) and (ii), after the entry thereof.

SECTION 8.15 Loan Parties' Advisors. The Loan Parties shall retain additional advisors as may be reasonably requested by the Administrative Agent on terms and conditions reasonably satisfactory to the Administrative Agent. The Loan Parties shall continue to retain the Investment Advisor, the Financial Advisor and the Specified Liquidation Agents (collectively with the Investment Advisor, the

Financial Advisor, the Specified Liquidation Agents and any additional advisors, the “*Advisors*”) on terms and conditions reasonably satisfactory to the Administrative Agent. The Loan Parties and their representatives will reasonably cooperate with any such advisors. The Loan Parties hereby (i) authorize the Administrative Agent (and their respective agents and advisors) to communicate directly with the Advisors regarding any and all matters related to the Loan Parties and their Affiliates and (ii) authorize and direct each Advisor to provide copies of reports and other information or materials prepared by such Advisor as the Administrative Agent may reasonably request (in each case, subject to protection as necessary in respect of bona fide attorney-client privilege). The Loan Parties shall host periodic (at least on a weekly basis) telephonic conference calls with the Administrative Agent, the Lenders and the Agent’s Advisors, if requested by the Administrative Agent to discuss matters as the Administrative Agent may reasonably request. Notwithstanding anything to the contrary contained in this SECTION 8.15, none of the Loan Parties or the Advisors will be required to disclose or permit access to any document, information, or other matter (i) in respect of which disclosure to the Administrative Agent or any Lender (or their respective representatives or Agent’s Advisors) is prohibited by Law or any binding agreement that is not entered into in order to circumvent the terms of this Section or (ii) that is subject to attorney-client or similar privilege or that constitutes attorney work product.

SECTION 8.16 Chief Restructuring Officer. The Loan Parties shall retain and maintain at all times Chris Wells from A&M as the CRO on the same terms as specified in the Effective Date Resolutions and the retention agreements delivered to the Administrative Agent on the Effective Date or otherwise satisfactory to the Administrative Agent. The Loan Parties hereby (i) authorize the Administrative Agent (or their respective agents or advisors) to communicate directly with the CRO regarding any and all matters related to the Loan Parties, including, without limitation, all financial reports and projections developed, reviewed or verified by the CRO and all additional information, reports and statements reasonably requested by the Administrative Agent and (ii) authorize and direct the CRO to provide the Administrative Agent (or their respective agents or advisors) with copies of reports and other information or materials prepared by such CRO as the Administrative Agent may reasonably request. Notwithstanding anything to the contrary contained in this Section 8.16, none of the Loan Parties or the CRO will be required to disclose or permit access to any document, information, or other matter (A) in respect of which disclosure to the Administrative Agent or any Lender (or their respective representatives or advisors) is prohibited by Law or any binding agreement that is not entered into in order to circumvent the terms of this Section or (B) that is subject to attorney-client or similar privilege or that constitutes attorney work product.

ARTICLE IX.

NEGATIVE COVENANTS

Until the Discharge of Obligations, Holdings and the Borrower shall not, nor shall the Borrower permit any Subsidiary to:

SECTION 9.1 Liens. Create, incur, assume or suffer to exist any Lien upon any of its property, assets or revenues, whether now owned or hereafter acquired, other than the following:

- (a) Liens created pursuant to any DIP Order or Loan Document;
- (b) Liens for taxes, assessments or governmental charges that are not overdue for a period of more than thirty (30) days or that are not subject to penalties for non-payment or that are being contested in good faith and by appropriate actions for which appropriate reserves have been established in accordance with GAAP;

(c) statutory or common law Liens of landlords, carriers, warehousemen, mechanics, materialmen, repairmen, construction contractors or other like Liens or other customary Liens in favor of landlords, so long as, in each case, such Liens secure amounts not overdue for a period of more than thirty (30) days or, if more than thirty (30) days overdue, are unfiled and no other action has been taken to enforce such Lien or that are being contested in good faith and by appropriate actions, if adequate reserves with respect thereto are maintained on the books of the applicable Person in accordance with GAAP;

(d) pledges or deposits in the ordinary course of business in connection with workers' compensation, unemployment insurance and other social security legislation;

(e) (i) good faith deposits to secure the performance of bids, tenders, contracts and leases (other than Indebtedness for borrowed money), public or statutory obligations, surety, stay, customs and appeal bonds, performance bonds, other obligations of a like nature (including those to secure health, safety and environmental obligations) and deposits as security for contested taxes or import duties, in each case, incurred in the ordinary course of business and (ii) Liens in favor of issuers of performance and surety bonds or bid bonds or with respect to other regulatory requirements or letters of credit issued pursuant to the request of and for the account of a Loan Party in the ordinary course of business;

(f) easements, rights-of-way, restrictions (including zoning restrictions), encroachments, protrusions and other similar encumbrances, minor survey exceptions and title defects affecting real property or Liens incidental to the conduct of the business of such Person or to the ownership of its properties, in each case, that were not incurred in connection with Indebtedness and that, in the aggregate, do not in any case materially interfere with the ordinary conduct of the business of the Borrower and its Subsidiaries taken as a whole, or materially impair the use of the property for its intended purpose, and any other exceptions to title on the Mortgage Policies accepted by the Collateral Agent in accordance with this Agreement;

(g) Liens arising from judgments or orders for the payment of money not constituting an Event of Default under SECTION 10.1(g) and notices of *lis pendens* and associated rights related to litigation being contested in good faith by appropriate proceedings and for which adequate reserves have been made;

(h) leases, non-exclusive licenses, subleases or non-exclusive sublicenses granted to others in the ordinary course of business (including with respect to real property) which do not (i) interfere in any material respect with the business of the Borrower and its Subsidiaries, taken as a whole, or (ii) secure any Indebtedness;

(i) Liens (i) in favor of customs and revenue authorities arising as a matter of law to secure payment of customs duties in connection with the importation of goods in the ordinary course of business and (ii) other than Revolver Priority Collateral, on specific items of inventory or other goods (and the proceeds of the foregoing) of any Loan Party securing such Loan Party's obligations in respect of bankers' acceptances or letters of credit issued or created for the account of such Loan Party to facilitate the purchase, shipment or storage of such inventory or such other goods in the ordinary course of business;

(j) Liens on insurance policies and the proceeds thereof securing the financing of the premiums with respect thereto;

(k) any interest or title of a lessor, sublessor, licensor or sublicensor or secured by a lessor's, sublessor's, licensor's or sublicensor's interest under leases (other than Capitalized Leases) or licenses entered into by the Borrower or any of the Subsidiaries in the ordinary course of business;

(l) Liens arising out of conditional sale, title retention, consignment or similar arrangements for sale of goods entered into by Holdings, the Borrower or any of the Subsidiaries in the ordinary course of business;

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

(n) purported Liens evidenced by the filing of precautionary UCC financing statements or similar public filings;

(o) Liens (i) of a collecting bank arising under Section 4-208 of the UCC on the items in the course of collection and (ii) in favor of a banking or other financial institution arising as a matter of law encumbering deposits or other funds maintained with a financial institution (including the right of set off) and that are within the general parameters customary in the banking industry;

(p) rights of set-off against credit balances of the Borrower or any of its Subsidiaries with Credit Card Issuers or Credit Card Processors or amounts owing by such Credit Card Issuers or Credit Card Processors to the Borrower or any of its Subsidiaries in the ordinary course of business, but not rights of set-off against any other property or assets of the Borrower or any of its Subsidiaries pursuant to the Credit Card Agreements (as in effect on the Effective Date (as defined in the Prepetition Credit Agreement)) to secure the obligations of the Borrower or any of its Subsidiaries to the Credit Card Issuers or Credit Card Processors as a result of fees and chargebacks;

(q) Liens in favor of Debtors;

(r) Prepetition ABL Liens (as defined in the Interim DIP Order);

(s) Prepetition Notes Liens (as defined in the Interim DIP Order);

(t) Prepetition PropCo Liens (as defined in the Interim DIP Order); and

(u) other Liens approved in writing by the Administrative Agent in its sole discretion.

provided that Liens described in clauses (e) and (i)(ii) are permitted Liens under this SECTION 9.1 solely to the extent such Liens arose and were enforceable against Holdings or its Subsidiaries prior to the Petition Date. Notwithstanding any of the foregoing, no Lien described in SECTION 9.1 (other than Prepetition Permitted Liens and except as set forth in the DIP Orders) is senior to or pari passu with the Liens securing the Obligations.

SECTION 9.2 Investments

Make or hold any Investments, except:

(a) Investments by Holdings, the Borrower or any of the Subsidiaries in assets that are, and the use of, cash and Cash Equivalents;

(b) Investments in the ordinary course of business consisting of UCC Article 3 endorsements for collection or deposit and UCC Article 4 customary trade arrangements with customers consistent with past practices;

(c) Investments (including debt obligations and Equity Interests) received in connection with the bankruptcy, workout, recapitalization or reorganization of suppliers and customers or in settlement of delinquent obligations of, or other disputes with, customers, suppliers or other issuer of an Investment, in each case, in the ordinary course of business;

(d) Investments consisting of purchases and acquisitions of inventory, supplies, materials, services or equipment; and

(e) other Investments approved in writing by the Administrative Agent in its sole discretion.

For the avoidance of doubt, no Investment shall be made by any Loan Party to or in any Specified Subsidiary.

SECTION 9.3 Indebtedness.

Create, incur, assume or suffer to exist any Indebtedness or issue any Disqualified Equity Interest, other than:

(a) Indebtedness under the Loan Documents;

(b) Indebtedness existing on the Petition Date;

(c) Guarantees by the Borrower and the Subsidiaries in respect of Indebtedness of the Borrower or any of the Subsidiaries otherwise permitted hereunder (other than Guarantees by a Loan Party of Indebtedness of a Non-Loan Party and except that a Subsidiary that is not a Loan Party may not, by virtue of this SECTION 9.3(c), Guarantee Indebtedness that such Subsidiary could not otherwise incur under this SECTION 9.3); provided that if the Indebtedness being Guaranteed is subordinated to the Obligations, such Guarantee shall be subordinated to the Guaranty on terms (taken as a whole) at least as favorable to the Lenders as those contained in the subordination terms of such Indebtedness (taken as a whole);

(d) Indebtedness in respect of netting services, automatic clearinghouse arrangements, overdraft protections, employee credit card programs and other cash management and similar arrangements in the ordinary course of business and any Guarantees thereof;

(e) Indebtedness incurred by the Borrower or any of the Subsidiaries in respect of letters of credit, bank guarantees, bankers' acceptances, warehouse receipts or similar instruments issued or created in the ordinary course of business, including in respect of workers compensation claims, health, disability or other benefits to employees, former employees or their families or property, casualty or liability insurance or self-insurance or letters of credit in connection with the maintenance, or pursuant to the requirements, of environmental or other permits or licenses from Governmental Authorities, or other Indebtedness with respect to reimbursement-type obligations regarding workers compensation claims;

(f) Indebtedness (including reimbursement obligations with respect to letters of credit and bank guarantees) in respect of performance, bid, appeal and surety bonds and performance and completion guarantees and similar obligations provided by the Borrower or any of the Subsidiaries, in each case in the ordinary course of business or consistent with past practice or industry practice;

(g) other Indebtedness approved in writing by the Administrative Agent in its sole discretion

Notwithstanding the foregoing, and except for the Carve-Out as provided in the DIP Orders, no Indebtedness permitted under this SECTION 9.3 shall have an administrative expense claim status under the Bankruptcy Code that is senior to or *pari passu* with (x) the DIP Superpriority Claims or (y) the superpriority administrative expense claims of the Prepetition Administrative Agent and the Prepetition Secured Parties, in each case, as set forth herein and in the DIP Orders.

SECTION 9.4 Fundamental Changes. Merge, amalgamate, dissolve, liquidate, consolidate with or into or wind up or convert into another Person, or Dispose of (whether in one transaction or in a series of transactions) all or substantially all of its assets (whether now owned or hereafter acquired) to or in favor of any Person, except that any Subsidiary may Dispose of all or substantially all of its assets (upon voluntary liquidation or otherwise) to the Borrower or another Subsidiary; *provided* that if the transferor in such a transaction is a Loan Party, then the transferee must be a Loan Party.

SECTION 9.5 Dispositions.

(a) Other than with respect to Notes Priority Collateral, sell transfer, lease, encumber or otherwise Dispose of fee or leasehold interests in real property of Holdings or any of its Subsidiaries without the prior written consent of the Required DIP Lenders, which consent may be obtained in a bidding procedures or similar order entered by the Bankruptcy Court.

(b) No consent shall be implied from any other action, inaction, or acquiescence by the Required DIP Lenders or from any order of the Bankruptcy Court, but which consent may be obtained in a bidding procedures or similar order entered by the Bankruptcy Court.

Notwithstanding anything to the contrary contained herein, no Disposition shall be made by any Loan Party to any Specified Subsidiary.

SECTION 9.6 Restricted Payments. Declare or make, directly or indirectly, any Restricted Payment, except each Subsidiary may make Restricted Payments (a) to a Loan Party and (b) approved in writing by the Administrative Agent in its sole discretion.

SECTION 9.7 Change in Nature of Business. Engage in any material line of business substantially different from those lines of business conducted by Holdings, the Borrower and the Subsidiaries on the Effective Date or any business reasonably related or ancillary thereto.

SECTION 9.8 Transactions with Affiliates. Enter into any transaction of any kind with any Affiliate (other than Holdings) of the Borrower, whether or not in the ordinary course of business, other than:

- (a) transactions among Loan Parties;
- (b) the payment of reasonable and customary fees and reimbursement of expenses paid to, and indemnities provided on behalf of, directors, officers, employees and consultants of Holdings, the Borrower and the Subsidiaries or any direct or indirect parent of Holdings, in each case, in accordance with the Approved Budget (subject to any Permitted Variances);
- (c) Investments permitted under SECTION 9.2; and
- (d) Restricted Payments permitted under SECTION 9.6.

Notwithstanding anything to the contrary contained herein, no Investment or Disposition shall be made by any Loan Party to or in any Specified Subsidiary.

SECTION 9.9 [Reserved].

SECTION 9.10 [Reserved].

SECTION 9.11 Prepayments, Etc.

(a) Directly or indirectly, voluntarily purchase, redeem, defease or prepay any principal of, premium, if any, interest or other amount payable in respect of any Indebtedness prior to its scheduled maturity or otherwise satisfy prior to the scheduled maturity thereof, other than (i) the Obligations, (ii) other Indebtedness approved in writing by the Administrative Agent in its sole discretion or (iii) otherwise pursuant to an order of the Bankruptcy Court and in accordance with the Approved Budget (subject to any Permitted Variances).

(b) Without limiting any other provision hereof, except as set forth in the Approved Budget (subject to any Permitted Variances), without express prior written consent of the Administrative Agent and pursuant to an order of the Bankruptcy Court (including any DIP Order) after notice and a hearing, no Loan Party shall make any payment or transfer with respect to any Lien or Indebtedness incurred or arising prior to the Petition Date that is subject to the automatic stay provisions of the Bankruptcy Code whether by way of “adequate protection” under the Bankruptcy Code or otherwise.

SECTION 9.12 Modification of Agreements.

Amend, modify or change (a) any engagement letter with Financial Advisor, the Investment Advisor, the Specified Liquidation Agents or any other Advisor in any manner materially adverse to the interest of the Lenders without the consent of the Administrative Agent (not to be unreasonably withheld, delayed or conditioned) or (b) in any manner materially adverse to the interest of the Lenders (i) any Constituent Documents of Holdings, the Borrower or any Subsidiaries, (ii) any Specified Liquidation Agreement, (iii) any Sponsor Management Agreement or (iv) the Shareholders Agreement, in each case, without the consent of the Administrative Agent (not to be unreasonably withheld, delayed or conditioned).

SECTION 9.13 [Reserved].

SECTION 9.14 Disbursements. None of Holdings or any of its Subsidiaries shall make any disbursements other than those (and at times) set forth in the Approved Budget (subject to any Permitted Variances) or as otherwise permitted in accordance with the terms of the DIP Orders.

SECTION 9.15 Case Matters. None of Holdings or any of its Subsidiaries, except with the prior written consent of the Required DIP Lenders, shall:

(a) assert, file or seek, or consent to the filing or the assertion of or joinder in, or use any portion of the proceeds of the Loans, Obligations, the Collateral, the Carve-Out or cash collateral to compensate services rendered or expenses incurred in connection with, any claim, counterclaim, action, proceeding, order, application, pleading, motion, objection, any other papers or documents, defense (including offsets and counterclaims of any nature or kind), or other contested matter seeking the following relief (including any of the foregoing the purpose of which is to seek or the result of which would be to obtain any order, judgment, determination, declaration, or similar relief):

(i) avoiding, re-characterizing, recovering, reducing, subordinating (except pursuant to the DIP Orders), disallowing, or otherwise challenging (under Sections 105, 506(c), 542, 543, 544, 545, 547, 548, 549, 550, 551, 552(b), or 553 of the Bankruptcy Code or other applicable law), in each case, in whole or in part, the Obligations, the DIP Liens, the Prepetition FILO Secured Obligations, the Prepetition Credit Documents or the Prepetition ABL/FILO Liens; or reversing, modifying, amending, staying or vacating the DIP Orders, without the prior written consent of the Administrative Agent;

(ii) granting priority for any administrative expense, secured claim or unsecured claim against any Loan Party (now existing or hereafter arising of any kind or nature whatsoever, including, without limitation, any administrative expenses of the kind specified in, or arising or ordered under, Sections 105, 326, 327, 328, 330, 331, 503(b), 506(c), 507(a), 507(b), 546, 726, 1113 and 1114 of the Bankruptcy Code) equal or superior to the priority of the Administrative Agent and the Lenders in respect of the Obligations, except as provided under the Carve-Out or to the extent expressly permitted under the DIP Orders;

(iii) granting or imposing, under Section 364(c) or 364(d) of the Bankruptcy Code or otherwise, any additional financing under such sections or any Lien equal or superior to the priority of the DIP Liens except to the extent expressly permitted under the DIP Orders;

(iv) permitting the use of cash collateral as defined in Section 363 of the Bankruptcy Code, except as expressly permitted by the DIP Orders or this Agreement;

(v) modifying, altering, or impairing in any manner any of the DIP Liens or the Prepetition ABL/FILO Liens, or any of the Administrative Agent's, the Lenders' or the Prepetition Secured Parties' rights or remedies under the DIP Orders, this Agreement, any of the other Loan Documents, any of the Prepetition Credit Documents or any documents related thereto (including the right to demand payment of all Obligations and Adequate Protection Obligations, as applicable, and to enforce its Liens and security interests in the Collateral and the Prepetition Collateral, as applicable), whether by plan of reorganization or liquidation, order of confirmation, or any financings of, extensions of credit to, or incurring of debt by any Loan Party or otherwise, whether pursuant to Section 364 of the Bankruptcy Code or otherwise;

(vi) seek or consent to any order (i) dismissing any of the Cases under Sections 105, 305 or 1112 of the Bankruptcy Code or otherwise; (ii) converting any of the Cases to cases under Chapter 7 of the Bankruptcy Code; (iii) appointing a Chapter 11 trustee in any of the Cases; (iv) appointing an examiner with enlarged powers beyond those set forth in sections 1104(d) and 1106(a)(3) and (4) of the Bankruptcy Code in any of the Cases; or (v) granting a change of venue with respect to any Case or any related adversary proceeding;

(vii) make any payments or transfer any property on account of claims asserted by any vendors of any Loan Party for reclamation in accordance with Section 2-702 of any applicable UCC and Section 546(c) of the Bankruptcy Code, unless otherwise ordered by the Bankruptcy Court upon prior notice to the Administrative Agent;

(viii) return any inventory or other property to any vendor pursuant to Section 546(g) of the Bankruptcy Code, unless otherwise ordered by the Bankruptcy Court in accordance with Section 546(g) of the Bankruptcy Code upon prior notice to the Administrative Agent; or

(ix) (i) make payments under any management incentive plan or on account of claims or expenses arising under section 503(c) of the Bankruptcy Code, except, in each case,

in amounts and on terms and conditions that (I) are approved by order of the Bankruptcy Court after notice and hearing, (II) are within the limits of the Approved Budget (subject to any Permitted Variances), and (III) as approved in writing by the Administrative Agent.

ARTICLE X.
EVENTS OF DEFAULT

SECTION 10.1 Events of Default. Each of the events referred to in *clauses (a) through (l)* of this SECTION 10.1 shall constitute an “*Event of Default*”:

(a) Non-Payment. The Borrower fails to pay (i) when due, any amount of principal of any Loan or (ii) within two (2) Business Days after the same becomes due, any interest on any Loan or any other amount (excluding any principal) payable hereunder or with respect to any other Loan Document; or

(b) Specific Covenants.

(i) Holdings or any Subsidiary fails to perform or observe any term, covenant or agreement contained in (A) SECTION 7.1, SECTION 7.2, SECTION 7.3, SECTION 8.1(a) (solely with respect to the Borrower), SECTION 8.9, SECTION 8.13, SECTION 8.14, SECTION 8.15 or (B) Article IX; or

(ii) the Borrower or any other Loan Party fails to perform or observe (or to cause to be performed or observed) any covenant or agreement contained in SECTION 8.5 and such failure continues for ten (10) Business Days after receipt by the Borrower of written notice thereof from the Administrative Agent; or

(c) Other Defaults.

(i) Any Loan Party fails to perform or observe any other covenant or agreement (not specified in SECTION 10.1(a) or (b) above) contained in any Loan Document on its part to be performed or observed and such failure continues for thirty (30) days after receipt by the Borrower of written notice thereof from the Administrative Agent; or

(d) Representations and Warranties. Any representation, warranty, certification or statement of fact made or deemed made by any Loan Party herein, in any other Loan Document, or in any document required to be delivered in connection herewith or therewith shall be untrue in any material respect when made or deemed made; or

(e) Specified Liquidation Agreements. Any Loan Party shall fail to comply in any material respect with the terms of any Specified Liquidation Agreement for the Specified Store Closing Sales and RE Sales or any Specified Liquidation Agreement for the Specified Store Closing Sales and RE Sales shall be amended or modified in a manner which is materially adverse to the Lenders without the Administrative Agent’s consent; or

(f) [reserved]; or

(g) Judgments. There is entered against any Loan Party or any Subsidiary a final judgment or order for the payment of money in an aggregate amount exceeding \$2,000,000 (to the extent not covered by independent third-party insurance as to which the insurer has been notified of such judgment or order and has not denied or failed to acknowledge coverage thereof and not subject to automatic

stay or other order of the Bankruptcy Court) and such judgment or order shall not have been satisfied, vacated, discharged or stayed or bonded pending an appeal for a period of sixty (60) consecutive days; or

(h) Challenge. Any Person in interest files any Challenge (as defined in the DIP Orders); or

(i) Invalidity of Loan Documents. Any material provision of any Loan Document at any time after its execution and delivery by any Loan Party and for any reason other than as expressly permitted hereunder or thereunder (including as a result of a transaction permitted under SECTION 9.4) or the Discharge of Obligations, ceases to be in full force and effect; or any Loan Party contests in writing the validity or enforceability of any provision of any such Loan Document; or any Loan Party denies in writing that it has any or further liability or obligation under any such Loan Document (other than as a result of the Discharge of Obligations), or purports in writing to revoke or rescind any such Loan Document; or

(j) Collateral Documents. Any Collateral Document shall for any reason cease to create, or any Lien purported to be created by any Collateral Document shall be asserted in writing by any Loan Party not to be, a valid and perfected Lien, with the requisite priority as set forth in the DIP Orders; or

(k) any of the following shall have occurred in the Cases:

(i) the bringing of a motion or application by any Debtor in any of the Cases, or the entry of any order by the Bankruptcy Court in any of the Cases: (A) to obtain additional post-petition financing under section 364(c) or (d) of the Bankruptcy Code that does not provide for the indefeasible repayment of all Obligations under this Agreement and Prepetition FILO Secured Obligations under the Prepetition Credit Agreement in full in cash immediately upon the consummation of such financing without the prior written consent of the Required DIP Lenders; (B) to grant any Lien, other than Liens expressly permitted under this Agreement or the DIP Orders upon or affecting any Collateral; or (C) except as provided in this Agreement or the DIP Orders, to use cash collateral of the Administrative Agent and the Lenders under section 363(c) of the Bankruptcy Code or any equivalent provision of the relevant applicable law without the prior written consent of the Administrative Agent (at the direction of the Required DIP Lenders) and the Required DIP Lenders; or

(ii) the filing of any plan of reorganization or disclosure statement attendant thereto, or any amendment, modification or supplement to such plan or disclosure statement, by any Debtor, other than a Chapter 11 plan that has been consented to by the Administrative Agent (an "*Approved Plan*"); or

(iii) the entry of an order in the Cases amending, supplementing, staying, vacating or otherwise modifying any Loan Document or any DIP Order without the prior written consent of the Required DIP Lenders; or

(iv) the payment of, or application by any Debtor for authority to pay, any prepetition claim without the prior written consent of the Required DIP Lenders other than amounts set forth in the Approved Budget (subject to any Permitted Variances); or

(v) the entry of an order by the Bankruptcy Court appointing, or the filing of a motion or application by any Debtor for an order seeking the appointment of, in either case, without the prior consent of the Required DIP Lenders, a trustee in the Cases or the appointment of an examiner under section 1104 of the Bankruptcy Code or otherwise in the Cases; or

(vi) the dismissal of any of the Cases, or if any Debtor files a motion or other pleading seeking the dismissal of the Cases, in each case, without the prior written consent of the Required DIP Lenders; or

(vii) the conversion of any of the Cases from one under Chapter 11 of the Bankruptcy Code to one under Chapter 7 of the Bankruptcy Code, or if any Debtor files a motion or other pleading seeking the conversion of any of the Cases under section 1112 of the Bankruptcy Code or otherwise; or

(viii) any Debtor files, without the prior written consent of the Administrative Agent, a motion or application seeking, or the entry of an order by the Bankruptcy Court granting relief from or modifying the automatic stay provisions of the Bankruptcy Code, (x) to allow any creditor to execute upon or enforce a Lien on any Collateral not in accordance with the terms hereof, or (y) with respect to any Lien of or the granting of any Lien on any Collateral to any state, provincial or local environmental or regulatory agency or authority having priority over the Liens in favor of the Administrative Agent; or

(ix) any (a) Debtor files a motion or application seeking, or the entry of an order precluding the Administrative Agent or the Prepetition Administrative Agent (or its respective designee) from having the right to or being permitted to “credit bid” any amount of the Obligations or Prepetition ABL/FILO Secured Obligations, respectively with respect to the assets of the Debtors, or (b) the Bankruptcy Court enters an order prohibiting, restricting, precluding, or otherwise impairing the unqualified right of the Administrative Agent or, after the conclusion of the Challenge Period (as defined in the DIP Orders), the Prepetition Administrative Agent (or their respective designees) from having the right to or being permitted to “credit bid” any amount of the Obligations or Prepetition ABL/FILO Secured Obligations, respectively, with respect to the assets of the Debtors; or

(x) the modification, reversal, vacation or stay of the effectiveness of the DIP Orders or any provision thereof without the prior written consent of the Required DIP Lenders; or

(xi) any Debtor shall make any payment or grant any form of adequate protection with respect to Indebtedness existing prior to the Petition Date (other than, in each case, as permitted under this Agreement, the DIP Orders or an Approved Plan or relief sought in any “first day” motions filed on the Petition Date).

SECTION 10.2 Remedies upon Event of Default.

(a) If any Event of Default occurs and is continuing, the Administrative Agent may with the consent of, and shall at the request of, the Required DIP Lenders take any or all of the following actions by notice to the Borrower:

(i) declare the Commitments of each Lender to be terminated, whereupon such Commitments and obligation shall be terminated;

(ii) declare the unpaid principal amount of all outstanding Loans, all interest accrued and unpaid thereon, and all other amounts owing or payable hereunder or under any other Loan Document (including the Exit Premium) to be immediately due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived by the Borrower; and

(iii) exercise on behalf of itself and the Lenders all rights and remedies available to it and the Lenders under the Loan Documents, the DIP Orders or applicable Law.

SECTION 10.3 Application of Funds.

(a) Subject to the DIP Orders, any and all payments with respect to the Obligations shall be applied as follows:

first, ratably to pay the Obligations in respect of any fees, expense reimbursements, indemnities and other amounts then due and payable to the Administrative Agent until paid in full;

second, ratably to pay the Obligations in respect of any fees (other than the Exit Premium) and indemnities then due and payable to the Lenders until paid in full;

third, ratably to pay interest then due and payable in respect of the Term Loans until paid in full;

fourth, ratably to pay the principal of the Term Loans until paid in full;

fifth, ratably, to pay the Obligation in respect of the Exit Premium then due and payable to the Lenders;

sixth, to the ratable payment of all other Obligations then due and payable until paid in full; and

seventh, to Company or as otherwise directed by applicable law.

(b) For purposes of SECTION 10.3(a), “paid in full” means payment in cash of all amounts due and payable under the Loan Documents in accordance with and subject to the terms and conditions thereof, including loan fees, service fees, professional fees, interest (and specifically including interest accrued after the commencement of any insolvency proceeding), default interest, interest on interest, and expense reimbursements, whether or not same would be or is allowed or disallowed in whole or in part in any insolvency proceeding.

ARTICLE XI.
THE ADMINISTRATIVE AGENT

SECTION 11.1 Appointment and Authorization.

(a) Each of the Lenders hereby irrevocably appoints TC LENDING, LLC to act on its behalf as the Administrative Agent hereunder and under the other Loan Documents and authorizes the Administrative Agent to take such actions on its behalf and to exercise such powers as are delegated to the Administrative Agent by the terms hereof or thereof, together with such actions and powers as are reasonably incidental thereto. The provisions of this Article XI (other than SECTIONS 11.6 and 11.11) are solely for the benefit of the Administrative Agent and the Lenders and the Borrower shall not have rights as a third party beneficiary of any such provision.

(b) The Administrative Agent shall also act as the “collateral agent” under the Loan Documents, and each of the Lenders hereby irrevocably appoints and authorizes the Administrative Agent to act as the agent of (and to hold any security interest created by the Collateral Documents for and on behalf of or in trust for) such Lender for purposes of acquiring, holding and enforcing any and all Liens on Collateral granted by any of the Loan Parties to secure any of the Obligations, together with such powers and discretion as are reasonably incidental thereto. In this connection, the Administrative Agent, as “collateral agent” and any co-agents, sub-agents and attorneys-in-fact appointed by the Administrative

Agent pursuant to SECTION 11.5 for purposes of holding or enforcing any Lien on the Collateral (or any portion thereof) granted under the Collateral Documents, or for exercising any rights and remedies thereunder at the direction of the Administrative Agent, shall be entitled to the benefits of all provisions of this Article XI and Article XII (including SECTIONS 11.3, 11.13, 12.3, 12.4 and 12.5, as though such co-agents, sub-agents and attorneys-in-fact were the “collateral agent” under the Loan Documents) as if set forth in full herein with respect thereto. Without limiting the generality of the foregoing, the Lenders hereby expressly authorize the Administrative Agent to execute any and all documents (including releases) with respect to the Collateral and the rights of the Secured Parties with respect thereto (including the Intercreditor Agreement), as contemplated by and in accordance with the provisions of this Agreement and the Collateral Documents and acknowledge and agree that any such action by any Agent shall bind the Lenders.

SECTION 11.2 Rights as a Lender. Any Person serving as an Agent (including as Administrative Agent) hereunder shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not an Agent and the term “Lender” or “Lenders” shall, unless otherwise expressly indicated or unless the context otherwise requires, include each Person serving as an Agent hereunder in its individual capacity. Such Person and its Affiliates may accept deposits from, lend money to, act as the financial advisor or in any other advisory capacity for and generally engage in any kind of business with the Borrower or any Subsidiary or other Affiliate thereof as if such Person were not an Agent hereunder and without any duty to account therefor to the Lenders. The Lenders acknowledge that, pursuant to such activities, any Agent or its Affiliates may receive information regarding any Loan Party or any of its Affiliates (including information that may be subject to confidentiality obligations in favor of such Loan Party or such Affiliate) and acknowledge that no Agent shall be under any obligation to provide such information to them.

SECTION 11.3 Exculpatory Provisions. No Agent (including the Administrative Agent) shall have any duties or obligations except those expressly set forth herein and in the other Loan Documents. Without limiting the generality of the foregoing, an Agent (including the Administrative Agent):

(a) shall not be subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing and without limiting the generality of the foregoing, the use of the term “agent” herein and in the other Loan Documents with reference to any Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable Law and instead, such term is used merely as a matter of market custom, and is intended to create or reflect only an administrative relationship between independent contracting parties;

(b) shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by the other Loan Documents that such Agent is required to exercise as directed in writing by the Required DIP Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Loan Documents), *provided* that no Agent shall be required to take any action that, in its opinion or the opinion of its counsel, may expose such Agent to liability or that is contrary to any Loan Document or applicable law; and

(c) shall not, except as expressly set forth herein and in the other Loan Documents, have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to the Borrower or any of its Affiliates that is communicated to or obtained by any Person serving as an Agent or any of its Affiliates in any capacity.

Neither the Administrative Agent shall be liable for any action taken or not taken by it (i) with the consent or at the request of the Required DIP Lenders (or such other number or percentage of the Lenders as shall be necessary, or as such Agent shall believe in good faith shall be necessary, under the

circumstances as provided in SECTIONS 12.1 and 12.2), or (ii) in the absence of its own gross negligence or willful misconduct as determined by the final judgment of a court of competent jurisdiction, in connection with its duties expressly set forth herein. The Administrative Agent shall not be deemed to have knowledge of any Default unless and until notice describing such Default is given to such Agent by the Borrower, a Lender.

No Agent-Related Person shall be responsible for or have any duty to ascertain or inquire into (i) any recital, statement, warranty or representation made in or in connection with this Agreement or any other Loan Document, (ii) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or therein or the occurrence of any Default, (iv) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Loan Document or any other agreement, instrument or document, or the creation, perfection or priority of any Lien purported to be created by the Collateral Documents, (v) the value or the sufficiency of any Collateral, or (vi) the satisfaction of any condition set forth in *Article IV* or elsewhere herein, other than to confirm receipt of items expressly required to be delivered to the Administrative Agent, or (vii) to inspect the properties, books or records of any Loan Party or any Affiliate thereof.

SECTION 11.4 Reliance by the Administrative Agent.

The Administrative Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing (including any electronic message, Internet or intranet website posting or other distribution) believed by it to be genuine and to have been signed, sent or otherwise authenticated by the proper Person. The Administrative Agent also may rely upon any statement made to it orally or by telephone and believed by it to have been made by the proper Person, and shall not incur any liability for relying thereon. In determining compliance with any condition hereunder to the making of a Loan that by its terms must be fulfilled to the satisfaction of a Lender, the Administrative Agent may presume that such condition is satisfactory to such Lender unless the Administrative Agent shall have received notice to the contrary from such Lender prior to the making of such Loan. The Administrative Agent may consult with legal counsel (who may be counsel for the Borrower), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

The Administrative Agent shall be fully justified in failing or refusing to take any action under any Loan Document unless the Administrative Agent shall first receive such advice or concurrence of the Required DIP Lenders as the Administrative Agent deems appropriate and, if the Administrative Agent so requests, the Administrative Agent shall first be indemnified to its satisfaction by the Lenders against any and all liability and expense which may be incurred by the Administrative Agent by reason of taking or continuing to take any such action. The Administrative Agent shall in all cases be fully protected in acting, or in refraining from acting, under this Agreement or any other Loan Document in accordance with a request or consent of the Required DIP Lenders (or such greater number or percentage of Lenders as may be expressly required hereby in any instance), and such request and any action taken or failure to act pursuant thereto shall be binding upon all the Lenders; provided that neither the Administrative Agent shall be required to take any action that, in the opinion of the Administrative Agent or in the opinion of their respective counsel, may expose the Administrative Agent to liability or that is contrary to any Loan Document or applicable Law.

SECTION 11.5 Delegation of Duties. The Administrative Agent may perform any and all of its duties and exercise its rights and powers hereunder or under any other Loan Documents by or through any one or more sub-agents appointed by the Administrative Agent. The Administrative Agent and any such sub-agent may perform any and all of its duties and exercise its rights and powers by or through their

respective Agent-Related Persons. The exculpatory provisions of this Article shall apply to any such sub-agent and to the Agent-Related Persons of the Administrative Agent and any such sub-agent, and shall apply to their respective activities in connection with the syndication of the credit facilities provided for herein as well as activities as Administrative Agent.

SECTION 11.6 Resignation of Administrative Agent or the Collateral Agent.

(a) The Administrative Agent or the Collateral Agent may at any time give notice of its resignation to the Lenders and the Borrower. Upon receipt of any such notice of resignation, the Required DIP Lenders shall have the right, with the consent of the Borrower at all times other than during the existence of an Event of Default under Section 10.1(a) (which consent of the Borrower shall not be unreasonably withheld or delayed), to appoint a successor, which shall be a Lender or a bank with an office in the United States, or an Affiliate of any such Lender or bank with an office in the United States. If no such successor shall have been so appointed by the Required DIP Lenders and shall have accepted such appointment within thirty (30) days after the retiring Administrative Agent or Collateral Agent, as applicable, gives notice of its resignation, then the retiring Administrative Agent or Collateral Agent, as applicable, may on behalf of the Lenders, with the consent of the Borrower at all times other than during the existence of an Event of Default under Section 10.1(a) (which consent of the Borrower shall not be unreasonably withheld or delayed), appoint a successor Administrative Agent or Collateral Agent, as applicable, meeting the qualifications set forth above; *provided* that if the Administrative Agent or Collateral Agent, as applicable, shall notify the Borrower and the Lenders that no qualifying Person has accepted such appointment, then such resignation shall nonetheless become effective in accordance with such notice and (1) the retiring Administrative Agent or Collateral Agent, as applicable, shall be discharged from its duties and obligations hereunder and under the other Loan Documents (except that in the case of any collateral security held by the Administrative Agent or the Collateral Agent on behalf of the Lenders under any of the Loan Documents, the retiring Administrative Agent or Collateral Agent, as applicable, shall continue to hold such collateral security until such time as a successor Administrative Agent or such Collateral Agent, as applicable, is appointed) and (2) all payments, communications and determinations provided to be made by, to or through the Administrative Agent shall instead be made by or to each Lender directly, until such time as the Required DIP Lenders with the consent of the Borrower at all times other than during the existence of an Event of Default (which consent of the Borrower shall not be unreasonably withheld or delayed) appoint a successor Administrative Agent as provided for above in this SECTION 11.6. Upon the execution and filing or recording of such financing statements, or amendments thereto, and such amendments or supplements to the Mortgages, and such other instruments or notices, as may be necessary or desirable, or as the Required DIP Lenders may request, in order to continue the perfection of the Liens granted or purported to be granted by the Collateral Documents, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring (or retired) Administrative Agent or Collateral Agent, as applicable, and the retiring Administrative Agent or Collateral Agent, as applicable, shall be discharged from all of its duties and obligations hereunder or under the other Loan Documents (if not already discharged therefrom as provided above in this SECTION). The fees payable by the Borrower to a successor Administrative Agent or Collateral Agent, as applicable, shall be the same as those payable to its predecessor unless otherwise agreed between the Borrower and such successor. After the retiring Administrative Agent's or Collateral Agent's, as applicable, resignation hereunder and under the other Loan Documents, the provisions of this Article and SECTIONS 12.3, 12.4 and 12.5 shall continue in effect for the benefit of such retiring Administrative Agent or Collateral Agent, as applicable, its sub agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while the retiring Administrative Agent or Collateral Agent, as applicable, was acting as Administrative Agent or Collateral Agent, as applicable.

SECTION 11.7 Non-Reliance on Administrative Agent and Other Lenders; Disclosure of Information by Agents. Each Lender acknowledges that no Agent-Related Person has made any

representation or warranty to it, and that no act by any Agent hereafter taken, including any consent to and acceptance of any assignment or review of the affairs of any Loan Party or any Affiliate thereof, shall be deemed to constitute any representation or warranty by any Agent-Related Person to any Lender as to any matter, including whether Agent-Related Persons have disclosed material information in their possession. Each Lender represents to each Agent that it has, independently and without reliance upon any Agent-Related Person and based on such documents and information as it has deemed appropriate, made its own appraisal of and investigation into the business, prospects, operations, property, financial and other condition and creditworthiness of the Loan Parties and their respective Subsidiaries, and all applicable bank or other regulatory Laws relating to the transactions contemplated hereby, and made its own decision to enter into this Agreement and to extend credit to the Borrower and the other Loan Parties hereunder. Each Lender also represents that it will, independently and without reliance upon the Administrative Agent or any other Lender or any of their Agent-Related Persons and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit analysis, appraisals and decisions in taking or not taking action under this Agreement and the other Loan Documents, and to make such investigations as it deems necessary to inform itself as to the business, prospects, operations, property, financial and other condition and creditworthiness of the Borrower and the other Loan Parties. Except for notices, reports and other documents expressly required to be furnished to the Lenders by any Agent herein, such Agent shall not have any duty or responsibility to provide any Lender with any credit or other information concerning the business, prospects, operations, property, financial and other condition or creditworthiness of any of the Loan Parties or any of their respective Affiliates which may come into the possession of any Agent-Related Person.

SECTION 11.8 [Reserved].

SECTION 11.9 [Reserved].

SECTION 11.10 Administrative Agent May File Proofs of Claim. In case of the pendency of any proceeding under any Debtor Relief Law or any other judicial proceeding relative to any Loan Party, the Administrative Agent (irrespective of whether the principal of any Loan shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Administrative Agent shall have made any demand on the Borrower) shall be entitled and empowered, by intervention in such proceeding or otherwise:

(a) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans and all other Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Lenders and the Administrative Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of the Lenders and the Administrative Agent and their respective agents and counsel and all other amounts due the Lenders and the Administrative Agent under SECTIONS 2.12, 12.3 and 12.4) allowed in such judicial proceeding; and

(b) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same; and

(c) any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender to make such payments to the Administrative Agent and, in the event that the Administrative Agent shall consent to the making of such payments directly to the Lenders, to pay to the Administrative Agent any amount due for the reasonable compensation, expenses, disbursements and advances of the Agents and their respective agents and counsel, and any other amounts due the Administrative Agent under SECTIONS 2.12, 12.3 and 12.4.

Nothing contained herein shall be deemed to authorize the Administrative Agent to authorize or consent to or accept or adopt on behalf of any Lender any plan of reorganization, arrangement, adjustment or composition affecting the Obligations or the rights of any Lender to authorize the Administrative Agent to vote in respect of the claim of any Lender in any such proceeding.

SECTION 11.11 Collateral and Guaranty Matters.

Each of the Lenders irrevocably authorizes the Administrative Agent and the Collateral Agent, and each of the Administrative Agent and the Collateral Agent agrees that it will:

(a) release any Lien on any property granted to or held by the Administrative Agent or the Collateral Agent under any Loan Document (i) upon the Discharge of Obligations, (ii) at the time the property subject to such Lien is transferred or to be transferred as part of or in connection with any transfer permitted hereunder or under any other Loan Document (including in connection with a Permitted Sale-Leaseback Transaction) to any Person other than Holdings, the Borrower or any of the Guarantors, (iii) subject to SECTION 12.1, if the release of such Lien is approved, authorized or ratified in writing by the Required DIP Lenders, or (iv) if the property subject to such Lien is owned by a Guarantor, upon release of such Guarantor from its obligations under its Guaranty pursuant to clause (c) below; and

(b) release any Guarantor from its obligations under the Guaranty if (i) in the case of any Subsidiary, such Person ceases to be a Subsidiary as a result of a transaction or designation permitted hereunder or (ii) in the case of Holdings, as a result of a transaction permitted hereunder.

Upon request by the Administrative Agent at any time, the Required DIP Lenders will confirm in writing the Collateral Agent's authority to release or subordinate its security interest in particular types or items of property, or to release any Guarantor from its obligations under the Guaranty pursuant to this SECTION 11.11.

Notwithstanding the foregoing, in each case as specified in this SECTION 11.11, the applicable Agent will (and each Lender irrevocably authorizes the applicable Agent to), at the Borrower's expense, promptly execute and deliver to the applicable Loan Party such documents as such Loan Party may reasonably request to evidence the release or subordination of such item of Collateral from the assignment and security interest granted under the Collateral Documents, or to evidence the release of such Guarantor from its obligations under the Guaranty, in each case in accordance with the terms of the Loan Documents and this SECTION 11.11.

In connection with the delivery of any such release or subordination documentation by the Administrative Agent pursuant to this SECTION 11.11, the Borrower shall have delivered to the Administrative Agent, prior to the date of the proposed release or subordination, a written request for release or subordination identifying the relevant Guarantor and/or Collateral and the terms of the sale or other disposition or transaction in reasonable detail, including such other information as the Administrative Agent shall reasonably request, together with a certification by the Borrower stating that such transaction is in compliance with this Agreement and the other Loan Documents.

SECTION 11.12 [Reserved].

SECTION 11.13 Indemnification of Agents.

Whether or not the transactions contemplated hereby are consummated, the Lenders shall indemnify upon demand the Administrative Agent and each other Agent-Related Person (solely to the extent any such Agent-Related Person was performing services on behalf of the Administrative Agent) (to

the extent not reimbursed by or on behalf of any Loan Party and without limiting the obligation, if any, of any Loan Party to do so), pro rata, and hold harmless the Administrative Agent and each other Agent-Related Person (solely to the extent any such Agent-Related Person was performing services on behalf of the Administrative Agent) from and against any and all Indemnified Liabilities incurred by it; provided that no Lender shall be liable for the payment to any Agent-Related Person of any portion of such Indemnified Liabilities resulting from such Agent-Related Person's own gross negligence or willful misconduct, as determined by the final judgment of a court of competent jurisdiction; provided that no action taken in accordance with the directions of the Required DIP Lenders (or such other number or percentage of the Lenders as shall be required by the Loan Documents) shall be deemed to constitute gross negligence or willful misconduct for purposes of this SECTION 11.13. In the case of any investigation, litigation or proceeding giving rise to any Indemnified Liabilities, this SECTION 11.13 applies whether any such investigation, litigation or proceeding is brought by any Lender or any other Person. Without limitation of the foregoing, each Lender shall reimburse the Administrative Agent upon demand for its ratable share of any costs or out-of-pocket expenses (including Attorney Costs) incurred by the Administrative Agent in connection with the preparation, execution, delivery, administration, modification, amendment or enforcement (whether through negotiations, legal proceedings or otherwise) of, or legal advice in respect of rights or responsibilities under, this Agreement, any other Loan Document, or any document contemplated by or referred to herein, to the extent that the Administrative Agent is not reimbursed for such expenses by or on behalf of the Borrower, provided that such reimbursement by the Lenders shall not affect the Borrower's continuing reimbursement obligations (if any) with respect thereto, provided further that the failure of any Lender to indemnify or reimburse the Administrative Agent shall not relieve any other Lender of its obligation in respect thereof. The undertaking in this SECTION 11.13 shall survive termination of the Aggregate Commitments, the payment of all other Obligations and the resignation of the Administrative Agent.

ARTICLE XII. **MISCELLANEOUS**

SECTION 12.1 Amendments, Etc. Except as otherwise set forth in this Agreement, no amendment or waiver of any provision of this Agreement or any other Loan Document, and no consent to any departure by the Borrower or any other Loan Party therefrom, shall be effective unless in writing signed by the Required DIP Lenders and the Borrower or the applicable Loan Party, as the case may be, and acknowledged by the Administrative Agent, and each such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given; *provided* that, no such amendment, waiver or consent shall:

(a) extend or increase the Commitment of any Lender without the written consent of each Lender directly and adversely affected thereby (it being understood that (i) a waiver of any condition precedent set forth in SECTION 4.1 or SECTION 4.2 or (ii) the waiver of any Default, mandatory prepayment or mandatory reduction of the Commitments, in each case, shall not constitute an extension or increase of any Commitment of any Lender);

(b) postpone any date scheduled for, or reduce the amount of, any payment of principal or interest under SECTION 2.6 or 2.10 without the written consent of each Lender directly and adversely affected thereby (it being understood that (i) a waiver of any condition precedent set forth in SECTION 4.1 or SECTION 4.2, (ii) the waiver of any Default, mandatory prepayment or mandatory reduction of the Commitments or (iii) a waiver of applicability of any post-default increase in interest rates, in each case, shall not constitute a postponement of any date scheduled for the payment of principal or interest or a reduction in the amount of any payment of interest);

(c) reduce the principal of, or the rate of interest specified herein on, any Loan or (subject to clause (iii) of the second proviso to this SECTION 12.1) any fees or other amounts payable hereunder or under any other Loan Document without the written consent of each Lender directly and adversely affected thereby (it being understood that (i) a waiver of any condition precedent set forth in SECTION 4.1 or SECTION 4.2, (ii) the waiver of any Default, mandatory prepayment or mandatory reduction of the Commitments or (iii) a waiver of applicability of any post-default increase in interest rates, in each case, shall not constitute a reduction in the rate of interest);

(d) change any provision of this SECTION 12.1, the definition of “Required DIP Lenders” or any other provision specifying the number of Lenders or portion of the Loans or Commitments required to take any action under the Loan Documents without the written consent of each Lender directly and adversely affected thereby;

(e) other than in a transaction permitted under SECTION 9.4 or pursuant to SECTION 11.11, release all or substantially all of the Collateral in any transaction or series of related transactions (except as expressly permitted by the Collateral Documents or this Agreement), without the written consent of each Lender;

(f) other than in a transaction permitted under SECTION 9.4 or pursuant to SECTION 11.11, release all or substantially all of the Guarantors (except as expressly permitted by the Guaranty or this Agreement), without the written consent of each Lender directly and adversely affected thereby;

(g) without the prior written consent of all Lenders directly and adversely affected thereby, (i) subordinate the Obligations hereunder to any other Indebtedness, or (ii) except as provided by operation of applicable Law or in the Intercreditor Agreement or pursuant to SECTION 11.11, subordinate the Liens granted hereunder or under the other Loan Documents to any other Lien;

(h) change SECTION 12.7 or the order of the application of funds specified in SECTION 10.3 without the written consent of each Lender directly affected thereby;

and *provided further* that no amendment, waiver or consent shall, unless in writing and signed by the Administrative Agent in addition to the Lenders required above, affect the rights or duties of, or any fees or other amounts payable to, the Administrative Agent under this Agreement or any other Loan Document; *provided further* that no such agreement shall amend, modify or otherwise directly and adversely affect the rights or duties of the Administrative Agent or the Collateral Agent hereunder or under any other Loan Document without the prior written consent of the Administrative Agent or the Collateral Agent, as applicable. Notwithstanding anything to the contrary herein, no Defaulting Lender shall have any right to approve or disapprove any amendment, waiver or consent hereunder (and any amendment, waiver or consent which by its terms requires the consent of all Lenders or each affected Lender may be effected with the consent of the applicable Lenders other than Defaulting Lenders), except that (x) the Commitment of any Defaulting Lender may not be increased or extended without the consent of such Lender and (y) any waiver, amendment or modification requiring the consent of all Lenders or each affected Lender that by its terms affects any Defaulting Lender more adversely than other affected Lenders shall require the consent of such Defaulting Lender.

Notwithstanding anything to the contrary contained in this SECTION 12.1 or otherwise in this Agreement or any other Loan Document, this Agreement and any other Loan Document may be amended, supplemented or otherwise modified, or any provision thereof waived, with the consent of the Administrative Agent and the Borrower without the need to obtain the consent of any Lender, if such amendment, supplement, modification or waiver is delivered in order to (A) cure ambiguities, omissions,

mistakes or defects or (B) cause any Collateral Document to be consistent with this Agreement and the other Loan Documents and (iii) without the consent of any Lender, the Borrower and the Administrative Agent or any other collateral agent may enter into any amendment, supplement or modification of any Loan Document, or enter into any new agreement or instrument, to effect the granting, perfection, protection, expansion or enhancement of any security interest of the Secured Parties in any Collateral or additional property to become Collateral for the benefit of the Secured Parties or as required by local law to give effect to, or protect any security interests for the benefit of the Secured Parties, in any property or so that the security interests therein comply with applicable law or this Agreement or in each case to otherwise enhance the rights or benefits of any Lender under any Loan Document. The Administrative Agent shall make available to the Lenders copies of each such amendment or other modification to this Agreement.

If any Lender does not consent to a proposed amendment, waiver, consent or release with respect to any Loan Document that requires the consent of each Lender or each affected Lender and that has been approved by the Required DIP Lenders, the Borrower may replace such non-consenting Lender in accordance with SECTION 3.7; *provided* that such amendment, waiver, consent or release can be effected as a result of the assignment contemplated by such Section (together with all other such assignments required by the Borrower to be made pursuant to this paragraph).

SECTION 12.2 Successors and Assigns.

(a) *Successors and Assigns Generally.* The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that neither Holdings nor the Borrower may assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the Administrative Agent and each Lender and no Lender may assign or otherwise transfer any of its rights or obligations hereunder except (i) to an assignee in accordance with the provisions of *subsection (b)* of this Section, (ii) by way of participation in accordance with the provisions of *subsection (d)* of this Section, or (iii) by way of pledge or assignment of a security interest subject to the restrictions of *subsection (f)* of this Section, or (iv) to an SPC in accordance with the provisions of *subsection (g)* of this Section (and any other attempted assignment or transfer by any party hereto shall be null and void). Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants to the extent provided in *subsection (d)* of this Section and, to the extent expressly contemplated hereby, the Related Parties of each of the Administrative Agent and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) *Assignments by Lenders.* Any Lender may at any time assign to one or more assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitment and the Loans at the time owing to it); provided that any such assignment shall be subject to the following conditions:

(i) Minimum Amounts.

(1) in the case of an assignment of the entire remaining amount of the assigning Lender's the Loans at the time owing to it or in the case of an assignment to a Lender, an Affiliate of a Lender or an Approved Fund, no minimum amount need be assigned; and

(2) the principal outstanding balance of the portion of the Term Loan of the assigning Lender subject to each such assignment, determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Administrative Agent or, if "Trade Date" is specified in the Assignment and Assumption, as of the Trade Date, shall not be less than \$1,000,000 unless each of the Administrative Agent and, so long as no Event of Default has occurred and

is continuing, the Borrower otherwise consents (each such consent not to be unreasonably withheld, delayed or conditioned); *provided, however*, that concurrent assignments to members of an Assignee Group and concurrent assignments from members of an Assignee Group to a single Eligible Assignee (or to an Eligible Assignee and members of its Assignee Group) will be treated as a single assignment for purposes of determining whether such minimum amount has been met;

(ii) *Proportionate Amounts.* Each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement with respect to the Loans or the Commitment assigned;

(iii) *Required Consents.* No consent shall be required for any assignment except to the extent required by *subsection (b)(i)(2)* of this Section and, in addition:

(1) the consent of the Borrower (such consent not to be unreasonably withheld, delayed or conditioned) shall be required unless (1) an Event of Default under Section 10.1(a) has occurred and is continuing at the time of such assignment or (2) such assignment is to a Lender, an Affiliate of a Lender or an Approved Fund; *provided* that the Borrower shall be deemed to have consented to an assignment (including any consent required under *subsection (b)(i)(2)* of this Section) unless it shall have objected thereto by written notice (including via e-mail) to the Administrative Agent within ten (10) Business Days after having received written notice thereof from the Administrative Agent; and

(2) the consent of the Administrative Agent (such consent not to be unreasonably withheld, delayed or conditioned) shall be required if such assignment is to a Person that is not a Lender, an Affiliate of such Lender or an Approved Fund with respect to such Lender.

(iv) *Assignment and Assumption.* The parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Assumption, together with a processing and recordation fee of \$3,500; *provided, however*, that the Administrative Agent may, in its sole discretion, elect to waive such processing and recordation fee in the case of any assignment. The Eligible Assignee, if it is not a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire. All assignments shall be by novation.

(v) *No Assignment to Certain Persons.* No such assignment shall be made (A) to Holdings, the Borrower or any of the Borrower's Affiliates or Subsidiaries, (B) to any Defaulting Lender, or any Person who, upon becoming a Lender hereunder, would constitute any of the foregoing Persons described in this *clause (B)*, or (C) to a natural person.

(vi) *Certain Additional Payments.* In connection with any assignment of rights and obligations of any Defaulting Lender hereunder, no such assignment shall be effective unless and until, in addition to the other conditions thereto set forth herein, the parties to the assignment shall make such additional payments to the Administrative Agent in an aggregate amount sufficient, upon distribution thereof as appropriate (which may be outright payment, purchases by the assignee of participations or subparticipations, or other compensating actions, including funding, with the consent of the Borrower and the Administrative Agent, the applicable pro rata share of Loans previously requested but not funded by the Defaulting Lender, to each of which the applicable assignee and assignor hereby irrevocably consent), to (x) pay and satisfy in full all payment liabilities then owed by such Defaulting Lender to the Administrative Agent or any Lender hereunder (and interest accrued thereon) and (y) acquire (and fund as appropriate) its full pro rata share of all Loans in accordance with its Pro Rata Share. Notwithstanding the foregoing, in the event that any assignment of rights and obligations of any Defaulting Lender hereunder shall become effective under applicable Law without compliance with the provisions of this paragraph,

then the assignee of such interest shall be deemed to be a Defaulting Lender for all purposes of this Agreement until such compliance occurs.

Subject to acceptance and recording thereof by the Administrative Agent pursuant to *clause (c)* of this Section, from and after the date of acceptance specified in each Assignment and Assumption, the assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto but shall continue to be entitled to the benefits of SECTIONS 3.1, 3.4, 12.3, 12.4 and 12.5 with respect to facts and circumstances occurring prior to the effective date of such assignment). Upon request, and the surrender by the assigning Lender of its DIP Term Note, the Borrower (at its expense) shall execute and deliver a DIP Term Note to the assignee Lender. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this subsection shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with *subsection (d)* of this Section.

(c) *Register.* The Administrative Agent, acting solely for this purpose as a non-fiduciary agent of the Borrower, shall maintain at one of the Administrative Agent's Offices a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Commitments of, and principal amounts (and related interest amounts) of the Loans owing to, each Lender pursuant to the terms hereof from time to time (the "*Register*"). The entries in the Register shall be conclusive absent manifest error, and the Borrower, the Agents and the Lenders shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. In addition, the Administrative Agent shall maintain on the Register information regarding the designation, and revocation of designation, of any Lender as a Defaulting Lender. The Register shall be available for inspection by the Borrower, any Agent and any Lender, at any reasonable time and from time to time upon reasonable prior notice. This SECTION 12.2(c) and SECTION 2.7 shall be construed so that all Loans are at all times maintained in "registered form" within the meaning of Sections 163(f), 871(h)(2) and 881(c)(2) of the Code and any related Treasury regulations (or any other relevant or successor provisions of the Code or of such Treasury regulations).

(d) Any Lender may at any time, without the consent of, or notice to, the Borrower or the Administrative Agent, sell participations to any Person (other than a natural person, a Defaulting Lender or the Borrower or any of the Borrower's Affiliates or Subsidiaries) (each, a "*Participant*") in all or a portion of such Lender's rights and/or obligations under this Agreement (including all or a portion of its Commitment and/or the Loans; *provided* that (i) such Lender's obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (iii) the Borrower, the Agents, the other Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement.

Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and the other Loan Documents and to approve any amendment, modification or waiver of any provision of this Agreement or any other Loan Document; *provided* that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, waiver or other modification described in the first proviso to SECTION 12.1 (other than clause (d) thereof) that directly and adversely affects such Participant. Subject to subsection (e) of this Section, the Borrower agrees that each Participant shall be entitled to the

benefits of SECTION 3.1 (subject to the requirements of SECTIONS 3.1(b), (c) or (d), as applicable) and SECTION 3.4 to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to subsection (b) of this Section. To the extent permitted by applicable Law, each Participant also shall be entitled to the benefits of SECTION 12.6 as though it were a Lender, provided such Participant agrees to be subject to SECTION 12.7 as though it were a Lender.

(e) *Limitations upon Participant Rights.* A Participant shall not be entitled to receive any greater payment under SECTION 3.1 or 3.4 than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant, unless the sale of the participation to such Participant is made with the Borrower's express prior written consent to such sale. A Participant shall not be entitled to the benefits of SECTION 3.1 unless the Borrower is notified of the participation sold to such Participant (provided, that the receipt of such notice without more shall not be deemed to imply or constitute the Borrower's consent to such sale for purposes of this Section or SECTION 3.1(e)) and such Participant agrees, for the benefit of the Borrower, to comply and does in fact comply with SECTION 3.1 as though it were a Lender. Each Lender that sells a participation shall (acting solely for this purpose as an agent of the Borrower) maintain a register complying with the requirements of Sections 163(f), 871(h) and 881(c)(2) of the Code and the Treasury regulations issued thereunder on which is entered the name and address of each Participant and the principal amounts (and stated interest) of each Participant's interest in the Loans or other obligations under this Agreement (the "*Participant Register*"). A Lender shall be obligated to disclose the Participant Register to any Person (including for the avoidance of doubt the Borrower and the Administrative Agent) to the extent such disclosure is necessary to establish that any Loan or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury regulations. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary.

(f) Any Lender may, at any time, pledge or assign a security interest in all or any portion of its rights under this Agreement to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank; *provided* that no such pledge or assignment shall release such Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

SECTION 12.3 Costs and Expenses. The Loan Parties agree (a) to pay or reimburse the Administrative Agent upon presentation of a summary statement for all reasonable, documented and invoiced out-of-pocket costs and expenses incurred in connection with the preparation, negotiation, syndication and execution of this Agreement and the other Loan Documents and any amendment, waiver, consent or other modification of the provisions hereof and thereof (whether or not the transactions contemplated thereby are consummated), and the consummation and administration of the transactions contemplated hereby and thereby, including, with respect to the Administrative Agent, all Attorney Costs of Proskauer Rose LLP and, if reasonably necessary, a single firm of local counsel in each relevant jurisdiction material to the interests of the Lenders taken as a whole (which may include a single special counsel acting in multiple jurisdictions), (b) to pay all reasonable, documented and invoiced out-of-pocket fees and expenses incurred by Administrative Agent's advisors (including M3 Advisory Partners, LP and a real estate advisor selected by Administrative Agent), and (c) to pay or reimburse the Administrative Agent and the Lenders for all reasonable, documented and invoiced out-of-pocket costs and expenses incurred in connection with the enforcement of any rights or remedies under this Agreement or the other Loan Documents (including all such reasonable, documented and invoiced out-of-pocket costs and expenses incurred during any legal proceeding, including any proceeding under any Debtor Relief Law, and including all Attorney Costs of a single firm of counsel to the Administrative Agent and the Lenders taken as a whole (and, if reasonably necessary, a single firm of local counsel in any relevant material jurisdiction (which may include a single special counsel acting in multiple jurisdictions)). Expenses being

reimbursed by the Loan Parties under this Section include, without limiting the generality of the foregoing, fees, costs and expenses incurred in connection with:

- (i) any attempt to enforce or prosecute any rights or remedies of the Administrative Agent against any or all of the Loan Parties or any other Person that may be obligated to the Administrative Agent or any Lender by virtue of any of the Loan Documents, including any such attempt to enforce any such remedies in the course of any work-out or restructuring of the Loans during the pendency of one or more Events of Default;
- (ii) any work-out or restructuring of the Loans during the pendency of one or more Events of Default;
- (iii) the obtaining of approval of the Loan Documents by the Bankruptcy Court; and
- (iv) the preparation and review of pleadings, documents and reports related to the Cases and any successor cases, attendance at meetings, court hearings or conferences related to the Cases and any successor cases, and general monitoring of the Cases and any successor cases.

The agreements in this SECTION 12.3 shall survive the termination of the Aggregate Commitments and repayment of all other Obligations. All amounts due under this SECTION 12.3 shall be paid promptly following receipt by the Borrower of an invoice relating thereto setting forth such expenses in reasonable detail. If any Loan Party fails to pay when due any costs, expenses or other amounts payable by it hereunder or under any Loan Document, such amount may be paid on behalf of such Loan Party by the Administrative Agent in its sole discretion.

SECTION 12.4 Indemnities. The Loan Parties shall indemnify and hold harmless the Agents, each Lender and their respective Affiliates, directors, officers, employees, agents, controlling persons and other representatives and the successors and permitted assigns of each of the foregoing (collectively the “*Indemnitees*”) from and against any and all liabilities, losses, damages, claims, and reasonable, documented and invoiced out-of-pocket fees and expenses (including Attorney Costs) of any kind or nature whatsoever which may at any time be imposed on, incurred by or asserted against any such Indemnatee in any way relating to or arising out of or in connection with (but limited, in the case of Attorney Costs, to the reasonable, documented and invoiced out-of-pocket fees, disbursements and other charges of a single firm of counsel to all Indemnitees taken as a whole and, if necessary, a single firm of local counsel for all Indemnitees taken as a whole in each appropriate jurisdiction (which may include a single firm of special counsel acting in multiple jurisdictions), and solely in the case of an actual or perceived conflict of interest, where the Indemnatee affected by such conflict informs the Borrower and thereafter retains its own counsel, one additional firm of counsel for each group of affected Indemnitees similarly situated taken as a whole) (i) the execution, delivery, enforcement, performance or administration of any Loan Document or any other agreement, letter or instrument delivered in connection with the transactions contemplated thereby or the consummation of the transactions contemplated thereby, (ii) any Commitment, Loan or the use or proposed use of the proceeds therefrom, or (iii) any actual or alleged presence or release of Hazardous Materials on or from any property currently or formerly owned or operated by the Borrower, any Subsidiary or any other Loan Party, or any Environmental Liabilities, in each case arising out of the activities or operations of the Borrower, any Subsidiary or any other Loan Party, or (iv) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory (including any investigation of, preparation for, or defense of any pending or threatened claim, investigation, litigation or proceeding) and regardless of whether any Indemnatee is a party thereto (all the foregoing, collectively, the “*Indemnified Liabilities*”); *provided* that such indemnity shall not, as to any Indemnatee, be available to the extent that such liabilities, losses, damages, claims, costs, expenses or

disbursements resulted from (A) (x) the gross negligence, bad faith or willful misconduct of such Indemnitee or of any Related Indemnified Person or (y) a breach of any obligations under any Loan Document by such Indemnitee or of any Related Indemnified Person, in each case, as determined by a final, non appealable judgment of a court of competent jurisdiction or (B) any dispute solely between or among Indemnitees other than any claims against an Indemnitee in its capacity or in fulfilling its role as an administrative agent or any similar role under the Facility (excluding their role as a Lender) and other than any claims arising out of any act or omission of the Borrower or any of its Affiliates. To the extent that the undertakings to indemnify and hold harmless set forth in this SECTION 12.4 may be unenforceable in whole or in part because they are violative of any applicable law or public policy, the Borrower shall contribute the maximum portion that it is permitted to pay and satisfy under applicable law to the payment and satisfaction of all Indemnified Liabilities incurred by the Indemnitees or any of them. No Indemnitee shall be liable for any damages arising from the use by others of any information or other materials obtained through IntraLinks or other similar information transmission systems in connection with this Agreement, nor shall any Indemnitee or any Loan Party or any Affiliate thereof have any liability for any special, punitive, indirect or consequential damages relating to this Agreement or any other Loan Document or arising out of its activities in connection herewith or therewith (whether before or after the Effective Date) (other than, in the case of any Loan Party, in respect of any such damages incurred or paid by an Indemnitee to a third party). In the case of an investigation, litigation or other proceeding to which the indemnity in this SECTION 12.4 applies, such indemnity shall be effective whether or not such investigation, litigation or proceeding is brought by any Loan Party, its directors, stockholders or creditors or an Indemnitee or any other Person, whether or not any Indemnitee is otherwise a party thereto and whether or not any of the transactions contemplated hereunder or under any of the other Loan Documents is consummated. All amounts due under this SECTION 12.4 shall be paid on demand after written demand thereof from the Administrative Agent or the Indemnitee entitled thereto. The agreements in this SECTION 12.4 shall survive the resignation of the Administrative Agent, the Collateral Agent, the replacement of any Lender, the termination of the Aggregate Commitments and the repayment, satisfaction or discharge of all the other Obligations. This SECTION 12.4 shall not apply to Taxes, or amounts excluded from the definition of Taxes pursuant to clauses (i) through (viii) of the first sentence of SECTION 3.1(a), that are imposed with respect to payments to or for account of any Agent or any Lender under any Loan Document, which shall be governed by SECTION 3.1. This SECTION 12.4 also shall not apply to Other Taxes or to taxes covered by SECTION 3.4.

SECTION 12.5 Limitation of Liability. The Loan Parties agree that no Indemnitee shall have any liability (whether in contract, tort or otherwise) to any Loan Party or any of their respective Subsidiaries or any of their respective equity holders or creditors for or in connection with the transactions contemplated hereby and in the other Loan Documents, except to the extent such liability is determined in a final non-appealable judgment by a court of competent jurisdiction to have resulted from such Indemnitee's gross negligence or willful misconduct or bad faith or breach by such Indemnitee of its material obligations under this Agreement. In no event shall any Loan Party, any Affiliate thereof, any other party hereto or any Indemnitee be liable on any theory of liability for any special, indirect, consequential or punitive damages (including any loss of profits, business or anticipated savings). Each party hereto hereby waives, releases and agrees (each for itself and on behalf of its Subsidiaries) not to sue upon any such claim for any special, indirect, consequential or punitive damages, whether or not accrued and whether or not known or suspected to exist in its favor.

SECTION 12.6 Right of Setoff.

If an Event of Default shall have occurred and be continuing, each Lender and each of its Affiliates is hereby authorized at any time and from time to time, after obtaining the prior written consent of the Administrative Agent, to the fullest extent permitted by applicable law, to set off and apply any and all deposits (general or special, time or demand, provisional or final, in whatever currency) at any time held

and other obligations (in whatever currency) at any time owing by such Lender or any such Affiliate to or for the credit or the account of the Borrower or any other Loan Party against any and all of the obligations of the Borrower or such other Loan Party now or hereafter existing under this Agreement or any other Loan Document to such Lender, irrespective of whether or not such Lender shall have made any demand under this Agreement or any other Loan Document and although such obligations of the Borrower or such Loan Party may be contingent or unmatured or are owed to a branch or office of such Lender different from the branch or office holding such deposit or obligated on such indebtedness; *provided* that in the event that any Defaulting Lender shall exercise any such right of setoff, (x) all amounts so set off shall be paid over immediately to the Administrative Agent for further application in accordance with the provisions of *Section 2.15* and, pending such payment, shall be segregated by such Defaulting Lender from its other funds and deemed held in trust for the benefit of the Administrative Agent and the Lenders, and (y) the Defaulting Lender shall provide promptly to the Administrative Agent a statement describing in reasonable detail the Obligations owing to such Defaulting Lender as to which it exercised such right of setoff. Each Lender agrees to notify the Borrower and the Administrative Agent promptly after any such setoff and application, provided that the failure to give such notice shall not affect the validity of such setoff and application.

SECTION 12.7 Sharing of Payments.

If, other than as expressly provided elsewhere herein, any Lender shall obtain payment in respect of any principal of or interest on account of the Loans made by it (in each case, whether voluntary, involuntary, through the exercise of any right of set-off, or otherwise) in excess of its ratable share (or other share contemplated hereunder) thereof, such Lender shall immediately (a) notify the Administrative Agent of such fact, and (b) purchase from the other Lenders such participations in the Loans made by them as shall be necessary to cause such purchasing Lender to share the excess payment of principal of or interest on such Loans or such participations, as the case may be, pro rata with each of them; *provided* that if all or any portion of such excess payment is thereafter recovered from the purchasing Lender under any of the circumstances described in SECTION 12.13 (including pursuant to any settlement entered into by the purchasing Lender in its discretion), such purchase shall to that extent be rescinded and each other Lender shall repay to the purchasing Lender the purchase price paid therefor, together with an amount equal to such paying Lender's ratable share (according to the proportion of (i) the amount of such paying Lender's required repayment to (ii) the total amount so recovered from the purchasing Lender) of any interest or other amount paid or payable by the purchasing Lender in respect of the total amount so recovered, without further interest thereon. The provisions of this Section shall not be construed to apply to the application of Cash Collateral provided for in SECTION 10.3. For avoidance of doubt, the provisions of this paragraph shall not be construed to apply to (A) any payment made by the Borrower pursuant to and in accordance with the express terms of this Agreement as in effect from time to time or (B) any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans to any assignee or participant permitted hereunder. The Borrower agrees that any Lender so purchasing a participation from another Lender may, to the fullest extent permitted by applicable Law, exercise all its rights of payment (including the right of set-off, but subject to SECTION 12.6) with respect to such participation as fully as if such Lender were the direct creditor of the Borrower in the amount of such participation. The Administrative Agent will keep records (which shall be conclusive and binding in the absence of manifest error) of participations purchased under this SECTION 12.7 and will in each case notify the Lenders following any such purchases or repayments. Each Lender that purchases a participation pursuant to this SECTION 12.7 shall from and after such purchase have the right to give all notices, requests, demands, directions and other communications under this Agreement with respect to the portion of the Obligations purchased to the same extent as though the purchasing Lender were the original owner of the Obligations purchased.

SECTION 12.8 Notices and Other Communications; Facsimile Copies.

(a) *General.* Except in the case of notices and other communications expressly permitted to be given by telephone (and except as provided in *subsection (b)* below), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by telecopier as follows, and all notices and other communications expressly permitted hereunder to be given by telephone shall be made to the applicable telephone number, as follows:

(i) if to Holdings, the Borrower or the Administrative Agent, to the address, telecopier number, electronic mail address or telephone number specified for such Person on its signature page hereto; and

(ii) if to any other Lender, to the address, telecopier number, electronic mail address or telephone number specified in its Administrative Questionnaire.

Notices and other communications sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received; notices and other communications sent by telecopier shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next Business Day for the recipient). Notices and other communications delivered through electronic communications to the extent provided in *subsection (b)* below shall be effective as provided in such *subsection (b)*.

(b) *Electronic Communications.* Notices and other communications to the Lenders s hereunder may be delivered or furnished by electronic communication (including e-mail and Internet or intranet websites) pursuant to procedures approved by the Administrative Agent, *provided* that the foregoing shall not apply to notices to any Lender pursuant to *Article II* if such Lender has notified the Administrative Agent that it is incapable of receiving notices under such Article by electronic communication. The Administrative Agent or the Borrower may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it, *provided* that approval of such procedures may be limited to particular notices or communications.

(c) *Receipt.* Unless the Administrative Agent otherwise prescribes, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement), *provided* that if such notice or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next Business Day for the recipient, and (ii) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing *clause (i)* of notification that such notice or communication is available and identifying the website address therefor.

(d) *The Platform.* THE PLATFORM IS PROVIDED "AS IS" AND "AS AVAILABLE." THE AGENT PARTIES (AS DEFINED BELOW) DO NOT WARRANT THE ACCURACY OR COMPLETENESS OF THE BORROWER MATERIALS OR THE ADEQUACY OF THE PLATFORM, AND EXPRESSLY DISCLAIM LIABILITY FOR ERRORS IN OR OMISSIONS FROM THE BORROWER MATERIALS. NO WARRANTY OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF THIRD PARTY RIGHTS OR FREEDOM FROM VIRUSES OR OTHER CODE DEFECTS, IS MADE BY ANY AGENT PARTY IN CONNECTION WITH THE BORROWER MATERIALS OR THE PLATFORM. In no event shall the Administrative Agent or any of its Agent-Related Persons (collectively, the "Agent Parties") have any liability to Holdings, the Borrower, any Lender or any other Person for losses, claims, damages, liabilities

or expenses of any kind (whether in tort, contract or otherwise) arising out of the Borrower's or the Administrative Agent's transmission of Borrower Materials through the Internet, except to the extent that such losses, claims, damages, liabilities or expenses are determined by a court of competent jurisdiction by a final and nonappealable judgment to have resulted from the gross negligence, bad faith or willful misconduct of such Agent Party; *provided, however*, that in no event shall any Agent Party have any liability to Holdings, the Borrower, any Lender or any other Person under this SECTION 12.8 for indirect, special, incidental, consequential or punitive damages (as opposed to direct or actual damages).

(e) *Change of Address.* Each of Holdings, the Borrower and the Administrative Agent may change its address, telecopier or telephone number for notices and other communications hereunder by notice to the other parties hereto. Each other Lender may change its address, telecopier or telephone number for notices and other communications hereunder by notice to the Borrower and the Administrative Agent. In addition, each Lender agrees to notify the Administrative Agent, from time to time to ensure that the Administrative Agent has on record (i) an effective address, contact name, telephone number, telecopier number and electronic mail address to which notices and other communications may be sent and (ii) accurate wire instructions for such Lender.

(f) *Reliance by Administrative Agent and Lenders.* The Administrative Agent and the Lenders shall be entitled to rely and act upon any notices (including telephonic Notices of Borrowing) purportedly given by or on behalf of the Borrower even if (i) such notices were not made in a manner specified herein, were incomplete or were not preceded or followed by any other form of notice specified herein, or (ii) the terms thereof, as understood by the recipient, varied from any confirmation thereof. The Borrower shall indemnify the Administrative Agent, each Lender and the Agent-Related Persons of each of them from all losses, costs, expenses and liabilities resulting from the reliance by such Person on each notice purportedly given by or on behalf of the Borrower; *provided* that such indemnity shall not be available to the extent that such losses, costs, expenses and liabilities resulted from (x) the gross negligence, bad faith or willful misconduct of such Person or (y) a breach of any obligations under any Loan Document by such Person, in each case, as determined by a final, non appealable judgment of a court of competent jurisdiction. All telephonic notices to and other telephonic communications with the Administrative Agent may be recorded by the Administrative Agent, and each of the parties hereto hereby consents to such recording.

SECTION 12.9 No Waiver; Cumulative Remedies.

No failure by any Lender or the Administrative Agent to exercise, and no delay by any such Person in exercising, any right, remedy, power or privilege hereunder or under any other Loan Document shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges herein provided, and provided under each other Loan Document, are cumulative and not exclusive of any rights, remedies, powers and privileges provided by Law.

SECTION 12.10 Binding Effect. This Agreement shall become effective when (i) it shall have been executed by the Borrower, Holdings and the Administrative Agent and (ii) the Administrative Agent shall have been notified by each Lender (and the Administrative Agent, in turn, shall have notified the Borrower thereof) that each such Lender has executed it and thereafter shall be binding upon and inure to the benefit of the Borrower, Holdings, each Agent and each Lender and their respective successors and assigns.

SECTION 12.11 Governing Law; Submission to Jurisdiction; Service of Process.

(a) THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS AND ANY CLAIMS, CONTROVERSY, DISPUTE OR CAUSE OF ACTION (WHETHER IN CONTRACT TORT OR OTHERWISE) BASED UPON, ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT (EXCEPT AS TO ANY OTHER LOAN DOCUMENT, AS EXPRESSLY SET FORTH THEREIN) AND THE TRANSACTIONS CONTEMPLATED HEREBY AND THEREBY SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK AND TO THE EXTENT APPLICABLE, THE BANKRUPTCY CODE.

(b) THE BORROWER, HOLDINGS, THE ADMINISTRATIVE AGENT, AND EACH LENDER EACH IRREVOCABLY AND UNCONDITIONALLY SUBMITS, FOR ITSELF AND ITS PROPERTY, TO THE EXCLUSIVE JURISDICTION OF THE BANKRUPTCY COURT, IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT, OR FOR RECOGNITION OR ENFORCEMENT OF ANY JUDGMENT, AND EACH OF THE PARTIES HERETO IRREVOCABLY AND UNCONDITIONALLY AGREES THAT ALL CLAIMS IN RESPECT OF ANY SUCH ACTION OR PROCEEDING SHALL BE HEARD AND DETERMINED IN THE BANKRUPTCY COURT. EACH OF THE PARTIES HERETO AGREES THAT A FINAL JUDGMENT IN ANY SUCH ACTION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW.

(c) THE BORROWER, HOLDINGS, THE ADMINISTRATIVE AGENT, AND EACH LENDER EACH IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT IN ANY COURT REFERRED TO IN PARAGRAPH (b) OF THIS SECTION. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING IN ANY SUCH COURT.

(d) EACH PARTY HERETO IRREVOCABLY CONSENTS TO SERVICE OF PROCESS IN THE MANNER PROVIDED FOR NOTICES IN SECTION 12.8. NOTHING IN THIS AGREEMENT WILL AFFECT THE RIGHT OF ANY PARTY HERETO TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY APPLICABLE LAW.

SECTION 12.12 Waiver of Jury Trial. EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

SECTION 12.13 Marshaling; Payments Set Aside. None of the Administrative or any Lender shall be under any obligation to marshal any assets in favor of the Loan Parties or any other

party or against or in payment of any or all of the Obligations. To the extent that any payment by or on behalf of the Borrower is made to any Agent or any Lender, or any Agent or any Lender exercises its right of set-off, and such payment or the proceeds of such set-off or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by such Agent or such Lender in its discretion) to be repaid to a trustee, receiver or any other party, in connection with any proceeding under any Debtor Relief Law or otherwise, then (a) to the extent of such recovery, the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such set-off had not occurred, and (b) each Lender severally agrees to pay to the Administrative Agent upon demand its applicable share of any amount so recovered from or repaid by any Agent, plus interest thereon from the date of such demand to the date such payment is made at a rate per annum equal to the applicable Overnight Rate from time to time in effect.

SECTION 12.14 Execution In Counterparts. This Agreement may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement and the other Loan Documents constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Delivery of an executed counterpart of a signature page of this Agreement by telecopy or other electronic imaging means shall be effective as delivery of a manually executed counterpart of this Agreement.

SECTION 12.15 Electronic Execution of Assignments and Certain Other Documents. The words “execution,” “signed,” “signature,” and words of like import in any Assignment and Assumption or in any amendment or other modification hereof (including waivers and consents) shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act.

SECTION 12.16 Confidentiality. Each of the Administrative Agent and the Lenders agrees to maintain the confidentiality of the Information in accordance with its customary procedures (as set forth below), except that Information may be disclosed (a) to its Affiliates and to its and its Affiliates’ respective employees, legal counsel, independent auditors, professionals and other experts or agents who need to know such Information and who are informed of the confidential nature of such Information are subject to customary confidentiality obligations of professional practice or agree to be bound by the terms of this SECTION 12.16 (or provisions at least as restrictive as those of this SECTION 12.16, taken as a whole,) (with each such Administrative Agent and Lender responsible for such Person’s compliance with this paragraph), (b) to the extent requested by any regulatory authority purporting to have jurisdiction over it (including any self-regulatory authority, such as the National Association of Insurance Commissioners) in which case the Administrative Agent and the Lenders agree (except with respect to any audit or examination conducted by bank accountants or any governmental bank regulatory authority exercising examination or regulatory authority), to the extent practicable and not prohibited by applicable Law, to notify the Borrower promptly thereof prior to disclosure by such Person, (c) pursuant to the order of any court or administrative agency or in any pending legal, judicial or administrative proceeding, or otherwise as required by applicable law or compulsory legal process based on the advice of counsel (in which case the Administrative Agent or such Lender, as applicable, agrees (except with respect to any audit or examination conducted by bank accountants or any governmental bank regulatory authority exercising examination or regulatory authority), to the extent practicable and not prohibited by applicable Law, to

inform the Borrower promptly thereof prior to disclosure), (d) to any other party hereto, (e) in connection with the exercise of any remedies hereunder or under any other Loan Document or any action or proceeding relating to this Agreement or any other Loan Document or the enforcement of rights hereunder or thereunder, (f) subject to an agreement containing provisions at least as restrictive as those of this SECTION 12.16, taken as a whole, to (i) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights or obligations under this Agreement or any Eligible Assignee invited to be an Additional Lender or (ii) any actual or prospective direct or indirect counterparty to any swap or derivative transaction relating to the Borrower and its obligations, in each case who agree to be bound by the terms of this SECTION 12.16 (or provisions at least as restrictive as those of this SECTION 12.16, taken as a whole.), (g) with the written consent of the Borrower; (h) to any rating agency in connection with obtaining ratings for the Borrower, the Facility or the Senior Notes; or (i) to the extent such Information (i) becomes publicly available other than as a result of a breach of this Section or improper disclosure by the Administrative Agent or any Lender or any of their respective Affiliates or any related parties thereto in violation of any confidentiality obligations owing to the Borrower, any Permitted Holder or any of their respective Affiliates or (ii) becomes available to the Administrative Agent, any Lender, or any of their respective Affiliates on a nonconfidential basis from a source other than Holdings, the Borrower or any Subsidiary thereof, and which source is not known by such Agent or Lender to be subject to a confidentiality restriction in respect thereof in favor of the Borrower, any Permitted Holder or any of their respective Affiliates.

For purposes of this Section, “*Information*” means all information received from any Loan Party or any Subsidiary thereof relating to any Loan Party or any Subsidiary thereof or their respective businesses, other than any such information that is available to the Administrative Agent or any Lender on a nonconfidential basis prior to disclosure by any Loan Party or any Subsidiary thereof, it being understood that all information received from or on behalf of Holdings, the Borrower or any Subsidiary after the Effective Date shall be deemed confidential unless such information is clearly identified at the time of delivery as not being confidential. Any Person required to maintain the confidentiality of Information as provided in this Section shall be considered to have complied with its obligation to do so in accordance with its customary procedures if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information.

Each of the Administrative Agent and the Lenders acknowledges that (a) the Information may include material non-public information concerning any Loan Party or a Subsidiary thereof, as the case may be, (b) it has developed compliance procedures regarding the use of material non-public information and (c) it will handle such material non-public information in accordance with applicable Law, including United States Federal and state securities Laws.

SECTION 12.17 [Reserved]

SECTION 12.18 USA PATRIOT Act Notice; Beneficial Ownership. Each Lender that is subject to the USA PATRIOT Act and the Beneficial Ownership Regulation and the Administrative Agent (for itself and not on behalf of any Lender) hereby notifies the Borrower that pursuant to the requirements of the USA PATRIOT Act and the Beneficial Ownership Regulation, it is required to obtain, verify and record information that identifies each Loan Party, which information includes the name and address of each Loan Party and other information that will allow such Lender or the Administrative Agent, as applicable, to identify each Loan Party and its ultimate beneficial owners in accordance with the USA PATRIOT Act and the Beneficial Ownership Regulation. The Borrower shall, promptly following a request by the Administrative Agent or any Lender, provide all documentation and other information that the Administrative Agent or such Lender requests in order to comply with its ongoing obligations under applicable “know your customer” and anti-money laundering rules and regulations, including the USA PATRIOT Act and the Beneficial Ownership Regulation.

SECTION 12.19 No Advisory or Fiduciary Responsibility. In connection with all aspects of each transaction contemplated hereby (including in connection with any amendment, waiver or other modification hereof or of any other Loan Document), each of the Borrower and Holdings acknowledges and agrees, and acknowledges its Subsidiaries' understanding, that: (i) (A) the arranging and other services regarding this Agreement provided by the Agents are arm's-length commercial transactions between the Borrower, Holdings and their respective Affiliates, on the one hand, and the Agents, on the other hand, (B) each of the Borrower and Holdings has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate, and (C) each of the Borrower and Holdings is capable of evaluating, and understands and accepts, the terms, risks and conditions of the transactions contemplated hereby and by the other Loan Documents; (ii) (A) the Agents and each Lender is and has been acting solely as a principal and, except as expressly agreed in writing by the relevant parties, has not been, is not, and will not be acting as an advisor, agent or fiduciary for the Borrower, Holdings or any of their respective Affiliates, or any other Person and (B) none of the Agents nor any Lender has any obligation to the Borrower, Holdings or any of their respective Affiliates with respect to the transactions contemplated hereby except those obligations expressly set forth herein and in the other Loan Documents; and (iii) the Agents, the Lender and their respective Affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Borrower, Holdings their respective Affiliates, and none of the Agents nor any Lender has any obligation to disclose any of such interests to the Borrower, Holdings or any of their respective Affiliates. To the fullest extent permitted by law, each of the Borrower and Holdings hereby waives and releases any claims that it may have against the Agents nor any Lender with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transaction contemplated hereby.

SECTION 12.20 Severability. If any provision of this Agreement or the other Loan Documents is held to be illegal, invalid or unenforceable, (a) the legality, validity and enforceability of the remaining provisions of this Agreement and the other Loan Documents shall not be affected or impaired thereby and (b) the parties shall endeavor in good faith negotiations to replace the illegal, invalid or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the illegal, invalid or unenforceable provisions. The invalidity of a provision in a particular jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

SECTION 12.21 Survival of Representations and Warranties. All representations and warranties made hereunder and in any other Loan Document or other document delivered pursuant hereto or thereto or in connection herewith or therewith shall survive the execution and delivery hereof and thereof. Such representations and warranties have been or will be relied upon by the Administrative Agent and each Lender, regardless of any investigation made by the Administrative Agent or any Lender or on their behalf and notwithstanding that the Administrative Agent or any Lender may have had notice or knowledge of any Default at the time of any Credit Extension, and shall continue in full force and effect until the Discharge of Obligations.

SECTION 12.22 Lender Action. Each Lender agrees that it shall not take or institute any actions or proceedings, judicial or otherwise, for any right or remedy against any Loan Party under any of the Loan Documents (including the exercise of any right of set-off, rights on account of any banker's lien or similar claim or other rights of self-help), or institute any actions or proceedings, or otherwise commence any remedial procedures, with respect to any Collateral or any other property of any such Loan Party, without the prior written consent of the Administrative Agent (which shall not be withheld in contravention of SECTION 11.4). The provision of this SECTION 12.22 are for the sole benefit of the Lenders and shall not afford any right to, or constitute a defense available to, any Loan Party.

SECTION 12.23 Interest Rate Limitation. Notwithstanding anything to the contrary contained in any Loan Document, the interest paid or agreed to be paid under the Loan Documents

shall not exceed the maximum rate of non-usurious interest permitted by applicable Law (the “*Maximum Rate*”). If any Agent or any Lender shall receive interest in an amount that exceeds the Maximum Rate, the excess interest shall be applied to the principal of the Loans or, if it exceeds such unpaid principal, refunded to the Borrower. In determining whether the interest contracted for, charged, or received by an Agent or a Lender exceeds the Maximum Rate, such Person may, to the extent permitted by applicable Law, (a) characterize any payment that is not principal as an expense, fee, or premium rather than interest, (b) exclude voluntary prepayments and the effects thereof, and (c) amortize, prorate, allocate, and spread in equal or unequal parts the total amount of interest throughout the contemplated term of the Obligations hereunder.

SECTION 12.24 Acknowledgement and Consent to Bail-In of EEA Financial Institutions. Notwithstanding anything to the contrary in any Loan Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any EEA Financial Institution arising under any Loan Document, to the extent such liability is unsecured, may be subject to the write-down and conversion powers of an EEA Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

(a) the application of any Write-Down and Conversion Powers by an EEA Resolution Authority to any such liabilities arising hereunder which may be payable to it by any party hereto that is an EEA Financial Institution; and

(b) the effects of any Bail-In Action on any such liability, including, if applicable:

(i) a reduction in full or in part or cancellation of any such liability;

(ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such EEA Financial Institution, its parent undertaking, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Loan Document; or

(iii) the variation of the terms of such liability in connection with the exercise of the write-down and conversion powers of any EEA Resolution Authority.

SECTION 12.25 DIP Orders.

This Agreement is subject to the terms and provisions of the applicable DIP Order in all respects. In the event of a conflict between the terms or provisions hereof and the terms or provisions of the applicable DIP Order, the terms and provisions of such applicable DIP Order shall govern and control.

ARTICLE XIII. **GUARANTY**

SECTION 13.1 Guarantee.

Each Guarantor irrevocably, absolutely and unconditionally guarantees, jointly with the other Guarantors and severally, as a primary obligor and not merely as a surety, the due and punctual payment and performance of the Guaranteed Obligations, in each case, whether such Guaranteed Obligations are now existing or hereafter incurred under, arising out of or in connection with any Loan Document, and whether at maturity, by acceleration or otherwise. Each of the Guarantors further agrees that the Guaranteed

Obligations may be extended, increased or renewed, amended or modified, in whole or in part, without notice to, or further assent from, such Guarantor and that such Guarantor will remain bound upon its guarantee hereunder notwithstanding any such extension, increase, renewal, amendment or modification of any Guaranteed Obligation. Each of the Guarantors waives promptness, presentment to, demand of payment from, and protest to, any Guarantor or any other Loan Party of any of the Guaranteed Obligations, and also waives notice of acceptance of its guarantee and notice of protest for nonpayment.

SECTION 13.2 Guarantee of Payment.

Each of the Guarantors further agrees that its guarantee hereunder constitutes a guarantee of payment when due (whether or not any bankruptcy or similar proceeding under any Debtor Relief Law shall have stayed the accrual of collection of any of the Guaranteed Obligations or operated as a discharge thereof) and not of collection, and waives any right to require that any resort be had by the Administrative Agent or any other Secured Party to any Collateral or other security held for the payment of any of the Guaranteed Obligations, or to any balance of any deposit account or credit on the books of the Administrative Agent or any other Secured Party in favor of any other Guarantor or any other Person. The obligations of each Guarantor hereunder are independent of the obligations of any other Guarantor or the Borrower, and a separate action or actions may be brought and prosecuted against each Guarantor whether or not action is brought against any other Guarantor or the Borrower and whether or not any other Guarantor or the Borrower be joined in any such action or actions. Any payment required to be made by a Guarantor hereunder may be required by the Administrative Agent or any other Secured Party on any number of occasions.

SECTION 13.3 No Limitations.

(a) To the fullest extent permitted by applicable Law, the obligations of each Guarantor hereunder shall not be subject to any reduction, limitation, impairment or termination for any reason, including any claim of waiver, release, surrender, alteration or compromise, and shall not be subject to any defense or set-off, counterclaim, recoupment or termination whatsoever by reason of the invalidity, illegality or unenforceability of any of the Guaranteed Obligations, any impossibility in the performance of any of the Guaranteed Obligations, or otherwise. Without limiting the generality of the foregoing, to the fullest extent permitted by applicable Law, the obligations of each Guarantor hereunder shall not be discharged, impaired or otherwise affected by (i) the failure of the Administrative Agent, any other Secured Party or any other Person to assert any claim or demand or to enforce any right or remedy under the provisions of any Loan Document or otherwise; (ii) any rescission, waiver, amendment or modification of, or any release from any of the terms or provisions of, any Loan Document or any other agreement, including with respect to any other Guarantor under this Guaranty; (iii) the release of, or any impairment of any security held by the Collateral Agent or any other Secured Party for the Guaranteed Obligations; (iv) any default, failure or delay, willful or otherwise, in the performance of the Guaranteed Obligations; (v) the failure to perfect any security interest in, or the release of, any of the Collateral held by or on behalf of the Collateral Agent or any other Secured Party; (vi) any change in the corporate existence, structure or ownership of any Loan Party, the lack of legal existence of the Borrower or any other Guarantor or legal obligation to discharge any of the Guaranteed Obligations by the Borrower or any other Guarantor for any reason whatsoever, including, without limitation, in any insolvency, bankruptcy or reorganization of any Loan Party; (vii) the existence of any claim, set-off or other rights that any Guarantor may have at any time against the Borrower, the Administrative Agent, any other Secured Party or any other Person, whether in connection with this Agreement, the other Loan Documents or any unrelated transaction; (viii) this Guaranty having been determined (on whatsoever grounds) to be invalid, non-binding or unenforceable against any other Guarantor *ab initio* or at any time after the Effective Date or (ix) any other circumstance (including statute of limitations), any act or omission that may in any manner or to any extent vary the risk of any Guarantor or otherwise operate as a defense to, or discharge of, the Borrower, any Guarantor or any

other guarantor or surety as a matter of law or equity (in each case, other than the Discharge of Obligations). Each Guarantor expressly authorizes the applicable Secured Parties to take and hold security for the payment and performance of the Guaranteed Obligations, to exchange, waive or release any or all such security (with or without consideration), to enforce or apply such security and direct the order and manner of any sale thereof in their sole discretion or to release or substitute any one or more other guarantors or obligors upon or in respect of the Guaranteed Obligations all without affecting the obligations of any Guarantor hereunder. Anything contained in this Guaranty to the contrary notwithstanding, the obligations of each Guarantor under this Guaranty shall be limited to an aggregate amount equal to the largest amount that would not render its obligations under this Guaranty subject to avoidance as a fraudulent transfer or conveyance under Section 548 of the Bankruptcy Code of the United States or any comparable provisions of any similar federal or state law.

(b) To the fullest extent permitted by applicable Law, each Guarantor waives any defense based on or arising out of any defense of the Borrower or any other Guarantor or the unenforceability of the Guaranteed Obligations or any part thereof from any cause, or the cessation from any cause of the liability of the Borrower or any other Guarantor, other than the Discharge of Obligations. The Administrative Agent and the other Secured Parties may in accordance with the terms of the Collateral Documents, at their election, foreclose on any security held by one or more of them by one or more judicial or nonjudicial sales, accept an assignment of any such security in lieu of foreclosure, compromise or adjust any part of the Guaranteed Obligations, make any other accommodation with the Borrower or any other Guarantor or exercise any other right or remedy available to them against any Guarantor, without affecting or impairing in any way the liability of any Guarantor hereunder except to the extent the Discharge of Obligations has occurred. To the fullest extent permitted by applicable Law, each Guarantor waives any defense arising out of any such election even though such election operates, pursuant to applicable Law, to impair or to extinguish any right of reimbursement or subrogation or other right or remedy of such Guarantor against the Borrower or any other Guarantor, as the case may be, or any security. To the fullest extent permitted by applicable Law, each Guarantor waives any and all suretyship defenses.

SECTION 13.4 Reinstatement.

Notwithstanding anything to the contrary contained in this Guaranty, each of the Guarantors agrees that (a) its guarantee hereunder shall continue to be effective or be reinstated, as the case may be, if at any time payment, or any part thereof, of any Guaranteed Obligation is rescinded or must otherwise be restored by the Administrative Agent or any other Secured Party upon the bankruptcy or reorganization (or any analogous proceeding in any jurisdiction) of the Borrower or any other Guarantor or otherwise and (b) the provisions of this SECTION 13.4 shall survive the termination of this Guaranty.

SECTION 13.5 Agreement To Pay; Subrogation.

In furtherance of the foregoing and not in limitation of any other right that the Administrative Agent or any other Secured Party has at law or in equity against any Guarantor by virtue hereof, upon the failure of the Borrower or any other Guarantor to pay any Guaranteed Obligation when and as the same shall become due, whether at maturity, by acceleration, after notice of prepayment or otherwise, each Guarantor hereby promises to and will forthwith pay, or cause to be paid, to the Administrative Agent for distribution to the applicable Secured Parties in cash the amount of such unpaid Guaranteed Obligation. Upon payment by any Guarantor of any sums to the Administrative Agent as provided above, all rights of such Guarantor against the Borrower or any other Guarantor arising as a result thereof by way of right of subrogation, contribution, reimbursement, indemnity or otherwise shall in all respects be subject to SECTION 13.7 hereof.

SECTION 13.6 Information.

Each Guarantor assumes all responsibility for being and keeping itself informed of the Borrower's and each other Guarantor's financial condition and assets, and of all other circumstances bearing upon the risk of nonpayment of the Guaranteed Obligations and the nature, scope and extent of the risks that such Guarantor assumes and incurs hereunder, and agrees that none of the Administrative Agent or the other Secured Parties will have any duty to advise such Guarantor of information known to it or any of them regarding such circumstances or risks.

SECTION 13.7 Indemnity, Subrogation and Subordination

Upon payment by any Guarantor of any Guaranteed Obligations, all rights of such Guarantor against the Borrower or any other Guarantor arising as a result thereof by way of right of subrogation, contribution, reimbursement, indemnity or otherwise shall in all respects be subordinate and junior in right of payment to the Discharge of Obligations. If any amount shall be paid to the Borrower or any other Guarantor in violation of the foregoing restrictions on account of (i) such subrogation, contribution, reimbursement, indemnity or similar right or (ii) any such indebtedness of the Borrower or any other Guarantor, such amount shall be held in trust for the benefit of the Secured Parties and shall forthwith be paid to the Administrative Agent to be credited against the payment of the Guaranteed Obligations, whether matured or unmatured, in accordance with the terms of this Agreement and the other Loan Documents. Subject to the foregoing, to the extent that any Guarantor shall, under this Agreement as a joint and several obligor, repay any of the Guaranteed Obligations constituting Loans or other advances made to or Reimbursement Obligations owed by to another Loan Party under this Agreement (an "Accommodation Payment"), then the Guarantor making such Accommodation Payment shall be entitled to contribution and indemnification from, and be reimbursed by, each of the other Guarantors in an amount equal to a fraction of such Accommodation Payment, the numerator of which fraction is such other Guarantor's Allocable Amount and the denominator of which is the sum of the Allocable Amounts of all of the Guarantors; provided that such rights of contribution and indemnification shall be subordinated to the Discharge of Obligations. As of any date of determination, the "Allocable Amount" of each Guarantor shall be equal to the maximum amount of liability for Accommodation Payments which could be asserted against such Guarantor hereunder and under this Agreement without (a) rendering such Guarantor "insolvent" within the meaning of Section 101 (31) of the Bankruptcy Code of the United States, Section 2 of the Uniform Fraudulent Transfer Act ("UFTA") or Section 2 of the Uniform Fraudulent Conveyance Act ("UFCA"), (b) leaving such Guarantor with unreasonably small capital or assets, within the meaning of Section 548 of the Bankruptcy Code of the United States, Section 4 of the UFTA, or Section 5 of the UFCA, or (c) leaving such Guarantor unable to pay its debts as they become due within the meaning of Section 548 of the Bankruptcy Code of the United States or Section 4 of the UFTA, or Section 5 of the UFCA.

SECTION 13.8 Obligations Absolute.

All rights of the Collateral Agent, the Administrative Agent and the other Secured Parties hereunder and all obligations of each Guarantor hereunder shall be absolute and unconditional irrespective of (a) any lack of validity or enforceability of any other Loan Document, any agreement with respect to any of the Guaranteed Obligations or any other agreement or instrument relating to any of the foregoing, (b) any change in the time, manner or place of payment of, or in any other term of, all or any of the Guaranteed Obligations, or any other amendment or waiver of or any consent to any departure from any Loan Document, or any other agreement or instrument, (c) any release or amendment or waiver of or consent under or departure from any guarantee guaranteeing all or any of the Guaranteed Obligations or (d) any Guarantor in respect of the Guaranteed Obligations or this Guaranty.

SECTION 13.9 Recourse; Limited Obligations.

This Guaranty is made with full recourse to each Guarantor and pursuant to and upon all the warranties, representations, covenants and agreements on the part of such Guarantor contained herein, in this Agreement and the other Loan Documents and otherwise in writing in connection herewith or therewith. It is the desire and intent of each Guarantor and each applicable Secured Party that this Guaranty shall be enforced against each Guarantor to the fullest extent permissible under applicable Law applied in each jurisdiction in which enforcement is sought.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK.]

IN WITNESS HEREOF, the parties have caused this Agreement to be executed by their respective authorized officers as of the date first written above written.

NUMBER HOLDINGS, INC.,
as Holdings and Guarantor

Ty: _____
Name:
Title:

99 CENTS ONLY STORES LLC,
as Borrower

Ty: _____
Name:
Title:

99 CENTS ONLY STORES TEXAS, INC.,
as Guarantor

Ty: _____
Name:
Title:

BARGAIN WHOLESALE LLC,
as Guarantor

Ty: _____
Name:
Title:

**BARGAIN GLOBAL LOGISTICS (HONG KONG)
LTD.,**
as Guarantor

Ty: _____
Name:
Title:

99 CENTS HOLDCO LLC,
as Guarantor

Ty: _____
Name:
Title:

99 CENTS PROPCO LLC,
as Guarantor

Ty: _____
Name:
Title:

Address for any Loan Party:

99 CENTS ONLY STORES LLC
1730 Flight Way, Suite 100
Tustin, CA 92782
Attention: Chris Wells, Chief Restructuring Officer
Email: [_____]

With a copy to (which shall not constitute notice):

MILBANK LLP
55 Hudson Yards
New York, NY 10001
Attention: Michael Price
Email: mprice@milbank.com

TC LENDING, LLC,
as Administrative Agent and Collateral Agent

By: _____
Name:
Title:

TC LENDING, LLC,
as Lender

By: _____
Name:
Title:

Address for any Agent:

TC LENDING, LLC
2100 McKinney Avenue, Suite 1500
Dallas, Texas 75201
Email: [_____]

With a copy to (which shall not constitute notice):

PROSKAUER ROSE LLP
11 Times Square
New York, New York 10036
Attention: Ji Hye You
Telephone: 212-969-3000
Email: jyou@proskauer.com

Schedule I
Commitments and Roll-Up Term Loans

Lender	Initial Term Loan Commitment	Delayed Draw Term Loan Commitment	Roll-Up Term Loan
TC Lending, LLC	\$20,500,000	\$15,000,000	\$25,300,000 plus any accrued and unpaid interest on the Prepetition FILO Secured Obligations as of the Final Order Entry Date

Schedule 4.1(a)
Specified Unencumbered Properties

350	Vacant Land	6316 Mission Blvd (SWC Mission & Opal)	Rubidoux	CA
329	Vacant Land	788 W, Ramona Expressway	San Jacinto	CA
215	Vacant Land	S Miracle Mile & Marble Canyon Drive	Bullhead City	AZ
81	Store Front	6745 Van Nuys Blvd	Van Nuys	CA
82	Store Front	606 E. Holt Ave	Pomona	CA
163	Store Front	4433 E. Main St	Mesa	AZ
166	Store Front	2315 E. Bell Rd	Phoenix	AZ
218	Store Front; Closed	601 Beck Avenue	Fairfield	CA
223	Store Front	7830 N. 12th Street	Phoenix	AZ
242	Store Front	1701 S. 4th Ave.	Yuma	AZ
344	Store Front	716 S Boulder Hwy	Henderson	NV
2806	Store Front	7130 FM 1960	Humble	TX
2815	Store Front	4100 Fairmont Parkway	Pasadena	TX
2818	Store Front	3901 Colleyville Blvd.	Colleyville	TX
2823	Store Front	6732 Camp Bowie Blvd.	Fort Worth	TX
2830	Store Front	10220 Almeda Genoa Rd.	Houston	TX
2835	Store Front	14310 Westheimer Rd.	Houston	TX
2839	Store Front	2942 Old Thousand Oaks	San Antonio	TX
2845	Store Front	4500 Live Oak St	Dallas	TX
2847	Store Front	9000 Bruton Rd.	Dallas	TX
2850	Store Front	8330 Broadway St	Houston	TX

Schedule 4.1(b)
Specified PropCo Properties

13	Store Front	1516 W. Pico	Los Angeles	CA
162	Store Front	825 W. Henderson Ave	Porterville	CA
183	Store Front	2351 Northgate Blvd.	Sacramento	CA
190	Store Front	2611 Hilltop Drive	Redding	CA
232	Store Front	42 Springstowne Center	Vallejo	CA
238	Store Front	401 E. 2nd Street	Calexico	CA
267	Store Front	2101 Imperial Ave	El Centro	CA
270	Store Front	1915 W. San Carlos St	San Jose	CA
271	Store Front	3110 N. West Avenue	Fresno	CA
292	Store Front	1870 Bellevue Road	Atwater	CA
319	Store Front	830 Colusa Ave.	Yuba City	CA
320	Store Front	41989 Fremont Blvd.	Fremont	CA

Schedule 5.11
Subsidiaries

Name of Subsidiary	Jurisdiction	Ownership Interest

Schedule 9.1
Prepetition Permitted Liens

Debtor	Secured Party	Collateral	Lien Date
99 Cents Only Stores LLC	American Greetings Corporation	PMSI on inventory of secured party and any of its subsidiaries or affiliates heretofore or hereafter sold or delivered by secured party to debtor for sale pursuant to scan based trading from time to time, wherever located, including, everyday and seasonal counter cards and everyday alternative cards, everyday and seasonal stickers, everyday and seasonal prepackaged cards (cellos), including all cash and non-cash proceeds from the same thereof. UCC-1 Filing #197701008124	3/7/2019 Continuation filed 9/22/2023.
99 Cents Only Stores LLC	Raymond Leasing Corporation	Equipment lien on all material handling equipment and accessories, including lift trucks, pallet trucks, orderpickers, batteries and chargers, in the possession of Debtor or hereafter acquired by Debtor in accordance with Equipment Master Lease Schedule No. 35370, or any Schedule thereunder. UCC-1 Filing #207767548662	3/12/2020
99 Cents Only Stores LLC	Raymond Leasing Corporation	Equipment lien on material handling equipment and associated accessories, including lift trucks, pallet trucks, orderpickers, batteries and chargers, in the possession of Debtor or hereafter acquired by Debtor in accordance with Equipment Master Lease Schedule No. 41257 or any Schedule thereunder. UCC-1 Filing #U220242128023	11/08/2022

Debtor	Secured Party	Collateral	Lien Date
99 Cents Only Stores LLC	CT Corporation System	Equipment lien on a 2022 Ottawa Model 4X2 T2 (VIN# 11VJ813A3NA001593), Serial # 361487; and a 2022 Ottawa Model 4X2 T2 (VIN#11VJ813A2NA001665), Serial #361490. Includes any rental, chattel paper, accounts, security deposits, replacements, or additions relating to these items. UCC-1 Filing #U230005879129	1/25/2023
99 Cents Only Stores Texas, Inc.	American Greetings Corporation	PMSI on inventory of secured party and any of its subsidiaries or affiliates heretofore or hereafter sold or delivered by secured party to debtor for sale pursuant to scan based trading from time to time, wherever located, including, everyday and seasonal counter cards and everyday alternative cards, everyday and seasonal stickers, everyday and seasonal prepackaged cards (cellos), including all cash and non-cash proceeds from the same thereof. UCC-1 Filing #20191610711	3/07/2019 Continuation filed 9/26/2023

FORM OF ASSIGNMENT AND ASSUMPTION

This Assignment and Assumption (this “*Assignment and Assumption*”) is dated as of the Effective Date set forth below and is entered into by and between [the][each]² Assignor identified in item 1 below ([the][each, an] “*Assignor*”) and [the][each]³ Assignee identified in item 2 below ([the][each, an] “*Assignee*”). [It is understood and agreed that the rights and obligations of [the Assignors][the Assignees]⁴ hereunder are several and not joint.]⁵ Capitalized terms used but not defined herein shall have the meanings given to them in the Credit Agreement identified below (the “*Credit Agreement*”), receipt of a copy of which is hereby acknowledged by the Assignee. The Standard Terms and Conditions set forth in Annex 1 attached hereto are hereby agreed to and incorporated *herein* by reference and made a part of this Assignment and Assumption as if set forth herein in full.

For an agreed consideration, [the][each] Assignor hereby irrevocably sells and assigns to [the Assignee][the respective Assignees], and [the][each] Assignee hereby irrevocably purchases and assumes from [the Assignor][the respective Assignors], subject to and in accordance with the Standard Terms and Conditions and the Credit Agreement, as of the Effective Date inserted by the Administrative Agent as contemplated below (i) all of [the Assignor’s][the respective Assignors’] rights and obligations in [its capacity as a Lender][their respective capacities as Lenders] under the Credit Agreement and any other documents or instruments delivered pursuant thereto to the extent related to the amount and percentage interest identified below of all of such outstanding rights and obligations of [the Assignor][the respective Assignors] under the respective facilities identified below and (ii) to the extent permitted to be assigned under applicable Law, all claims, suits, causes of action and any other right of [the Assignor (in its capacity as a Lender)][the respective Assignors (in their respective capacities as Lenders)] against any Person, whether known or unknown, arising under or in connection with the Credit Agreement, any other documents or instruments delivered pursuant thereto or the loan transactions governed thereby or in any way based on or related to any of the foregoing, including, but not limited to, contract claims, tort claims, malpractice claims, statutory claims and all other claims at law or in equity related to the rights and obligations sold and assigned pursuant to clause (i) above (the rights and obligations sold and assigned by [the][any] Assignor to [the][any] Assignee pursuant to clauses (i) and (ii) above being referred to herein collectively as [the][an] “*Assigned Interest*”). Each such sale and assignment is without recourse to [the][any] Assignor and, except as expressly provided in this Assignment and Assumption, without representation or warranty by [the][any] Assignor.

1. Assignor[s]: _____

2. Assignee[s]: _____

² For bracketed language here and elsewhere in this form relating to the Assignor(s), if the assignment is from a single Assignor, choose the first bracketed language. If the assignment is from multiple Assignors, choose the second bracketed language.

³ For bracketed language here and elsewhere in this form relating to the Assignee(s), if the assignment is to a single Assignee, choose the first bracketed language. If the assignment is to multiple Assignees, choose the second bracketed language.

⁴ Select as appropriate.

⁵ Include bracketed language if there are either multiple Assignors or multiple Assignees.

 [for each Assignee *identify Lender*]

3. Borrower: 99 CENTS ONLY STORES LLC
4. Administrative Agent: TC LENDING, LLC (“TCL”), including any successor thereto, as the administrative agent under the Credit Agreement
5. Credit Agreement: The SENIOR SECURED SUPER-PRIORITY DEBTOR-IN-POSSESSION TERM LOAN CREDIT AGREEMENT, dated as of April [], 2024, among Number Holdings, Inc. (the “Parent”), Borrower, the other subsidiaries of Parent party thereto, the Lenders from time to time party thereto, and TCL as Administrative Agent and Collateral Agent.
6. Assigned Interest:

<u>Assignor[s]</u> ⁶	<u>Assignee[s]</u> ⁷	<u>Amount of Loans being Assigned</u>	<u>Amount of Commitment being Assigned</u>
		-	-
		\$	\$
		\$	\$
		\$	\$

[7. Trade Date: _____⁸

Effective Date: _____, 20__ [TO BE INSERTED BY THE ADMINISTRATIVE AGENT AND WHICH SHALL BE THE EFFECTIVE DATE OF RECORDATION OF TRANSFER IN THE REGISTER THEREFOR.]

⁶ List each Assignor, as appropriate.

⁷ List each Assignee, as appropriate.

⁸ To be completed if the Assignor and the Assignee intend that the minimum assignment amount is to be determined as of the Trade Date.

The terms set forth in this Assignment and Assumption are hereby agreed to:

ASSIGNOR

[NAME OF ASSIGNOR]

By: _____

Name:

Title:

ASSIGNEE

[NAME OF ASSIGNEE]

By: _____

Name:

Title:

[Consented to and]⁹ Accepted:

TC LENDING, LLC, as Administrative Agent

By: _____

Name:

Title:

⁹ To be added only if the consent of the Administrative Agent is required by the terms of the Credit Agreement.

[Consented to: 99 CENTS ONLY STORES LLC

By: _____

Name:

Title:]¹⁰

¹⁰ To be added only if the consent of the Borrower is required by the terms of the Credit Agreement.

ANNEX 1
TO ASSIGNMENT AND ASSUMPTION

STANDARD TERMS AND CONDITIONS FOR
ASSIGNMENT AND ASSUMPTION

1. Representations and Warranties.

1.1. Assignor. [The][Each] Assignor (a) represents and warrants that (i) it is the legal and beneficial owner of [the][the relevant] Assigned Interest, (ii) [the][such] Assigned Interest is free and clear of any lien, encumbrance or other adverse claim and (iii) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and Assumption and to consummate the transactions contemplated hereby; and (b) assumes no responsibility with respect to (i) any statements, warranties or representations made in or in connection with the Credit Agreement or any other Loan Document, (ii) the execution, legality, validity, enforceability, genuineness, sufficiency or value of the Loan Documents or any collateral thereunder, (iii) the financial condition of the Borrower, any of its Subsidiaries or Affiliates or any other Person obligated in respect of any Loan Document or (iv) the performance or observance by the Borrower, any of its Subsidiaries or Affiliates or any other Person of any of their respective obligations under any Loan Document.

1.2. Assignee. [The][Each] Assignee (a) represents and warrants that (i) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and Assumption and to consummate the transactions contemplated hereby and to become a Lender under the Credit Agreement, (ii) it meets all the requirements to be an assignee under **Section 12.2(b)(iii)** and **(v)** of the Credit Agreement (subject to such consents, if any, as may be required under **Section 12.2(b)(iii)** of the Credit Agreement), (iii) from and after the Effective Date referred to in this Assignment and Assumption, it shall be bound by the provisions of the Credit Agreement as a Lender thereunder and, to the extent of [the][the relevant] Assigned Interest, shall have the obligations of a Lender thereunder, (iv) it is sophisticated with respect to decisions to acquire assets of the type represented by [the][such] Assigned Interest and either it, or the Person exercising discretion in making its decision to acquire [the][such] Assigned Interest, is experienced in acquiring assets of such type, (v) it has received a copy of the Credit Agreement, and such other documents and information as it deems appropriate to make its own credit analysis and decision to enter into this Assignment and Assumption and to purchase [the][such] Assigned Interest, (vi) it has, independently and without reliance upon the Administrative Agent or any other Lender and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Assignment and Assumption and to purchase [the][such] Assigned Interest and (vii) attached hereto is any documentation required to be delivered by it pursuant to the terms of the Credit Agreement, including but not limited to any documentation required pursuant to **Section 3.1** of the Credit Agreement, duly completed and executed by [the][such] Assignee; and (b) agrees that (i) it will, independently and without reliance upon the Administrative Agent, [the][any] Assignor or any other Lender, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under the Loan Documents, and (ii) it will perform in accordance with their terms all of the obligations which by the terms of the Loan Documents are required to be performed by it as a Lender.

2. Payments. From and after the Effective Date, the Administrative Agent shall make all payments in respect of [the][each] Assigned Interest (including payments of principal, interest, fees and other amounts) to [the][the relevant] Assignor for amounts which have accrued to but excluding the Effective Date and to [the][the relevant] Assignee for amounts which have accrued from and after the Effective Date.

3. General Provisions. This Assignment and Assumption shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns. This Assignment and

Assumption may be executed in any number of counterparts (and by different parties hereto indifferent counterparts), each of which shall constitute an original, but all of which together shall constitute one instrument. Delivery of an executed counterpart of a signature page of this Assignment and Assumption by telecopy or other electronic imaging means shall be effective as delivery of a manually executed counterpart of this Assignment and Assumption. This Assignment and Assumption shall be governed by, and construed in accordance with, the law of the State of New York.

EXHIBIT B

FORM OF NOTICE OF BORROWING

_____ , _____
TC LENDING, LLC,
as Administrative Agent for the Lenders referred to below
2100 McKinney Avenue, Suite 1500
Dallas, Texas 75201

Re: 99 CENTS ONLY STORES LLC

Reference is made to that certain SENIOR SECURED SUPER-PRIORITY DEBTOR-IN-POSSESSION TERM LOAN CREDIT AGREEMENT, dated as of April [], 2024 (as the same may be amended, restated, amended and restated, extended, supplemented or otherwise modified from time to time, the “*Credit Agreement*”), among NUMBER HOLDINGS, INC., a Delaware corporation (the “*Parent*”), 99 CENTS ONLY STORES LLC, a Delaware limited liability company (the “*Borrower*”), certain other Subsidiaries of the Parent party thereto TC LENDING, LLC, as administrative agent (in such capacity, including any successor thereto, the “*Administrative Agent*”) and as collateral agent under the Loan Documents, and each Lender from time to time party thereto. Capitalized terms used herein and not otherwise defined herein are used herein as defined in the Credit Agreement.

The Borrower hereby gives you notice, irrevocably, pursuant to *Section 2.2* of the Credit Agreement that the undersigned hereby requests a Borrowing under the Credit Agreement and, in connection therewith, sets forth below the information relating to the Borrowing (the “*Proposed Borrowing*”) as required by *Section 2.2* of the Credit Agreement:

- (a) The date of the Proposed Borrowing is _____, _____ (the “*Funding Date*”).
- (b) The aggregate principal amount of the Borrowing is \$ _____.
- (c) \$ _____ of the Borrowing shall be of [Base Rate Loans] [SOFR Loans].

The undersigned hereby represents and warrants that the conditions set forth in **Article IV** the Credit Agreement shall be satisfied on the Funding Date both immediately before and immediately after giving effect to the Proposed Borrowing and to the application of the proceeds therefrom.

[Remainder of page intentionally left blank]

99 CENTS ONLY STORES LLC

By: _____
Name:
Title:

[SIGNATURE PAGE TO NOTICE OF BORROWING]

EXHIBIT C

FORM OF NOTICE OF CONVERSION OR CONTINUATION

_____, ____

TC LENDING, LLC,
as Administrative Agent for the Lenders referred to below
2100 McKinney Avenue, Suite 1500
Dallas, Texas 75201

Re: 99 CENTS ONLY STORES LLC

Reference is made to that certain SENIOR SECURED SUPER-PRIORITY DEBTOR-IN-POSSESSION TERM LOAN CREDIT AGREEMENT, dated as of April [], 2024 (as the same may be amended, restated, amended and restated, extended, supplemented or otherwise modified from time to time, the "*Credit Agreement*"), among NUMBER HOLDINGS, INC., a Delaware corporation (the "*Parent*"), 99 CENTS ONLY STORES LLC, a Delaware limited liability company (the "*Borrower*"), certain other Subsidiaries of the Parent party thereto, TC LENDING, LLC, as administrative agent (in such capacity, including any successor thereto, the "*Administrative Agent*") and as collateral agent under the Loan Documents, and each Lender from time to time party thereto. Capitalized terms used herein and not otherwise defined herein are used herein as defined in the Credit Agreement.

The Borrower hereby gives you notice, irrevocably, pursuant to *Section 2.11* of the Credit Agreement that the undersigned hereby requests a [conversion on _____, ____] [continuation] of [\$]_____ in principal amount of presently outstanding Loans that are [Base Rate Loans] [SOFR] having an Interest Period ending on _____, ____ [to] [as][Base Rate] [SOFR] Loans. [The Interest Period for such amount requested to be converted to or continued as SOFR Loans is _____ [month[s]][days].]

[Remainder of page intentionally left blank]

In connection herewith, the undersigned has executed this notice as of the date first set forth above.

99 CENTS ONLY STORES LLC

By: _____
Name:
Title:

EXHIBIT D-1

FORM OF NON-BANK CERTIFICATE
(For Foreign Lenders That Are Not Partnerships or Pass-Thru Entities
For U.S. Federal Income Tax Purposes)

Reference is made to that certain SENIOR SECURED SUPER-PRIORITY DEBTOR-IN-POSSESSION TERM LOAN CREDIT AGREEMENT, dated as of April [], 2024 (as the same may be amended, restated, amended and restated, extended, supplemented or otherwise modified from time to time, the “*Credit Agreement*”), among NUMBER HOLDINGS, INC., a Delaware corporation (the “*Parent*”), 99 CENTS ONLY STORES LLC, a Delaware limited liability company (the “*Borrower*”), certain other Subsidiaries of the Parent party thereto, TC LENDING, LLC, as administrative agent (in such capacity, including any successor thereto, the “*Administrative Agent*”) and as collateral agent under the Loan Documents, and each Lender from time to time party thereto. Capitalized terms used but not otherwise defined herein shall have the meanings assigned to them in the Credit Agreement. _____ (the “*Foreign Lender*”) is providing this certificate pursuant to **Section 3.1(b)** of the Credit Agreement and hereby attaches hereto two (2) original signed copies of Internal Revenue Service Form W-8BEN (or such successor form thereto required under applicable Law as of the date hereof).

The Foreign Lender hereby represents and warrants that:

1. The Foreign Lender is the sole record and beneficial owner of the Loans (as well as any notes evidencing such loans) in respect of which it is providing this certificate.

2. The Foreign Lender is not a “bank” for purposes of Section 881(c)(3)(A) of the Internal Revenue Code of 1986, as amended (the “*Code*”). In this regard, the Foreign Lender further represents and warrants that:

- (a) the Foreign Lender is not subject to regulatory or other legal requirements as a bank in any jurisdiction; and
- (b) the Foreign Lender has not been treated as a bank for purposes of any tax, securities law or other filing or submission made to any Governmental Authority, any application made to a rating agency or qualification for any exemption from tax, securities law or other legal requirements.

3. The Foreign Lender is not a 10-percent shareholder of the Borrower within the meaning of Section 871(h)(3)(B) of the Code.

4. The Foreign Lender is not a controlled foreign corporation within the meaning of Section 881(c)(3)(C) of the Code related to the Borrower within the meaning of Section 864(d) of the Code.

The undersigned shall promptly notify the Borrower if any of the representations and warranties made herein are no longer true and correct.

[Signature Page Follows]

IN WITNESS WHEREOF, the undersigned has duly executed this certificate on the ____ day of _____, 20__.

[NAME OF FOREIGN LENDER]

By: _____

Name:

Title:

FORM OF NON-BANK CERTIFICATE
(For Foreign Lenders That Are Partnerships or Pass-Thru Entities
For U.S. Federal Income Tax Purposes)

Reference is made to that certain SENIOR SECURED SUPER-PRIORITY DEBTOR-IN-POSSESSION TERM LOAN CREDIT AGREEMENT, dated as of April [], 2024 (as the same may be amended, restated, amended and restated, extended, supplemented or otherwise modified from time to time, the “*Credit Agreement*”), among NUMBER HOLDINGS, INC., a Delaware corporation (the “*Parent*”), 99 CENTS ONLY STORES LLC, a Delaware limited liability company (the “*Borrower*”), certain other Subsidiaries of the Parent party thereto, TC LENDING, LLC, as administrative agent (in such capacity, including any successor thereto, the “*Administrative Agent*”) and as collateral agent under the Loan Documents, and each Lender from time to time party thereto. Capitalized terms used but not otherwise defined herein shall have the meanings assigned to them in the Credit Agreement. _____ (the “*Foreign Lender*”) is providing this certificate pursuant to **Section 3.1(b)** of the Credit Agreement and hereby attaches hereto two (2) original signed copies of Internal Revenue Service Form W-8IMY and accompanying documentation (or such successor forms thereto required under applicable Law as of the date hereof).

The Foreign Lender hereby represents and warrants that:

1. The Foreign Lender is the sole record owner of the Loans (as well as any notes evidencing such Loans) in respect of which it is providing this certificate.
2. The Foreign Lender’s partners/members are the sole beneficial owners of the Loans (as well as any notes evidencing such Loans).
3. Neither the Foreign Lender nor any of its partners/members is a “bank” for purposes of Section 881(c)(3)(A) of the Internal Revenue Code of 1986, as amended (the “**Code**”). In this regard, the Foreign Lender further represents and warrants that:
 - (a) neither the Foreign Lender nor any of its partners/members is subject to regulatory or other legal requirements as a bank in any jurisdiction; and
 - (b) neither the Foreign Lender nor any of its partners/members has been treated as a bank for purposes of any tax, securities law or other filing or submission made to any Governmental Authority, any application made to a rating agency or qualification for any exemption from tax, securities law or other legal requirements.
4. None of the Foreign Lender’s partners/members is a 10-percent shareholder of the Borrower within the meaning of Section 871(h)(3)(B) of the Code.
5. None of the Foreign Lender’s partners/members is a controlled foreign corporation within the meaning of Section 881(c)(3)(C) of the Code related to the Borrower within the meaning of Section 864(d) of the Code.

The undersigned shall promptly notify the Borrower if any of the representations and warranties made herein are no longer true and correct.

IN WITNESS WHEREOF, the undersigned has duly executed this certificate on the _____ day
of _____, 20__.

[NAME OF FOREIGN LENDER]

By: _____
Name:
Title:

FORM OF NON-BANK CERTIFICATE
(For Foreign Participants That Are Not Partnerships or Pass-Thru Entities
For U.S. Federal Income Tax Purposes)

Reference is made to that certain SENIOR SECURED SUPER-PRIORITY DEBTOR-IN-POSSESSION TERM LOAN CREDIT AGREEMENT, dated as of April [__], 2024 (as the same may be amended, restated, amended and restated, extended, supplemented or otherwise modified from time to time, the “*Credit Agreement*”), among NUMBER HOLDINGS, INC., a Delaware corporation (the “*Parent*”), 99 CENTS ONLY STORES LLC, a Delaware limited liability company (the “*Borrower*”), certain other Subsidiaries of the Parent party thereto, TC LENDING, LLC, as administrative agent (in such capacity, including any successor thereto, the “*Administrative Agent*”) and as collateral agent under the Loan Documents, and each Lender from time to time party thereto. Capitalized terms used but not otherwise defined herein shall have the meanings assigned to them in the Credit Agreement. _____ (the “*Foreign Participant*”) is providing this certificate pursuant to **Section 3.1(b)** and **Section 12.2(d)** of the Credit Agreement and hereby attaches hereto two (2) original signed copies of Internal Revenue Service Form W-8BEN (or such successor form thereto required under applicable Law as of the date hereof).

The Foreign Participant hereby represents and warrants that:

1. The Foreign Participant is the sole record and beneficial owner of the participation in respect of which it is providing this certificate.
2. The Foreign Participant is not a “bank” for purposes of Section 881(c)(3)(A) of the Internal Revenue Code of 1986, as amended (the “*Code*”). In this regard, the Foreign Participant further represents and warrants that:
 - (a) the Foreign Participant is not subject to regulatory or other legal requirements as a bank in any jurisdiction; and
 - (b) the Foreign Participant has not been treated as a bank for purposes of any tax, securities law or other filing or submission made to any Governmental Authority, any application made to a rating agency or qualification for any exemption from tax, securities law or other legal requirements.
3. The Foreign Participant is not a 10-percent shareholder of the Borrower within the meaning of Section 871(h)(3)(B) of the Code.
4. The Foreign Participant is not a controlled foreign corporation within the meaning of Section 881(c)(3)(C) of the Code related to the Borrower within the meaning of Section 864(d) of the Code.

The undersigned shall promptly notify the Borrower if any of the representations and warranties made herein are no longer true and correct.

[Signature Page Follows]

IN WITNESS WHEREOF, the undersigned has duly executed this certificate on the ____ day of _____, 20__.

[NAME OF FOREIGN PARTICIPANT]

By: _____
Name:
Title:

FORM OF NON-BANK CERTIFICATE
(For Foreign Participants That Are Partnerships or Pass-Thru Entities
For U.S. Federal Income Tax Purposes)

Reference is made to that certain SENIOR SECURED SUPER-PRIORITY DEBTOR-IN-POSSESSION TERM LOAN CREDIT AGREEMENT, dated as of April [__], 2024 (as the same may be amended, restated, amended and restated, extended, supplemented or otherwise modified from time to time, the “*Credit Agreement*”), among NUMBER HOLDINGS, INC., a Delaware corporation (the “*Parent*”), 99 CENTS ONLY STORES LLC, a Delaware limited liability company (the “*Borrower*”), certain other Subsidiaries of the Parent party thereto, TC LENDING, LLC, as administrative agent (in such capacity, including any successor thereto, the “*Administrative Agent*”) and as collateral agent under the Loan Documents, and each Lender from time to time party thereto. Capitalized terms used but not otherwise defined herein shall have the meanings assigned to them in the Credit Agreement. _____ (the “*Foreign Participant*”) is providing this certificate pursuant to **Section 3.1(b)** and **Section 12.2(d)** of the Credit Agreement and hereby attaches hereto two (2) original signed copies of Internal Revenue Service Form W-8IMY and accompanying documentation (or such successor forms thereto required under applicable Law as of the date hereof).

The Foreign Participant hereby represents and warrants that:

1. The Foreign Participant is the sole record owner of the participation in respect of which it is providing this certificate.
2. The Foreign Participant’s partners/members are the sole beneficial owners of the participation.
3. Neither the Foreign Participant nor any of its partners/members is a “bank” for purposes of Section 881(c)(3)(A) of the Internal Revenue Code of 1986, as amended (the “Code”). In this regard, the Foreign Participant further represents and warrants that:
 - (a) neither the Foreign Participant nor any of its partners/members is subject to regulatory or other legal requirements as a bank in any jurisdiction; and
 - (b) neither the Foreign Participant nor any of its partners/members has been treated as a bank for purposes of any tax, securities law or other filing or submission made to any Governmental Authority, any application made to a rating agency or qualification for any exemption from tax, securities law or other legal requirements.
4. None of the Foreign Participant’s partners/members is a 10-percent shareholder of the Borrower within the meaning of Section 871(h)(3)(B) of the Code.
5. None of the Foreign Participant’s partners/members is a controlled foreign corporation within the meaning of Section 881(c)(3)(C) of the Code related to the Borrower within the meaning of Section 864(d) of the Code.

The undersigned shall promptly notify the Borrower if any of the representations and warranties made herein are no longer true and correct.

IN WITNESS WHEREOF, the undersigned has duly executed this certificate on the ____ day of _____, 20__.

[NAME OF FOREIGN PARTICIPANT]

By: _____
Name:
Title:

Annex A

Additional Reporting¹

- Weekly report on cash flow variance report, showing Approved Budget to actual results on a line item by line item basis
- Weekly call with Financial Advisor to discuss such actual cash flow results and budget variances
- Weekly roll forward of inventory
- Weekly update and update call with the Specified Liquidation Agents on the Specified Store Closing Sales and RE Sales and intellectual property
- Weekly report and update call with the Specified Liquidation Agents and Investment Advisor on the real property sales and other Dispositions of Collateral, including updates on parties contacted and discussions held, non-disclosure agreements in process and executed, and bids and letters of intent received
- Weekly reporting on the composition of any inflow or disbursement in any week, as requested by the Administrative Agent or the Lenders
- Daily reporting of all disbursements, which shall include the issuance of any funds whether by wire, ACH, check, or other means, made by the Debtors
- Daily sales report for the going out of business sales in form and substance satisfactory to the Agents prepared by Specified Liquidation Agent described in clause (a) of the definition thereof

¹ The Debtors shall deliver (i) all weekly reporting set forth herein by 5:00 p.m. (PST) on the Thursday of each week and (ii) all daily reporting by 5:00 p.m. (PST) on each Business Day.

Annex B

Initial Budget

[SEE ATTACHED]

Annex C

Interim DIP Order

[SEE ATTACHED]