

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

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In re:	:	Chapter 11
	:	
GLOBAL EAGLE ENTERTAINMENT	:	Case No. 20-11835 (JTD)
INC., <i>et al.</i> , ¹	:	
	:	(Joint Administration Requested)
Debtors.	:	
	:	
	X	

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

Global Eagle Entertainment Inc. and its debtor affiliates, as debtors and debtors in possession in the above-captioned chapter 11 cases (collectively, the “**Debtors**”), respectfully represent as follows in support of this motion (this “**Motion**”):²

RELIEF REQUESTED

1. By this Motion, the Debtors seek entry of an interim order, substantially in the form attached hereto as **Exhibit A** (the “**Interim Order**”), and a final order (the “**Final Order**”)³ and, together with the Interim Order, the “**DIP Orders**”):

¹ The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number are: Global Eagle Entertainment Inc. (7800), Airline Media Productions, Inc. (2314), Emerging Markets Communications, LLC (0735), Entertainment in Motion, Inc. (3908), Global Eagle Entertainment Operations Solutions, Inc. (3375), Global Eagle Services, LLC (7899), Global Eagle Telecom Licensing Subsidiary LLC (2547), IFE Services (USA), Inc. (2120), Inflight Productions USA Inc. (8493), Maritime Telecommunications Network, Inc. (9974), MTN Government Services, Inc. (6069), MTN International, Inc. (8559), MTN License Corp. (0314), N44HQ, LLC (0570), Post Modern Edit, Inc. (6256), Row 44, Inc. (2959), and The Lab Aero, Inc. (9831). The Debtors’ address is 6080 Center Drive, Suite 1200, Los Angeles, California 90045.

² Capitalized terms used but not otherwise defined herein have the meanings ascribed to such terms in the DIP Orders (as defined below).

³ The Debtors will file the Final Order in advance of the Final Hearing (as defined below).

- a. authorizing Global Eagle Entertainment Inc., in its capacity as borrower (the “**DIP Borrower**”), to obtain postpetition financing, and for each of the other Debtors to guarantee unconditionally (the “**DIP Guarantors**”) on a joint and several basis, the DIP Borrower’s obligations in connection with a superpriority senior secured credit facility (the “**DIP Facility**”) consisting of an \$80,000,000 term loan credit facility (the “**DIP Loans**”) of which \$30,000,000 in DIP Loans will be available immediately upon entry of this Interim Order, in accordance with the terms and conditions set forth in the DIP Credit Agreement (as defined below), attached as **Exhibit A** to the Interim DIP Order, and all other terms and conditions of the DIP Documents (as defined below);
- b. authorizing the Debtors to enter into that certain Senior Secured Super-Priority Term Loan Debtor-In-Possession Credit Agreement among the DIP Borrower, the DIP Guarantors, the lenders party thereto (collectively in such capacities, the “**DIP Lenders**”), and Citibank, N.A., as administrative agent, collateral agent, and escrow agent (in such capacities, the “**DIP Agent**,” and, together with the DIP Lenders, the “**DIP Secured Parties**”) (as the same may be amended, restated, supplemented, waived or otherwise modified from time to time, the “**DIP Credit Agreement**”); and together with this Interim Order, the Final Order, and all agreements, documents, and instruments delivered or executed in connection therewith (including the fee letters executed by the DIP Borrower in connection with the DIP Facility), and other guarantee and security documentation, collectively, the “**DIP Documents**”), and to perform such other and further acts as may be required in connection with the DIP Documents;
- c. authorizing the Debtors to use the proceeds of the DIP Loans and the Prepetition Collateral, including Cash Collateral, in accordance with the Approved DIP Budget (subject to permitted variances set forth herein and in the DIP Credit Agreement) in form and substance acceptable to the required lenders under and pursuant to the DIP Credit Agreement (the “**Required DIP Lenders**”) to provide working capital for, and for other general corporate purposes of, the Debtors, including for payment of any Adequate Protection Payments and reasonable and documented transaction costs, fees, and expenses incurred in connection with any transactions to be implemented through the Chapter 11 Cases (as defined below);
- d. granting adequate protection to the Prepetition Secured Parties (as defined below) to the extent of any Diminution in Value of their interests in the Prepetition Collateral as set forth in the DIP Orders;
- e. granting valid, enforceable, binding, non-avoidable, and fully perfected first priority priming liens on and senior security interests in substantially all of the property, assets, and other interests in property and assets of the Debtors, whether such property is presently owned or after-acquired, and each Debtor’s estate as created by section 541 of the Bankruptcy Code, of any kind or nature whatsoever, real or personal, tangible, intangible, or mixed, now existing or hereafter acquired or created, whether existing prior to or arising after the Petition Date (as defined below), subject only to the (x) Carve Out, (y) certain liens permitted pursuant to the

terms of the DIP Credit Agreement and (z) other valid, perfected and unavoidable liens, if any, existing as of the Petition Date (or perfected after the Petition Date to the extent permitted by section 546(b) of the Bankruptcy Code) (the “**Prior Senior Liens**”), in each case, that are senior in priority to the First Lien Loan Liens, on the terms and conditions set forth herein and in the DIP Documents;

- f. granting superpriority administrative expense claims against each of the Debtors’ estates to parties on account of the Debtors’ reimbursement obligations with respect to the Prepetition L/Cs and DIP L/C Facility (each as defined below) subordinate only to the payment of the Carve Out on the terms and conditions set forth herein and in the DIP Documents;
- g. granting superpriority administrative expense claims against each of the Debtors’ estates to the DIP Agent and the DIP Lenders with respect to the DIP Obligations (as defined below) over any and all administrative expenses of any kind or nature subject and subordinate only to the payment of the Carve Out on the terms and conditions set forth herein and in the DIP Documents
- h. granting superpriority administrative claim status equivalent to the DIP Superpriority Claims on account of the Postpetition L/Cs, subordinate only to the payment of the Carve Out;
- i. subject to entry of a Final Order (as defined below) and to the extent set forth herein, waiving the Debtors’ and the estates’ right to surcharge against the Prepetition Collateral pursuant to section 506(c) of the Bankruptcy Code;
- j. subject to entry of a Final Order and to the extent set forth herein, for the “equities of the case” exception under Bankruptcy Code section 552(b) to not apply to such parties with respect to the proceeds, products, offspring, or profits of any of the Prepetition Collateral or the DIP Collateral, as applicable;
- k. pursuant to Bankruptcy Rule 4001, holding an interim hearing (the “**Interim Hearing**”) on the Motion before this Court to consider entry of this Interim Order, among other things, (1) authorizing Debtors to, on an interim basis, borrow from the DIP Lenders a principal amount of up to \$30,000,000 in DIP Loans, (2) authorizing the DIP Guarantors to guaranty the DIP Obligations, (3) authorizing the Debtors’ use of Prepetition Collateral (including Cash Collateral), (4) effectuating the DIP L/C Facility, (5) granting the adequate protection described in this Interim Order, and (6[^]) authorizing the Debtors to execute and deliver the DIP Documents to which they are a party and to perform their respective obligations thereunder and such other and further acts as may be necessary or appropriate in connection therewith;
- l. scheduling a final hearing (the “**Final Hearing**”) to consider the relief requested in the Motion and the entry of a final order (the “**Final Order**”), and approving the form of notice with respect to the Final Hearing; and
- m. granting related relief.

2. In support of this Motion, the Debtors submit: (a) the *Declaration of Neil A. Augustine in Support of the Motion for Debtors For Entry of Interim and Final Orders (I) Authorizing the Debtors to Obtain Postpetition Financing, (II) Authorizing the Debtors to Use Cash Collateral, (III) Granting Liens and Providing Superpriority Administrative Expense Claims, (IV) Granting Adequate Protection, (V) Modifying Automatic Stay, (VI) Scheduling a Final Hearing and (VII) Granting Related Relief*, attached hereto as **Exhibit B** (the “**Greenhill Declaration**”); and (b) the *Declaration of Christian M. Mezger In Support of Debtors’ Chapter 11 Petitions and First Day Relief* (the “**First Day Declaration**”), filed contemporaneously herewith and incorporated herein by reference. The Debtors’ initial budget reflecting the anticipated disbursements for each calendar week during the period from the Petition Date through and including the end of the 13th calendar week following the Petition Date is attached as **Exhibit B** to the Interim Order (the “**Approved DIP Budget**”).

JURISDICTION AND VENUE

3. The Court has jurisdiction to consider this Motion pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before the Court pursuant to 28 U.S.C. §§ 1408 and 1409.

4. The statutory predicates for the relief requested herein are sections 105, 361, 362, 363, 364 and 507 of the Bankruptcy Code, Rules 2002, 4001, 6003, 6004 and 9014 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), and Rules 2002-1, 4001-1, 4001-2 and 9013-1 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “**Local Rules**”).

5. Pursuant to Local Rule 9013-1(f), the Debtors consent to the entry of a final order

or judgment by the Court in connection with this Motion if it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments consistent with Article III of the United States Constitution.

BACKGROUND

6. On the date hereof (the “**Petition Date**”), the Debtors commenced with the Court voluntary cases (the “**Chapter 11 Cases**”) for relief under chapter 11 of the Bankruptcy Code. The Debtors are authorized to continue operating their businesses and managing their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee, examiner, or statutory committee has been appointed in the Chapter 11 Cases.

7. Contemporaneously with the filing of this Motion, the Debtors have filed with the Court a motion requesting joint administration of the Chapter 11 Cases for procedural purposes only pursuant to Bankruptcy Rule 1015(b).

8. Additional information regarding the Debtors’ businesses, capital structure, and the circumstances leading to the commencement of the Chapter 11 Cases is set forth in the First Day Declaration.⁴

PRELIMINARY STATEMENT

9. The Debtors commenced the Chapter 11 Cases to maximize the value of their estates for the benefit of all parties in interest. By this Motion, the Debtors seek authorization to access the DIP Facility, the DIP L/C Facility and to use Cash Collateral, which will, among other things, (a) ensure the continued, uninterrupted operation of their businesses as the Debtors pursue a value-maximizing chapter 11 process pursuant to the terms of the Restructuring Support

⁴ The First Day Declaration and other relevant case information is available on the following website maintained by the Debtors’ proposed claims and noticing agent, Prime Clerk LLC: <http://cases.primeclerk.com/GEE>.

Agreement (“**RSA**”), attached as Exhibit B to the First Day Declaration, including entry into the Stalking Horse Purchase Agreement and pursuit of a competitive sale process as described herein, (b) assure the Debtors’ customers, employees, counterparties, and business partners that the Debtors are well-capitalized during the pendency of the Chapter 11 Cases, and (c) make available sufficient funding for the Debtors to pay necessary expenses incurred in connection with administering the Chapter 11 Cases.

10. As further described in the First Day Declaration and the Greenhill Declaration, prior to the Petition Date, the Debtors explored a range of options to address the challenges arising from the widespread effects of the COVID-19 pandemic as well as their significant amount of funded debt. Specifically, the Debtors explored a variety of alternatives, including various out of court financing transactions, capital market transactions, sale transactions, and potential recapitalization or restructuring transactions. Ultimately, the Debtors determined that initiating a potential chapter 11 process in pursuit of a sale of all or substantially all of their assets provided the best option to preserve their operations, and further, best positioned their operations for future growth.

11. Contemporaneously with the commencement of the Chapter 11 Cases, the Debtors entered into the RSA with holders of approximately 90% in principal amount of their First Lien Loans. The RSA contemplates that a newly formed entity (formed in a manner reasonably acceptable to the Required Consenting First Lien Lenders (as defined in the RSA) and the Company) will serve as a stalking horse bidder (the “**Stalking Horse Bidder**”) in connection with a section 363 sale of the Debtors’ assets. Moreover, the RSA contemplates that the Debtors will continue a third-party marketing process for a sale of all or substantially all of its assets on the timeline contemplated therein and in accordance with the Bidding Procedures, to ascertain whether

any higher or otherwise better bids may exist. The Debtors have an urgent need for additional liquidity to ensure business continuity and operational stability while they conduct this process and implement the transactions contemplated by the RSA.

12. Immediate access to the DIP Facility, the DIP L/C Facility and use of Cash Collateral is necessary to avoid immediate and irreparable harm that would otherwise result if the Debtors were denied incremental liquidity. The Company had minimum cash on hand upon commencement of the Chapter 11 Cases—an estimated \$14 million in liquidity—and the Debtors' liquidity position will be further strained after the Petition Date by, among other things, the costs of administering the Chapter 11 Cases. The Debtors believe that access to the DIP Facility and use of Cash Collateral are critical to ensuring that the Debtors are able to successfully pursue their goals in chapter 11 for the benefit of all parties in interest. In addition, access to the DIP L/C Facility will provide the Debtors with access to letters of credit that they require to support their ordinary course of operations.

13. As part of the RSA, the Debtors negotiated the terms of the consensual use of Cash Collateral and their entry into the DIP Facility and the DIP L/C Facility to ensure that the Debtors have adequate liquidity during the Chapter 11 Cases. Having committed funding for the Chapter 11 Cases is vital to send a clear and important signal to the Debtors' customers, employees, counterparties, and business partners that the Debtors' operations can and will continue on a business-as-usual basis.

14. The DIP Facility was thoroughly evaluated by the Debtors and their professionals and was the subject of rigorous, arm's-length negotiations. As described in the Greenhill Declaration, alternative sources of postpetition financing were not readily available to the Debtors on terms better than or comparable to the DIP Facility. Accordingly, the Debtors, in consultation

with their advisors, have determined that the DIP Facility represents the best postpetition financing alternative available to the Debtors under the circumstances.

CONCISE STATEMENT PURSUANT TO BANKRUPTCY RULE 4001

15. Pursuant to Bankruptcy Rules 4001(b), (c), and (d), the following is a concise statement and summary of the proposed material terms of the DIP Documents and DIP Orders:⁵

Summary of Material Terms	
<p>Parties to the DIP Facility <i>Fed. R. Bankr. P. 4001(c)(1)(B)</i></p>	<p><u>Borrower:</u> Global Eagle Entertainment, Inc. <u>Guarantors:</u> Non-GEE Debtor Affiliates <u>DIP Agent:</u> Citibank, N.A., as administrative agent and collateral agent <u>DIP Lenders:</u> The financial institutions from time to time party to the DIP Facility</p>
<p>Purpose <i>Fed. R. Bankr. P. 4001(c)(1)(B); Local Rule 4001-2(a)(ii)</i></p>	<p>The Debtors have an immediate need to obtain the DIP Facility and to use Cash Collateral (solely to the extent consistent with the Approved DIP Budget (subject to permitted variances as set forth in this Interim Order and the DIP Documents)) to, among other things, (A) permit the orderly continuation of their businesses; (B) pay certain Adequate Protection Payments; and (C) pay the costs of administration of their estates and satisfy other working capital and general corporate purposes of the Debtors. The Debtors represent that the proceeds of the DIP Facility will provide the Debtors with the ability to fund day-to-day operations, meet administrative obligations during the Cases and preserve the value of their estates. The DIP Facility will also reassure the Company's customers and employees that the Company will have access to additional liquidity to meet its commitments during the Cases. The ability of the Debtors to obtain sufficient working capital and liquidity through the incurrence of the new indebtedness for borrowed money and other financial accommodations is vital to the preservation and maintenance of the Debtors' going concern values and successful reorganization. The Debtors will not have sufficient sources of working capital and financing to operate their businesses in the ordinary course of business throughout the Cases without access to the DIP Facility and authorized use of Cash Collateral.</p> <p><i>See Interim Order ¶ F(i).</i></p>
<p>Borrowing Limits</p>	<p>Up to \$80,000,000 in new money delayed draw term loans, \$30,000,000 of which shall be available upon entry of the Interim Order.</p> <p><i>See Interim Order ¶ (i).</i></p>

⁵ This statement is qualified in its entirety by reference to the applicable provisions of the DIP Documents. To the extent there exists any inconsistency between this concise statement and the provisions of the DIP Documents or the DIP Orders, the provisions of the DIP Documents or the DIP Orders, as applicable, will control. Capitalized terms not defined in this section shall have the meaning ascribed to them in the DIP Orders or the DIP Credit Agreement, as applicable.

Summary of Material Terms	
<p><i>Fed. R. Bankr. P. 4001(c)(1)(B); Local Rule 4001-2(a)(ii)</i></p>	
<p>Approved DIP Budget <i>Fed. R. Bankr. P. 4001(c)(1)(B)</i></p>	A copy of the Approved DIP Budget is attached as Exhibit B to the Interim Order.
<p>Interest Rates <i>Fed. R. Bankr. P. 4001(c)(1)(B); Local Rule 4001-2(a)(ii)</i></p>	<p>(a) Subject to the provisions of Section 2.08(b),</p> <ul style="list-style-type: none"> i. each Eurocurrency Rate Loan shall bear interest on the outstanding principal amount thereof for each Interest Period at a rate per annum equal to the Eurocurrency Rate for such Interest Period plus 10.00% (provided that the Eurocurrency Rate shall not be less than 1.25% per annum); and ii. each Base Rate Loan shall bear interest on the outstanding principal amount thereof from the Funding Date at a rate per annum equal to the Base Rate plus 9.00% (provided that the Base Rate shall not be less than 2.25% per annum). <p>(b) During the continuance of an Event of Default, the Borrower shall pay interest on principal and other amounts owing by it hereunder at a fluctuating interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by applicable Laws; provided that no interest at the Default Rate shall accrue or be payable to a Defaulting Lender so long as such Lender shall be a Defaulting Lender. Accrued and unpaid interest on such amounts (including interest on past due interest) shall be due and payable in cash upon written demand.</p> <p>(c) Interest on each Loan shall be due and payable in arrears on each Interest Payment Date applicable thereto and at such other times as may be specified herein. Interest hereunder shall be due and payable in accordance with the terms hereof before and after judgment, and before and after the commencement of any proceeding under any Debtor Relief Law.</p> <p>(d) For the avoidance of doubt, all interest accruing with respect to any Loans that have been fronted by the DIP Agent prior to the date on which such Loans have been purchased by the applicable Lender shall accrue for the account of the DIP Agent; provided, that to the extent such Loans have been purchased by the applicable Lender from the DIP Agent prior to 5:00 pm New York City time on the Funding Date, all interest with respect to such Loans shall accrue to the account of such Lender beginning on the Funding Date and ending on the date on which such Loans have been purchased by the applicable Lender.</p> <p>See DIP Credit Agreement § 2.08.</p>
<p>Maturity Date <i>Fed. R. Bankr. P. 4001(c)(1)(B); Local Rule</i></p>	<p>“Maturity Date” means the date that is the earliest of (i) the date that is six (6) months after the Petition Date (subject to an extension of up to thirty (30) days to the extent necessary if the Sale Order has been entered and the parties are awaiting required Federal Communications Commission consents and approvals), (ii) the date on which the Obligations become due and payable pursuant to this Agreement, whether by acceleration</p>

Summary of Material Terms	
<i>4001-2(a)(ii)</i>	<p>or otherwise, (iii) the effective date of a Chapter 11 Plan for the Debtors, (iv) the date of consummation of a sale of all or substantially all of the Debtors' assets under Section 363 of the Bankruptcy Code, including the Sale Transaction, (v) the first Business Day on which the Interim Order expires by its term or is terminated, unless the Final Order has been entered and become effective prior thereto, (vi) conversion of any of the Chapter 11 Cases to a case under Chapter 7 of the Bankruptcy Code unless otherwise consented to by the DIP Agent (at the Direction of the Required DIP Lenders), (vii) dismissal of any of the Chapter 11 Cases, unless otherwise consented to in writing by the DIP Agent (at the Direction of the Required DIP Lenders), (viii) dismissal of any of the Chapter 11 Cases, unless otherwise consented to in writing by the DIP Agent (at the Direction of the Required DIP Lenders), or (ix) the Final Order is vacated, terminated, rescinded, revoked, declared null and void or otherwise ceases to be in full force and effect (unless otherwise consented to in writing by the DIP Agent (at the Direction of the Required DIP Lenders)).</p> <p><i>See</i> DIP Credit Agreement §1.01 (Definitions).</p>
<p>Repayment Features / Roll-Up</p> <p><i>Local Rule 4001-2(a)(i)(E)</i></p>	<p>In connection with the DIP Credit Agreement, the Debtors will enter into an up to \$10 million (the "DIP L/C Facility Limit") letter of credit facility (the "DIP L/C Facility") with the DIP Agent or one its affiliates, which shall provide for the issuance of letters of credit, and which DIP L/C Facility will be documented pursuant to a letter of credit facility agreement (the "DIP L/C Agreement"), which DIP L/C Agreement shall provide for letter of credit fees consistent with those applicable to the Prepetition L/Cs under the Prepetition Credit Agreement.</p> <p>The Debtors will be authorized to obtain postpetition letters of credit under the DIP L/C Facility (the "Postpetition L/Cs") up to an amount equal to the DIP L/C Facility Limit less the aggregate face amount of then issued and outstanding Prepetition L/Cs, which Postpetition L/Cs will be cash collateralized (the "DIP L/C Cash Collateral") on the terms set forth in the DIP L/C Agreement with proceeds of the DIP Loans and granted superpriority administrative claim status equivalent to and pari passu with the DIP Superpriority Claims (the "DIP L/C Superpriority Claims").</p> <p>Upon entry of this Interim Order, the Debtors' reimbursement obligations in connection with the Prepetition L/Cs shall be granted allowed DIP L/C Superpriority Claim status, subject to the Carve Out, but shall not be cash collateralized. For the avoidance of doubt, the only collateral for the Postpetition L/Cs issued pursuant to the DIP L/C Facility shall be DIP L/C Cash Collateral and the only claims in respect of reimbursement of obligations in connection with the Prepetition L/Cs shall be the DIP L/C Superpriority Claims as set forth herein; provided, however, the DIP L/C Cash Collateral shall not be used to fund the Carve Out, solely to the extent the applicable Postpetition L/Cs secured by such DIP L/C Cash Collateral remains outstanding; provided, further, that, in the event any Postpetition L/C expires or is cancelled, any DIP L/C Cash Collateral that previously cash collateralized such Postpetition L/C shall be returned to an account under the control of the DIP Agent for the benefit of the DIP Lenders.</p> <p><i>See</i> Interim Order §3(c)</p>
Conditions Precedent to	<p>The effectiveness of the DIP Credit Agreement and the occurrence of the Closing Date are subject to the satisfaction, or waiver by the Required DIP Lenders, of conditions precedent</p>

Summary of Material Terms	
<p>Closing and Lending</p> <p><i>Fed. R. Bankr. P. 4001(c)(1)(B)</i></p>	<p>customary for financings of this type, which are set forth in Article IV of the DIP Credit Agreement.</p>
<p>Events of Default</p> <p><i>Fed. R. Bankr. P. 4001(c)(1)(B)</i></p>	<p>The DIP Credit Agreement contains customary events of default for financings of this type, which are set forth in Article VIII of the DIP Credit Agreement.</p>
<p>Carve Out</p> <p><i>Fed. R. Bankr. P. 4001(c)(1)(B); Local Rule 4001-2(a)(i)(F)</i></p>	<p>As used in the Interim Order, the term “Carve-Out” includes:</p> <ol style="list-style-type: none"> 1. <u>Statutory Fees</u>. All fees required to be paid to the Clerk of the Court and to the Office of the United States Trustee under section 1930(a) of title 28 of the United States Code and section 3717 of title 31 of the United States Code plus interest at the statutory rate. 2. <u>Clerk and U.S. Trustee Fees</u>. All reasonable fees and expenses up to \$50,000 incurred by a trustee under section 726(b) of the Bankruptcy Code. 3. <u>Allowed Professional Fees Incurred Prior to the Carve Out Trigger Notice</u>. To the extent allowed at any time, whether by interim order, procedural order, or otherwise, all unpaid fees and expenses (including any success or transaction fees owed to Greenhill & Co., LLC (“Greenhill”), to the extent payable pursuant to an order entered by the Court approving Greenhill’s retention in the Cases) (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 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 (at the direction of the Required DIP Lenders) 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 (the amounts set forth in clauses (i) through (iii), the “Pre-Carve Out Trigger Notice Cap”). 4. <u>Allowed Professional Fees Incurred After a Carve Out Trigger Notice</u>. Allowed Professional Fees of Professional Persons in an aggregate amount not to exceed \$3,500,000 incurred after the first business day following delivery by the DIP Agent of the Carve Out Trigger Notice (such date, the “Trigger Date”), to the extent allowed at any time, whether by interim order, procedural order, or otherwise (the amounts set forth in this clause (iv) being the “Post-Carve Out Trigger Notice Cap” and, together with the Pre-Carve Out Trigger Notice Cap, the “Carve Out Cap”). <p>For purposes of the foregoing, “Carve Out Trigger Notice” shall mean a written notice delivered by email (or other electronic means) by the DIP Agent to the Debtors, their lead restructuring counsel (Latham & Watkins LLP), the U.S. Trustee, and counsel to the Committee, which notice may be delivered following the occurrence and during the continuation of an Event of Default (as defined in the DIP Credit Agreement) and acceleration of the DIP Obligations under the DIP Facility, stating that the Post-Carve Out Trigger Notice Cap has been invoked. Notwithstanding anything in this Interim Order or</p>

Summary of Material Terms

the DIP Loan Documents to the contrary, in no event shall the Carve Out apply to the DIP L/C Cash Collateral, solely to the extent the applicable Postpetition L/Cs secured by such DIP L/C Cash Collateral remains outstanding.

Notwithstanding the occurrence of an Event of Default or conditions to borrowing or release of funds from the DIP Loan Escrow, on the day on which a Carve Out Trigger Notice is given by the DIP Agent to the Debtors with a copy to counsel to the Committee (the “**Termination Declaration Date**”), the Carve Out Trigger Notice shall (i) be deemed a draw request and notice of borrowing by the Debtors for DIP Loans under the DIP Facility (on a pro rata basis based on the then outstanding DIP Obligations) and/or request to release funds from the DIP Loan Escrow, in an amount equal to the then unpaid amounts of the Allowed Professional Fees plus reasonably estimated fees not yet allowed for the period through and including the Termination Declaration Date (any such amounts actually advanced shall constitute DIP Loans and shall be deposited in the DIP Loan Escrow), and (ii) also constitute a demand to the Debtors to utilize all cash on hand as of such date and any available cash thereafter held by any Debtor or available in the DIP Loan Escrow to fund a reserve in an amount equal to the then unpaid amounts of the Allowed Professional Fees plus reasonably estimated fees not yet allowed for the period through and including the Termination Declaration Date. The Debtors shall deposit and hold such amounts in a segregated account in trust to pay such then unpaid Allowed Professional Fees plus reasonably estimated fees not yet allowed for the period through and including the Termination Declaration Date (the “**Pre-Carve Out Trigger Notice Reserve**”) prior to any and all other claims. On the Termination Declaration Date, the Carve Out Trigger Notice shall also (i) be deemed a request by the Debtors for DIP Loans under the DIP Facility (on a pro rata basis based on the then outstanding DIP Obligations) and/or request to release funds from the DIP Loan Escrow in an amount equal to the Post-Carve Out Trigger Notice Cap (any such amounts actually advanced shall constitute DIP Loans) and (ii) constitute a demand to the Debtors to utilize all cash on hand as of such date and any available cash thereafter held by any Debtor or available in the DIP Loan Escrow, after funding the Pre-Carve Out Trigger Notice Reserve, to fund a reserve in an amount equal to the Post-Carve Out Trigger Notice Cap. The Debtors shall deposit and hold such amounts in a segregated account in trust to pay such Allowed Professional Fees benefiting from 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. On the first business day after the DIP Agent gives such notice to such DIP Lenders, notwithstanding anything in the DIP Credit Agreement to the contrary, including with respect to the existence of a Default (as defined in the DIP Credit Agreement) or Event of Default, the failure of the Debtors to satisfy any or all of the conditions precedent for DIP Loans under the DIP Facility, any termination of the DIP Obligations following an Event of Default, or the occurrence of the Maturity Date (as defined in the DIP Credit Agreement), each DIP Lender with an outstanding Commitment (as defined in the DIP Credit Agreement, on a pro rata basis based on the then outstanding Commitments) shall make available to the DIP Agent such DIP Lender’s pro rata share with respect to such borrowing in accordance with the DIP Facility. All funds in the Pre-Carve Out Trigger Notice Reserve shall be used first to pay the obligations set forth in the Pre-Carve Out Trigger Notice Cap (the “Pre-Carve Out Amounts”), but not, for the avoidance of doubt, the Post-Carve Out Trigger Notice Cap, until paid in full, and then, to the extent the Pre-Carve Out Trigger Notice Reserve has not been reduced to zero, to pay the DIP Agent for the benefit of the DIP

Summary of Material Terms	
	<p>Lenders, unless the DIP Obligations have been indefeasibly paid in full, in cash, and all Commitments have been terminated, in which case any such excess shall be paid to the Prepetition First Lien Secured Parties in accordance with their rights and priorities as of the Petition Date. All funds in the Post-Carve Out Trigger Notice Reserve shall be used first to pay the obligations set forth in the Post-Carve Out Trigger Notice Cap (the “Post-Carve Out Amounts”), and then, to the extent the Post-Carve Out Trigger Notice Reserve has not been reduced to zero, to pay the DIP Agent for the benefit of the DIP Lenders, unless the DIP Obligations have been indefeasibly paid in full, in cash, and all Commitments have been terminated, in which case any such excess shall be paid to the Prepetition First Lien Secured Parties in accordance with their rights and priorities as of the Petition Date. Notwithstanding anything to the contrary in the DIP Documents, or this Interim Order, if either of the Carve Out Reserves is not funded in full in the amounts set forth in this Paragraph 10, 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 Reserves, up to the applicable amount set forth in this Paragraph 10, prior to making any payments to the DIP Agent or the Prepetition First Lien Secured Parties, as applicable. Notwithstanding anything to the contrary in the DIP Documents or this Interim Order, following delivery of a Carve Out Trigger Notice, the DIP Agent and the Prepetition First Lien Administrative Agent shall not sweep or foreclose on cash (including cash received as a result of the sale or other disposition of any assets) of the Debtors until the Carve Out Reserves have been fully funded, but shall have a security interest in any residual interest in the Carve Out Reserves, with any excess paid to the DIP Agent for application in accordance with the DIP Documents. Further, notwithstanding anything to the contrary in this Interim Order, (i) disbursements by the Debtors from the Carve Out Reserves shall not constitute DIP Loans or increase or reduce the DIP Obligations, (ii) the failure of the Carve Out Reserves to satisfy in full the Allowed Professional Fees shall not affect the priority of the Carve Out, and (iii) in no way shall the Approved DIP Budget, Budget, Carve Out, Post-Carve Out Trigger Notice Cap, Carve Out Reserves, or any of the foregoing be construed as a cap or limitation on the amount of the Allowed Professional Fees due and payable by the Debtors. For the avoidance of doubt and notwithstanding anything to the contrary in this Interim Order, the DIP Facility, the Prepetition First Lien Documents or the Second Lien Note Documents (as defined in the Intercreditor Agreement), the Carve Out shall be senior to all liens and claims securing the DIP Facility, the Adequate Protection Liens, the adequate Protection Superiority Claims, any claims arising under section 507(b) of the Bankruptcy Code, and any and all other forms of adequate protection, liens, or claims securing the DIP Obligations, the Prepetition First Lien Obligations, and the obligations pursuant to the Securities Purchase Agreement.</p> <p><i>See Interim Order ¶ 10.</i></p>
<p>Priority of Claims and Liens; Collateral</p> <p><i>Fed. R. Bankr. P. 4001(c)(1)(B)(i)</i></p>	<p>As security for the DIP Obligations, effective and perfected upon the date of the Interim Order, and without the necessity of the execution, recordation of filings by the Debtors of mortgages, security agreements, control agreements, pledge agreements, financing statements, or other similar documents, or the possession or control by the DIP Agent or any DIP Lender of, or over, any DIP Collateral (as defined below), the security interests and liens identified in ¶ 7 of the Interim Order are hereby granted by the Debtors to the DIP Agent, (all property identified in clause (a) and (b) below being collectively referred to as the “DIP Collateral”), subject to (x) Liens permitted pursuant to the terms of the DIP Credit</p>

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	<p>Agreement and (y) the Carve Out (all such liens and security interests granted to the DIP Agent, for the benefit of the DIP Lenders, pursuant to this Interim Order and the DIP Documents, the “DIP Liens”).</p> <p>Other than as set forth in the Interim Order, neither the DIP Liens nor the Adequate Protection Liens shall be made subject to or <i>pari passu</i> with any lien or security interest granted in any of the Cases or arising after the Petition Date, and neither the DIP Liens nor the Adequate Protection Liens shall be subject or junior to any lien or security interest that is avoided and preserved for the benefit of the Debtors’ estates under Bankruptcy Code section 551.</p> <p>DIP Superpriority Claims. Pursuant to section 364(c)(1) of the Bankruptcy Code, all of the DIP Obligations shall constitute allowed superpriority administrative expense claims against each of the Debtors’ estates (the “DIP Superpriority Claims”) (without the need to file any proof of claim) with priority over any and all administrative expenses, adequate protection claims, diminution claims, and all other claims against the Debtors, now existing or hereafter arising, of any kind whatsoever, including, without limitation, all administrative expenses of the kind specified in sections 503(b) and 507(b) of the Bankruptcy Code, and over any and all administrative expenses or other claims arising under sections 105, 326, 327, 328, 330, 331, 361, 362, 363, 364, 365, 503(b), 506(c), 507(a), 507(b), 726, 1113, or 1114 of the Bankruptcy Code or otherwise, whether or not such expenses or claims may become secured by a judgment lien or other non-consensual lien, levy or attachment, which allowed claims shall for the purposes of section 1129(a)(9)(A) of the Bankruptcy Code be considered administrative expenses allowed under section 503(b) of the Bankruptcy Code and which shall be payable from and have recourse to all prepetition and postpetition property of the Debtors and all proceeds thereof, including, without limitation, subject to entry of the Final Order, any proceeds or property recovered in connection with the pursuit of claims or causes of action arising under chapter 5 of the Bankruptcy Code, if any (the “Avoidance Actions”), subject only to, and subordinated in all respects to, the payment of the Carve Out; provided, however, the DIP L/C Superpriority Claim shall be <i>pari passu</i> with the DIP Superpriority Claims and treated as DIP Superpriority Claims pursuant to the terms of this Interim Order and the DIP Documents. Except as set forth in the Interim Order or the Final Order, no other superpriority claims shall be granted or allowed in these Cases. See Interim Order ¶¶ 6; 7; 27(f).</p>
<p>Adequate Protection / Identity of Each Entity with Interest in Cash Collateral</p> <p><i>Fed. R. Bankr. P. 4001(c)(1)(B)(ii); (b)(1)(B)(i), (iv)</i></p>	<p>Adequate Protection for the Prepetition First Lien Secured Parties. Subject only to the Carve Out and the terms of the Interim Order, pursuant to sections 361, 363(e), and 364 of the Bankruptcy Code, and in consideration of the stipulations and consents set forth herein, as adequate protection of their interests in the Prepetition Collateral (including Cash Collateral), solely for and equal in amount to the postpetition diminution in value of such interests (each such diminution, a “Diminution in Value”), resulting from, among other things, the imposition of the priming DIP Liens on the Prepetition Collateral, the Carve Out, the Debtors’ use of the Prepetition Collateral (including Cash Collateral), and the imposition of the automatic stay, the Prepetition First Lien Administrative Agent, for the benefit of itself and the other Prepetition First Lien Secured Parties, is hereby granted the following (collectively, the “Adequate Protection Obligations”):</p>

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1. First Lien Adequate Protection Liens. As security for and solely to the extent of any Diminution in Value, additional and replacement, valid, binding, enforceable, non-avoidable, and effective and automatically perfected postpetition security interests in and liens as of the date of the Interim Order (together, the “**First Lien Adequate Protection Liens**”), without the necessity of the execution by the Debtors (or recordation or other filing), of security agreements, control agreements, pledge agreements, financing statements, mortgages, or other similar documents, on all DIP Collateral and, upon entry of the Final Order, all proceeds or property recovered from Avoidance Actions. Subject to the terms of the Interim Order, the First Lien Adequate Protection Liens shall be subordinate only to the (A) Carve Out, (B) the DIP Liens, and (C) Prior Senior Liens. The First Lien Adequate Protection Liens shall otherwise be senior to all other security interests in, liens on, or claims against any of the DIP Collateral (including, for the avoidance of doubt, any lien or security interest that is avoided and preserved for the benefit of the Debtors and their estates under section 551 of the Bankruptcy Code).
2. First Lien Adequate Protection Superpriority Claims. As further adequate protection, and to the extent provided by sections 503(b) and 507(b) of the Bankruptcy Code, allowed administrative expense claims in each of the Cases ahead of and senior to any and all other administrative expense claims in such Cases to the extent of any postpetition Diminution in Value (the “**Adequate Protection Superpriority Claims**”), but junior to the Carve Out and the DIP Superpriority Claims. Subject to the Carve Out and the DIP Superpriority Claims and DIP L/C Superpriority Claims in all respects, the Adequate Protection Superpriority Claims will not be junior to any claims and shall have priority over all administrative expense claims against each of the Debtors, now existing or hereafter arising, of any kind or nature whatsoever, including, without limitation, administrative expense claims of the kinds specified in or ordered pursuant to sections 105, 326, 328, 330, 331, 365, 503(a), 503(b), 506(c) (subject to entry of the Final Order), 507(a), 507(b), 546(d), 726, 1113 and 1114 of the Bankruptcy Code. The Prepetition First Lien Secured Parties shall not receive or retain any payments, property or other amounts in respect of the Adequate Protection Superpriority Claims under section 507(b) of the Bankruptcy Code granted hereunder unless and until the DIP Obligations have been indefeasibly paid in full, in cash, or satisfied in a manner otherwise agreed to by the Required DIP Lenders, in each case as provided in the DIP Documents.
3. First Lien Adequate Protection Payments. As further adequate protection, the Debtors are authorized and directed to pay, in accordance with the terms of Paragraph 19 of the Interim Order, all reasonable and documented fees and expenses (the “**Adequate Protection Fees**”), whether incurred before or after the Petition Date, to the extent not duplicative of any fees and/or expenses paid pursuant to paragraph 3(d)(3) of the Interim Order, including all reasonable and documented fees and expenses of counsel and other professionals retained as provided for in the DIP Documents and the Interim Order, including, for the avoidance of doubt, of (i) the Agent Advisors, as counsel to the DIP Agent and Prepetition First Lien Administrative Agent, (ii) the DIP/First Lien Group Advisors, and (iii) to the extent necessary to exercise and fulfill its obligations under the Prepetition First Lien Loan Documents, one counsel to the Prepetition First Lien Secured Parties (taken as a

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	<p>whole) in each local jurisdiction that is material to the Prepetition First Lien Secured Parties (taken as a whole) (all payments referenced in this sentence, collectively, the “<u>Adequate Protection Payments</u>”). None of the Adequate Protection Fees shall be subject to separate approval by this Court or the U.S. Trustee Guidelines, and no recipient of any such payment shall be required to file any interim or final fee application with respect thereto or otherwise seek the Court’s approval of any such payments.</p> <p>4. <u>Right to Seek Additional Adequate Protection.</u> The Interim Order is without prejudice to, and does not constitute a waiver of, expressly or implicitly, the rights of the Prepetition First Lien Secured Parties to request further or alternative forms of adequate protection at any time or the rights of the Debtors or any other party to contest such request.</p> <p><i>See Interim Order ¶ 8.</i></p> <p><u>Adequate Protection for the Prepetition Second Lien Secured Parties.</u> Pursuant to the terms of the Interim Order and sections 361, 363(e), and 364 of the Bankruptcy Code, as adequate protection of their interests in the Prepetition Collateral (including Cash Collateral), solely for and equal in amount to the postpetition Diminution in Value, resulting from, among other things, the imposition of the priming DIP Liens on the Prepetition Collateral, the Carve Out, the Debtors’ use of the Prepetition Collateral (including Cash Collateral), and the imposition of the automatic stay, the Prepetition Second Lien Administrative Agent, for the benefit of itself and the other Prepetition Second Lien Secured Parties, is hereby granted the following (collectively, the “<u>Second Lien Adequate Protection Obligations</u>” and, together with the First Lien Adequate Protection Obligations, the “<u>Adequate Protection Obligations</u>”):</p> <p>1. <u>Second Lien Adequate Protection Liens.</u> As security for and solely to the extent of any Diminution in Value, additional and replacement, valid, binding, enforceable, non-avoidable, and effective and automatically perfected postpetition security interests in and liens as of the date of the Interim Order (together, the “<u>Second Lien Adequate Protection Liens</u>” and, together with the First Lien Adequate Protection Liens, the “<u>Adequate Protection Liens</u>”), without the necessity of the execution by the Debtors (or recordation or other filing), of security agreements, control agreements, pledge agreements, financing statements, mortgages, or other similar documents, on all DIP Collateral and, upon entry of the Final Order, all proceeds or property recovered from Avoidance Actions. Subject to the terms of this Interim Order, the Second Lien Adequate Protection Liens shall be subordinate only to the (A) Carve Out, (B) the DIP Liens, (C) the First Lien Adequate Protection Liens, (D) the First Lien Loan Liens, and (E) Prior Senior Liens. The Second Lien Adequate Protection Liens shall otherwise be senior to all other security interests in, liens on, or claims against any of the DIP Collateral (including, for the avoidance of doubt, any lien or security interest that is avoided and preserved for the benefit of the Debtors and their estates under section 551 of the Bankruptcy Code).</p> <p><i>See Interim Order ¶ 9.</i></p>
Debtors’ Stipulations	<p>Stipulations. Without prejudice to the rights of parties in interest, including any Committee, as set forth in paragraph 12 of the Interim Order, and subject to the limitations</p>

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4001(c)(1)(B)(iii)
Local Rule
4001-2(a)(i)(B)

thereon contained in paragraphs 20 and 28 of the Interim Order, and subject to entry of a Final Order, the Debtors stipulate and agree that (the below list summarizing the most noteworthy stipulations):

1. First Lien Loans. As of the Petition Date, the Debtors were jointly and severally indebted to the Prepetition First Lien Secured Parties pursuant to the Prepetition First Lien Loan Documents, without defense, counterclaim, or offset of any kind, in an amount equal to the aggregate principal amount of the First Lien Loans *plus* accrued and unpaid interest with respect thereto and any additional fees, costs, expenses (including any attorneys', financial advisors', and other professionals' fees and expenses), reimbursement obligations, indemnification obligations, contingent obligations, and other charges of whatever nature, whether or not contingent, whenever arising, due, or owing, and all other Obligations (as defined in the Prepetition Credit Agreement) owing under or in connection with the Prepetition First Lien Loan Documents (collectively, the "**Prepetition First Lien Obligations**").
2. First Lien Loan Collateral. In connection with the Prepetition Credit Agreement, the Debtors entered into that certain Security Agreement, dated as of January 6, 2017 (as amended, supplemented or otherwise modified from time to time, including by the Omnibus Incremental Term Loan and Seventh Amendment to Credit Agreement and Amendment to Security Agreement, the "**Security Agreement**"), by and between the Borrower, the other loan parties thereto, and the Prepetition First Lien Administrative Agent. Pursuant to the Security Agreement and the other Prepetition First Lien Loan Documents, the Prepetition First Lien Obligations are secured by valid, binding, perfected, and enforceable first-priority security interests in and liens (the "**First Lien Loan Liens**") on the "Collateral" (the "**Prepetition Collateral**"), pursuant to, and as such term is defined in, the Security Agreement, consisting of substantially all of the Debtors' assets, except as set forth in the Security Agreement.
3. Second Lien Collateral. In connection with the Securities Purchase Agreement, the Debtors and the Prepetition Second Lien Administrative Agent entered into that certain Security Agreement, dated as of March 27, 2018 (as amended, supplemented or otherwise modified from time to time, including by the Second Amendment to Securities Purchase Agreement and Amendment to Security Agreement, the "**Second Lien Security Agreement**"). Pursuant to the Second Lien Security Agreement, the Prepetition Second Lien Secured Parties were granted security interests in and liens (the "**Second Lien Loan Liens**" and, together with the First Lien Loan Liens, the "**Prepetition Liens**") on the Prepetition Collateral.
4. Priority of Prepetition Liens; Intercreditor Agreements. The Prepetition First Lien Administrative Agent and the Prepetition Second Lien Administrative Agent are parties to that certain Intercreditor and Subordination Agreement, dated as of March 27, 2018 (as amended, restated, or otherwise modified from time to time, including by that certain Amendment No. 1 to Intercreditor and Subordination Agreement and Consent and Reaffirmation, dated as of July 19, 2019, the "**Intercreditor Agreement**") to govern, among other things, the respective rights, interests, obligations, priority, and positions of the Prepetition First Lien Secured Parties and the Prepetition Second Lien Secured Parties with respect to the assets and properties

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	<p>of the Debtors and other obligors. Each of the Borrower and Guarantors acknowledged and agreed to the Intercreditor Agreement.</p> <p>5. <u>Cash Collateral</u>. Any and all of the Debtors’ cash, including the Debtors’ cash and other amounts on deposit or maintained in any account or accounts by the Debtors, and any amounts generated by the collection of accounts receivable or other disposition of the Prepetition Collateral existing as of the Petition Date, and the proceeds of any of the foregoing is the Prepetition First Lien Secured Parties’ cash collateral within the meaning of Bankruptcy Code section 363(a) (the “Cash Collateral”).</p> <p>6. <u>Validity, Perfection, and Priority of First Lien Loan Liens and Prepetition First Lien Obligations</u>. Subject to the Challenge Period (as defined herein), each of the Debtors acknowledges and agrees that, in each case as of the Petition Date: (A) the First Lien Loan Liens are valid, binding, enforceable, non-avoidable, and properly perfected liens on and security interests in the Prepetition Collateral; (B) the First Lien Loan Liens are subject and subordinate only to valid, perfected, and unavoidable liens and security interests existing as of the Petition Date or that are perfected subsequent to the Petition Date as permitted by section 546(b) of the Bankruptcy Code, in each case, that are senior in priority to the First Lien Loan Liens as permitted by the terms of the Prepetition First Lien Loan Documents; (C) the Prepetition First Lien Obligations constitute legal, valid, binding, and non-avoidable obligations of the Debtors; (D) no offsets, challenges, objections, defenses, claims, or counterclaims of any kind or nature to any of the First Lien Loan Liens or Prepetition First Lien Obligations exist, and no portion of the First Lien Loan Liens or Prepetition First Lien Obligations is subject to any challenge or defense including impairment, set-off, right of recoupment, avoidance, attachment, disallowance, disgorgement, reduction, recharacterization, recovery, subordination (whether equitable or otherwise), attack, offset, defense, counterclaims, cross-claims, or “claim” (as defined in the Bankruptcy Code), pursuant to the Bankruptcy Code or applicable nonbankruptcy law; and (E) the Debtors and their estates have no claims, objections, challenges, causes of actions, recoupments, counterclaims, cross-claims, setoff rights, and/or choses in action, including “lender liability” causes of action or avoidance claims under chapter 5 of the Bankruptcy Code, whether arising under applicable state law or federal law (including any recharacterization, subordination, avoidance, disgorgement, recovery, or other claims arising under or pursuant to sections 105, 510, or 542 through 553 of the Bankruptcy Code), against the Prepetition First Lien Administrative Agent, the Prepetition First Lien Secured Parties, or any of their respective affiliates, agents, representatives, attorneys, advisors, professionals, officers, directors, and employees arising out of, based upon, or related to their loans under the Prepetition First Lien Loan Documents, the Prepetition First Lien Obligations, or the First Lien Loan Liens.</p> <p><i>See Interim Order ¶ E</i></p>
Waiver or Modification of Automatic Stay	<p>Immediately upon the occurrence and during the continuation of an Event of Default, notwithstanding the provisions of section 362 of the Bankruptcy Code, without any application, motion, or notice to, hearing before, or order from the Court, but subject to the terms of this Interim Order, subject to the Remedies Notice Period (defined below), (a) the</p>

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Fed. R. Bankr. P. 4001(c)(1)(B)(iv)

DIP Agent (at the direction of the Required DIP Lenders) may declare (any such declaration shall be referred to herein as a “Termination Declaration”) (i) all DIP Obligations owing under the DIP Documents to be immediately due and payable, (ii) the termination, reduction or restriction of any further commitment to extend credit to the Debtors to the extent any such commitment remains under the DIP Facility, (iii) termination of the DIP Facility and the DIP Documents as to any future liability or obligation of the DIP Agent and the DIP Lenders, but without affecting any of the DIP Liens or the DIP Obligations, and (iv) that the Carve Out shall be triggered, through the delivery of the Carve Out Trigger Notice to the DIP Borrower and (b) subject to paragraph 13(b), the DIP Agent (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 (the date on which a Termination Declaration is delivered, the “DIP Termination Date”). The Termination Declaration shall not be effective until notice has been provided by electronic mail (or other electronic means) to counsel to the Debtors, counsel to a Committee (if appointed), and the U.S. Trustee. The automatic stay in the Cases otherwise applicable to the DIP Agent, the DIP Lenders, and the Prepetition First Lien Secured Parties is hereby modified so that five (5) business days after the DIP Termination Date (the “Remedies Notice Period”): (a) the DIP Agent (at the direction of the Required DIP Lenders) shall be entitled to exercise its rights and remedies in accordance with the DIP Documents and this Interim Order to satisfy the DIP Obligations, DIP Superpriority Claims, DIP L/C Superpriority Claims and DIP Liens, subject to the Carve Out; (b) subject to the foregoing clause (a), the applicable Prepetition First Lien Secured Parties shall be entitled to exercise their respective rights and remedies to the extent available in accordance with the applicable Prepetition First Lien Loan Documents and this Interim Order with respect to the Debtors’ use of Cash Collateral. During the Remedies Notice Period, the Debtors, the Committee (if appointed), and/or any party in interest shall be entitled to seek an emergency hearing within the Remedies Notice Period with the Court for the sole purpose (unless the Court orders otherwise) of contesting whether an Event of Default has occurred or is continuing or for the contested use of Cash Collateral. Except as set forth in this Paragraph 16 or otherwise ordered by the Court prior to the expiration of the Remedies Notice Period, after the Remedies Notice Period, the Debtors shall waive their right to and shall not be entitled to seek relief, including, without limitation, under section 105 of the Bankruptcy Code, to the extent such relief would in any way impair or restrict the rights and remedies of the DIP Agent, the DIP Lenders, or the Prepetition First Lien Secured Parties under this Interim Order. Unless the Court has determined that an Event of Default has not occurred and/or is not Lenders, and Prepetition First Lien Secured Parties (solely with respect to the use of Cash Collateral to the extent permitted hereunder) shall automatically be terminated at the end of the Remedies Notice Period without further notice or order. Upon expiration of the Remedies Notice Period, the DIP Agent (at the direction of the Required DIP Lenders) and the Prepetition First Lien Secured Parties shall be permitted to exercise all remedies set forth herein, and in the DIP Documents, and as otherwise available at law without further order of or application or motion to this Court consistent with this Interim Order; provided, that the Prepetition First Lien Secured Parties shall be permitted to exercise remedies to the extent available solely with respect to the Debtors’ use of Cash Collateral.

See Interim Order ¶ 16.

Summary of Material Terms

<p>Milestones</p> <p><i>Fed. R. Bankr. P. 4001(c)(1)(B)(vi)</i></p>	<p>The DIP Credit Agreement contains the following milestones:</p> <ol style="list-style-type: none"> 1. By no later than three (3) days following the Petition Date, the Debtors shall have filed a motion seeking approval of the Bidding Procedures Order, in form and substance acceptable to the Required DIP Lenders. 2. By no later than five (5) days following the Petition Date, the Bankruptcy Court shall enter the Interim Order. 3. By no later than twenty-eight (28) days following the Petition Date, the Borrower shall have obtained entry of the Bidding Procedures Order, in form and substance acceptable to the Required DIP Lenders (the “Bidding Procedures Order”). 4. By no later than forty (40) days following the Petition Date, the Bankruptcy Court shall enter the Final Order authorizing the DIP Facility, in form and substance acceptable to the Required DIP Lenders. 5. By no later than forty-two (42) days following the Petition Date, the Borrower shall have obtained receipt of Initial Acceptable Bids (as defined in the Bidding Procedures Order or equivalent term used therein). 6. By no later than seventy-five (75) days following the Petition Date, the Borrower shall have obtained receipt of Qualified Bids (as defined in the Bidding Procedures Order or equivalent term used therein). 7. By no later than eighty (80) days following the Petition Date, the Borrower shall conduct the Auction (as defined in the Bidding Procedures Order or equivalent term used therein) in accordance with the Bidding Procedures Order. 8. By no later than ninety-five (85) days following the Petition Date, the Bankruptcy Court shall have conducted, to the extent necessary, the Sale Hearing (as defined in the Bidding Procedures Order) and entered the Sale Order in form and substance acceptable to the Required DIP Lenders and the Borrower approving the Sale Transaction. 9. By no later than one-hundred (100) days following the Petition Date, the Sale Transaction shall have closed; provided that if regulatory approvals associated with a Sale Transaction remain pending as of such date, such date shall be automatically extended to the date that is the third Business Day following receipt of all necessary regulatory approvals. <p>Notwithstanding the foregoing or any other provision hereof or of any other Loan Document, in the event that no Initial Acceptable Bids (as defined in the Bidding Procedures Order or equivalent term used therein) are timely received providing for a purchase price that would result in the Discharge of the DIP and First Lien Obligations (including, for the avoidance of doubt, any Initial Acceptable Bids for an individual asset or combination of assets that are less than all of the Loan Parties’ Assets (as defined in the Bidding Procedures Order or equivalent term used therein), but, when taken together, would result in the Discharge of the DIP and First Lien Obligations), then, to the extent consistent with the exercise of their fiduciary duties, the Loan Parties (in consultation with the Consultation Parties (as defined in the Bidding Procedures Order or equivalent term used therein)) will terminate the Sale Process and will seek an expedited Sale Hearing (as defined in the Bidding Procedures Order or equivalent term used therein) to approve the Sale (as defined in the Bidding Procedures Order or equivalent term used therein) to the Stalking Horse Bidder pursuant to the terms of the Stalking Horse Agreement as promptly as practicable and subject to the Bankruptcy Court’s availability.</p>
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	See DIP Credit Agreement §6.25.
Indemnification <i>Fed. R. Bankr. P. 4001(c)(1)(B)(ix)</i>	<p>The Debtors agree to indemnify and hold harmless the DIP Agent and the DIP Lenders in accordance with the terms and conditions of the DIP Credit Agreement.</p> <p>See Interim Order ¶ 19(c).</p>
Section 506(c) Waiver / Section 552(b) Waiver <i>Fed. R. Bankr. P. 4001(c)(1)(B)(x)</i> <i>Local Rule 4001-2(a)(i)(C)</i>	<p>In light of the Prepetition First Lien Secured Parties' agreement to subordinate their liens and superpriority claims to the DIP Obligations and the Carve Out and to permit the use of their Cash Collateral as set forth herein, the Prepetition First Lien Secured Parties are entitled to the rights and benefits of section 552(b) of the Bankruptcy Code and, subject to and upon entry of the Final Order, (i) a waiver of any "equities of the case" claims under section 552(b) of the Bankruptcy Code and (ii) a waiver of the provisions of section 506(c) of the Bankruptcy Code.</p> <p>See Interim Order ¶ F(v).</p>
Liens on Avoidance Actions <i>Fed. R. Bankr. P. 4001(c)(1)(B)(xi)</i>	<p>First Lien Adequate Protection Liens and Second Lien Adequate Protection Liens over all proceeds or property recovered from Avoidance Actions.</p> <p>Subject to entry of a Final Order, First Priority Lien on Previously Unencumbered Property, including proceeds and property recovered in respect of Avoidance Actions.</p> <p>See Interim Order ¶ 7.</p>
Fees <i>Fed. R. Bankr. P. 4001(c)(1)</i>	<p><u>Backstop Fees.</u> Pursuant to the RSA Term Sheet, the Borrower shall pay a backstop payment of 500 bps, which shall be payable in cash on the closing of the DIP Facility.</p> <p><u>Upfront Payment.</u> Pursuant to the RSA Term Sheet, the Borrower shall pay an upfront payment of 300 bps, which shall be payable in cash on the closing date of the DIP Facility.</p> <p><u>DIP Agent Fees.</u> The Borrower shall pay to the DIP Agent and Escrow Agent such fees as shall have been separately agreed upon in writing in the amounts and at the times so specified. Such fees shall be fully earned when paid and shall not be refundable for any reason whatsoever (except as expressly agreed between the Borrower and the applicable Agent).</p> <p>See DIP Credit Agreement §2.09; RSA Term Sheet, at 4.</p>
Roll-Up and/or Cross-Collateralization <i>Fed. R. Bankr. P. 4001-2(a)(i)(A)</i>	<p>As described above, upon entry of the Interim Order, the Debtors' reimbursement obligations in connection with the Prepetition L/Cs shall be granted allowed DIP L/C Superpriority Claim status, subject to the Carve Out, but shall not be cash collateralized. For the avoidance of doubt, the only collateral for the Postpetition L/Cs issued pursuant to the DIP L/C Facility shall be DIP L/C Cash Collateral and the only claims in respect of reimbursement of obligations in connection with the Prepetition L/Cs shall be the DIP L/C Superpriority Claims as set forth herein (as further described above).</p> <p>No provision of the DIP Credit Agreement, the Interim Order, or the Final Order grants cross-collateralization protection of the type contemplated by Local Rule 4001-2(a)(i)(A).</p>

DEBTORS' PREPETITION INDEBTEDNESS

16. As of the Petition Date, the Debtors have approximately \$855.6 million in outstanding funded debt, consisting primarily of \$584.4⁶ million in borrowings under the First Lien Credit Facility (as defined below) (consisting of \$503.3 million outstanding under a term loan and a revolver drawn down at \$81.1 million, plus \$3.9 million in outstanding letters of credit), \$188.7 million outstanding under the Second Lien Notes (as defined below), and \$82.5 million outstanding under the unsecured Convertible Notes (as defined below).

A. First Lien Credit Facility

17. The Debtors are party to that certain Credit Agreement, dated as of January 6, 2017 (as amended, amended and restated, supplemented, or otherwise modified from time to time), by and among GEE, as borrower, each Debtor other than GEE, as guarantors (the “**First Lien Guarantors**”), and Citibank, N.A., as administrative and collateral agent (in such capacities, the “**First Lien Agent**”), for and on behalf of itself and the lenders party thereto (collectively, the “**First Lien Lenders**”), pursuant to which the First Lien Lenders agreed to provide GEE with a senior secured term loan facility (the “**First Lien Term Loan Facility**”) in an aggregate principal amount of \$584.4 million and a senior secured revolving credit facility with \$85 million of aggregate availability thereunder (including up to \$15 million available for the issuance of letters of credit) (the “**First Lien Revolving Credit Facility**” and, together with the First Lien Term Loan Facility, the “**First Lien Credit Facility**”). On July 19, 2019, pursuant to the Omnibus Incremental Term Loan and Seventh Amendment to Credit Agreement and Amendment to Security Agreement, the Borrower added incremental term loans (the “**Incremental Term**”

⁶ Amount is as of June 30, 2020.

Loans”) under the First Lien Credit Facility in an aggregate principal amount of \$40 million, while receiving amortization relief and other accommodations from the First Lien Lenders.

18. The First Lien Term Loan Facility matures on January 6, 2023 and the First Lien Revolving Credit Facility matures on January 6, 2022. The obligations under the First Lien Credit Facility are guaranteed by the First Lien Guarantors. The First Lien Credit Facility is secured by the Collateral (as defined in the First Lien Credit Facility). The Collateral includes substantially all of the Debtors’ tangible and intangible assets, including a pledge of all of the outstanding capital stock of substantially all of the Company’s domestic subsidiaries and 100% of the shares or equity interests in any foreign subsidiary directly owned by a Debtor. The First Lien Credit Facility, as amended, also requires GEE to maintain a maximum consolidated first lien net leverage ratio of no greater than 6.75x as of June 30, 2020 (the requirement steps down .25 each quarter through September 30, 2022, resulting in a maximum consolidated first lien net leverage ratio of 5.00x as of September 30, 2022 and as of the last day of each fiscal quarter thereafter).

19. In April 2020 the Debtors entered into a series of amendments to their First Lien Credit Facility, which included a tenth amendment, dated as of April 15, 2020 (the “**April 15 First Lien Amendment**”). The April 15 First Lien Amendment delayed the deadline under the First Lien Credit Facility for furnishing audited year-end 2019 financial statements and unaudited financial statements for the first quarter of 2020. In addition, the April 15 First Lien Amendment modified and exempted the Company from compliance with the Maximum Leverage Covenant for the first quarter of 2020, but also subjected the Company to, among other reporting covenants, a liquidity covenant requiring the Company to maintain a minimum level of aggregate undrawn

revolving commitments above \$17.5 million in the aggregate plus unrestricted cash and cash equivalents (the “**Minimum Liquidity Covenant**”).

20. On July 9, 2020, the Debtors entered into an eleventh amendment to the First Lien Credit Facility (the “**July 9 Amendment**”), under which the lenders party thereto waived until August 1, 2020, any default or event of default arising from the failure to pay interest due on July 9, 2020. The July 9 Amendment also provided for default interest to accrue and payment of certain fees payable in kind to the lender parties thereto. On July 20, 2020, the Debtors entered into an twelfth amendment of their Senior Secured Credit Agreement (the “**July 20 Amendment**”). The July 20 Amendment exempted the Company from compliance with the Minimum Liquidity Covenant from the period commencing July 20, 2020 through August 1, 2020.

21. As of the Petition Date, certain Debtors have contingent reimbursement obligations (such reimbursement obligations, collectively, the “**Prepetition L/C Obligations**”) in connection with letters of credit (the “**Prepetition L/Cs**”) issued pursuant to the letter of credit sub-facility included in the First Lien Revolving Credit Facility (the “**Prepetition L/C Facility**”) provided under the First Lien Credit Facility. The Prepetition L/Cs support the operations of the Company. The commencement of the Chapter 11 Cases will trigger an event of default under the First Lien Credit Facility.⁷

B. Second Lien Notes

22. Pursuant to the Securities Purchase Agreement dated March 8, 2018 (as amended, amended and restated, supplemented, or otherwise modified from time to time, the “**Securities Purchase Agreement**”), between GEE, as issuer, Cortland Capital Market Services (now known as Alter Domus LLC), as collateral agent (in such capacity, the “**Second Lien Agent**”), and

⁷ The issuers of the Prepetition L/Cs are not obligated to issue new letters of credit, renew existing letters of credit or extend any letters of credit after the occurrence and during the continuation of an event of default.

Searchlight II TBO, L.P. and Searchlight II TBO-W, L.P. (collectively, “**Searchlight**” or the “**Second Lien Noteholder**” and, together with the First Lien Lenders, the “**Prepetition Secured Parties**”), as purchasers, GEE issued \$150 million in aggregate principal amount of secured second lien notes (the “**Second Lien Notes**”), together with two sets of warrants to acquire GEE’s common stock to Searchlight. As of the Petition Date, approximately \$188.7 million in principal amount of Second Lien Notes remained outstanding, which includes \$38.7 million of interest that has been paid-in-kind and added to the principal since issuance.

23. The Second Lien Notes mature on June 30, 2023. The Second Lien Notes are guaranteed by each Debtor other than GEE pursuant to that certain Guaranty, dated as of March 27, 2018 (as amended, amended and restated, supplemented, or otherwise modified from time to time) made by each Debtor other than GEE, as guarantors (collectively, the “**Second Lien Guarantors**” and, together with the First Lien Guarantors, the “**Prepetition Guarantors**”) in favor of the Second Lien Noteholder. The Second Lien Notes are secured by the Collateral, subject to the terms of the Intercreditor Agreement (as defined below).

C. **Intercreditor Agreement**

24. The rights of the First Lien Lenders and the Second Lien Noteholder with respect to the Collateral are governed by the Intercreditor and Subordination Agreement, dated as of March 27, 2018 (as amended, amended and restated, supplemented, or otherwise modified from time to time, the “**Intercreditor Agreement**”), among the First Lien Agent, Second Lien Agent, GEE, and the Prepetition Guarantors. The Intercreditor Agreement governs, among other things, the priority of distribution of the Collateral and the respective rights of the First Lien Lenders and the Second Lien Noteholder and their respective representatives in connection with certain bankruptcy-related matters, such as the provision of postpetition financing. Under the Intercreditor

Agreement, the First Lien Lenders are afforded first priority with respect to the Collateral, and the Second Lien Noteholder are afforded second priority with respect to the Collateral.

D. Convertible Senior Notes

25. In addition to its secured debt, the Company also has certain unsecured obligations. GEE issued certain 2.75% convertible senior unsecured notes due February 15, 2035, in a private placement (the “**Convertible Notes**”), pursuant to the Purchase Agreement, dated as of February 12, 2015, between GEE, as issuer, and Piper Jaffray & Co., as representative of certain initial purchasers. The terms of the Convertible Senior Notes are governed by the Indenture, dated February 18, 2015, between GEE and U.S. Bank National Association, as trustee. The Convertible Notes are unsecured obligations and do not contain any financial covenants or restrictions on the payments of dividends, the incurrence of indebtedness, or further issuances of debt by GEE or the Prepetition Guarantors. The Convertible Notes are unsecured obligations and do not contain any financial covenants or restrictions on the payments of dividends, the incurrence of indebtedness, or further issuances of debt by GEE or the Prepetition Guarantors. As of the Petition Date, the principal amount outstanding of the Convertible Notes is \$82.5 million.

DEBTORS’ LIQUIDITY NEEDS AND MARKETING EFFORTS

I. Debtors Have an Immediate Need to Access DIP Facility and Use Cash Collateral

26. As described in the First Day Declaration, the Debtors are facing significant liquidity constraints as a result of the COVID-19 pandemic, and are entering chapter 11 with limited cash on hand. The Debtors require access to the DIP Facility and authority to use Cash Collateral to ensure they have sufficient liquidity to operate their businesses and administer their estates during the Chapter 11 Cases. Access to the DIP Facility will provide the Debtors with immediate access to liquidity and to the Cash Collateral, which will permit the Debtors to:

(i) continue to provide goods and services to their customers and generate revenue during these

Chapter 11 Cases; (ii) provide working capital for their businesses; (iii) fund payments to their workforce; (iv) fund other general corporate purposes; (v) fund the payments authorized by the Court pursuant to the “first-day motions” filed contemporaneously with the DIP Motion; (vi) operate the their cash management system; and (vii) satisfy administrative costs and expenses of the Debtors incurred in the Chapter 11 Cases.

27. Absent authority to enter into and access the DIP Facility, even for a limited period of time, the Debtors will be unable to continue operating their businesses, resulting in a deterioration of value and immediate and irreparable harm to the Debtors’ estates. Further, while the RSA (attached as Exhibit B to the First Day Declaration) establishes a framework for the Debtors’ operations to be preserved on a going-concern basis, in order to pursue a value-maximizing section 363 sale process, the Debtors require sufficient funding to administer the Chapter 11 Cases. Accordingly, immediate access to the DIP Facility is essential so the Debtors can assure their employees, customers, and vendors that the Debtors have sufficient capital to continue operating “business as usual” during the pendency of the Chapter 11 Cases and while they pursue a section 363 sale process. Even with access to Cash Collateral, the Debtors do not believe it would be prudent, or even possible, to administer the Chapter 11 Cases solely on a “cash collateral” basis.

28. The Debtors have worked closely with their advisors to evaluate the Debtors’ cash requirements for their business. As part of such evaluation, the Debtors and their advisors reviewed and analyzed the Debtors’ near-term weekly and long-term cash flow forecasts and prepared the Approved DIP Budget. These forecasts take into account anticipated cash receipts and disbursements during the projected periods and consider a number of factors, including, but not limited to, the effect of the chapter 11 filing on the operations of the business, fees and interest

associated with postpetition financing, professional fees, and customer and vendor obligations, as well as the operational performance of the Debtors' business. The Debtors believe that the Approved DIP Budget provides an accurate reflection of the Debtors' funding requirements over the identified period and is reasonable and appropriate under the circumstances.

II. Proposed DIP Facility Represents the Best Postpetition Financing Option Available to the Debtors Under the Circumstances

29. Given the Debtors' prepetition capital structure and the challenges facing the Debtors' businesses, the DIP Facility represents the best available postpetition financing. Prior to the commencement of these cases, the Debtors, in consultation with their advisors, implemented internal cost reductions and carefully considered a number of other potential alternatives to address the Debtors' capital structure and liquidity challenges, including alternate transactions with stakeholders and third parties to reduce ongoing cash needs and leverage and to obtain additional financing. While these efforts were intended to support liquidity, the Debtors and their advisors were unable to identify viable, actionable alternatives that would provide sufficient liquidity to the Debtors to continue operations in the ordinary course or sufficiently reduce the Debtors' leverage. Therefore, the Debtors focused on preparing for a potential chapter 11 filing, including by commencing a marketing process led by their investment banker, Greenhill, to obtain postpetition financing.

30. Beginning in June 2020, Greenhill solicited third party interest in providing postpetition financing to the Debtors (on both a priming and non-priming basis) and contacted, in total, fourteen parties. Of the fourteen potential lenders that were contacted, four executed a non-disclosure agreement (or were already under a non-disclosure agreement with the Debtors) and were provided introductory materials and access to due diligence, including calls with the Debtors'

advisors. Greenhill also contacted the Second Lien Noteholder and the holders of the majority of the Debtors' Convertible Notes, and neither offered to provide DIP financing.

31. The Debtors did not receive any actionable proposals for postpetition financing from third parties. While one party contacted the Debtors' investment banker, as further described in the Greenhill Declaration, those discussions did not lead to an actionable proposal. In addition, many of the third parties contacted by the Debtors' advisors indicated they were unwilling to extend financing to the Debtors due to factors including the Debtors' financial position, the Debtors' levered capital structure and lack of interest to provide postpetition financing on a junior basis, the lack of significant unencumbered collateral to secure postpetition financing on a non-priming basis, the challenges, uncertainty and legal expenses inherent in a priming fight with the Prepetition Secured Parties, and the volatile state of the global economy and the Company's outlook due to the COVID-19 crisis and associated uncertainty. While the Debtors continued to attempt to identify third party providers of postpetition financing until shortly prior to commencing these cases, the Debtors concluded, in consultation with Greenhill and their other advisors, that engaging with the Prepetition Secured Parties represented the path most likely to lead to successfully obtaining postpetition financing.

32. During this period, the Debtors and their advisors continued to engage in intensive parallel-track negotiations with the Debtors' existing stakeholders, including certain of the Debtors' First Lien Lenders and Second Lien Noteholder. Beginning in late June, the Debtors and an *ad hoc* group representing approximately 90% of the Debtors' first lien term loan and approximately 78% of the first lien lenders (the "**Ad Hoc First Lien Group**") began exchanging term sheets related to a potential debtor-in-possession financing. The negotiations spanned several weeks and lasted until the Petition Date. Throughout this process, the Debtors and their advisors

fought to improve material terms of the DIP financing proposed by the Ad Hoc First Lien Group—including the amount of financing available, economics, covenants, and milestones, among others. The Debtors engaged in a series of negotiations with the Second Lien Noteholder regarding a number of issues, including potential postpetition financing, and engaged in outreach to the Ad Hoc Convertible Noteholder Group, but ultimately negotiations stalled with these two entities and neither submitted any indication of interest.

33. Ultimately, the Debtors and their advisors believe the DIP Facility, which provides \$75 million in new money for the Debtors' estates and access to necessary Cash Collateral, as well as the DIP L/C Facility, which provides access to Postpetition L/Cs necessary for the Debtors' operations, is necessary, on customary and reasonable terms, and the best postpetition financing option available to the Debtors under the circumstances.

BASIS FOR RELIEF REQUESTED

I. DEBTORS SHOULD BE AUTHORIZED TO ACCESS THE DIP FACILITY

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

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

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

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

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

11 U.S.C. § 364(d)(1).

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

- a. unencumbered credit or alternative financing without superpriority status is available to the debtor;
- b. the credit transactions are necessary to preserve assets of the estate;
- c. the terms of the credit agreement are fair, reasonable, and adequate;
- d. the proposed financing agreement was negotiated in good faith and at arm's-length and entry thereto is an exercise of sound and reasonable business judgment and in the best interest of the debtors' estate and their creditors; and
- e. the proposed financing agreement adequately protects prepetition secured creditors.

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

37. Section 364 of the Bankruptcy Code also allows for postpetition financing secured by a priming lien. Section 364(d)(1) provides that the court, after notice and a hearing, may authorize the obtaining of credit or the incurring of debt if:

(A) the trustee is unable to obtain such credit otherwise; and

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

11 U.S.C. § 364(d)(1).

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

A. Debtors Cannot Obtain Postpetition Financing on More Favorable Terms

39. In demonstrating that credit is not available without the protections afforded by section 364(c) or 364(d) of the Bankruptcy Code, a debtor need only make a good faith effort. *See, e.g., In re Ames Dep't Stores, Inc.*, 115 B.R. 34, 40 (Bankr. S.D.N.Y. 1990) (approving financing facility and holding that debtor made reasonable efforts to satisfy the standards of section 364(c) to obtain less onerous terms where debtor approached four lending institutions, was rejected by two, and selected the least onerous financing option from the remaining two lenders); *see also In re Snowshoe Co.*, 789 F.2d 1085, 1088 (4th Cir. 1986) (holding “[t]he statute imposes no duty to seek credit from every possible lender before concluding that such credit is unavailable”); *In re Phoenix Steel Corp.*, 39 B.R. 218, 222 (D. Del. 1984) (holding the debtor satisfied its burden to show an inability to obtain credit on other terms through its time and effort spent trying to obtain credit on alternative terms and conditions).

40. Moreover, where few lenders likely can or will extend the necessary credit to a debtor, “it would be unrealistic and unnecessary to require [the debtor] to conduct such an exhaustive search for financing.” *In re Sky Valley, Inc.*, 100 B.R. 107, 113 (Bankr. N.D. Ga. 1988), *aff d sub nom., Anchor Sav. Bank FSB v. Sky Valley, Inc.*, 99 B.R. 117, 120 n.4 (N.D. Ga. 1989); *see also In re Stanley Hotel, Inc.*, 15 B.R. 660, 663 (D. Colo. 1981) (holding that bankruptcy

court's finding that two national banks refused to grant unsecured loans was sufficient to support conclusion that section 364 requirement was met).

41. As set forth above and in the Greenhill Declaration, given their current financial condition, financing arrangements, and capital structure, and despite significant outreach to third parties and other prepetition lenders, the Debtors were unable to identify actionable alternative sources of interim and long-term financing other than the DIP Lenders on terms more favorable than those under the DIP Facility and the DIP Documents, and were not able to obtain unsecured credit allowable as an administrative expense under section 503(b)(1) of the Bankruptcy Code. The Debtors believe that new credit is unavailable to the Debtors without providing the DIP Superpriority Claims and the DIP Liens upon the DIP Collateral, as provided herein and in the DIP Documents.

B. DIP Facility is Necessary to Preserve the Value of the Debtors' Estates

42. As debtors in possession, the Debtors have a fiduciary duty to protect and maximize the value of their estates. *See In re Mushroom Transp. Co.*, 382 F.3d 325, 339 (3d Cir. 2004). The DIP Facility, if approved, will provide working capital critical to funding the Debtors' day-to-day operations and the Chapter 11 Cases, which provide a path for the Debtors' to sell their assets as a going concern pursuant to section 363 of the Bankruptcy Code. Without access to the DIP Facility, the Debtors would be forced to cease operations, which would result in immediate and irreparable harm to their businesses and deplete the going concern value of such businesses. The Debtors would also be unable to administer their Chapter 11 Cases. The Debtors' ability to maintain business relationships with their vendors, suppliers, and customers, to make capital expenditures, and to satisfy other working capital and operational needs and otherwise finance their operations during the Chapter 11 Cases is essential to the Debtors' continued viability and to ensure that the most value-maximizing sale process can be pursued. Because the Debtors' available and projected

Cash Collateral is insufficient to fund their operations, the credit to be provided under the DIP Facility is necessary to preserve the value of the Debtors' estates for the benefit of all stakeholders.

C. Terms of the DIP Facility are Fair, Reasonable, and Adequate under the Circumstances

43. In considering whether the terms of postpetition financing are fair and reasonable, courts consider the terms in light of the relative circumstances of both the debtor and the proposed lender. *In re L.A. Dodgers LLC*, 457 B.R. 308, 312 (Bankr. D. Del. 2011) (stating that approval of DIP financing requires terms that are “fair, reasonable and adequate, given the circumstances of the debtor-borrower and the proposed lender”); *In re Farmland Indus., Inc.*, 294 B.R. 855, 886 (Bankr. W.D. Mo. 2003); *see also Unsecured Creditors' Comm. Mobil Oil Corp. v. First Nat'l Bank & Trust Co. (In re Ellingsen MacLean Oil Co.)*, 65 B.R. 358, 365 (W.D. Mich. 1986) (a debtor may have to enter into hard bargains to acquire funds). The appropriateness of a proposed financing facility should also be considered in light of current market conditions. *See Transcript of Record* at 740:4-6, *In re Lyondell Chem. Co.*, No. 09-10023 (REG) (Bankr. S.D.N.Y. Feb. 27, 2009) (“[B]y reason of present market conditions, as disappointing as the [DIP] pricing terms are, I find the provisions [of a DIP that included a roll-up of prepetition secured debt] reasonable here and now.”).

44. As described in the Greenhill Declaration, as a result of the volatile state of the global economy and the Company's outlook due to the COVID-19 crisis, the Company has faced challenging market conditions given that it provides services in the passenger aviation and cruise ship industry—an industry whose commercial activities have been severely curtailed or halted by operation of law in light of the COVID-19 crisis. Ultimately, in connection with the prepetition process to canvass the market for potential alternatives, the Company did not receive actionable indications of interest regarding postpetition financing from any parties.

45. As described above, given the urgent need of the Debtors to obtain financial stability for the benefit of all parties in interest, the terms of the DIP Facility are fair, appropriate, reasonable, and in the best interests of the Debtors, their estates, and their creditors. As described in the First Day Declaration and the Greenhill Declaration, the DIP Documents were negotiated extensively by the Debtors and the DIP Lenders, in good faith and at arm's-length as required by section 364(e) of the Bankruptcy Code, with all parties represented by experienced counsel.

D. Entry into the DIP Documents Reflects the Debtors' Reasonable Business Judgment

46. A debtor's decision to enter into a postpetition lending facility under section 364 of the Bankruptcy Code is governed by the business judgment standard. *See In re Trans World Airlines, Inc.*, 163 B.R. 964, 974 (Bankr. D. Del 1994) (noting that the interim loan, receivable facility and asset based facility were approved because they "reflect[ed] sound and prudent business judgment [were] reasonable under the circumstances and in the best interests of TWA and its creditors"); *Ames Dep't Stores, Inc.*, 115 B.R. at 40 ("cases consistently reflect that the court's discretion under section 364 is to be utilized on grounds that permit reasonable business judgment to be exercised so long as the financing agreement does not contain terms that leverage the bankruptcy process and powers or its purpose is not so much to benefit the estate as it is to benefit parties in interest"); *Group of Institutional Holdings v. Chicago Mil. St. P. & Pac. Ry.*, 318 U.S. 523, 550 (1943); *In re Simasko Prod. Co.*, 47 B.R. 444, 449 (Bankr. D. Colo. 1985) ("Business judgments should be left to the board room and not to this Court."); *In re Lifeguard Indus., Inc.*, 37 B.R. 3, 17 (Bankr. S.D. Ohio 1983) (same).

47. Bankruptcy courts typically defer to the debtors' business judgment on the decision to borrow money unless such decision is arbitrary and capricious. *See In re Trans World Airlines, Inc.*, 163 B.R. at 974. In fact, "[m]ore exacting scrutiny would slow the administration of the

debtor's estate and increase its cost, interfere with the Bankruptcy Code's provision for private control of administration of the estate and threaten the court's ability to control a case impartially."

Richmond Leasing Co. v. Capital Bank, N.A., 762 F.2d 1303, 1311 (5th Cir. 1985).

48. For the reasons set forth above, the Debtors submit that the entry into the DIP Facility is the exercise of the Debtors' reasonable business judgment.

E. Proposed Adequate Protection is Appropriate

49. To the extent a secured creditor's interests in the collateral constitute valid and perfected security interests and liens as of the Petition Date, section 364(d)(1)(B) of the Bankruptcy Code requires that adequate protection be provided where the liens of such secured creditor are being primed to secure the obligations under a debtor in possession financing facility. Section 361 of the Bankruptcy Code delineates the forms of adequate protection, which include periodic cash payments, additional liens, replacement liens, and other forms of relief. What constitutes adequate protection must be decided on a case-by-case basis. *See In re Columbia Gas Sys., Inc.*, 1992 WL 79323, at *2 (Bankr. D. Del. Feb. 18, 1992); *In re O'Connor*, 808 F.2d 1393, 1396 (10th Cir. 1987); *In re Martin*, 761 F.2d 472 (8th Cir. 1985). The focus of the requirement is to protect a secured creditor from the diminution in the value of its interest in the particular collateral during the period of use. *See In re Swedeland Dev. Group, Inc.*, 16 F.3d 552, 564 (3d Cir. 1994) ("The whole purpose of adequate protection for a creditor is to insure that the creditor receives the value for which he bargained prebankruptcy.") (internal citations omitted).

50. The proposed adequate protection provided to the First Lien Lenders comprises the following: (i) valid and perfected security interests in and liens on the DIP Collateral in accordance with the priorities set forth in the DIP Orders, (ii) allowed, superpriority administrative expense claims under sections 503(b) and 507(b) of the Bankruptcy Code, in

accordance with the priorities set out in the DIP Orders, and (iii) the reasonable and documented fees and expenses of counsel and other professionals, as set forth in the DIP Orders.

51. The proposed adequate protection provided to the Second Lien Noteholder consists of valid and perfected junior security interests in and liens on the DIP Collateral in accordance with the priorities set forth in the DIP Orders. The Debtors believe that the adequate protection proposed herein to protect any diminution in value of the Prepetition Secured Parties' interest in the Prepetition Collateral is fair and reasonable. Further, the Prepetition Secured Parties have consented (or are deemed to consent) to the priming of their Prepetition Liens.⁸ Accordingly, based upon the foregoing, the Debtors respectfully request that the Court authorize the Debtors to provide the adequate protection described above to such parties.

F. Debtors Should be Authorized to Pay the Fees and Payments Required by the DIP Agent and the DIP Lenders Under the DIP Documents

52. In addition to the various Adequate Protection Payments (as defined in the Proposed Interim DIP Order) and other reimbursement obligations, in each case, specified under the DIP Documents, and the Interim DIP Order the Debtors have agreed, subject to Court approval, to pay certain fees and other payments to the DIP Agent and the DIP Lenders. In particular, as noted above, the Debtors have agreed to pay:

- a. **Backstop Fees.** Pursuant to the RSA Term Sheet, the Borrower shall pay a backstop payment of 500 bps, which shall be payable in cash on the closing of the DIP Facility.
- b. **Upfront Payment.** Pursuant to the RSA Term Sheet, the Borrower shall pay an upfront payment of 300 bps, which shall be payable in cash on the closing date of the DIP Facility.
- c. **DIP Agent Fees.** The Borrower shall pay to the DIP Agent and Escrow Agent such fees as shall have been separately agreed upon in writing in the amounts and at the times so specified. Such fees shall be fully earned when paid and shall not be

⁸ Pursuant to the Intercreditor Agreement, the Second Lien Secured Parties are deemed to consent to any priming post-petition financing unless the First Lien Administrative Agent shall have opposed or objected.

refundable for any reason whatsoever (except as expressly agreed between the Borrower and the applicable Agent).

53. It is understood and agreed by all parties, including the Debtors, that these fees are an integral component of the overall terms of the DIP Facility and were required by the DIP Agent and DIP Lenders as consideration for the extension of postpetition financing after arm's-length and good faith negotiations. Accordingly, the Court should authorize the Debtors to pay the fees provided under the DIP Documents in connection with entering into those agreements.

G. The DIP L/C Facility is Necessary and Appropriate Under Sections 105(a) and 363(b) of the Bankruptcy Code

54. The DIP L/C Facility contemplated under the DIP Facility is similarly appropriate. Sound business reasons support entering into the DIP L/C Facility as the Debtors require letters of credit in order to run their ordinary course operations, and must ensure that such letters of credit will remain in place and available during the Chapter 11 Cases. The Prepetition L/Cs support the operations of the Debtors and were issued and outstanding under certain agreements entered into prior to the Petition Date. Access to letters of credit, including the Postpetition L/Cs is critical to the Company's business, and without access to the DIP L/C Facility, the Company would risk not being able to renew or replace letters of credit in the ordinary course of business, which would jeopardize the Company's ability in the future to successfully conduct its operations.

H. Treatment of Letters of Credit under the Prepetition L/C Facility is Necessary and Appropriate

55. Under the DIP Orders, the Debtors' reimbursement obligations in connection with the Prepetition L/Cs shall be granted allowed DIP L/C Superpriority Claim status, subject to the Carve Out. For the avoidance of doubt, the Debtors' reimbursement obligations under the Prepetition L/Cs but shall not be cash collateralized, and the only collateral for the Postpetition L/Cs issued pursuant to the DIP L/C Facility shall be DIP L/C Cash Collateral and the only claims

in respect of reimbursement of obligations in connection with the Prepetition L/Cs shall be the DIP L/C Superpriority Claims as set forth herein.

56. The Court may grant the relief requested herein pursuant to Sections 363(b) and 105(a) of the Bankruptcy Code. Under Section 105(a) of the Bankruptcy Code, “[t]he court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a). The purpose of Section 105(a) is “to assure the bankruptcy courts power to take whatever action is appropriate or necessary in aid of the exercise of its jurisdiction.” Collier on Bankruptcy P 105.01 (Alan N. Resnick & Henry J. Sommer eds., 16th ed.). Section 363(b) of the Bankruptcy Code provides, in relevant part, that “[t]he [debtor], after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b)(1).

57. Sound business reasons support affording superpriority administrative claim status for the Debtors’ reimbursement obligations under the Prepetition L/C Facility. The Prepetition L/Cs support the operations of the Debtors and were issued and outstanding under certain agreements entered into prior to the Petition Date. The Company needs continued access to letters of credit (both pursuant to its Prepetition L/C Facility and the DIP L/C Facility) due to the importance of letters of credit to the Company’s business, and to ensure that the Debtors are able to enter into and/or renew letters of credit on a go forward basis, so that the Company’s ability in the future to successfully conduct its operations is maintained.

II. APPROVAL OF USE OF CASH COLLATERAL IS APPROPRIATE

58. Section 363(c)(2) of the Bankruptcy Code provides that a debtor may not use, sell, or lease cash collateral unless “(a) each entity that has an interest in such cash collateral consents; or (b) the court, after notice and hearing, authorizes such use, sale, or lease in accordance with the provisions of this section.”

59. The Debtors have an urgent need for the immediate use of their Prepetition Collateral, including the Cash Collateral, and seek to use all Cash Collateral existing on or after the Petition Date pursuant to the terms of the DIP Documents. The Debtors need the Cash Collateral to pay operating expenses, including essential vendors, in order to ensure a continued supply of goods and services essential to the Debtors' business, as well as fund the Chapter 11 Cases so they can pursue a value-maximizing sale process. Indeed, absent such relief, the Debtors' businesses will be brought to an immediate halt, with damaging consequences for the Debtors and their estates and creditors.

60. The Debtors believe that the terms and conditions of their use of the Cash Collateral (including the provision of adequate protection described above) are appropriate and reasonable and that such adequate protection is sufficient to secure any adequate protection obligations under the circumstances. Furthermore, the Prepetition Secured Parties have consented (or are deemed to consent) to the Debtors' use of the Cash Collateral subject to the terms and conditions of the DIP Documents and the Interim Order. Therefore, the Debtors submit that they should be authorized to use the Cash Collateral on the terms set forth in the DIP Documents.

III. THE DIP LENDERS SHOULD BE DEEMED GOOD-FAITH LENDERS UNDER SECTION 364(e)

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

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

authorization and the incurring of such debt, or the granting of such priority or lien, were stayed pending appeal.

62. As explained herein, the Greenhill Declaration, and the First Day Declaration, the DIP Documents are the result of: (i) the Debtors' reasonable judgment that the DIP Lenders provided the best (and only actionable) postpetition financing alternative available under the circumstances and (b) extended arm's-length, good-faith negotiations between the Debtors and the DIP Lenders. The Debtors submit that the terms and conditions of the DIP Documents are reasonable under the circumstances, and the proceeds of the DIP Facility will be used only for purposes that are permissible under the Bankruptcy Code. Accordingly, the Court should find that the DIP Lenders are "good faith" lenders within the meaning of section 364(e) of the Bankruptcy Code and are entitled to all of the protections afforded by that section.

III. MODIFICATION OF AUTOMATIC STAY

63. The Interim Order provides that the automatic stay provisions of section 362 of the Bankruptcy Code are vacated and modified to the extent necessary to permit the DIP Agent and the DIP Lenders to exercise, upon the occurrence and during the continuation of any Event of Default under the DIP Credit Agreement, all rights and remedies provided in the DIP Credit Agreement without further order of or application to the Court. However, the DIP Agent must provide the Debtors and various other parties with five (5) business days' notice before exercising any enforcement rights or remedies in respect of their collateral. During such period, the Debtors and other parties in interest may contest whether an Event of Default has occurred and is continuing.

64. Stay modification provisions of this sort are common features of postpetition financing facilities and, in the Debtors' business judgment, are reasonable under the circumstances.

Accordingly, the Debtors request that the Court modify the automatic stay solely to the extent contemplated by the DIP Credit Agreement and the Interim Order and Final Order.

IV. APPROVAL OF INTERIM RELIEF

65. Bankruptcy Rules 4001(b)(2) and 4001(c)(2) provide that a final hearing on a motion to use cash collateral or obtain credit, respectively, may not be commenced earlier than 14 days after the service of such motion. Upon request, however, the court may conduct a preliminary expedited hearing on the motion and authorize the use of cash collateral and the obtaining of credit on an interim basis “to the extent necessary to avoid immediate and irreparable harm to the estate pending a final hearing.” Fed. R. Bankr. P. 4001(b)(2); (c)(2).

66. As described above, the Debtors have an urgent and immediate need for cash in order to maintain business relationships with their vendors, suppliers, and customers, to make capital expenditures, and to satisfy other working capital and operational needs and otherwise finance their operations and the Chapter 11 Cases. Given the immediate and irreparable harm to be suffered by the Debtors, their estates and their creditors absent interim relief, the Debtors request that, pending the Final Hearing, the Court schedule an interim hearing within two days of the Petition Date or as soon thereafter as practicable to consider the interim relief requested in the Motion.

V. REQUEST FOR A FINAL HEARING

67. The DIP Credit Agreement requires that a Final Order approving the Motion be entered within forty (40) days after the Petition Date. As such, pursuant to Bankruptcy Rules 4001(b)(2) and 4001(c)(2), the Debtors request that the Court set a date for the Final Hearing that is as soon as practicable, but in no event later than forty (40) days following the Petition Date, and fix the time and date before the Final Hearing for parties to file objections to the Motion.

**BANKRUPTCY RULE 6003 HAS BEEN SATISFIED
AND BANKRUPTCY RULE 6004 SHOULD BE WAIVED**

68. Certain aspects of the relief requested herein may, if granted, be subject to Bankruptcy Rule 6003. Pursuant to Bankruptcy Rule 6003, a court may grant such relief if it is necessary to avoid immediate and irreparable harm. The Debtors submit that the facts set forth herein demonstrate that the relief requested is necessary to avoid immediate and irreparable harm to the Debtors and, thus, Bankruptcy Rule 6003 has been satisfied.

69. Additionally, to the extent that any aspect of the relief sought herein constitutes a use of property under section 363(b) of the Bankruptcy Code, the Debtors seek a waiver of the 14-day stay under Bankruptcy Rule 6004(h). As described above, the relief that the Debtors seek in this Motion is immediately necessary in order for the Debtors to be able to continue to operate their businesses and preserve the value of their estates. Accordingly, the Debtors submit that the requested waiver of the 14-day stay imposed by Bankruptcy Rule 6004(h) is appropriate.

RESERVATION OF RIGHTS

70. Nothing contained herein is or should be construed as: (a) an admission as to the validity of any claim against the Debtors or the existence of any lien against the Debtors' property; (b) a waiver of the Debtors' rights to dispute any claim or lien on any grounds; (c) a promise to pay any claim; (d) an implication or admission that any particular claim would constitute an allowed claim; (e) an assumption or rejection of any executory contract or unexpired lease pursuant to section 365 of the Bankruptcy Code; or (f) a limitation on the Debtors' rights under section 365 of the Bankruptcy Code to assume or reject any executory contract with any party subject to the DIP Orders once entered. Nothing contained in the DIP Orders will be deemed to increase, reclassify, elevate to an administrative expense status, or otherwise affect any claim to the extent it is not paid.

NOTICE

71. Notice of this Motion will be provided to (a) the Office of the United States Trustee for the District of Delaware (Attn: Timothy J. Fox, Jr.); (b) the holders of the 30 largest unsecured claims against the Debtors; (c) counsel to the prepetition first lien and proposed postpetition agent, Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, New York 10153 (Attn: David N. Griffiths and Bryan R. Podzius); (d) Gibson, Dunn & Crutcher LLP, 200 Park Avenue, New York, New York 10166 (Attn: Scott J. Greenberg and Michael J. Cohen), as counsel to the DIP Lenders and Ad Hoc First Lien Group; (e) Paul, Weiss, Rifkind, Wharton & Garrison LLP, 1285 Avenue of the Americas, New York, New York 10019 (Attn: Alan W. Kornberg), as counsel to the Second Lien Noteholder; (f) Akin Gump Strauss Hauer & Feld LLP, One Bryant Park, Bank of America Tower, New York, New York 10036 (Attn: Philip C. Dublin), as counsel to the Ad Hoc Convertible Noteholder Group; (g) any party known after a reasonable inquiry to have asserted a lien against the Debtors' assets; (h) the Banks; (i) the United States Attorney's Office for the District of Delaware; (j) the Internal Revenue Service; (k) the United States Securities and Exchange Commission; and (l) any party that has requested notice pursuant to Bankruptcy Rule 2002. As this Motion is seeking "first day" relief, the Debtors will serve copies of this Motion and any order entered in respect of this Motion as required by Local Rule 9013 1(m). The Debtors believe that no further notice is required.

[Remainder of page intentionally left blank]

WHEREFORE the Debtors respectfully request entry of the DIP Orders granting the relief requested herein and such other and further relief as the Court may deem just and appropriate.

Dated: July 22, 2020
Wilmington, Delaware

YOUNG CONAWAY STARGATT & TAYLOR, LLP

/s/ Kara Hammond Coyle

Michael R. Nestor (No. 3526)
Kara Hammond Coyle (No. 4410)
Betsy L. Feldman (No. 6410)
Rodney Square
1000 North King Street
Wilmington, Delaware 19801
Telephone: (302) 571-6600
Facsimile: (302) 571-1253
Email: mnestor@ycst.com
kcoyle@ycst.com
bfeldman@ycst.com

-and-

LATHAM & WATKINS LLP

George A. Davis (*pro hac vice* admission pending)
Madeleine C. Parish (*pro hac vice* admission pending)
885 Third Avenue
New York, New York 10022
Telephone: (212) 906-1200
Facsimile: (212) 751-4864
Email: george.davis@lw.com
madeleine.parish@lw.com

-and-

Ted A. Dillman (*pro hac vice* admission pending)
Helena G. Tseregounis (*pro hac vice* admission pending)
Nicholas J. Messana (*pro hac vice* admission pending)
355 South Grand Avenue, Suite 100
Los Angeles, California 90071
Telephone: (213) 485-1234
Facsimile: (213) 891-8763
Email: ted.dillman@lw.com
helena.tseregounis@lw.com
nicholas.messana@lw.com

Proposed Counsel for Debtors and Debtors in Possession

EXHIBIT A

Interim Order

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

)	
In re:)	Chapter 11
)	
GLOBAL EAGLE ENTERTAINMENT INC., ¹)	Case No. 20-11835 (JTD)
)	
Debtors.)	(Joint Administration Requested)
)	Re: Docket No. ____

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

Upon the motion (the “Motion”)² of the above-captioned debtors and debtors in possession (collectively, the “Debtors”) in the above captioned chapter 11 cases (collectively, the “Cases”) for entry of an interim order (this “Interim Order”), pursuant to sections 105, 361, 362, 363, 364, 507, and 552 of title 11 of the United States Code (as amended, the “Bankruptcy Code”), rules 2002, 4001, 6003, 6004, and 9014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and [rules 2002-1(b), 4001-2, 9006-1, and 9013 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware] (the “Local Rules”), seeking entry of this interim order (this “Interim Order”):

¹ The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number are: Global Eagle Entertainment Inc. (7800), Airline Media Productions Inc. (2314), Emerging Markets Communications, LLC (0735), Entertainment in Motion, Inc. (3908), Global Eagle Entertainment Operations Solutions, Inc. (3375), Global Eagle Services, LLC (7899), Global Eagle Telecom Licensing Subsidiary LLC (2547), IFE Services (USA), Inc. (2120), Inflight Productions USA, Inc. (8493), Maritime Telecommunications Network, Inc. (9974), MTN Government Services, Inc. (6069), MTN International, Inc. (8559), MTN License Corp. (0314), N44HQ, LLC (0570), Post Modern Edit, Inc. (6256), Row 44, Inc. (2959), and The Lab Aero, Inc. (9831). The Debtors’ address is 6080 Center Drive, Suite 1200, Los Angeles, California 90045.

² Capitalized terms used but not defined herein have the meanings given to such terms in the Motion.

(i) authorizing Global Eagle Entertainment Inc., in its capacity as borrower (the “DIP Borrower”), to obtain postpetition financing, and for each of the other Debtors to guarantee unconditionally (the “DIP Guarantors”) on a joint and several basis, the DIP Borrower’s obligations in connection with a superpriority senior secured credit facility (the “DIP Facility”) consisting of a \$80,000,000 term loan credit facility (the “DIP Loans”) of which \$30,000,000 in DIP Loans will be available immediately upon entry of this Interim Order, in accordance with the terms and conditions set forth in the DIP Credit Agreement (as defined below), attached hereto as **Exhibit A**, and all other terms and conditions of the DIP Documents (as defined below) upon entry of the Interim Order, and subject to the terms of the Final Order;

(ii) authorizing the Debtors to enter into that certain Senior Secured Super-Priority Term Loan Debtor-In-Possession Credit Agreement dated as of July [__], 2020, among the DIP Borrower, the DIP Guarantors, the lenders party thereto (collectively in such capacities, the “DIP Lenders”), and Citibank, N.A., as administrative agent, collateral agent, and escrow agent (in such capacities, the “DIP Agent,” and, together with the DIP Lenders, the “DIP Secured Parties”) (as the same may be amended, restated, supplemented, waived or otherwise modified from time to time, the “DIP Credit Agreement”); and together with this Interim Order, the Final Order, and all agreements, documents, and instruments delivered or executed in connection therewith (including the fee letters executed by the DIP Borrower in connection with the DIP Facility), and other guarantee and security documentation, collectively, the “DIP Documents”), and to perform such other and further acts as may be required in connection with the DIP Documents;

(iii) authorizing the Debtors to use the proceeds of the DIP Loans and the Prepetition Collateral (as defined below), including Cash Collateral (as defined below), in accordance with the Approved DIP Budget (as defined below) (subject to permitted variances set forth herein and in the DIP Credit Agreement) in form and substance acceptable to the required lenders under and pursuant to the DIP Credit Agreement (the “Required DIP Lenders”) to provide working capital for, and for other general corporate purposes of, the Debtors, including for payment of any Adequate Protection Payments (as defined below) and reasonable and documented transaction costs, fees, and expenses incurred in connection with any transactions to be implemented through the Cases;

(iv) granting adequate protection to the Prepetition First Lien Secured Parties (as defined below) to the extent of any Diminution in Value (as defined below) of their interests in the Prepetition Collateral;

(v) granting valid, enforceable, binding, non-avoidable, and fully perfected first priority priming liens on and senior security interests in substantially all of the property, assets, and other interests in property and assets of the Debtors, whether such property is presently owned or after-acquired, and each Debtor’s estate as created by section 541 of the Bankruptcy Code, of any kind or nature whatsoever, real or personal, tangible, intangible, or mixed, now existing or hereafter acquired or created, whether existing prior to or arising after the Petition Date (as defined below), subject only to the (x) Carve Out (as defined below), (y) certain liens permitted pursuant to the terms of the DIP Credit Agreement and (z) other valid, perfected and unavoidable liens, if any, existing as of the Petition Date (or perfected after the Petition Date to the extent permitted by section 546(b) of the Bankruptcy Code) (the “Prior Senior Liens”), in each case, that are senior in

priority to the First Lien Loan Liens, on the terms and conditions set forth herein and in the DIP Documents;

(vi) granting superpriority administrative expense claims against each of the Debtors' estates to parties on account of the Debtors' reimbursement obligations with respect to the Prepetition L/Cs and DIP L/C Facility (each as defined below) subordinate only to the payment of the Carve Out on the terms and conditions set forth herein and in the DIP Documents;

(vii) granting superpriority administrative expense claims against each of the Debtors' estates to the DIP Agent and the DIP Lenders with respect to the DIP Obligations (as defined below) over any and all administrative expenses of any kind or nature subject and subordinate only to the payment of the Carve Out on the terms and conditions set forth herein and in the DIP Documents

(viii) subject to entry of a Final Order (as defined below) and to the extent set forth herein, waiving the Debtors' and the estates' right to surcharge against the Prepetition Collateral pursuant to section 506(c) of the Bankruptcy Code;

(ix) subject to entry of a Final Order and to the extent set forth herein, for the "equities of the case" exception under Bankruptcy Code section 552(b) to not apply to such parties with respect to the proceeds, products, offspring, or profits of any of the Prepetition Collateral or the DIP Collateral, as applicable;

(x) pursuant to Bankruptcy Rule 4001, holding an interim hearing (the "Interim Hearing") on the Motion before this Court to consider entry of this Interim Order, among other things, (1) authorizing Debtors to, on an interim basis, borrow from the DIP Lenders a principal amount of up to \$30,000,000 in DIP Loans, (2) authorizing the DIP Guarantors to guaranty the DIP Obligations, (3) authorizing the Debtors' use of Prepetition Collateral (including Cash

Collateral), (4) effectuating the DIP L/C Facility, (5) granting the adequate protection described in this Interim Order, and (6) authorizing the Debtors to execute and deliver the DIP Documents to which they are a party and to perform their respective obligations thereunder and such other and further acts as may be necessary or appropriate in connection therewith;

(xi) scheduling a final hearing (the “Final Hearing”) to consider the relief requested in the Motion and the entry of a final order (the “Final Order”), and approving the form of notice with respect to the Final Hearing; and

(xii) granting related relief.

This Court having considered the Motion, the exhibits thereto, the *Declaration of Christian M. Mezger, in Support of Chapter 11 Petitions and First Day Motions* [Docket No. ___] (the “First Day Declaration”), the *Declaration of Neil. A. Augustine in Support of the Debtors’ Motion for Entry of Interim and Final Orders (I) Authorizing The Debtors to Obtain Postpetition Financing, (II) Authorizing the Debtors to Use Cash Collateral, (III) Granting Liens And Providing Superpriority Administrative Expense Claims, (IV) Granting Adequate Protection, (V) Modifying Automatic Stay, (VI) Scheduling A Final Hearing, And (VII) Granting Related Relief* [Docket No. ___] (the “Greenhill Declaration”), and the other evidence submitted or adduced and the arguments of counsel made at the Interim Hearing held pursuant to Bankruptcy Rule 4001(b)(2) on _____, 2020; and this Court having heard and resolved or overruled any objections, reservations of rights, or other statements with respect to the relief requested in the Motion; and the Court having noted the appearances of all parties in interest; 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 pending the Final Hearing, and otherwise is fair and reasonable and in the best interests of the Debtors, their estates, and all parties-in-interest, and is essential for the continued operation

of the Debtors' businesses and the preservation of the value of the Debtors' assets; and it appearing that the Debtors' entry into the DIP Credit Agreement and the other DIP Documents is a sound and prudent exercise of the Debtors' business judgment; and the Debtors having provided notice of the Motion as set forth in the Motion, and it appearing that no other or further notice of the Motion need be given; and after due deliberation and consideration, and for good and sufficient cause appearing therefor;

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

A. Petition Date. On July 22, 2020 (the "Petition Date"), each of the Debtors filed a voluntary petition under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware commencing these Cases.

B. Debtors in Possession. The Debtors continue to manage and operate their businesses and properties as debtors in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in these Cases.

C. Jurisdiction and Venue. The Court has jurisdiction over the Motion, these Cases, and the parties and property affected hereby pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012. Venue for these Cases is proper pursuant to 28 U.S.C. §§ 1408 and 1409. This Court may enter a final order consistent with Article III of the United States Constitution.

³ Findings of fact shall be construed as conclusions of law, and conclusions of law shall be construed as findings of fact, pursuant to Bankruptcy Rule 7052.

D. Committee. As of the date hereof, no official committee of unsecured creditors has been appointed in these Cases pursuant to section 1102 of the Bankruptcy Code (any such committee, the “Committee”).

E. Debtors’ Stipulations. Without prejudice to the rights of parties in interest (other than the Debtors), including any Committee, as set forth in Paragraph 12 herein, and subject to the limitations thereon contained in Paragraphs 20 and 28 herein, the Debtors stipulate and agree that (collectively, Paragraphs E(i) through (v) below are referred to herein as the “Debtors’ Stipulations”):

(i) First Lien Loans.

(a) Under that certain loan agreement dated as of January 6, 2017, by and among Global Eagle Entertainment Inc. (the “Borrower”), certain of the Debtors (the “Guarantors”), the letter of credit issuers, and the lenders party thereto (collectively, the “Prepetition First Lien Lenders”), and Citibank, N.A., as administrative agent (in such capacity, the “Prepetition First Lien Administrative Agent”, and together with the Prepetition First Lien Lenders, the “Prepetition First Lien Secured Parties”) (such credit agreement, as amended, restated, or otherwise modified from time to time, including by that certain First Amendment and Limited Waiver to Credit Agreement, dated as of May 4, 2017, the Amendment to First Amendment and Limited Waiver to Credit Agreement and Second Amendment to Credit Agreement, dated as of June 29, 2017, the Third Amendment to Limited Waiver to Credit Agreement and Third Amendment to Credit Agreement, dated as of October 2, 2017, the Fourth Amendment to Limited Waiver to Credit Agreement and Fourth Amendment to Credit Agreement, dated as of October 31, 2017, the Fifth Amendment to Limited Waiver to Credit Agreement and Fifth Amendment to Credit Agreement, dated as of December 22, 2017, the Sixth Amendment to

Credit Agreement, dated as of March 8, 2018, and the Omnibus Incremental Term Loan and Seventh Amendment to Credit Agreement and Amendment to Security Agreement, dated as of July 19, 2019, the Eighth Amendment to Credit Agreement, dated as of April 7, 2020, the Ninth Amendment to Credit Agreement, dated as of April 9, 2020, the Tenth Amendment to Credit Agreement, dated as of April 15, 2020, and the Eleventh Amendment to Credit Agreement, dated as of July 9, 2020, the “Prepetition Credit Agreement”, and together with the other “Loan Documents” (as defined in the Prepetition Credit Agreement, the “Prepetition First Lien Loan Documents”), the Prepetition First Lien Lenders provided loans thereunder (the “First Lien Loans”) in a total aggregate principal amount outstanding as of the Petition Date of \$584,400,000, and letters of credit have been issued thereunder in an aggregate face amount outstanding as of the Petition Date of \$3,900,000 pursuant to a letter of credit sub-facility under the Prepetition Credit Agreement (the “Prepetition L/Cs”).⁴

(b) As of the Petition Date, the Debtors were jointly and severally indebted to the Prepetition First Lien Secured Parties pursuant to the Prepetition First Lien Loan Documents, without defense, counterclaim, or offset of any kind, in an amount equal to the aggregate principal amount of the First Lien Loans *plus* accrued and unpaid interest with respect thereto and any additional fees, costs, expenses (including any attorneys’, financial advisors’, and other professionals’ fees and expenses), reimbursement obligations, indemnification obligations, contingent obligations, and other charges of whatever nature, whether or not contingent, whenever arising, due, or owing, and all other Obligations (as defined in the Prepetition Credit Agreement) owing under or in connection with the Prepetition First Lien Loan Documents (collectively, the “Prepetition First Lien Obligations”).

⁴ Amount of funded debt is calculated as of June 30, 2020.

(ii) First Lien Loan Collateral. In connection with the Prepetition Credit Agreement, the Debtors entered into that certain Security Agreement, dated as of January 6, 2017 (as amended, supplemented or otherwise modified from time to time, including by the Omnibus Incremental Term Loan and Seventh Amendment to Credit Agreement and Amendment to Security Agreement, the “Security Agreement”), by and between the Borrower, the other loan parties thereto, and the Prepetition First Lien Administrative Agent. Pursuant to the Security Agreement and the other Prepetition First Lien Loan Documents, the Prepetition First Lien Obligations are secured by valid, binding, perfected, and enforceable first-priority security interests in and liens (the “First Lien Loan Liens”) on the “Collateral” (the “Prepetition Collateral”), pursuant to, and as such term is defined in, the Security Agreement, consisting of substantially all of the Debtors’ assets, except as set forth in the Security Agreement.

(iii) Second Lien Notes. Under that certain Securities Purchase Agreement, among Borrower and the purchasers (the “Purchasers”) identified on schedule I thereto, and Cortland Capital Market Services LLC, as collateral agent (the “Prepetition Second Lien Administrative Agent,” and together with the Purchasers, the “Prepetition Second Lien Secured Parties” and together with the Prepetition First Lien Secured Parties, the “Prepetition Secured Parties”), dated as of March 8, 2018 (as amended, restated, or otherwise modified from time to time, including by that certain First Amendment to Securities Purchase Agreement, dated as of March 27, 2018, that certain Second Amendment to Securities Purchase Agreement and Amendment to Security Agreement, dated as of July 19, 2019, and that certain Third Amendment to Securities Purchase Agreement, dated as of April 15, 2020, the “Securities Purchase Agreement”) the Purchasers hold second lien notes in an aggregate principal amount of \$188,700,000.

(iv) Second Lien Collateral. In connection with the Securities Purchase Agreement, the Debtors and the Prepetition Second Lien Administrative Agent entered into that certain Security Agreement, dated as of March 27, 2018 (as amended, supplemented or otherwise modified from time to time, including by the Second Amendment to Securities Purchase Agreement and Amendment to Security Agreement, the “Second Lien Security Agreement”). Pursuant to the Second Lien Security Agreement, the Prepetition Second Lien Secured Parties were granted security interests in and liens (the “Second Lien Loan Liens” and, together with the First Lien Loan Liens, the “Prepetition Liens”) on the Prepetition Collateral.

(v) Priority of Prepetition Liens; Intercreditor Agreements. The Prepetition First Lien Administrative Agent and the Prepetition Second Lien Administrative Agent are parties to that certain Intercreditor and Subordination Agreement, dated as of March 27, 2018 (as amended, restated, or otherwise modified from time to time, including by that certain Amendment No. 1 to Intercreditor and Subordination Agreement and Consent and Reaffirmation, dated as of July 19, 2019, the “Intercreditor Agreement”) to govern, among other things, the respective rights, interests, obligations, priority, and positions of the Prepetition First Lien Secured Parties and the Prepetition Second Lien Secured Parties with respect to the assets and properties of the Debtors and other obligors. Each of the Borrower and Guarantors acknowledged and agreed to the Intercreditor Agreement.

(vi) Cash Collateral. Any and all of the Debtors’ cash, including the Debtors’ cash and other amounts on deposit or maintained in any account or accounts by the Debtors, and any amounts generated by the collection of accounts receivable or other disposition of the Prepetition Collateral existing as of the Petition Date, and the proceeds of any of the foregoing is

the Prepetition First Lien Secured Parties' cash collateral within the meaning of Bankruptcy Code section 363(a) (the "Cash Collateral").

(vii) Bank Accounts. The Debtors acknowledge and agree that as of the Petition Date, none of the Debtors has either opened or maintains any bank accounts other than the accounts listed in the exhibit attached to any order authorizing the Debtors to continue to use the Debtors' existing cash management system (the "Cash Management Order").

(viii) Validity, Perfection, and Priority of First Lien Loan Liens and Prepetition First Lien Obligations. Subject to the Challenge Period (as defined herein), each of the Debtors acknowledges and agrees that, in each case as of the Petition Date: (A) the First Lien Loan Liens are valid, binding, enforceable, non-avoidable, and properly perfected liens on and security interests in the Prepetition Collateral; (B) the First Lien Loan Liens are subject and subordinate only to Prior Senior Liens; (C) the Prepetition First Lien Obligations constitute legal, valid, binding, and non-avoidable obligations of the Debtors; (D) no offsets, challenges, objections, defenses, claims, or counterclaims of any kind or nature to any of the First Lien Loan Liens or Prepetition First Lien Obligations exist, and no portion of the First Lien Loan Liens or Prepetition First Lien Obligations is subject to any challenge or defense including impairment, set-off, right of recoupment, avoidance, attachment, disallowance, disgorgement, reduction, recharacterization, recovery, subordination (whether equitable or otherwise), attack, offset, defense, counterclaims, cross-claims, or "claim" (as defined in the Bankruptcy Code), pursuant to the Bankruptcy Code or applicable nonbankruptcy law; and (E) the Debtors and their estates have no claims, objections, challenges, causes of actions, recoupments, counterclaims, cross-claims, setoff rights, and/or choses in action, including "lender liability" causes of action or avoidance claims under chapter 5 of the Bankruptcy Code, whether arising under applicable state law or federal law (including any

recharacterization, subordination, avoidance, disgorgement, recovery, or other claims arising under or pursuant to sections 105, 510, or 542 through 553 of the Bankruptcy Code), against the Prepetition First Lien Administrative Agent, the Prepetition First Lien Secured Parties, or any of their respective affiliates, agents, representatives, attorneys, advisors, professionals, officers, directors, and employees arising out of, based upon, or related to their loans under the Prepetition First Lien Loan Documents, the Prepetition First Lien Obligations, or the First Lien Loan Liens.

(ix) Intercreditor Agreement. Pursuant to section 510 of the Bankruptcy Code, the Intercreditor Agreement, and any other applicable intercreditor or subordination provisions contained in any of the Prepetition First Lien Loan Documents or any of the Second Lien Note Documents (as defined in the Intercreditor Agreement) shall (i) remain in full force and effect, (ii) continue to govern the relative obligations, priorities, rights and remedies of the Prepetition First Lien Secured Parties and the Prepetition Second Lien Secured Parties, and (iii) not be deemed to be amended, altered or modified by the terms of this Interim Order or the DIP Documents, in each case, unless expressly set forth herein or therein.

F. Findings Regarding the DIP Facility and Use of Cash Collateral.

(i) The Debtors have an immediate need to obtain the DIP Facility and to use Cash Collateral (solely to the extent consistent with the Approved DIP Budget (subject to permitted variances as set forth in this Interim Order and the DIP Documents)) to, among other things, (A) permit the orderly continuation of their businesses; (B) pay certain Adequate Protection Payments; and (C) pay the costs of administration of their estates and satisfy other working capital and general corporate purposes of the Debtors. The Debtors represent that the proceeds of the DIP Facility will provide the Debtors with the ability to fund day-to-day operations, meet administrative obligations during the Cases and preserve the value of their estates. The DIP

Facility will also reassure the Company's customers and employees that the Company will have access to additional liquidity to meet its commitments during the Cases. The ability of the Debtors to obtain sufficient working capital and liquidity through the incurrence of the new indebtedness for borrowed money and other financial accommodations is vital to the preservation and maintenance of the Debtors' going concern values and successful reorganization. The Debtors will not have sufficient sources of working capital and financing to operate their businesses in the ordinary course of business throughout the Cases without access to the DIP Facility and authorized use of Cash Collateral.

(ii) The Debtors are unable to obtain financing on more favorable terms from sources other than the DIP Lenders under the DIP Documents and are unable to obtain unsecured credit allowable under Bankruptcy Code section 503(b)(1) as an administrative expense. The Debtors also are unable to obtain secured credit allowable under sections 364(c)(1), 364(c)(2), and 364(c)(3) of the Bankruptcy Code for the purposes set forth in the DIP Documents without the Debtors granting to the DIP Secured Parties, subject to the Carve Out as provided for herein, the DIP Liens (as defined below) and the DIP Superpriority Claims (as defined below), and the DIP L/C Superpriority Claims (as defined below) under the terms and conditions set forth in this Interim Order and the DIP Documents.

(iii) The DIP Facility has been negotiated in good faith and at arm's length among the Debtors and the DIP Secured Parties, and all of the Debtors' obligations and indebtedness arising under, in respect of, or in connection with the DIP Facility and the DIP Documents, including, without limitation, all loans made to and guarantees issued by the Debtors pursuant to the DIP Documents and all other obligations under the DIP Documents (collectively, the "DIP Obligations") shall be deemed to have been extended by the DIP Secured Parties in good

faith as that term is used in section 364(e) of the Bankruptcy Code and in express reliance upon the protections offered by section 364(e) of the Bankruptcy Code. The DIP Obligations, the DIP Liens, and the DIP Superpriority Claims shall be entitled to the full protection of Bankruptcy Code section 364(e) in the event that this Interim Order or any provision hereof is vacated, reversed, or modified on appeal or otherwise, and any liens or claims granted to, or payments made to, or payments made to, the DIP Agent or the DIP Lenders hereunder arising prior to the effective date of any such vacatur, reversal, or modification of this Interim Order shall be governed in all respects by the original provisions of this Interim Order, including entitlement to all rights, remedies, privileges, and benefits granted herein.

(iv) Adequate Protection. Each of the Prepetition First Lien Secured Parties are entitled, pursuant to sections 105, 361, 362 and 363(e) of the Bankruptcy Code, to adequate protection of their respective interests in the Prepetition Collateral, including Cash Collateral, for any diminution in the value thereof.

(v) Sections 506(c) and 552(b). In light of the Prepetition First Lien Secured Parties' agreement to subordinate their liens and superpriority claims to the DIP Obligations and the Carve Out and to permit the use of their Cash Collateral as set forth herein, the Prepetition First Lien Secured Parties are entitled to the rights and benefits of section 552(b) of the Bankruptcy Code and, subject to and upon entry of the Final Order, (i) a waiver of any "equities of the case" claims under section 552(b) of the Bankruptcy Code and (ii) a waiver of the provisions of section 506(c) of the Bankruptcy Code.

(vi) Consent by Prepetition First Lien Administrative Agent. The Prepetition First Lien Administrative Agent (at the direction of the Required Lenders (as defined in the Prepetition Credit Agreement)), on behalf and for the benefit of each of the Prepetition First Lien

Secured Parties, has consented to, conditioned on the entry of this Interim Order, the Debtors' incurrence of the DIP Facility, the incurrence of the DIP L/C Facility, and the proposed use of Cash Collateral on the terms and conditions set forth in this Interim Order, and the terms of the adequate protection provided for in this Interim Order, including that the Adequate Protection Liens and Adequate Protection Superpriority Claim are subject and subordinate to the Carve Out.

G. Good Cause Shown; Best Interest. Good cause has been shown for entry of this Interim Order, and entry of this Interim Order is in the best interests of the Debtors' respective estates and creditors as its implementation will, among other things, allow for the continued operation of the Debtors' existing business and enhance the Debtors' prospects for a successful reorganization. Absent granting the relief sought by this Interim Order, the Debtors' estates will be immediately and irreparably harmed.

H. Notice. In accordance with Bankruptcy Rules 2002, 4001(b) and (c), and 9014, and the Local Rules, notice of the Interim Hearing and the emergency relief requested in the Motion has been provided by the Debtors. Under the circumstances, the notice given by the Debtors of the Motion, the relief requested herein, and of the Interim Hearing complies with Bankruptcy Rules 2002, 4001(b) and (c), and 9014 and applicable Local Rules.

Based upon the foregoing findings and conclusions, the Motion and the record before the Court with respect to the Motion, and good and sufficient cause appearing therefor,

IT IS HEREBY ORDERED THAT:

1. DIP Financing Approved. The Motion is granted on an interim basis as set forth herein, and the use of Cash Collateral on an interim basis is authorized, subject to the terms of this Interim Order.

2. Objections Overruled. Any objections, reservations of rights, or other statements with respect to entry of the Interim Order, to the extent not withdrawn or resolved, are overruled on the merits. This Interim Order shall become effective immediately upon its entry.

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

(a) The Debtors are hereby immediately authorized and empowered to enter into, and execute and deliver, the DIP Documents, and such additional documents, instruments, certificates and agreements as may be reasonably required or requested by the DIP Secured Parties to implement the terms or effectuate the purposes of this Interim Order and the DIP Documents, including the incurrence of the DIP L/C Facility. To the extent not entered into as of the date hereof, the Debtors and the DIP Secured Parties shall negotiate the DIP Documents in good faith, and in all respects such DIP Documents shall be consistent with the terms of the DIP Credit Agreement and otherwise acceptable to the DIP Agent and the Required DIP Lenders. Upon entry of this Interim Order and until execution and delivery of the DIP Credit Agreement and other DIP Documents required or requested by the DIP Secured Parties, the Debtors and the DIP Secured Parties shall be bound by (x) the terms and conditions and other provisions set forth in the other executed DIP Documents (including the fee letters executed in connection with the DIP Facility), with the same force and effect as if duly executed and delivered to the DIP Agent by the Debtors, and (y) this Interim Order and the other executed DIP Documents (including the fee letters executed in connection with the DIP Facility) shall govern and control the DIP Facility. Upon entry of this Interim Order, the Interim Order, the DIP Credit Agreement, and other DIP

Documents shall govern and control the DIP Facility. The DIP Agent is hereby authorized to execute and enter into its respective obligations under the DIP Facility Documents, subject to the terms and conditions set forth therein and this Interim Order. Upon execution and delivery thereof, the DIP Documents shall constitute valid and binding obligations of the Debtors enforceable in accordance with their terms. To the extent there exists any conflict among the terms and conditions of the DIP Documents and this Interim Order, the terms and conditions of this Interim Order shall govern and control.

(b) Upon entry of this Interim Order, the DIP Borrower is hereby authorized to borrow, and the DIP Guarantors are hereby authorized to guaranty, borrowings up to an aggregate principal amount of \$30,000,000 of DIP Loans, subject to and in accordance with this Interim Order, without any further action by the Debtors or any other party.

(c) In connection with the DIP Credit Agreement, the Debtors will enter into an up to \$10 million (the “DIP L/C Facility Limit”) letter of credit facility (the “DIP L/C Facility”) with the DIP Agent or one its affiliates, which shall provide for the issuance of letters of credit, and which DIP L/C Facility will be documented pursuant to a letter of credit facility agreement (the “DIP L/C Agreement”), which DIP L/C Agreement shall provide for letter of credit fees consistent with those applicable to the Prepetition L/Cs under the Prepetition Credit Agreement. The Debtors will be authorized to obtain postpetition letters of credit under the DIP L/C Facility (the “Postpetition L/Cs”) up to an amount equal to the DIP L/C Facility Limit less the aggregate face amount of then issued and outstanding Prepetition L/Cs, which Postpetition L/Cs will be cash collateralized (the “DIP L/C Cash Collateral”) on the terms set forth in the DIP L/C Agreement with proceeds of the DIP Loans and granted superpriority administrative claim status equivalent to and *pari passu* with the DIP Superpriority Claims (the “DIP L/C Superpriority Claims”). Upon

entry of this Interim Order, the Debtors' reimbursement obligations in connection with the Prepetition L/Cs shall be granted allowed DIP L/C Superpriority Claim status, subject to the Carve Out, but shall not be cash collateralized. For the avoidance of doubt, the only collateral for the Postpetition L/Cs issued pursuant to the DIP L/C Facility shall be DIP L/C Cash Collateral and the only claims in respect of reimbursement of obligations in connection with the Prepetition L/Cs shall be the DIP L/C Superpriority Claims as set forth herein; provided, however, the DIP L/C Cash Collateral shall not be used to fund the Carve Out, solely to the extent the applicable Postpetition L/Cs secured by such DIP L/C Cash Collateral remains outstanding; provided, further, that, in the event any Postpetition L/C expires or is cancelled, any DIP L/C Cash Collateral that previously cash collateralized such Postpetition L/C shall be returned to an account under the control of the DIP Agent for the benefit of the DIP Lenders.

(d) In accordance with the terms of this Interim Order and the DIP Documents, proceeds of the DIP Loans shall be used solely for the purposes permitted under the DIP Documents and this Interim Order, and in accordance with the Approved DIP Budget, subject to permitted variances as set forth in this Interim Order and the DIP Documents. Attached as **Exhibit B** hereto and incorporated herein by reference is a budget prepared by the Debtors and approved by the Required DIP Lenders in accordance with Section 6.24 of the DIP Credit Agreement (the "Approved DIP Budget").

(e) In furtherance of the foregoing and without further approval of this Court, each Debtor is authorized, and the automatic stay imposed by section 362 of the Bankruptcy Code is hereby lifted to the extent necessary to perform all acts and to make, execute, and deliver all instruments and documents (including, without limitation, the DIP Credit Agreement, any security and pledge agreement, and any mortgage to the extent contemplated thereby, or the DIP Credit

Agreement), and to pay all fees (including all amounts owed to the DIP Lenders and the DIP Agent under the DIP Documents) that may be reasonably required or necessary for the Debtors' performance of their obligations under the DIP Facility, including, without limitation:

- (1) the execution, delivery, and performance of the DIP Documents, including, without limitation, the DIP Credit Agreement, any security and pledge agreement, and any mortgage to the extent contemplated thereby;
- (2) the execution, delivery, and performance of one or more amendments, waivers, consents, or other modifications to and under the DIP Documents (in each case in accordance with the terms of the applicable DIP Documents and in such form as the Debtors, the DIP Agent, and the Required DIP Lenders may agree), it being understood that no further approval of the Court shall be required for amendments, waivers, consents, or other modifications to and under the DIP Documents or the DIP Obligations that do not shorten the maturity of the extensions of credit thereunder or modify the commitments or the rate of interest or other amounts payable thereunder;
- (3) the non-refundable payment to each of and/or on behalf of the DIP Secured Parties, as applicable, of the fees referred to in the DIP Documents, including (x) all fees and other amounts owed to the DIP Agent and the DIP Lenders and (y) all reasonable and documented costs and expenses as may be due from time to time, including, without limitation, the reasonable and documented fees and expenses of counsel and other professionals retained as provided for in the DIP Documents and this Interim Order (whether incurred before or after the Petition Date, including, for the avoidance of doubt, (a) Gibson, Dunn & Crutcher LLP (as counsel), Rothschild & Co. US Inc. (as financial

advisor), and Pachulski, Stang, Ziehl & Jones LLP (as local bankruptcy counsel) (collectively, the “DIP/First Lien Advisors”) to the DIP Lenders and the ad hoc group of the Prepetition First Lien Lenders (the “DIP/First Lien Group”); and (b) Weil, Gotshal & Manges LLP (as counsel), and Troutman Pepper Hamilton Sanders LLP (as local bankruptcy counsel) as counsel to the Prepetition First Lien Administrative Agent and DIP Agent, (collectively, the “Agent Advisors”) and, to the extent necessary to exercise its rights and fulfill its obligations under the DIP Documents, one counsel to the DIP Agent in each local jurisdiction, which such fees and expenses shall not be subject to the approval of the Court, nor shall any recipient of any such payment be required to file with respect thereto any interim or final fee application with the Court, provided that any fees and expenses of a professional shall be subject to the provisions of Paragraph 19 of this Interim Order; and

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

(f) Upon entry of this Interim Order, such DIP Documents, the DIP Obligations, and the DIP Liens shall constitute valid, binding, and non-avoidable obligations of the Debtors enforceable against each Debtor party thereto in accordance with their respective terms and the terms of this Interim Order for all purposes during the Cases, any subsequently converted Case of any Debtor to a case under chapter 7 of the Bankruptcy Code or after the dismissal of any Case. No obligation, payment, transfer, or grant of security under the DIP Credit Agreement, the other DIP Documents, or this Interim Order shall be stayed, restrained, voidable, avoidable, or recoverable under the Bankruptcy Code or under any applicable law (including, without limitation, under sections 502(d), 548, or 549 of the Bankruptcy Code or under any applicable state Uniform

Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act, Uniform Voidable Transactions Act or similar statute or common law), or subject to any defense, reduction, setoff, recoupment, or counterclaim. All payments or proceeds remitted (a) to or on behalf of the DIP Agent on behalf of any DIP Secured Parties or (b) to or on behalf of the Prepetition First Lien Secured Parties, in each case, pursuant to the DIP Documents, the provisions of this Interim Order, or any subsequent order of this Court shall be received free and clear of any claim, charge, assessment, or other liability, including, without limitation, any such claim or charge arising out of or based on, directly or indirectly, section 506(c) or the “equities of the case” exception of section 552(b) of the Bankruptcy Code (and, solely in the case of waivers of rights under sections 506(c) and 552(b) of the Bankruptcy Code, subject to the entry of the Final Order).

(g) The DIP Guarantors hereby are authorized and directed to jointly, severally, and unconditionally guarantee, and upon entry of this Interim Order shall be deemed to have guaranteed, in full, all of the DIP Obligations of the DIP Borrower.

(h)

4. Budget and Variance Reporting. On the final business day of every fourth calendar week following entry of this Interim Order beginning with the fourth full week following the Petition Date (or more frequently if determined by the Debtors), the Debtors will deliver to the Prepetition First Lien Administrative Agent, the Agent Advisors, and the DIP/First Lien Advisors an updated Budget for the subsequent 13-week period, which shall be in form and substance satisfactory to the Required DIP Lenders. The initial Approved DIP Budget or any subsequent Approved DIP Budget shall be deemed to constitute the “Approved DIP Budget” for purposes of this Interim Order with the most recently delivered Budget constituting the “Approved DIP Budget,” upon (i) approval by the Required DIP Lenders (which must be in writing, email being

sufficient) or (ii) 5:00 p.m. (prevailing Eastern time) three (3) business days following delivery of such Budget if the Required DIP Lenders have neither approved nor rejected the Budget. The Debtors will deliver to the Prepetition First Lien Administrative Agent, the Agent Advisors, and the DIP/First Lien Advisors an updated Budget for the subsequent 13-week period on the final business day of every fourth calendar week following entry of this Interim Order beginning with the fourth full week following the Petition Date. In the event the conditions for the most recently delivered Budget to constitute an “Approved DIP Budget” are not met as set forth herein, the prior Approved DIP Budget shall remain in full force and effect. Commencing on the first full calendar week after the Petition Date, on or before 5:00 p.m. (prevailing Eastern time) on Thursday of each week, the Debtors shall deliver to the DIP Agent and the DIP/First Lien Advisors a budget variance report/reconciliation (the “Approved DIP Budget Variance Report”), setting forth in reasonable detail actual operating receipts and operating disbursements on a rolling four-week basis (the “Budget Period”)⁵ and all Budget Variances (as defined below), in each case, on both an individual line item basis and an aggregate basis, as compared to the projected amounts therefor set forth in the then applicable Approved DIP Budget, together with a statement confirming compliance with the budget covenants set forth in Section 6.24 of the DIP Credit Agreement. The Approved DIP Budget Variance Report shall include indications as to whether each variance therein is temporary or permanent and an explanation, in reasonable detail, of any material variance. The Debtors shall not permit the percentage variance with respect to (i) total projected disbursements in each then-

⁵ Notwithstanding anything to the contrary herein, with respect to the Budget Period for the initial Approved DIP Budget, the Approved DIP Budget Variance Report delivered August 6, 2020 will include actual operating receipts and operating disbursements for the four-week period ending July 31 (including weeks falling prior to the Petition Date) and each subsequent Approved DIP Budget Variance Report delivered for succeeding weeks will be determined in a similar manner on a rolling four-week basis, through the end of the week prior to the delivery of such Approved DIP Budget Variance Report.

current Approved DIP Budget to exceed 115% on an aggregate basis of total actual operating disbursements, and (ii) total projected receipts in each then-current Approved DIP Budget to be less than 85% on an aggregate basis of total actual operating receipts, in each case, for measuring the variance, beginning with the week ending July 31, 2020, which would be reported by the Approved DIP Budget Variance Report delivered August 6, 2020, tested weekly on a four week rolling basis, in each case, for the Budget Period under the then-current Approved DIP Budget (the “Budget Variances”; all references in this Interim Order and the DIP Documents to “Approved DIP Budget” shall mean the Approved DIP Budget as it is subject to the Budget Variances). For the avoidance of doubt, for purposes of Budget Variances testing, the fees and expenses of Professional Persons (as defined herein), the Agent Advisors, and the DIP/First Lien Advisors shall be excluded.

5. Access to Records. The Debtors shall provide the DIP/First Lien Advisors with all reporting and other information required to be provided to the DIP Agent under the DIP Documents. In addition to, and without limiting, whatever rights to access the DIP Secured Parties have under the DIP Documents, upon reasonable notice to Debtors’ counsel (email being sufficient), at reasonable times during normal business hours, the Debtors shall permit representatives, agents, and employees of the DIP Secured Parties to have reasonable access to (i) inspect the Debtors’ assets, and (ii) all information (including historical information and the Debtors’ books and records) and personnel, including regularly scheduled meetings as mutually agreed with senior management of the Debtors and other company advisors (during normal business hours), and the DIP Secured Parties shall be provided with access to all information they shall reasonably request, excluding any information for which confidentiality is owed to third

parties, information subject to attorney client or similar privilege, or where such disclosure would not be permitted by any applicable requirements of law.

6. DIP Superpriority Claims. Pursuant to section 364(c)(1) of the Bankruptcy Code, all of the DIP Obligations shall constitute allowed superpriority administrative expense claims against each of the Debtors' estates (the "DIP Superpriority Claims") (without the need to file any proof of claim) with priority over any and all administrative expenses, adequate protection claims, diminution claims, and all other claims against the Debtors, now existing or hereafter arising, of any kind whatsoever, including, without limitation, all administrative expenses of the kind specified in sections 503(b) and 507(b) of the Bankruptcy Code, and over any and all administrative expenses or other claims arising under sections 105, 326, 327, 328, 330, 331, 361, 362, 363, 364, 365, 503(b), 506(c), 507(a), 507(b), 726, 1113, or 1114 of the Bankruptcy Code or otherwise, whether or not such expenses or claims may become secured by a judgment lien or other non-consensual lien, levy or attachment, which allowed claims shall for the purposes of section 1129(a)(9)(A) of the Bankruptcy Code be considered administrative expenses allowed under section 503(b) of the Bankruptcy Code and which shall be payable from and have recourse to all prepetition and postpetition property of the Debtors and all proceeds thereof, including, without limitation, subject to entry of the Final Order, any proceeds or property recovered in connection with the pursuit of claims or causes of action arising under chapter 5 of the Bankruptcy Code, if any (the "Avoidance Actions"), subject only to, and subordinated in all respects to, the payment of the Carve Out; provided, however, the DIP L/C Superpriority Claim shall be *pari passu* with the DIP Superpriority Claims and treated as DIP Superpriority Claims pursuant to the terms of this Interim Order and the DIP Documents. Except as set forth in this Interim Order or the Final Order, no other superpriority claims shall be granted or allowed in these Cases.

7. DIP Liens. As security for the DIP Obligations, effective and perfected upon the date of this Interim Order, and without the necessity of the execution, recordation of filings by the Debtors of mortgages, security agreements, control agreements, pledge agreements, financing statements, or other similar documents, or the possession or control by the DIP Agent or any DIP Lender of, or over, any DIP Collateral (as defined below), the following security interests and liens are hereby granted by the Debtors to the DIP Agent, for the benefit of the DIP Secured Parties (all property identified in clause (a) and (b) below being collectively referred to as the “DIP Collateral”), subject to (x) Liens permitted pursuant to the terms of the DIP Credit Agreement and (y) the Carve Out (all such liens and security interests granted to the DIP Agent, for the benefit of the DIP Lenders, pursuant to this Interim Order and the DIP Documents, the “DIP Liens”):

(a) First Priority Lien On Any Unencumbered Property. Pursuant to section 364(c)(2) of the Bankruptcy Code, a valid, binding, continuing, enforceable, fully-perfected, non-avoidable, automatically, and properly perfected first priority senior security interest in and lien upon all property of the Debtors, whether existing on the Petition Date or thereafter acquired, that, on or as of the Petition Date is not subject to valid, perfected, and non-avoidable liens (or perfected after the Petition Date to the extent permitted by section 546(b) of the Bankruptcy Code) (subject to the Carve Out), including, without limitation (in each case, to the extent not subject to valid, perfected, and non-avoidable liens), a 100% equity pledge of any first-tier foreign subsidiaries; unencumbered cash of the Debtors (whether maintained with the DIP Agent or otherwise) and any investment of such cash, accounts, inventory, goods, contract rights, instruments, documents, chattel paper, patents, trademarks, copyrights, and licenses therefor, accounts receivable, receivables and receivables records, general intangibles, payment intangibles, tax or other refunds,

insurance proceeds, letters of credit, contracts, owned real estate, real property leaseholds, fixtures, deposit accounts, commercial tort claims, securities accounts, instruments, investment property, letter-of-credit rights, supporting obligations, machinery and equipment, real property, leases (and proceeds from the disposition thereof), all of the issued and outstanding capital stock of each Debtor, other equity or ownership interests in or of any entity (including equity interests in subsidiaries of each Debtor), money, investment property, intercompany claims, claims arising on account of transfers of value from a Debtor to (x) another Debtor and (y) a non-Debtor affiliate incurred on or following the Petition Date, causes of action, including causes of action arising under section 549 of the Bankruptcy Code (but excluding all other Avoidance Actions), all products and proceeds of the foregoing and, subject to entry of the Final Order, all proceeds and property recovered in respect of Avoidance Actions (collectively, the “Previously Unencumbered Property”).

(b) Liens Priming the Prepetition Liens. Pursuant to section 364(d)(1) of the Bankruptcy Code, a valid, binding, continuing, enforceable, fully-perfected first priority senior priming security interest in and lien upon all property of the Debtors that was subject to the Prepetition Liens (subject to the Carve Out), including, without limitation, the Prepetition Collateral and Cash Collateral; provided that such liens shall be immediately junior to any Prior Senior Liens; provided, further, that, for the avoidance of doubt and notwithstanding anything to the contrary contained herein, to the extent a lien cannot attach to any of the foregoing pursuant to applicable law, the liens granted pursuant to this Interim Order shall attach to the Debtors’ economic rights, including, without limitation, any and all proceeds of the foregoing.

8. Adequate Protection for the Prepetition First Lien Secured Parties. Subject only to the Carve Out and the terms of this Interim Order, pursuant to sections 361, 363(e), and 364 of the

Bankruptcy Code, and in consideration of the stipulations and consents set forth herein, as adequate protection of their interests in the Prepetition Collateral (including Cash Collateral), solely for and equal in amount to the postpetition diminution in value of such interests (each such diminution, a “Diminution in Value”), resulting from, among other things, the imposition of the priming DIP Liens on the Prepetition Collateral, the Carve Out, the Debtors’ use of the Prepetition Collateral (including Cash Collateral), and the imposition of the automatic stay, the Prepetition First Lien Administrative Agent, for the benefit of itself and the other Prepetition First Lien Secured Parties, is hereby granted the following (collectively, the “First Lien Adequate Protection Obligations”):

(a) First Lien Adequate Protection Liens. As security for and solely to the extent of any Diminution in Value, additional and replacement, valid, binding, enforceable, non-avoidable, and effective and automatically perfected postpetition security interests in and liens as of the date of this Interim Order (together, the “First Lien Adequate Protection Liens”), without the necessity of the execution by the Debtors (or recordation or other filing), of security agreements, control agreements, pledge agreements, financing statements, mortgages, or other similar documents, on all DIP Collateral and, upon entry of the Final Order, all proceeds or property recovered from Avoidance Actions. Subject to the terms of this Interim Order, the First Lien Adequate Protection Liens shall be subordinate only to the (A) Carve Out, (B) the DIP Liens, and (C) Prior Senior Liens. The First Lien Adequate Protection Liens shall otherwise be senior to all other security interests in, liens on, or claims against any of the DIP Collateral (including, for the avoidance of doubt, any lien or security interest that is avoided and preserved for the benefit of the Debtors and their estates under section 551 of the Bankruptcy Code).

(b) Adequate Protection Superpriority Claims. As further adequate protection, and to the extent provided by sections 503(b) and 507(b) of the Bankruptcy Code, allowed administrative expense claims in each of the Cases ahead of and senior to any and all other administrative expense claims in such Cases to the extent of any postpetition Diminution in Value (the “Adequate Protection Superpriority Claims”), but junior to the Carve Out and the DIP Superpriority Claims. Subject to the Carve Out and the DIP Superpriority Claims and DIP L/C Superpriority Claims in all respects, the Adequate Protection Superpriority Claims will not be junior to any claims and shall have priority over all administrative expense claims against each of the Debtors, now existing or hereafter arising, of any kind or nature whatsoever, including, without limitation, administrative expense claims of the kinds specified in or ordered pursuant to sections 105, 326, 328, 330, 331, 365, 503(a), 503(b), 506(c) (subject to entry of the Final Order), 507(a), 507(b), 546(d), 726, 1113 and 1114 of the Bankruptcy Code. The Prepetition First Lien Secured Parties shall not receive or retain any payments, property or other amounts in respect of the Adequate Protection Superpriority Claims under section 507(b) of the Bankruptcy Code granted hereunder unless and until the DIP Obligations have been indefeasibly paid in full, in cash, or satisfied in a manner otherwise agreed to by the Required DIP Lenders, in each case as provided in the DIP Documents.

(c) First Lien Adequate Protection Payments. As further adequate protection, the Debtors are authorized and directed to pay, in accordance with the terms of Paragraph 19 of this Interim Order, all reasonable and documented fees and expenses (the “Adequate Protection Fees”), whether incurred before or after the Petition Date, to the extent not duplicative of any fees and/or expenses paid pursuant to paragraph 3(d)(3) hereof, including all reasonable and documented fees and expenses of counsel and other professionals retained as provided for in the

DIP Documents and this Interim Order, including, for the avoidance of doubt, of (i) the Agent Advisors, as counsel to the DIP Agent and Prepetition First Lien Administrative Agent, (ii) the DIP/First Lien Group Advisors, and (iii) to the extent necessary to exercise and fulfill its obligations under the Prepetition First Lien Loan Documents, one counsel to the Prepetition First Lien Secured Parties (taken as a whole) in each local jurisdiction that is material to the Prepetition First Lien Secured Parties (taken as a whole) (all payments referenced in this sentence, collectively, the “Adequate Protection Payments”). None of the Adequate Protection Fees shall be subject to separate approval by this Court or the U.S. Trustee Guidelines, and no recipient of any such payment shall be required to file any interim or final fee application with respect thereto or otherwise seek the Court’s approval of any such payments.

(d) Right to Seek Additional Adequate Protection. This Interim Order is without prejudice to, and does not constitute a waiver of, expressly or implicitly, the rights of the Prepetition First Lien Secured Parties to request further or alternative forms of adequate protection at any time or the rights of the Debtors or any other party to contest such request.

9. Adequate Protection for the Prepetition Second Lien Secured Parties. Pursuant to the terms of this Interim Order and sections 361, 363(e), and 364 of the Bankruptcy Code, as adequate protection of their interests in the Prepetition Collateral (including Cash Collateral), solely for and equal in amount to the postpetition Diminution in Value, resulting from, among other things, the imposition of the priming DIP Liens on the Prepetition Collateral, the Carve Out, the Debtors’ use of the Prepetition Collateral (including Cash Collateral), and the imposition of the automatic stay, the Prepetition Second Lien Administrative Agent, for the benefit of itself and the other Prepetition Second Lien Secured Parties, is hereby granted the following (collectively,

the “Second Lien Adequate Protection Obligations” and, together with the First Lien Adequate Protection Obligations, the “Adequate Protection Obligations”):

(a) Second Lien Adequate Protection Liens. As security for and solely to the extent of any Diminution in Value, additional and replacement, valid, binding, enforceable, non-avoidable, and effective and automatically perfected postpetition security interests in and liens as of the date of this Interim Order (together, the “Second Lien Adequate Protection Liens” and, together with the First Lien Adequate Protection Liens, the “Adequate Protection Liens”), without the necessity of the execution by the Debtors (or recordation or other filing), of security agreements, control agreements, pledge agreements, financing statements, mortgages, or other similar documents, on all DIP Collateral and, upon entry of the Final Order, all proceeds or property recovered from Avoidance Actions. Subject to the terms of this Interim Order, the Second Lien Adequate Protection Liens shall be subordinate only to the (A) Carve Out, (B) the DIP Liens, (C) the First Lien Adequate Protection Liens, (D) the First Lien Loan Liens, and (E) Prior Senior Liens. The Second Lien Adequate Protection Liens shall otherwise be senior to all other security interests in, liens on, or claims against any of the DIP Collateral (including, for the avoidance of doubt, any lien or security interest that is avoided and preserved for the benefit of the Debtors and their estates under section 551 of the Bankruptcy Code).

10. Carve Out.

(a) Priority of Carve Out. Subject to the terms and conditions contained in this Paragraph 10, each of the DIP Liens, DIP Superpriority Claims, DIP Superpriority L/C Claims, Prepetition Liens, Adequate Protection Liens, and Adequate Protection Superpriority Claims shall be subject and subordinate to payment of the Carve Out; provided, however, that the DIP L/C Cash Collateral shall not be used to fund the Carve Out, solely to the extent the applicable Postpetition

L/Cs secured by such DIP L/C Cash Collateral remains outstanding. The Carve Out shall have such priority claims and liens over all assets of the Debtors, including any DIP Collateral, Prepetition Collateral, and any funds in the escrow account into which the DIP Loans are funded (the “DIP Loan Escrow”).

(b) Definition of Carve Out. As used in this Interim Order, the “Carve Out” means the sum of (i) all fees required to be paid to the Clerk of the Court and to the United States Trustee under section 1930(a) of title 28 of the United States Code plus interest at the statutory rate (without regard to the notice set forth in (iii) below); (ii) all reasonable fees and expenses up to \$50,000 incurred by a trustee under section 726(b) of the Bankruptcy Code (without regard to the notice set forth in (iii) below); (iii) to the extent allowed at any time, whether by interim order, procedural order, or otherwise, all unpaid fees and expenses (including any success or transaction fees owed to Greenhill & Co., LLC (“Greenhill”), to the extent payable pursuant to an order entered by the Court approving Greenhill’s retention in the Cases) (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 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 (at the direction of the Required DIP Lenders) 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, (the amounts set forth in clauses (i) through (iii), the “Pre-Carve Out Trigger Notice Cap”); and (iv) Allowed Professional Fees of Professional Persons in an aggregate amount not to exceed \$3,500,000 incurred after the first business day following delivery by the DIP Agent of the Carve Out Trigger Notice (such date, the “Trigger Date”), to the extent allowed at any time,

whether by interim order, procedural order, or otherwise, less the amount of any prepetition retainers received by any such Professional Persons and not previously returned or applied to fees and expenses (the amounts set forth in this clause (iv) being the “Post-Carve Out Trigger Notice Cap” and, together with the Pre-Carve Out Trigger Notice Cap, the “Carve Out 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 to the Debtors, their lead restructuring counsel (Latham & Watkins LLP), the U.S. Trustee, and counsel to the Committee, which notice may be delivered following the occurrence and during the continuation of an Event of Default (as defined in the DIP Credit Agreement) and acceleration of the DIP Obligations under the DIP Facility, stating that the Post-Carve Out Trigger Notice Cap has been invoked. Notwithstanding anything in this Interim Order or the DIP Loan Documents to the contrary, in no event shall the Carve Out apply to the DIP L/C Cash Collateral, solely to the extent the applicable Postpetition L/Cs secured by such DIP L/C Cash Collateral remains outstanding.

(c) Carve Out Reserve. Notwithstanding the occurrence of an Event of Default or conditions to borrowing or release of funds from the DIP Loan Escrow, on the day on which a Carve Out Trigger Notice is given by the DIP Agent to the Debtors with a copy to counsel to the Committee (the “Termination Declaration Date”), the Carve Out Trigger Notice shall (i) be deemed a draw request and notice of borrowing by the Debtors for DIP Loans under the DIP Facility (on a pro rata basis based on the then outstanding DIP Obligations) and/or request to release funds from the DIP Loan Escrow, in an amount equal to the then unpaid amounts of the Allowed Professional Fees plus reasonably estimated fees not yet allowed for the period through and including the Termination Declaration Date (any such amounts actually advanced shall constitute DIP Loans and shall be deposited in the DIP Loan Escrow), and (ii) also constitute a

demand to the Debtors to utilize all cash on hand as of such date and any available cash thereafter held by any Debtor or available in the DIP Loan Escrow to fund a reserve in an amount equal to the then unpaid amounts of the Allowed Professional Fees plus reasonably estimated fees not yet allowed for the period through and including the Termination Declaration Date. The Debtors shall deposit and hold such amounts in a segregated account in trust to pay such then unpaid Allowed Professional Fees plus reasonably estimated fees not yet allowed for the period through and including the Termination Declaration Date (the “Pre-Carve Out Trigger Notice Reserve”) prior to any and all other claims. On the Termination Declaration Date, the Carve Out Trigger Notice shall also (i) be deemed a request by the Debtors for DIP Loans under the DIP Facility (on a pro rata basis based on the then outstanding DIP Obligations) and/or request to release funds from the DIP Loan Escrow in an amount equal to the Post-Carve Out Trigger Notice Cap (any such amounts actually advanced shall constitute DIP Loans) and (ii) constitute a demand to the Debtors to utilize all cash on hand as of such date and any available cash thereafter held by any Debtor or available in the DIP Loan Escrow, after funding the Pre-Carve Out Trigger Notice Reserve, to fund a reserve in an amount equal to the Post-Carve Out Trigger Notice Cap . The Debtors shall deposit and hold such amounts in a segregated account in trust to pay such Allowed Professional Fees benefiting from 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. On the first business day after the DIP Agent gives such notice to such DIP Lenders, notwithstanding anything in the DIP Credit Agreement to the contrary, including with respect to the existence of a Default (as defined in the DIP Credit Agreement) or Event of Default, the failure of the Debtors to satisfy any or all of the conditions precedent for DIP Loans under the DIP Facility, any termination of the DIP Obligations following an Event of Default, or the

occurrence of the Maturity Date (as defined in the DIP Credit Agreement), each DIP Lender with an outstanding Commitment (as defined in the DIP Credit Agreement, on a pro rata basis based on the then outstanding Commitments) shall make available to the DIP Agent such DIP Lender's pro rata share with respect to such borrowing in accordance with the DIP Facility. All funds in the Pre-Carve Out Trigger Notice Reserve shall be used first to pay the obligations set forth in the Pre-Carve Out Trigger Notice Cap (the "Pre-Carve Out Amounts"), but not, for the avoidance of doubt, the Post-Carve Out Trigger Notice Cap, until paid in full, and then, to the extent the Pre-Carve Out Trigger Notice Reserve has not been reduced to zero, to pay the DIP Agent for the benefit of the DIP Lenders, unless the DIP Obligations have been indefeasibly paid in full, in cash, and all Commitments have been terminated, in which case any such excess shall be paid to the Prepetition First Lien Secured Parties in accordance with their rights and priorities as of the Petition Date. All funds in the Post-Carve Out Trigger Notice Reserve shall be used first to pay the obligations set forth in the Post-Carve Out Trigger Notice Cap (the "Post-Carve Out Amounts"), and then, to the extent the Post-Carve Out Trigger Notice Reserve has not been reduced to zero, to pay the DIP Agent for the benefit of the DIP Lenders, unless the DIP Obligations have been indefeasibly paid in full, in cash, and all Commitments have been terminated, in which case any such excess shall be paid to the Prepetition First Lien Secured Parties in accordance with their rights and priorities as of the Petition Date. Notwithstanding anything to the contrary in the DIP Documents, or this Interim Order, if either of the Carve Out Reserves is not funded in full in the amounts set forth in this Paragraph 10, 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 Reserves, up to the applicable amount set forth in this Paragraph 10, prior to making any payments to the DIP Agent or the Prepetition First Lien Secured Parties, as

applicable. Notwithstanding anything to the contrary in the DIP Documents or this Interim Order, following delivery of a Carve Out Trigger Notice, the DIP Agent and the Prepetition First Lien Administrative Agent shall not sweep or foreclose on cash (including cash received as a result of the sale or other disposition of any assets) of the Debtors until the Carve Out Reserves have been fully funded, but shall have a security interest in any residual interest in the Carve Out Reserves, with any excess paid to the DIP Agent for application in accordance with the DIP Documents. Further, notwithstanding anything to the contrary in this Interim Order, (i) disbursements by the Debtors from the Carve Out Reserves shall not constitute DIP Loans or increase or reduce the DIP Obligations, (ii) the failure of the Carve Out Reserves to satisfy in full the Allowed Professional Fees shall not affect the priority of the Carve Out, and (iii) in no way shall the Approved DIP Budget, Budget, Carve Out, Post-Carve Out Trigger Notice Cap, Carve Out Reserves, or any of the foregoing be construed as a cap or limitation on the amount of the Allowed Professional Fees due and payable by the Debtors. For the avoidance of doubt and notwithstanding anything to the contrary in this Interim Order, the DIP Facility, the Prepetition First Lien Documents or the Second Lien Note Documents (as defined in the Intercreditor Agreement), the Carve Out shall be senior to all liens and claims securing the DIP Facility, the Adequate Protection Liens, the Adequate Protection Superiority Claims, any claims arising under section 507(b) of the Bankruptcy Code, and any and all other forms of adequate protection, liens, or claims securing the DIP Obligations, the Prepetition First Lien Obligations, and the obligations pursuant to the Securities Purchase Agreement.

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

(e) No Direct Obligation To Pay Allowed Professional Fees. Except for funding the Carve Out Reserves as provided herein, none of the DIP Agent, DIP Lenders, or the Prepetition First Lien Secured Parties shall be responsible for the payment or reimbursement of any fees or disbursements of any Professional Person incurred in connection with the Cases or any successor cases under any chapter of the Bankruptcy Code. Nothing in this Interim Order or otherwise shall be construed to obligate the DIP Agent, the DIP Lenders, or the Prepetition First Lien 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.

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

11. Reservation of Rights of the DIP Agent, DIP Lenders, and Prepetition First Lien Secured Parties. Subject in all cases to the Carve Out, notwithstanding any other provision in this Interim Order or the DIP Documents to the contrary, the entry of this Interim Order is without prejudice to, and does not constitute a waiver of, expressly or implicitly, or otherwise impair: (a) any of the rights of any of the Prepetition First Lien Secured Parties to seek any other or supplemental relief in respect of the Debtors including the right to seek additional adequate protection at and following the Final Hearing; *provided* that any such further or different adequate protection shall at all times be subordinate and junior to the Carve Out and the claims and liens of

the DIP Secured Parties granted under this Interim Order and the DIP Documents; (b) any of the rights of the DIP Secured Parties or the Prepetition First Lien Secured Parties under the DIP Documents, the Prepetition First Lien Loan Documents, the Intercreditor Agreement, or the Bankruptcy Code or under non-bankruptcy law (as applicable), including, without limitation, the right of any of the DIP Secured Parties or the Prepetition First Lien Secured Parties to (i) request modification of the automatic stay of section 362 of the Bankruptcy Code, (ii) request dismissal of any of the Cases, conversion of any of the Cases to cases under chapter 7, or appointment of a chapter 11 trustee or examiner with expanded powers in any of the Cases, (iii) seek to propose, subject to the provisions of section 1121 of the Bankruptcy Code, a chapter 11 plan or plans; or (c) any other rights, claims, or privileges (whether legal, equitable, or otherwise) of any of the DIP Secured Parties or the Prepetition First Lien Secured Parties. The delay in or failure of the DIP Secured Parties and/or the Prepetition First Lien Secured Parties to seek relief or otherwise exercise their rights and remedies shall not constitute a waiver of any of the DIP Secured Parties' or the Prepetition First Lien Secured Parties' rights and remedies.

12. Reservation of Certain Committee and Third Party Rights and Bar of Challenges and Claims. Subject to the Challenge Period (as defined herein), the stipulations, admissions, waivers, and releases contained in this Interim Order, including the Debtors' Stipulations, shall be binding upon the Debtors, their estates, and any of their respective successors in all circumstances and for all purposes, and the Debtors are deemed to have irrevocably waived and relinquished all Challenges (as defined below) as of the Petition Date. The stipulations, admissions, and waivers contained in this Interim Order, including, the Debtors' Stipulations, shall be binding upon all other parties in interest, including any Committee and any other person acting on behalf of the Debtors' estates, unless and to the extent that a party in interest with proper standing granted by

order of the Court (or other court of competent jurisdiction) has timely and properly filed an adversary proceeding or contested matter under the Bankruptcy Rules (i) before the earlier of (a) except as to any Committee, seventy-five (75) calendar days after entry of the Interim Order, and (b) in the case of any such adversary proceeding or contested matter filed by any Committee, sixty (60) calendar days after the appointment of such Committee, subject to further extension by written agreement of the Debtors and the Prepetition First Lien Administrative Agent (acting at the direction of the Required Lenders (as defined in the Prepetition Credit Agreement)) or the Prepetition Second Lien Administrative Agent, as applicable, (in each case, a “Challenge Period” and the date of expiration of each Challenge Period being a “Challenge Period Termination Date”); *provided, however*, that if, prior to the end of the Challenge Period, (x) the cases convert to chapter 7, or (y) if a chapter 11 trustee is appointed, then, in each such case, the Challenge Period shall be extended by the later of (A) the time remaining under the Challenge Period plus ten (10) days or (B) such other time as ordered by the Court solely with respect to any such trustee, commencing on the occurrence of either of the events discussed in the foregoing clauses (x) and (y); (ii) seeking to avoid, object to, or otherwise challenge the findings or Debtors’ Stipulations regarding: (a) the validity, enforceability, extent, priority, or perfection of the mortgages, security interests, and liens of the Prepetition First Lien Administrative Agent and the Prepetition First Lien Secured Parties; or (b) the validity, enforceability, allowability, priority, secured status, or amount of the Prepetition First Lien Obligations (any such claim, a “Challenge”), and (iii) in which the Court enters a final order in favor of the plaintiff sustaining any such Challenge in any such timely filed adversary proceeding or contested matter. Upon the expiration of the Challenge Period Termination Date without the filing of a Challenge (or if any such Challenge is filed and overruled): (a) any and all such Challenges by any party (including the Committee, any chapter 11 trustee, and/or any

examiner or other estate representative appointed or elected in these Cases, and any chapter 7 trustee and/or examiner or other estate representative appointed or elected in any Successor Case) shall be deemed to be forever barred; (b) the Prepetition First Lien Obligations shall constitute allowed claims, not subject to counterclaim, setoff, recoupment, reduction, subordination, recharacterization, defense, or avoidance for all purposes in the Debtors' Cases and any Successor Cases; (c) the First Lien Loan Liens shall be deemed to have been, as of the Petition Date, legal, valid, binding, and perfected secured claims, not subject to recharacterization, subordination, or avoidance; and (d) all of the Debtors' stipulations and admissions contained in this Interim Order, including the Debtors' Stipulations, and all other waivers, releases, affirmations, and other stipulations as to the priority, extent, and validity as to the Prepetition First Lien Secured Parties' claims, liens, and interests contained in this Interim Order shall be of full force and effect and forever binding upon the Debtors, the Debtors' estates, and all creditors, interest holders, and other parties in interest in these Cases and any Successor Cases. If any such adversary proceeding or contested matter is timely and properly filed under the Bankruptcy Rules and remains pending and the Cases are converted to chapter 7, the chapter 7 trustee may continue to prosecute such adversary proceeding or contested matter on behalf of the Debtors' estates. Furthermore, if any such adversary proceeding or contested matter is timely and properly filed under the Bankruptcy Rules, the stipulations and admissions contained in this Interim Order, including the Debtors' Stipulations, shall nonetheless remain binding and preclusive on any Committee and any other person or entity except to the extent that such stipulations and admissions were expressly challenged in such adversary proceeding or contested matter prior to the Challenge Period Termination Date. Nothing in this Interim Order vests or confers on any person (as defined in the Bankruptcy Code), including, without limitation, any Committee appointed in the Cases, standing

or authority to pursue any cause of action belonging to the Debtors or their estates, including, without limitation any challenges (including a Challenge) with respect to the Prepetition First Lien Loan Documents, the First Lien Loan Liens, and the Prepetition First Lien Obligations, and a separate order of the Court conferring such standing on any Committee or other party-in-interest shall be a prerequisite for the prosecution of a Challenge by such Committee or such other party-in-interest.

13. DIP Termination Date. On the DIP Termination Date (as defined below), consistent with Section 8.02 of the DIP Credit Agreement, (a) all DIP Obligations shall be immediately due and payable, all Commitments will terminate, and the Carve Out Reserves shall be immediately funded; (b) all authority to use Cash Collateral shall cease; *provided, however*, that during the Remedies Notice Period (as defined below), the Debtors may use Cash Collateral solely to fund the Carve Out and pay payroll and other expenses critical to the administration of the Debtors' estates strictly in accordance with the Approved DIP Budget, subject to such variances as permitted in the DIP Credit Agreement; and (c) the DIP Secured Parties shall be otherwise entitled to exercise rights and remedies under the DIP Documents in accordance with this Interim Order.

14. Events of Default. The occurrence of any of the following events, unless waived by the Required DIP Lenders in accordance with the terms of the DIP Documents, shall constitute an event of default (collectively, the "Events of Default"): (a) the failure of the Debtors to perform, in any material respect, any of the terms, provisions, conditions, covenants, or obligations under this Interim Order, (b) the failure of the Debtors to comply with any of the Required Milestones (as defined below) or (c) the occurrence of an "Event of Default" under the DIP Credit Agreement.

15. Milestones. The Debtors' failure to comply with those certain case milestones set forth in Section 6.25 of the DIP Credit Agreement (collectively, the "Required Milestones") shall constitute an "Event of Default" in accordance with the terms of the DIP Credit Agreement.

16. Rights and Remedies Upon Event of Default. Immediately upon the occurrence and during the continuation of an Event of Default, notwithstanding the provisions of section 362 of the Bankruptcy Code, without any application, motion, or notice to, hearing before, or order from the Court, but subject to the terms of this Interim Order, subject to the Remedies Notice Period (defined below), (a) the DIP Agent (at the direction of the Required DIP Lenders) may declare (any such declaration shall be referred to herein as a "Termination Declaration") (i) all DIP Obligations owing under the DIP Documents to be immediately due and payable, (ii) the termination, reduction or restriction of any further commitment to extend credit to the Debtors to the extent any such commitment remains under the DIP Facility, (iii) termination of the DIP Facility and the DIP Documents as to any future liability or obligation of the DIP Agent and the DIP Lenders, but without affecting any of the DIP Liens or the DIP Obligations, and (iv) that the Carve Out shall be triggered, through the delivery of the Carve Out Trigger Notice to the DIP Borrower and (b) subject to paragraph 13(b), the DIP Agent (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 (the date on which a Termination Declaration is delivered, the "DIP Termination Date"). The Termination Declaration shall not be effective until notice has been provided by electronic mail (or other electronic means) to counsel to the Debtors, counsel to a Committee (if appointed), and the U.S. Trustee. The automatic stay in the Cases otherwise applicable to the DIP Agent, the DIP Lenders, and the Prepetition First Lien Secured Parties is hereby modified so that five (5) business days after the DIP Termination Date (the "Remedies Notice Period"): (a) the

DIP Agent (at the direction of the Required DIP Lenders) shall be entitled to exercise its rights and remedies in accordance with the DIP Documents and this Interim Order to satisfy the DIP Obligations, DIP Superpriority Claims, DIP L/C Superpriority Claims and DIP Liens, subject to the Carve Out; (b) subject to the foregoing clause (a), the applicable Prepetition First Lien Secured Parties shall be entitled to exercise their respective rights and remedies to the extent available in accordance with the applicable Prepetition First Lien Loan Documents and this Interim Order with respect to the Debtors' use of Cash Collateral. During the Remedies Notice Period, the Debtors, the Committee (if appointed), and/or any party in interest shall be entitled to seek an emergency hearing within the Remedies Notice Period with the Court for the sole purpose (unless the Court orders otherwise) of contesting whether an Event of Default has occurred or is continuing or for the contested use of Cash Collateral, . Except as set forth in this Paragraph 16 or otherwise ordered by the Court prior to the expiration of the Remedies Notice Period, after the Remedies Notice Period, the Debtors shall waive their right to and shall not be entitled to seek relief, including, without limitation, under section 105 of the Bankruptcy Code, to the extent such relief would in any way impair or restrict the rights and remedies of the DIP Agent, the DIP Lenders, or the Prepetition First Lien Secured Parties under this Interim Order. Unless the Court has determined that an Event of Default has not occurred and/or is not continuing or the Court orders otherwise, the automatic stay, as to all of the DIP Agent, DIP Lenders, and Prepetition First Lien Secured Parties (solely with respect to the use of Cash Collateral to the extent permitted hereunder) shall automatically be terminated at the end of the Remedies Notice Period without further notice or order. Upon expiration of the Remedies Notice Period, the DIP Agent (at the direction of the Required DIP Lenders) and the Prepetition First Lien Secured Parties shall be permitted to exercise all remedies set forth herein, and in the DIP Documents, and as otherwise available at law without

further order of or application or motion to this Court consistent with this Interim Order; *provided*, that the Prepetition First Lien Secured Parties shall be permitted to exercise remedies to the extent available solely with respect to the Debtors' use of Cash Collateral.

17. Limitation on Charging Expenses Against Collateral. No expenses of administration of the Cases or any future proceeding that may result therefrom, including liquidation in bankruptcy or other proceedings under the Bankruptcy Code, shall be charged against or recovered from (a) the DIP Collateral (except to the extent of the Carve Out), the DIP Agent, or the DIP Lenders or (b) subject to entry of the Final Order, the Prepetition Collateral (except to the extent of the Carve Out) or the Prepetition First Lien Secured Parties, in each case, pursuant to sections 105(a) or 506(c) of the Bankruptcy Code or any similar principle of law or equity, without the prior written consent of the DIP Agent, the DIP Lenders, and the Prepetition First Lien Secured Parties, as applicable, and no such consent shall be implied from any other action, inaction, or acquiescence by the DIP Agent, the DIP Lenders, or the Prepetition First Lien Secured Parties.

18. Use of Cash Collateral. The Debtors are hereby authorized to use all Cash Collateral of the Prepetition First Lien Secured Parties, but solely for the purposes set forth in this Interim Order and in accordance with the Approved DIP Budget (subject to permitted variances as set forth in this Interim Order and the DIP Documents), including, without limitation, to make payments on account of the Adequate Protection Obligations provided for in this Interim Order, from the date of this Interim Order through and including the date of termination of the DIP Credit Agreement. Except on the terms and conditions of this Interim Order, the Debtors shall be enjoined and prohibited from at any time using the Cash Collateral.

19. Expenses and Indemnification.

(a) The Debtors are hereby authorized and directed to pay, in accordance with this Interim Order, the principal, interest, fees, payments, expenses, and other amounts described in the DIP Documents as such amounts become due and without need to obtain further Court approval, including, without limitation, backstop, fronting, closing, arrangement or commitment payments (including all payments and other amounts owed to the DIP Lenders), administrative agent's fees, collateral agent's fees, and escrow agent's fees (including all fees and other amounts owed to the DIP Agent), the reasonable and documented fees and disbursements of counsel and other professionals to the extent set forth in Paragraphs 3(d)(iii) and 8(c) of this Interim Order, whether or not such fees arose before or after the Petition Date, all to the extent provided in this Interim Order or the DIP Documents. Notwithstanding the foregoing, the Debtors are authorized and directed to pay on the Closing Date (as defined in the DIP Documents) all reasonable and documented fees, costs, and expenses, including the fees and expenses of counsel to the DIP Lenders, the DIP Agent, the Prepetition First Lien Administrative Agent, and the DIP/First Lien Group, incurred on or prior to such date without the need for any professional engaged by the DIP Lenders, the DIP Agent, the Prepetition First Lien Administrative Agent, or the DIP/First Lien Group to first deliver a copy of its invoice as provided for herein.

(b) The Debtors shall be jointly and severally obligated to pay all fees and expenses described above, which obligations shall constitute the DIP Obligations. The Debtors shall pay the reasonable and documented professional fees, expenses, and disbursements of professionals to the extent provided for in Paragraphs 3(d)(iii) and 8(c) of this Interim Order (collectively, the "Lender Professionals" and, each, a "Lender Professional") no later than ten (10) business days (the "Review Period") after the receipt by counsel for the Debtors, any Committee, or the U.S. Trustee of each of the invoices therefor (the "Invoiced Fees") and without the necessity

of filing formal fee applications or complying with the U.S. Trustee Guidelines, including such amounts arising before the Petition Date. Invoiced Fees shall be in the form of an invoice summary for professional fees and categorized expenses incurred during the pendency of the Cases, and such invoice summary shall not be required to contain time entries, but shall include a general, brief description of the nature of the matters for which services were performed, and which may be redacted or modified to the extent necessary to delete any information subject to the attorney-client privilege, any work product doctrine, privilege or protection, common interest doctrine privilege or protection, any other evidentiary privilege or protection recognized under applicable law, or any other confidential information, and the provision of such invoices shall not constitute any waiver of the attorney-client privilege, work product doctrine, privilege or protection, common interest doctrine privilege or protection, or any other evidentiary privilege or protection recognized under applicable law. The Debtors, any Committee, or the U.S. Trustee may dispute the payment of any portion of the Invoiced Fees (the “Disputed Invoiced Fees”) if, within the Review Period, a Debtor, any Committee that may be appointed in these Cases, or the U.S. Trustee notifies the submitting party in writing setting forth the specific objections to the Disputed Invoiced Fees (to be followed by the filing with the Court, if necessary, of a motion or other pleading, with at least ten (10) days prior written notice to the submitting party of any hearing on such motion or other pleading). For avoidance of doubt, the Debtors shall promptly pay in full all Invoiced Fees other than the Disputed Invoiced Fees.

(c) In addition, the Debtors will indemnify the DIP Lenders, the DIP Agent, and their respective affiliates, successors, and assigns and the officers, directors, employees, agents, attorneys, advisors, controlling persons, and members of each of the foregoing (each an “Indemnified Person”) and hold them harmless from and against all costs, expenses (including but

not limited to reasonable and documented legal fees and expenses), and liabilities arising out of or relating to the transactions contemplated hereby and any actual or proposed use of the proceeds of any loans made under the DIP Facility; *provided* that no such person will be indemnified for costs, expenses, or liabilities to the extent determined by a final, non-appealable judgment of a court of competent jurisdiction to have been incurred solely by reason of the gross negligence, fraud, or willful misconduct of such person (or their related persons). No Indemnified Person shall have any liability (whether direct or indirect, in contract, tort, or otherwise) to the Debtors or any shareholders or creditors of the Debtors for or in connection with the transactions contemplated hereby, except to the extent such liability is found in a final non-appealable judgment by a court of competent jurisdiction to have resulted solely from such Indemnified Person's gross negligence, fraud, or willful misconduct or breach of their obligations under the DIP Facility, and in no event shall any Indemnified Person be liable on any theory of liability for any special, indirect, consequential, or punitive damages.

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

21. Section 507(b) Reservation. Subject to the Carve Out, 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 First Lien Secured Parties is insufficient to compensate for any Diminution in Value of their interests in the Prepetition Collateral during the Cases. Nothing contained herein shall be deemed a finding by the Court, or an acknowledgment by any of the Prepetition First Lien Secured Parties that the adequate protection granted herein does in fact

adequately protect any of the Prepetition First Lien Secured Parties against any Diminution in Value of their respective interests in the Prepetition Collateral (including the Cash Collateral).

22. Insurance. Until the DIP Obligations have been indefeasibly paid in full, at all times the Debtors shall maintain casualty and loss insurance coverage for the Prepetition Collateral and the DIP Collateral on substantially the same basis as maintained prior to the Petition Date and shall name the DIP Agent as loss payee thereunder.

23. No Waiver for Failure to Seek Relief. The failure or delay of the DIP Agent or the Required DIP Lenders to exercise rights and remedies under this Interim Order, the DIP Documents, or applicable law, as the case may be, shall not constitute a waiver of their respective rights hereunder, thereunder, or otherwise.

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

(a) The DIP Agent, the Prepetition First Lien Administrative Agent, and the Prepetition Second Lien Administrative Agent are hereby authorized, but not required, to file or record financing statements, intellectual property filings, mortgages, depository account control agreements, notices of lien, or similar instruments in any jurisdiction in order to validate and perfect the liens and security interests granted hereunder. Whether or not the DIP Agent, the Prepetition First Lien Administrative Agent, or the Prepetition Second Lien Administrative Agent shall (at the direction of the applicable required lenders) choose to file such financing statements, intellectual property filings, mortgages, notices of lien, or similar instruments, such liens and security interests shall be deemed valid, perfected, allowed, enforceable, non-avoidable, and not, subject to the Challenge Period, subject to challenge, dispute, or subordination as of the date of entry of this Interim Order. If the DIP Agent, the Prepetition First Lien Administrative Agent, or the Prepetition Second Lien Administrative Agent (at the direction of the applicable required

lenders) determines to file or execute any financing statements, agreements, notice of liens, or similar instruments, the Debtors shall cooperate and assist in any such execution and/or filings as reasonably requested by the DIP Agent, the Prepetition First Lien Administrative Agent, or the Prepetition Second Lien Administrative Agent (at the direction of the applicable required lenders), and the automatic stay shall be modified to allow such filings.

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

(c) Any provision of any lease or other license, contract or other agreement that requires (i) the consent or approval of one or more landlords or other parties or (ii) the payment of any fees or obligations to any governmental entity, in order for any Debtor to pledge, grant, sell, assign, or otherwise transfer any such leasehold interest, or the proceeds thereof, or other collateral related thereto, is hereby deemed to be inconsistent with the applicable provisions of the Bankruptcy Code, subject to applicable law. Any such provision shall have no force and effect with respect to the granting of the DIP Liens and the Adequate Protection Liens on such leasehold interest or the proceeds of any assignment and/or sale thereof by any Debtor in accordance with the terms of the DIP Credit Agreement or this Interim Order, subject to applicable law.

25. Release. Subject to the rights and limitations set forth in Paragraph 12 of this Interim Order, effective upon entry of this Interim Order, each of the Debtors and the Debtors'

estates, on its own behalf and on behalf of each of their predecessors, their successors, and assigns, shall, to the maximum extent permitted by applicable law, unconditionally, irrevocably, and fully forever release, remise, acquit, relinquish, irrevocably waive, and discharge each of the DIP Secured Parties and the Prepetition First Lien Secured Parties (each in their respective roles as such), and each of their respective affiliates, former, current, or future officers, employees, directors, agents, representatives, owners, members, partners, financial advisors, legal advisors, shareholders, managers, consultants, accountants, attorneys, affiliates, assigns, and predecessors in interest, each in their capacity as such, of and from any and all claims, demands, liabilities, responsibilities, disputes, remedies, causes of action, indebtedness and obligations, rights, assertions, allegations, actions, suits, controversies, proceedings, losses, damages, injuries, attorneys' fees, costs, expenses, or judgments of every type, whether known, unknown, asserted, unasserted, suspected, unsuspected, accrued, unaccrued, fixed, contingent, pending, or threatened, including, without limitation, all legal and equitable theories of recovery, arising under common law, statute, or regulation or by contract, of every nature and description that exist on the date hereof with respect to or relating to the DIP Obligations, the DIP Liens, the DIP Documents, the Prepetition First Lien Obligations, the First Lien Loan Liens or the Prepetition First Lien Loan Documents, as applicable, including, without limitation, (i) any so-called "lender liability" or equitable subordination claims or defenses, (ii) any and all claims and causes of action arising under the Bankruptcy Code, and (iii) any and all claims and causes of action regarding the validity, priority, extent, enforceability, perfection, or avoidability of the liens or claims of the DIP Secured Parties and the Prepetition First Lien Secured Parties; *provided* that nothing in this paragraph shall in any way limit or release the obligations of any DIP Secured Party under the DIP Documents.

26. Credit Bidding & Sale Provisions. Subject to the terms of the RSA (as defined in the DIP Credit Agreement), the DIP Agent (at the direction of the Required DIP Lenders) and the Prepetition First Lien Administrative Agent (at the direction of the Required Lenders (as defined in the Prepetition Credit Agreement)) shall have the right to credit bid (either directly or through one or more acquisition vehicles), up to the full amount of the underlying lenders' respective claims, including, for the avoidance of doubt, Adequate Protection Superpriority Claims, if any, in any sale of all or any portion of the Prepetition Collateral or the DIP Collateral including, without limitation, sales occurring pursuant to section 363 of the Bankruptcy Code or included as part of any chapter 11 plan subject to confirmation under Bankruptcy Code section 1129(b)(2)(A)(ii)-(iii). On the date of the consummation of a sale or other disposition of all or substantially all of the assets of the Debtors under section 363 or 1129 of the Bankruptcy Code, and subject in all respects to the Carve Out, (i) the Prepetition L/Cs outstanding as of such date shall be cash collateralized at 100% of the face amount, the Debtors shall cause the establishment of a "backstop" letter of credit acceptable to the issuer of the Prepetition L/Cs at 100% of the face amount of such Prepetition L/Cs, or the issuer of the Prepetition L/Cs and the Required DIP Lenders shall agree on an alternative treatment or arrangement with respect to such Prepetition L/Cs and (ii) any other administrative expense claims of the First Lien Administrative Agent or its affiliates arising from ordinary course cash management services (including for the avoidance of doubt, any obligations of the Debtors under the Cash Management Order) shall be paid in full and cash.

27. Preservation of Rights Granted Under this Interim Order.

(a) Unless and until all DIP Obligations are indefeasibly paid in full, in cash, and all Commitments are terminated, the Prepetition First Lien Secured Parties shall: (i) have no

right to and shall take no action to foreclose upon, or recover in connection with, the liens granted thereto pursuant to the Prepetition First Lien Loan Documents or this Interim Order, or otherwise seek to exercise or enforce any rights or remedies against such DIP Collateral; and (ii) not file any further financing statements, trademark filings, copyright filings, mortgages, notices of lien or similar instruments, or otherwise take any action to perfect their security interests in the DIP Collateral, except as set forth in Paragraph 24 herein.

(b) In the event this Interim Order or any provision hereof is vacated, reversed, or modified on appeal or otherwise, any liens or claims granted to the DIP Secured Parties or the Prepetition First Lien Secured Parties hereunder arising prior to the effective date of any such vacatur, reversal, or modification of this Interim Order shall be governed in all respects by the original provisions of this Interim Order, including entitlement to all rights, remedies, privileges, and benefits granted herein, and the Prepetition First Lien Secured Parties shall be entitled to all the rights, remedies, privileges, and benefits afforded in section 364(e) of the Bankruptcy Code.

(c) Unless and until all DIP Obligations, Prepetition First Lien Obligations, and Adequate Protection Payments are indefeasibly paid in full, in cash, and all Commitments are terminated, the Debtors irrevocably waive the right to seek and shall not seek or consent to, directly or indirectly (i) except as permitted under the DIP Documents or, if not provided for therein, with the prior written consent of the DIP Agent, the Required DIP Lenders, and the Prepetition First Lien Administrative Agent, (x) any modification, stay, vacatur, or amendment of this Interim Order or (y) a priority claim for any administrative expense or unsecured claim against any of the Debtors (now existing or hereafter arising of any kind or nature whatsoever, including, without limitation, any administrative expense of the kind specified in sections 503(b), 507(a), or 507(b) of the Bankruptcy Code) in any of the Cases, *pari passu* with or senior to the DIP Superpriority

Claims, the Adequate Protection Superpriority Claims, or the Prepetition First Lien Obligations, or (z) any other order allowing use of the DIP Collateral; (ii) except as permitted under the DIP Documents (including the Carve Out), any lien on any of the DIP Collateral or the Prepetition Collateral with priority equal or superior to the DIP Liens, the Adequate Protection Liens or the First Lien Loan Liens, as applicable; (iii) the use of Cash Collateral for any purpose other than as permitted in the DIP Documents and this Interim Order; (iv) except as set forth in the DIP Documents, the return of goods pursuant to section 546(h) of the Bankruptcy Code (or other return of goods on account of any prepetition indebtedness) to any creditor of any Debtor; (v) an order converting or dismissing any of the Cases; (vi) an order appointing a chapter 11 trustee in any of the Cases; or (vii) an order appointing an examiner with enlarged powers in any of the Cases.

(d) Notwithstanding any order dismissing any of the Cases entered at any time, (x) the DIP Liens, the DIP Superpriority Claims, the DIP L/C Superpriority Claims, the Adequate Protection Liens, the Adequate Protection Superpriority Claims, and the other administrative claims granted pursuant to this Interim Order 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 Payments are indefeasibly paid in full in cash (and such DIP Liens, DIP Superpriority Claims, the DIP L/C Superpriority Claims, Adequate Protection Liens, Adequate Protection Superpriority Claims, and the other administrative claims granted pursuant to this Interim Order, shall, notwithstanding such dismissal, remain binding on all parties in interest); and (y) to the fullest extent permitted by law the Court shall retain jurisdiction, notwithstanding such dismissal, for the purposes of enforcing the claims, liens, and security interests referred to in clause (x) above.

(e) Except as expressly provided in this Interim Order or in the DIP Documents, the DIP Liens, the DIP Superpriority Claims, the DIP L/C Superpriority Claims, the Adequate

Protection Liens, the Adequate Protection Superpriority Claims, and all other rights and remedies of the DIP Agent, the DIP Lenders, the Prepetition First Lien Secured Parties, and the Prepetition Second Lien Secured Parties granted by the provisions of this Interim Order and the DIP Documents shall survive, and shall not be modified, impaired, or discharged by (i) the entry of an order converting any of the Cases to a case under chapter 7, dismissing any of the Cases, terminating the joint administration of these Cases or by any other act or omission, (ii) the entry of an order approving the sale of any Prepetition Collateral or DIP Collateral pursuant to section 363(b) of the Bankruptcy Code, or (iii) the entry of an order confirming a chapter 11 plan in any of the Cases and, pursuant to section 1141(d)(4) of the Bankruptcy Code, the Debtors have waived any discharge as to any remaining DIP Obligations or Adequate Protection Obligations. The terms and provisions of this Interim Order and the DIP Documents shall continue in these Cases, in any successor cases if these Cases cease to be jointly administered, or in any superseding chapter 7 cases under the Bankruptcy Code. The DIP Liens, the DIP Superpriority Claims, the DIP L/C Superpriority Claims, the Adequate Protection Liens, the Adequate Protection Superpriority Claims, and all other rights and remedies of the DIP Secured Parties, the Prepetition First Lien Secured Parties, and the Prepetition Second Lien Secured Parties granted by the provisions of this Interim Order shall continue in full force and effect until the DIP Obligations and the Adequate Protection Payments are indefeasibly paid in full, in cash (or, with respect to the DIP Obligations, otherwise satisfied in a manner agreed to by the Required DIP Lenders and the DIP Agent).

(f) Other than as set forth in this Interim Order, neither the DIP Liens nor the Adequate Protection Liens shall be made subject to or *pari passu* with any lien or security interest granted in any of the Cases or arising after the Petition Date, and neither the DIP Liens nor the

Adequate Protection Liens shall be subject or junior to any lien or security interest that is avoided and preserved for the benefit of the Debtors' estates under Bankruptcy Code section 551.

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

Notwithstanding anything to the contrary set forth in this Interim Order, none of the DIP Facility, the DIP Collateral, the Prepetition Collateral, including Cash Collateral, or the Carve Out or proceeds thereof may be used: (a) to investigate (including by way of examinations or discovery proceedings), initiate, assert, prosecute, join, commence, support, or finance the initiation or prosecution of any claim, counterclaim, action, suit, arbitration, proceeding, application, motion, objection, defense, adversary proceeding, or other litigation of any type (i) against any of the DIP Secured Parties or the Prepetition First Lien Secured Parties (each in their capacities as such), and each of their respective affiliates, officers, directors, employees, agents, representatives, attorneys, consultants, financial advisors, affiliates, assigns, or successors, with respect to any transaction, occurrence, omission, action, or other matter (including formal discovery proceedings in anticipation thereof), including, without limitation, any so-called "lender liability" claims and causes of action, or seeking relief that would impair the rights and remedies of the DIP Secured Parties or the Prepetition First Lien Secured Parties (each in their capacities as such) under the DIP Documents, the Prepetition First Lien Loan Documents, or this Interim Order, including, without limitation, for the payment of any services rendered by the professionals retained by the Debtors or any Committee appointed in these Cases in connection with the assertion of or joinder in any claim, counterclaim, action, suit, arbitration, proceeding, application, motion, objection, defense, adversary proceeding, or other contested matter, the purpose of which is to seek, or the result of which would be to obtain, any order, judgment, determination, declaration, or similar relief that would impair the ability of any of the DIP Secured Parties or the Prepetition First Lien Secured

Parties to recover on the DIP Collateral or the Prepetition Collateral or seeking affirmative relief against any of the DIP Secured Parties or the Prepetition Parties related to the DIP Obligations or the Prepetition First Lien Obligations; (ii) invalidating, setting aside, avoiding, or subordinating, in whole or in part, the DIP Obligations or the Prepetition First Lien Obligations, or the DIP Agent's, the DIP Lenders,' and the Prepetition First Lien Secured Parties' liens or security interests in the DIP Collateral or Prepetition Collateral, as applicable; or (iii) for monetary, injunctive, or other affirmative relief against the DIP Secured Parties or the Prepetition First Lien Secured Parties, or the DIP Agent's, the DIP Lenders,' the Prepetition First Lien Secured Parties' respective liens on or security interests in the DIP Collateral or the Prepetition Collateral that would impair the ability of any of the DIP Secured Parties or the Prepetition First Lien Secured Parties, as applicable, to assert or enforce any lien, claim, right, or security interest or to realize or recover on the DIP Obligations or the Prepetition First Lien Obligations, to the extent applicable; (b) for objecting to or challenging in any way the legality, validity, priority, perfection, or enforceability of the claims, liens, or interests (including the First Lien Loan Liens) held by or on behalf of each of the Prepetition First Lien Secured Parties related to the Prepetition First Lien Obligations, or by or on behalf of the DIP Agent and the DIP Lenders related to the DIP Obligations; (c) for asserting, commencing, or prosecuting any claims or causes of action whatsoever, including, without limitation, any Avoidance Actions related to the DIP Obligations, the DIP Liens, the Prepetition First Lien Obligations, or the First Lien Loan Liens; or (d) for prosecuting an objection to, contesting in any manner, or raising any defenses to, the validity, extent, amount, perfection, priority, or enforceability of: (x) any of the DIP Liens or any other rights or interests of the DIP Agent or the DIP Lenders related to the DIP Obligations or the DIP Liens, or (y) any of the First Lien Loan Liens or any other rights or interests of any of the Prepetition First Lien Secured

Parties related to the Prepetition First Lien Obligations or the First Lien Loan Liens, *provided* that no more than \$50,000 of the proceeds of the DIP Facility, the DIP Collateral, or the Prepetition Collateral, including the Cash Collateral, in the aggregate, may be used by any Committee appointed in these Cases, if any, solely to investigate, within the Challenge Period (as defined below), the claims, causes of action, adversary proceedings, or other litigation against the Prepetition First Lien Secured Parties solely concerning the legality, validity, priority, perfection, enforceability or extent of the claims, liens, or interests (including the First Lien Loan Liens) held by or on behalf of each of the Prepetition First Lien Secured Parties related to the Prepetition First Lien Obligations. Nothing contained in this Paragraph 28 shall prohibit the Debtors from responding or objecting to or complying with discovery requests of any Committee, in whatever form, made in connection with such investigation or the payment from the DIP Collateral (including Cash Collateral) of professional fees related thereto or from contesting or challenging whether a Termination Declaration has in fact occurred.

29. Conditions Precedent. Except as provided for in the Carve Out, no DIP Lender shall have any obligation to make any DIP Loan under the respective DIP Documents unless all of the conditions precedent to the making of such extensions of credit under the applicable DIP Documents have been satisfied in full or waived in accordance with such DIP Documents.

30. Intercreditor Agreement. Pursuant to section 510 of the Bankruptcy Code, the Intercreditor Agreement and any other applicable intercreditor or subordination provisions contained in any of the Prepetition First Lien Loan Documents or any of the Second Lien Note Documents (as defined in the Intercreditor Agreement) (i) shall remain in full force and effect, and (ii) shall continue to govern the relative priorities, rights, and remedies of the Prepetition First Lien

Secured Parties and the Prepetition Second Lien Secured Parties; *provided* that nothing in this Interim Order shall be deemed to provide liens to any Prepetition First Lien Secured Party or Prepetition Second Lien Secured Party on any assets of the Debtors except as set forth herein. Pursuant to the Intercreditor Agreement, the Second Lien Secured Parties are prohibited from opposing or objecting to (and are deemed to consent to) any post-petition financing (including any debtor in possession financing) provided by any of the First Lien Secured Parties pursuant to section 364 of the Bankruptcy Code (including on a priming basis) unless the First Lien Administrative Agent shall have opposed or objected to such debtor-in-possession financing.

31. Binding Effect; Successors and Assigns. The DIP Documents and the provisions of this Interim Order, including all findings herein, shall be binding upon all parties in interest in these Cases, including, without limitation, the DIP Secured Parties, the Prepetition First Lien Secured Parties, any Committee appointed in these Cases, and the Debtors and their respective successors and assigns (including any chapter 7 or chapter 11 trustee hereinafter appointed or elected for the estate of any of the Debtors, an examiner appointed pursuant to section 1104 of the Bankruptcy Code, or any other fiduciary appointed as a legal representative of any of the Debtors or with respect to the property of the estate of any of the Debtors) and shall inure to the benefit of the DIP Secured Parties and the applicable Prepetition First Lien Secured Parties; *provided* that, except to the extent expressly set forth in this Interim Order, the Prepetition First Lien Secured Parties shall have no obligation to permit the use of Cash Collateral or to extend any financing to any chapter 7 trustee or similar responsible person appointed for the estates of the Debtors. In determining to make any loan (whether under the DIP Credit Agreement, a promissory note or otherwise) to permit the use of Cash Collateral or in exercising any rights or remedies as and when permitted pursuant to this Interim Order or the DIP Documents, the DIP Secured Parties and the

Prepetition First Lien Secured Parties shall not (i) be deemed to be in control of the operations of the Debtors, or (ii) owe any fiduciary duty to the Debtors, their respective creditors, shareholders, or estates.

32. Limitation of Liability. Subject to entry of a Final Order, in determining to make any loan under the DIP Documents, permitting the use of Cash Collateral, or in exercising any rights or remedies as and when permitted pursuant to this Interim Order or the DIP Documents, the DIP Secured Parties and the Prepetition First Lien Secured Parties shall not, solely by reason thereof, be deemed in control of the operations of the Debtors or to be acting as a “responsible person” or “owner or operator” with respect to the operation or management of the Debtors (as such terms, or any similar terms, are used in the United States Comprehensive Environmental Response, Compensation and Liability Act, 29 U.S.C. §§ 9601 et seq. as amended, or any similar federal or state statute). Furthermore, nothing in this Interim Order or in the DIP Documents shall in any way be construed or interpreted to impose or allow the imposition upon the DIP Agent, the DIP Lenders, or any Prepetition First Lien Secured Parties of any liability for any claims arising from the prepetition or post-petition activities of any of the Debtors.

33. No Requirement to File Claim for DIP Obligations. Notwithstanding anything to the contrary contained in any prior or subsequent order of the Court, including, without limitation, any order establishing a deadline for the filing of proofs of claim or requests for payment of administrative expenses under section 503(b) of the Bankruptcy Code, neither the DIP Agent nor any DIP Lender shall be required to file any proof of claim or request for payment of administrative expenses with respect to any of the DIP Obligations, all of which shall be due and payable in accordance with the DIP Documents without the necessity of filing any such proof of claim or request for payment of administrative expenses, and the failure to file any such proof of claim or

request for payment of administrative expenses shall not affect the validity, priority, or enforceability of any of the DIP Documents or of any indebtedness, liabilities, or obligations arising at any time thereunder or prejudice or otherwise adversely affect the DIP Agent's or any DIP Lender's rights, remedies, powers, or privileges under any of the DIP Documents, this Interim Order, or applicable law. 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.

34. No Requirement to File Claim for Prepetition First Lien Obligations. Provided that the Plan is confirmed and is consummated, then notwithstanding anything to the contrary contained in any prior or subsequent order of the Court, including, without limitation, any order establishing a deadline for the filing of proofs of claim or requests for payment of administrative expenses under section 503(b) of the Bankruptcy Code, neither the Prepetition First Lien Administrative Agent nor any Prepetition First Lien Lender shall be required to file any proof of claim or request for payment of administrative expenses with respect to any of the Prepetition First Lien Obligations; and the failure to file any such proof of claim or request for payment of administrative expenses shall not affect the validity, priority, or enforceability of any of the Prepetition First Lien Loan Documents or of any indebtedness, liabilities, or obligations arising at any time thereunder or prejudice or otherwise adversely affect the Prepetition First Lien Administrative Agent's or any Prepetition First Lien Lender's rights, remedies, powers, or privileges under any of the Prepetition First Lien Loan Documents, this Interim Order, or applicable law. 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.

35. No Marshaling. The DIP Agent and the DIP Secured Parties shall not be subject to the equitable doctrine of “marshaling” or any other similar doctrine with respect to any of the DIP Collateral, and proceeds of the DIP Collateral shall be received and applied pursuant to this Interim Order, the DIP Documents and the Prepetition First Lien Loan Documents (subject to the Intercreditor Agreement), notwithstanding any other agreement or provision to the contrary, and subject to entry of the Final Order, the Prepetition First Lien Secured Parties shall not be subject to the equitable doctrine of “marshaling” or any other similar doctrine with respect to any of the Prepetition Collateral.

36. Application of Proceeds of DIP Collateral. Subject to entry of a Final Order, the DIP Obligations, at the option of the Required DIP Lenders, to be exercised in their sole and absolute discretion, shall be repaid (a) first, from the DIP Collateral comprising Previously Unencumbered Property and (b) second, from all other DIP Collateral.

37. Equities of the Case. Subject to entry of a Final Order, the Prepetition First Lien Secured Parties shall each be entitled to all the rights and benefits of section 522(b) of the Bankruptcy Code, and, subject to and upon entry of the Final Order, the “equities of the case” exception under section 552(b) of the Bankruptcy Code shall not apply to the Prepetition First Lien Secured Parties with respect to proceeds, product, offspring, or profits of any of the Collateral (including the Prepetition Collateral).

38. Final Hearing. The Final Hearing on the Motion shall be held on _____, 2020, at ___:___ .m., prevailing Eastern time. Any objections or responses to entry of a final order on the Motion shall be filed on or before 4:00 p.m., prevailing Eastern time, on _____, 2020, and shall be served on: (a) the Debtors, Global Eagle Entertainment Inc., 6080 Center Drive, Suite 1200, Los Angeles, California 90045, Attn: Joshua B. Marks; (b) proposed counsel to the Debtors,

Latham & Watkins LLP 885 Third Avenue, New York, New York 10022, Attn: George A. Davis, Esq. and Ted A. Dillman, Esq., and Helena Tseregounis, Esq.; (c) proposed co-counsel to the Debtors, Young Conaway Stargatt & Taylor, LLP, Rodney Square, 1000 N. King Street, Wilmington, Delaware 19801, Attn: Michael R. Nestor, Esq. and Kara Hammond Coyle, Esq.; (d) counsel to the DIP Lenders and the DIP/First Lien Group, Gibson, Dunn & Crutcher LLP, 200 Park Ave., New York, NY 10166, Attn: Scott J. Greenberg, Esq., Steven A. Domanowski, Esq., and Michael J. Cohen, Esq.; (e) co-counsel to the DIP Lenders and the DIP/First Lien Group, Pachulski, Stang, Ziehl & Jones LLP, 919 N Market St # 1700, Wilmington, DE 19801, Attn: Laura Davis Jones, Esq.; (f) counsel to the DIP Agent and First Lien Prepetition Agent, Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, New York 10153, Attn: David N. Griffiths and Bryan R. Podzius, as counsel to the DIP Agent and First Lien Agent; (g) the United States Trustee, 844 King Street, Suite 2207, Lockbox 35, Wilmington, Delaware 19801, Attn: Timothy J. Fox, Jr.; and (h) counsel to any statutory committee appointed in these chapter 11 cases. In the event no objections to entry of the Final Order on the Motion are timely received, this Court may enter such Final Order without need for the Final Hearing.

39. Effect of this Interim Order. 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 execution hereof.

40. Retention of Jurisdiction. The Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation of this Interim Order.

EXHIBIT A

DIP Credit Agreement

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

Dated as of July [___], 2020 among

GLOBAL EAGLE ENTERTAINMENT INC.,
as the Borrower, a Debtor and a Debtor-in-Possession under
Chapter 11 of the Bankruptcy Code,

THE GUARANTORS PARTY HERETO FROM TIME TO TIME,
each as a Debtor and a Debtor-in-Possession
under Chapter 11 of the Bankruptcy Code,

CITIBANK, N.A.
as DIP Agent, and

CITIBANK, N.A.
as Sole Lead Arranger and Bookrunner

THE LENDERS PARTY HERETO FROM TIME TO TIME

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CREDIT AGREEMENT

This SENIOR SECURED SUPER-PRIORITY TERM LOAN DEBTOR-IN-POSSESSION CREDIT AGREEMENT is entered into as of July [●], 2020, among GLOBAL EAGLE ENTERTAINMENT INC., a Delaware corporation, a debtor and a debtor-in-possession (the “**Borrower**” or the “**Company**”), the Guarantors party hereto, each as a debtor and a debtor-in-possession, CITIBANK, N.A., solely in its capacities as DIP Agent and collateral agent for the Secured Parties (in such capacities, the “**DIP Agent**”), and each lender from time to time party hereto (collectively, the “**Lenders**” and, individually, a “**Lender**”).

PRELIMINARY STATEMENTS

WHEREAS, on July 22, 2020 (the “**Petition Date**”), the Borrower and certain Guarantors (together with certain of their Subsidiaries and Affiliates that are or become debtors under the Chapter 11 Cases, collectively, the “**Debtors**,” and each individually, a “**Debtor**”) commenced Chapter 11 Case Nos. [●] as administratively consolidated at Chapter 11 Case No. [●] (collectively, the “**Chapter 11 Cases**” and each individually, a “**Chapter 11 Case**”) in the United States Bankruptcy Court for the District of Delaware (the “**Bankruptcy Court**”). The Debtors continue to operate their businesses and manage their properties as debtors and debtors-in-possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code.

WHEREAS, prior to the Petition Date, the Lenders (among other lenders) provided financing to the Borrower pursuant to that certain Credit Agreement dated January 6, 2017, among the Borrower, the guarantors party thereto from time to time, Citibank, N.A., as Administrative Agent (the “**Pre-Petition Agent**”), L/C Issuer and Swing Line Lender, the lenders party thereto from time to time (the “**Pre-Petition Lenders**”) (as amended by (i) the First Amendment and Limited Waiver to Credit Agreement dated as of May 4, 2017, (ii) the Amendment to First Amendment and Limited Waiver to Credit Agreement and Second Amendment to Credit Agreement dated as of June 29, 2017, (iii) the Third Amendment to Limited Waiver to Credit Agreement and Third Amendment to Credit Agreement dated as of October 2, 2017, (iv) the Fourth Amendment to Limited Waiver to Credit Agreement and Fourth Amendment to Credit Agreement dated as of October 31, 2017, (v) the Fifth Amendment to Limited Waiver to Credit Agreement and Fifth Amendment to Credit Agreement dated as of December 22, 2017, (vi) the Sixth Amendment to Credit Agreement dated as of March 8, 2018, (vii) the Omnibus Incremental Term Loan and Seventh Amendment to Credit Agreement and Amendment to Security Agreement dated as of July 19, 2019, (viii) the Eighth Amendment to Credit Agreement dated as of April 7, 2020, (ix) the Ninth Amendment to Credit Agreement dated as of April 9, 2020, (x) the Tenth Amendment to Credit Agreement, dated as of April 15, 2020, (xi) the Eleventh Amendment to Credit Agreement, dated as of July 10, 2020 and the Twelfth Amendment to Credit Agreement, dated as of July 20, 2020, as so amended, and as further amended, restated, supplemented or otherwise modified from time to time through the Petition Date, the “**Pre-Petition Priority Loan Agreement**”).

WHEREAS, on the Petition Date, the Pre-Petition Lenders under the Pre-Petition Priority Loan Agreement were owed approximately \$[594,000,000] in outstanding principal balance of Loans (as defined in the Pre-Petition Priority Loan Agreement) (the “**Existing Loans**”) plus

interest, fees, costs and expenses and all other Pre-Petition Obligations under the Pre-Petition Priority Loan Agreement.

WHEREAS, the Obligations under and as defined in the Pre-Petition Priority Loan Agreement are secured by a security interest in substantially all of the existing and after-acquired assets of the Borrower and the Guarantors as more fully set forth in the Pre-Petition Loan Documents, and such security interest is perfected, and, as described in the Pre-Petition Loan Documents subject to certain limited exceptions set forth therein, has priority over other security interests.

WHEREAS, the Borrower has requested, and, upon the terms set forth in this Agreement, the Lenders have agreed to make available to the Borrower, a senior secured term loan credit facility of up to \$80,000,000 (the “**DIP Facility**”), to fund the general corporate purposes and working capital requirements of the Borrower during the pendency of the Chapter 11 Cases pursuant to and in accordance with the Approved DIP Budget.

WHEREAS, subject to the terms hereof and the DIP Order, the Borrower and the Guarantors have agreed to secure all of their Obligations under the Loan Documents by granting to the DIP Agent, for the benefit of the DIP Agent and the other Secured Parties, a security interest in and lien upon all of their existing and after-acquired personal property.

WHEREAS, the Borrower and the Guarantors’ business is a mutual and collective enterprise and the Borrower and the Guarantors believe that the loans and other financial accommodations to the Borrower under this Agreement will enhance the aggregate borrowing powers of the Borrower and facilitate the administration of the Chapter 11 Cases and their loan relationship with the DIP Agent and the Lenders, all to the mutual advantage of the Borrower and the Guarantors.

WHEREAS, the Borrower and each Guarantor acknowledges that it will receive substantial direct and indirect benefits by reason of the making of loans and other financial accommodations to the Borrower as provided in this Agreement.

WHEREAS, the DIP Agent’s and the Lenders’ willingness to extend financial accommodations to the Borrower, and to administer the Borrower’s and the Guarantors’ collateral security therefor, on a combined basis as more fully set forth in this Agreement and the other Loan Documents, is done solely as an accommodation to the Borrower and the Guarantors and at the Borrower’s and the Guarantors’ request and in furtherance of the Borrower’s and the Guarantors’ mutual and collective enterprise.

WHEREAS, all capitalized terms used in this Agreement, including in these recitals, shall have the meanings ascribed to them in Section 1.01 below, and, for the purposes of this Agreement and the other Loan Documents, the rules of construction set forth in Section 1.02 shall govern. All Schedules, Exhibits, Annexes, and other attachments hereto, or expressly identified in this Agreement, are incorporated by reference, and taken together with this Agreement, shall constitute a single agreement. These recitals shall be construed as part of this Agreement.

In consideration of the mutual covenants and agreements herein contained, the parties hereto covenant and agree as follows:

**ARTICLE 1.
DEFINITIONS AND ACCOUNTING TERMS**

SECTION 1.01 **Defined Terms.** As used in this Agreement, the following terms shall have the meanings set forth below:

“**Actual Cash Receipts**” means with respect to any period, as the context requires, (x) the amount of actual cash receipts during such period of the Loan Parties (excluding any borrowings under this Agreement) under the heading “Total Cash Inflows” in the Approved DIP Budget and/or (y) the sum, for such period, of all such receipts for all such line items which comprise “Total Cash Inflows” (as set forth in the Approved DIP Budget), on a cumulative basis, in each case, as determined by reference to the Approved DIP Budget as then in effect.

“**Actual Disbursement Amounts**” means with respect to any period, as the context requires, (x) the amount of actual disbursements made by the Loan Parties and their Subsidiaries during such period that correspond to each line item (on a line item by line item basis) immediately above the heading “Total Operating Disbursements” in the Approved DIP Budget and/or (y) the sum, for such period, of all such disbursements for all such line items which comprise “Total Operating Disbursements” (as set forth in the Approved DIP Budget), on a cumulative basis, in each case, as determined by reference to the Approved DIP Budget as then in effect.

“**Actual Liquidity**” means as of any date of determination, as the context requires, for the Loan Parties, the actual amounts of unrestricted cash and Cash Equivalents of the Loan Parties and their Subsidiaries as of such date (which, for the avoidance of doubt, shall not include any amounts that are cash collateralizing letters of credit) and the amount of any outstanding Withdrawal Notice that is deemed acceptable to the Required DIP Lenders as of such date, but excluding any amounts in the Loan Proceeds Account.

“**Ad Hoc Group of Lenders**” means those certain Lenders represented by the Specified Lender Advisors.

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

“**Advisors**” has the meaning set forth in Section 10.08.

“**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. “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.

“**Agent**” means the DIP Agent or Escrow Agent, as applicable.

“**Agent-Related Persons**” means the DIP Agent, together with its respective Affiliates, officers, directors, employees, partners, agents, advisors and other representatives.

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

“**Agreement**” means this Credit Agreement, as the same may be amended, restated, amended and restated, supplemented or otherwise modified from time to time.

“**Annual Financial Statements**” means the audited consolidated balance sheets of the Borrower as of December 31, 2019, December 31, 2018, and December 31, 2017, and the related consolidated statements of income and statements of cash flows for the Borrower for the fiscal years then ended.

“**Applicable Rate**” means a percentage per annum equal to (x) for Loans that are Eurocurrency Rate Loans, 10.00% and (y) for Loans that are Base Rate Loans, 9.00%.

“**Approved Bank**” has the meaning set forth in clause (d) of the definition of “Cash Equivalents.”

“**Approved DIP Budget**” means the then most current budget prepared by the Borrower and approved by the Required DIP Lenders in accordance with Section 6.24. As of the Closing Date, the Approved DIP Budget is attached hereto as Schedule 2.01(c).

“**Approved DIP Budget Variance Report**” means a report provided by the Borrower to the DIP Agent and the Lenders (a) showing, in each case, on a line item by line item and cumulative basis, the Actual Cash Receipts and the Actual Disbursement Amounts, as of the last day of the Prior Week, and the Variance Testing Period then most recently ended, noting therein (i) all variances, on a line item by line item basis and a cumulative basis, from the Budgeted Disbursement Amounts for such period as set forth in the Approved DIP Budget as in effect for such period and (ii) containing an indication as to whether each variance is temporary or permanent and analysis and explanations for all material variances, (iii) certifying compliance or non-compliance with such maximum variances set forth therein, and (iv) including explanations for all material variances and all violations, if any, of such covenant and if any such violation exists, setting forth the actions which the Borrower has taken or intends to take with respect thereto, and (b) which such reports shall be certified by a Responsible Officer of the Borrower and shall be in a form, and shall contain supporting information, satisfactory to the Required DIP Lenders in their sole discretion.

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

“**Asset Purchase Agreement**” means that certain Asset Purchase Agreement, dated as of July [___], 2020, by and among [GEE Acquisition LLC], a Delaware limited liability company, as Purchaser (as defined therein), the Borrower and the other Sellers as defined and named therein, as may be amended, restated, supplemented or otherwise modified from time to time in accordance with the terms thereof.

“**Assignee**” has the meaning set forth in Section 10.07(b)(i).

“**Assignment and Assumption**” means an Assignment and Assumption substantially in the form of Exhibit E-1 hereto.

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

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

“**Automatic Stay**” means the automatic stay imposed with respect to creditors of the Debtors pursuant to Section 362 of the Bankruptcy Code.

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

“**Bankruptcy Rules**” means the Federal Rules of Bankruptcy Procedure, as the same may be amended from time to time, in effect and applicable to the Chapter 11 Cases.

“**Base Rate**” means for any day a fluctuating rate per annum equal to the highest of (i) the Federal Funds Effective Rate *plus* 1/2 of 1%, (ii) the rate of interest in effect for such day as published by the *Wall Street Journal*, from time to time, as the “prime rate” and (iii) the rate per annum determined in the manner set forth in clause (b) of the definition of Eurocurrency Rate *plus* 1%; *provided that*, notwithstanding the foregoing, in no event shall the Base Rate applicable to the Loans at any time be less than 2.25% per annum. Any change in the Base Rate due to a change in such rate announced by the DIP Agent or in the Federal Funds Effective Rate shall take effect at the opening of business on the day specified in the announcement of such change.

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

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

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

“**Bidding Procedures Order**” means the “Bidding Procedures Order” (as defined in the RSA), as such order may be amended, supplemented, or modified from time to time.

“**Board**” has the meaning set forth in the definition of “Statutory Reserves.”

“**Borrower**” has the meaning set forth in the introductory paragraph hereto.

“**Borrower Materials**” has the meaning set forth in Section 6.01.

“**Borrowing**” means the Loans made on the Funding Date, of the same Type and as to which a single Interest Period is in effect.

“**Budgeted Cash Receipts**” means with respect to any period, as the context requires, (x) the amount that corresponds to the line item under the heading “Total Cash Inflows” in the Approved DIP Budget and/or (y) the sum, for such period, of all such line items which comprise “Total Cash Inflows” (as set forth in the Approved DIP Budget), on a cumulative basis, in each case, as determined by reference to the Approved DIP Budget as then in effect.

“**Budgeted Disbursement Amounts**” means with respect to any period, as the context requires, (x) the amount that corresponds to the line item under the heading “Total Operating Disbursements” in the Approved DIP Budget, and/or (y) the sum, for such period, of all such line items which comprise “Total Operating Disbursements” (as set forth in the Approved DIP Budget), on a cumulative basis, in each case, as determined by reference to the Approved DIP Budget as then in effect.

“**Business Day**” means (i) any day other than a Saturday, Sunday or other day on which commercial banks are authorized to close under the Laws of, or are in fact closed in, the State of New York and (ii) if such day relates to any Eurocurrency Rate Loan, any such day on which dealings in deposits in Dollars are conducted by and between banks in the London interbank eurodollar market.

“**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 assigned to such term in the DIP Order.

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

“**Cash Equivalents**” means any of the following types of Investments, to the extent owned by a Loan Party:

- (a) Dollars;
- (b) readily marketable obligations issued or directly and fully guaranteed or insured by the government or any agency or instrumentality of the United States having average maturities of not more than 24 months from the date of acquisition thereof; *provided that* the full faith and credit of the United States is pledged in support thereof;
- (c) (i) direct obligations of, or obligations the principal of and interest on which are unconditionally guaranteed by, a province of Canada, the United Kingdom or any country which is a member of the Organisation for Economic Cooperation and Development; (ii) readily

marketable securities issued by any agency of the Canadian federal government, the United Kingdom or any country which is a member of the Organisation for Economic Cooperation and Development, the obligations of which are fully backed by the full faith and credit of the United States or Canadian government, the United Kingdom or any country which is a member of the Organisation for Economic Cooperation and Development, as applicable; and (iii) any readily marketable direct obligations issued by any other agency of the Canadian government, any province of Canada or any political subdivision of any such state or province or any public instrumentality thereof, the United Kingdom or any country which is a member of the Organisation for Economic Cooperation and Development; *provided that*, in each case of (i), (ii), and (iii) above, such obligations, such obligations or securities (x) mature within one year from the date of acquisition thereof and (y) have a rating of at least “A-1” from S&P and at least “P-1” from Moody’s;

(d) time deposits or eurodollar time deposits with, insured certificates of deposit, bankers’ acceptances or overnight bank deposits of, or letters of credit issued by, any commercial bank that (i) is a Lender or (ii) (A) is organized under the Laws of the United States, any state thereof, the District of Columbia or any member nation of the Organisation for Economic Cooperation and Development or is the principal banking Subsidiary of a bank holding company organized under the Laws of the United States, any state thereof, the District of Columbia or any member nation of the Organisation for Economic Cooperation and Development and is a member of the Federal Reserve System, and (B) has combined capital and surplus of at least \$250,000,000 or \$100,000,000 in the case of any non-U.S. bank (any such bank in the foregoing clauses (i) or (ii) being an “**Approved Bank**”), in each case with maturities not exceeding 24 months from the date of acquisition thereof;

(e) commercial paper and variable or fixed rate notes issued by an Approved Bank (or by the parent company thereof) or any variable or fixed rate note issued by, or guaranteed by, a corporation (other than structured investment vehicles and other than corporations used in structured financing transactions) and rated A-2 (or the equivalent thereof) or better by S&P or P2 (or the equivalent thereof) or better by Moody’s, in each case with average maturities of not more than 24 months from the date of acquisition thereof;

(f) marketable short-term money market and similar funds having a rating of at least P-2 or A-2 from either Moody’s or S&P, respectively (or, if at any time neither Moody’s nor S&P shall be rating such obligations, an equivalent rating from another nationally recognized statistical rating agency selected by the Borrower);

(g) repurchase obligations for underlying securities of the types described in clauses (b), (c), (d) and (f) above entered into with any Approved Bank;

(h) securities with average maturities of 24 months or less from the date of acquisition issued or fully guaranteed by any state, commonwealth or territory of the United States, by any political subdivision or taxing authority of any such state, commonwealth or territory or by any foreign government having an investment grade rating from either S&P or Moody’s (or the equivalent thereof);

(i) Investments (other than in structured investment vehicles and structured financing transactions) with average maturities of 12 months or less from the date of acquisition in money market funds rated AAA- (or the equivalent thereof) or better by S&P or Aaa3 (or the equivalent thereof) or better by Moody's;

(j) securities with maturities of 12 months or less from the date of acquisition backed by standby letters of credit issued by any Approved Bank;

(k) (i) instruments equivalent to those referred to in clauses (a) through (j) above denominated in Euros or any other foreign currency comparable in credit quality and tenor to those referred to above and customarily used by corporations for cash management purposes in any jurisdiction outside the United States to the extent and in amounts reasonably required in connection with any business conducted by any of the Loan Parties organized in such jurisdiction and (ii) in the case of any Foreign Subsidiary, such local currencies in those countries in which such Foreign Subsidiary transacts business from time to time in the ordinary course of business;

(l) Investments, classified in accordance with GAAP as current assets of the Borrower or any Subsidiary thereof, in money market investment programs which are registered under the Investment Company Act of 1940 or which are administered by financial institutions having capital of at least \$250,000,000, and, in either case, the portfolios of which are limited such that substantially all of such Investments are of the character, quality and maturity described in clauses (a) through (k) above; and

(m) investment funds investing at least 90% of their assets in securities of the types described in clauses (a) through (l) above.

Notwithstanding the foregoing, Cash Equivalents shall include amounts denominated in currencies other than those set forth in clauses (a) and (k) above; *provided that* such amounts are converted into any currency listed in clause (a) or (k) as promptly as practicable and in any event within ten (10) Business Days following the receipt of such amounts.

“Cash Management Order” means the order of the Bankruptcy Court entered in the Chapter 11 Cases after the “first day” hearing, together with all extensions, modifications and amendments thereto, in form and substance satisfactory to the DIP Agent and the Required DIP Lenders, which among other matters authorizes the Debtors to maintain their existing cash management and treasury arrangements (as set forth in the Pre-Petition Priority Loan Agreement) or such other arrangements as shall be acceptable to the DIP Agent and the Required DIP Lenders in all material respects.

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

“Change of Control” shall be deemed to occur if (in the case of clauses (a) and (b), subject to the proviso at the end of this definition):

(a) any person or “group” (within the meaning of Rules 13d-3 and 13d-5 under the Exchange Act as in effect on the Closing Date) (but excluding (x) any employee benefit plan of such person and its Subsidiaries and any person or entity acting in its capacity as trustee, agent or other fiduciary or administrator of any such plan, (y) Searchlight and (z) Nantahala), shall have, directly or indirectly, acquired beneficial ownership of Equity Interests representing 35% or more of the aggregate voting power represented by the issued and outstanding Equity Interests of the Borrower;

(b) Searchlight or Nantahala shall have, directly or indirectly, acquired beneficial ownership of Equity Interests representing 40% or more of the aggregate voting power represented by the issued and outstanding Equity Interests of the Borrower; or

(c) any person or two or more persons in concert acquire by contract or otherwise, or have entered into a contract (other than the Asset Purchase Agreement or in the event that a Qualified Bidder (as defined in the Bidding Procedures Order or equivalent term used therein), other than the Stalking Horse Bidder, is the Successful Bidder (as defined in the Bidding Procedures Order), the purchase agreement for the Successful Bidder or equivalent term used therein) that, upon consummation thereof, will result in its or their acquisition of the power to exercise, directly or indirectly, a controlling influence over the management or policies of the Borrower, or control over the equity securities of the Borrower entitled to vote for members of the board of directors of the Borrower on a fully-diluted basis (and taking into account all such securities that such person or persons have the right to acquire (whether pursuant to an option right or otherwise)) representing 35% or more of the aggregate voting power represented by the issued and outstanding Equity Interests of the Borrower;

provided that, for purposes of determining whether a “Change of Control” has occurred, in no event shall Searchlight and Nantahala be considered a “group” within the meaning of Rule 13d-3 or 13d-5 under the Exchange Act, *provided further that*, in no event shall the commencement of the Chapter 11 Cases constitute a “Change of Control”.

“**Chapter 11 Cases**” shall have the meaning set forth in the recitals.

“**Chapter 11 Plan**” means a chapter 11 plan of liquidation or reorganization in the Chapter 11 Cases.

“**Citi**” means Citibank, N.A.

“**Citigroup**” means Citigroup Global Markets Inc.

“**Closing Date**” means the date the conditions precedent set forth in Section 4.01 are satisfied (or waived by the Required DIP Lenders in accordance with this Agreement).

“**Code**” means the Internal Revenue Code of 1986, and the regulations of the United States Department of the Treasury promulgated thereunder, as amended from time to time (unless as specifically provided otherwise).

“**Collateral**” means the “Collateral” as defined in the Security Agreement and all the “Collateral,” “Pledged Assets” or “DIP Collateral” (or equivalent terms) as defined in any other

Collateral Document (including, for the avoidance of doubt, the DIP Order) and any other assets pledged pursuant to any Collateral Document (including, for the avoidance of doubt, the DIP Order), but in any event excluding the Excluded Assets.

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

(a) the DIP Agent shall have received each Collateral Document required to be, or to have been delivered at such time as may be designated therein or herein, including pursuant to the Collateral Documents or Section 6.11 or 6.13, as applicable, duly executed by each Loan Party thereto;

(b) all Obligations shall have been unconditionally guaranteed by the Borrower (other than with respect to its direct Obligations as a Primary Obligor (as opposed to a guarantor) under the Loan Documents) and each wholly owned Domestic Subsidiary, including those that are listed on Schedule 1.01(A) hereto (each, a “**Guarantor**”);

(c) the Secured Obligations and the Guaranty shall have been secured pursuant to the DIP Order or the Security Agreement by a first-priority security interest (subject to Liens permitted by Section 7.01) in (i) all of the Equity Interests of each Domestic Subsidiary of the Loan Parties and (ii) all of the issued and outstanding Equity Interests of each first-tier Foreign Subsidiary that is directly owned by the Borrower or a Loan Party;

(d) except to the extent otherwise provided hereunder, including being subject to Liens permitted by Section 7.01, or under any Collateral Document, the Secured Obligations and the Guaranty shall have been secured by a perfected first-priority security interest or by Mortgages referred to in clause (e) below (to the extent requested pursuant thereto) in the Collateral of the Borrower and each Guarantor (including, without limitation, accounts, inventory, equipment, fixtures, investment property, goods, chattel paper, instruments, payment intangibles, deposit accounts, commodity accounts, security accounts, contract rights, applications and registrations of intellectual property, general intangibles, owned real property, intercompany notes and proceeds of the foregoing), in each case, (i) with the priority required by the DIP Order and the Collateral Documents and (ii) subject to exceptions and limitations otherwise set forth in this Agreement (for the avoidance of doubt, including the limitations and exceptions set forth in Section 4.01), the Collateral Documents or the DIP Order; and

(e) if requested by the DIP Agent (at the Direction of the Required DIP Lenders), the DIP Agent shall have received (i) counterparts of a Mortgage with respect to fee-owned real property required to be delivered pursuant to Sections 6.11 and 6.13 (the “**Mortgaged Properties**”) duly executed and delivered by the applicable Loan Party, (ii) a title insurance policy for such property available in each applicable jurisdiction (the “**Mortgage Policies**”) insuring the Lien of each such Mortgage as a valid first-priority Lien on the property described therein, free of any other Liens except as permitted by Section 7.01, together with such endorsements, coinsurance and reinsurance as the DIP Agent (at the Direction of the Required DIP Lenders) may reasonably request, (iii) a completed Life-of-Loan Federal Emergency Management Agency Standard Flood Hazard Determination with respect to each Mortgaged Property (together with a notice about special flood hazard area status and flood disaster assistance duly executed by the Borrower and each Loan Party relating thereto) and, if any improvements on any Mortgaged Property are located

within an area designated a “flood hazard area,” evidence of such flood insurance as may be required under Section 6.07, (iv) ALTA surveys in form and substance reasonably acceptable to the Required DIP Lenders or such existing surveys together with no-change affidavits sufficient for the title company to remove all standard survey exceptions from the Mortgage Policies and issue the endorsements required in clause (ii) above, (v) copies of any existing abstracts and appraisals and (vi) such other documents as the DIP Agent may reasonably request (at the Direction of the Required DIP Lenders) with respect to any such Mortgaged Property;

provided, however, that (i) the foregoing definition shall not require, and the Loan Documents shall not contain any requirements as to, (A) the creation or perfection of pledges of, security interests in, Mortgages on, or the obtaining of title insurance, surveys, abstracts or appraisals or taking other actions with respect to, any Excluded Assets and (B) any other assets that, in the sole judgment of the Required DIP Lenders, the cost of creating, perfecting or maintaining such pledges or security interests in such assets or obtaining title insurance, surveys, abstracts or appraisals in respect of such assets shall be excessive in view of the value of such assets or the practical benefit to the Lenders afforded thereby and (ii) the Liens required to be granted from time to time pursuant to the Collateral and Guarantee Requirement shall be subject to exceptions and limitations set forth in this Agreement, the Collateral Documents and the DIP Order.

The DIP Agent (acting at the Direction of the Required DIP Lenders) may grant extensions of time for the perfection of security interests in, or the delivery of the Mortgages and the obtaining of title insurance and surveys with respect to, particular assets and the delivery of assets (including extensions beyond the Closing Date for the perfection of security interests in the assets of the Loan Parties on such date) or any other compliance with the requirements of this definition where it reasonably determines, in consultation with the Borrower, that perfection or compliance cannot be accomplished without undue effort or expense by the time or times at which it would otherwise be required by this Agreement or the Collateral Documents.

Except as specified by the Required DIP Lenders in their sole discretion, no actions in any non-U.S. jurisdiction or required by the Laws of any non-U.S. jurisdiction shall be required in order to create any security interests in assets located, titled, registered or filed outside of the U.S. or to perfect such security interests (it being understood that, except as specified by the Required DIP Lenders in their sole discretion, there shall be no security agreements or pledge agreements governed under the Laws of any non-U.S. jurisdiction).

“**Collateral Documents**” means, collectively, the Security Agreement, the DIP Order, any Intellectual Property Security Agreements, any Mortgages, collateral assignments, Security Agreement Supplements, security agreements, pledge agreements, intellectual property security agreements or other similar instrument, document or agreement pursuant to which a Loan Party had granted (or has purported to have granted) any Lien to the DIP Agent or any other Secured Party to secure the Obligations under the Loan Documents.

“**Commitment**” means with respect to any Lender, such Lender’s DIP Commitment.

“**Committed Loan Notice**” means a written notice of (a) a Borrowing, or (b) a conversion of Loans from one Type to the other, which shall be substantially in the form of Exhibit A hereto.

“**Committee**” means an official committee of unsecured creditors appointed in any of the Chapter 11 Cases by the U.S. Trustee.

“**Communications Act**” means the Communications Act of 1934, as amended, and the rules, regulations, and published policies of the FCC.

“**Company**” has the meaning set forth in the introductory paragraph hereto.

“**Compensation Period**” has the meaning set forth in Section 2.12(c)(ii).

“**Compliance Certificate**” means a certificate substantially in the form of Exhibit D-1 hereto.

“**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**” has the meaning set forth in the definition of “Affiliate.”

“**Controlled Investment Affiliate**” means, as to any Person, any other Person which directly or indirectly is in Control of, is Controlled by, or is under common Control with, such Person and (i) is organized by such Person (or any Person Controlling such Person) primarily for making equity or debt investments in the Borrower or other portfolio companies or (ii) is obligated pursuant to a commitment agreement to invest its capital as directed by such Person.

“**Cumulative Period**” means, at any time, the period from the Closing Date through the Prior Week.

“**Debtor**” shall have the meaning assigned to such term in the introductory paragraph of this Agreement.

“**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.

“**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, without cure or waiver hereunder, would be an Event of Default.

“**Default Rate**” means for Loans and any other amounts due hereunder an interest rate equal to (a) the Base Rate *plus* (b) the Applicable Rate, if any, applicable to Base Rate Loans *plus* (c) 2.0% per annum; *provided that* with respect to a Eurocurrency Rate Loan, the Default Rate shall be an interest rate equal to the interest rate (including any Applicable Rate) otherwise applicable to such Loan *plus* 2.0% per annum, in each case, to the fullest extent permitted by applicable Laws.

“**Defaulting Lender**” means any Lender whose acts or failure to act, whether directly or indirectly, cause it to meet any part of the definition of Lender Default.

“**DIP Agent**” shall have the meaning assigned to such term in the introductory paragraph of this Agreement, together with its successors and permitted assigns in such capacity.

“**DIP Agent Counsel**” means Weil, Gotshal & Manges LLP in connection with the enforcement or protection of its rights in connection with this Agreement and the other Loan Documents or in connection with the Loans made hereunder, and one counsel in each relevant jurisdiction, in each case retained by the DIP Agent.

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

“**DIP Collateral**” has the meaning assigned to such term in the DIP Order.

“**DIP Commitment**” means, with respect to each Lender, the commitment of such Lender to make Loans hereunder on the Funding Date, expressed as an amount representing the maximum principal amount of the Loans to be made by such Lender hereunder or pursuant to an Assignment and Assumption. The amount of each Lender’s DIP Commitment as of the Closing Date is set forth on Schedule 2.01(a) hereto or in any applicable Assignment and Assumption pursuant to which any such Lender shall have assumed or assigned any portion of a DIP Commitment, as the case may be. Once funded, the DIP Commitments shall be reduced to zero and terminated.

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

“**DIP Order**” means the Interim Order, unless the Final Order shall have been entered, in which case it means the Final Order.

“**Direction of the Required DIP Lenders**” means a written direction or instruction from Lenders constituting the Required DIP Lenders which may be in the form of an email or other form of written communication and which may come from any of the Specified Lender Advisors (or any other Lender Advisor selected by the Required DIP Lenders and designated in writing to the DIP Agent), it being understood and agreed that the DIP Agent and/or the Escrow Agent may conclusively rely (without any further inquiry) on any such written direction or instruction from such Specified Lender Advisor or designated Lender Advisor at the direction of the Required DIP Lenders. For the avoidance of doubt, with respect to each reference herein to (i) documents, agreements or other matters being “satisfactory,” “acceptable,” “reasonably satisfactory” or “reasonably acceptable” (or any expression of similar import) to the Required DIP Lenders, such determination may be communicated by a Direction of the Required DIP Lenders as contemplated above and/or (ii) any matter requiring the consent or approval of, or a determination by, the Required DIP Lenders, such consent, approval or determination may be communicated by a Direction of the Required DIP Lenders as contemplated above.

“**Discharge of the DIP and First Lien Obligations**” means the receipt by DIP Agent and Pre-Petition Agent of an amount of net cash proceeds in connection with a Sale Transaction

sufficient to repay in full in cash the DIP Obligations and the Prepetition First Lien Obligations and result in the discharge of the DIP Obligations and the Prepetition First Lien Obligations

“Disposition” or **“Dispose”** means the sale, transfer, license, lease or other disposition (including any sale and leaseback transaction and any sale or issuance of Equity Interests (other than directors’ qualifying shares or other shares required by applicable Law) in a Subsidiary of the Borrower) of any property by any Person (including, without limitation, any non-wholly owned Subsidiary or joint venture of the Borrower and/or any of its Subsidiaries), 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.

“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 exchangeable), or upon the happening of any event or condition (a) matures or is mandatorily redeemable (other than (i) solely for Qualified Equity Interests and cash in lieu of fractional shares or (ii) solely at the discretion of the issuer), pursuant to a sinking fund obligation or otherwise (except as a result of a change of control, asset sale or similar event so long as any rights of the holders thereof upon the occurrence of a change of control, asset sale or similar event shall be subject to the prior repayment in full of the Loans and all other Obligations that are accrued and payable and the termination of the Commitments), (b) is redeemable at the option of the holder thereof (other than (i) solely for Qualified Equity Interests and cash in lieu of fractional shares or (ii) as a result of a change of control, asset sale or similar event so long as any rights of the holders thereof upon the occurrence of a change of control, asset sale or similar event shall be subject to the prior repayment in full of the Loans and all other Obligations that are accrued and payable and the termination of the Commitments), (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 91 days after the Maturity Date at the time of issuance of such Equity Interests; *provided that* if such Equity Interests are issued pursuant to a plan for the benefit of employees of the Borrower or the Subsidiaries or by any such plan to such employees, such Equity Interests shall not constitute Disqualified Equity Interests solely because it may be required to be repurchased by the Borrower or its Subsidiaries in order to satisfy applicable statutory or regulatory obligations.

“Disqualified Institution” means (1) such Persons as are separately identified in writing by the Borrower and the Required DIP Lenders to the DIP Agent prior to the Closing Date and (2) such Persons who are competitors of the Borrower and its Subsidiaries that are separately identified in writing by the Borrower to the DIP Agent from time to time and any of their Affiliates (other than any such Affiliate that is affiliated with a financial investor in such Person and that is not itself an operating company or otherwise an Affiliate of an operating company so long as such Affiliate is a bona fide Fund) that are clearly identifiable on the basis of such Affiliate’s name.

“Distressed Person” has the meaning set forth in the definition of “Lender-Related Distress Event.”

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

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

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

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

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

“**Eligible Assignee**” has the meaning set forth in Section 10.07(a).

“**Enforcement Qualifications**” has the meaning set forth in Section 5.04.

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

“**Environmental Laws**” means any applicable Law relating to the prevention of pollution or the protection of the Environment and natural resources, and the protection of human health and safety as it relates to the Environment.

“**Environmental Liability**” means any liability, contingent or otherwise (including any liability for damages, costs of investigation and remediation, fines, penalties or indemnities), of the Loan Parties or any of their Subsidiaries resulting from or based upon (a) violation of any Environmental Law, (b) the generation, use, handling, transportation, storage or treatment of any Hazardous Materials, (c) exposure to any Hazardous Materials, (d) the Release or threatened Release of any Hazardous Materials or (e) any contract, agreement or other consensual arrangement to the extent liability is assumed or imposed with respect to any of the foregoing.

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

“**Equity Interests**” means, with respect to any Person, all of the shares, 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); *provided that* any instrument evidencing Indebtedness convertible or exchangeable for Equity Interests shall not be deemed to be Equity Interests unless and until such instrument is so converted or exchanged.

“**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 is under common control with a Loan Party or any of their Subsidiaries within the meaning of Section 414(b) or (c) of the Code or Section 4001 of ERISA (and Sections 414(m) and (o) of the Code for purposes of provisions relating to Section 412 of the Code or Section 302 of ERISA).

“**ERISA Event**” means (a) a Reportable Event with respect to a Pension Plan; (b) a withdrawal by a Loan Party or any Subsidiary thereof or any ERISA Affiliate from a Pension Plan subject to Section 4063 of ERISA during a plan year in which it was a substantial employer (as defined in Section 4001(a)(2) of ERISA) or a cessation of operations that is treated as such a withdrawal under Section 4062(e) of ERISA; (c) a complete or partial withdrawal by a Loan Party or any Subsidiary thereof or any ERISA Affiliate from a Multiemployer Plan or notification that a Multiemployer Plan is in reorganization (within the meaning of Section 4241 of ERISA) or insolvent (within the meaning of Section 4245 of ERISA) or in “endangered” or “critical” status (within the meaning of Section 432 of the Code or Section 305 of ERISA); (d) a determination that any Pension Plan is in “at risk” status (within the meaning of Section 430 of the Code or Section 303 of ERISA); (e) the filing of a notice of intent to terminate, 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; (f) an event or condition which constitutes grounds under Section 4042 of ERISA for, and that could reasonably be expected to result in, the termination of, or the appointment of a trustee to administer, any Pension Plan or Multiemployer Plan; (g) with respect to a Pension Plan, the failure to satisfy the minimum funding standard of Section 412 of the Code or Section 302 of ERISA, whether or not waived; (h) a failure by a Loan Party any Subsidiary thereof or any ERISA Affiliate to make a required contribution to a Multiemployer Plan; (i) the occurrence of a nonexempt prohibited transaction (within the meaning of Section 4975 of the Code or Section 406 of ERISA) which could reasonably be expected to result in liability to a Loan Party or any Subsidiary thereof; or (j) the imposition of any liability under Title IV of ERISA, other than for PBGC premiums due but not delinquent under Section 4007 of ERISA, upon a Loan Party, any Subsidiary thereof or any ERISA Affiliate.

“**Escrow Agent**” means the Escrow Agent under the Escrow Agreement, which shall initially be Citibank, N.A., solely in such capacity. Each party hereto acknowledges and agrees that the Escrow Agent is not a party to this Agreement and is not bound by the terms hereof.

“**Escrow Agreement**” means that certain Escrow Agreement, dated as of the Closing Date (as amended, restated, supplemented or otherwise modified from time to time) among the Borrower, the Escrow Agent and the DIP Agent for and on behalf of the Lenders relating to the Loan Proceeds Account.

“**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.

“**Eurocurrency Rate**” means:

(a) for any Interest Period with respect to a Eurocurrency Rate Loan, the rate per annum determined by the DIP Agent at approximately 11:00 a.m. (London time) on the date that is two Business Days prior to the commencement of such Interest Period by reference to the interest settlement rates for deposits in Dollars (as published by Reuters on page LIBOR01 of the Reuters Screen (or another commercially available source providing quotations of such rate as designated by the DIP Agent from time to time)) (as set forth by (i) the Intercontinental Exchange Group, (ii) any publicly available successor service or entity that has been authorized by the U.K. Financial Conduct Authority to administer the London Interbank Offered Rate or (iii) any publicly available service selected by the DIP Agent that has been nominated by such an entity as an authorized information vendor for the purpose of displaying such rates) for a period equal to such Interest Period; *provided that*, to the extent that an interest rate is not ascertainable pursuant to the foregoing provisions of this definition, the “Eurocurrency Rate” shall be the interest rate per annum determined by the DIP Agent (acting at the Direction of the Required DIP Lenders) in consultation with the Borrower, and

(b) for any interest calculation with respect to a Base Rate Loan on any date, the rate per annum determined by the DIP Agent at approximately 11:00 a.m. (London time) on such date by reference to the interest settlement rates for deposits in Dollars (as published by Reuters on page LIBOR01 of the Reuters Screen (or another commercially available source providing quotations of such rate as designated by the DIP Agent from time to time)) with a term of one month (as set forth by (i) the InterContinental Exchange Group, (ii) any publicly available successor service or entity that has been authorized by the U.K. Financial Conduct Authority to administer the London Interbank Offered Rate or (iii) any publicly available service selected by the DIP Agent that has been nominated by such an entity as an authorized information vendor for the purpose of displaying such rates);

in the case of clauses (a) and (b) above, multiplied by Statutory Reserves; *provided that* (i) in the case of clauses (a) and (b) above, the Eurocurrency Rate shall not be less than 1.25% per annum and (ii) in no event shall the Eurocurrency Rate be less than zero.

“**Eurocurrency Rate Loan**” means a Loan that bears interest at a rate based on clause (a) of the definition of “Eurocurrency Rate.”

“**Event of Default**” has the meaning set forth in Section 8.01.

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

“**Exchange Rate**” means on any day with respect to any currency other than Dollars, the rate at which such currency may be exchanged into Dollars, as set forth at approximately 11:00 a.m. (London time) on such day on the Reuters World Currency Page for such currency; in the event that such rate does not appear on any Reuters World Currency Page, the Exchange Rate shall be determined by reference to such other publicly available service for displaying exchange rates as may be agreed upon by the DIP Agent and the Borrower, or, in the absence of such agreement, the Exchange Rate shall instead be the arithmetic average of the spot rates of exchange of the DIP Agent in the market where its foreign currency exchange operations in respect of such currency are then being conducted, at or about 10:00 a.m. (New York City time) on such date for the purchase of Dollars for delivery two Business Days later.

“Excluded Assets” means (i) all Licenses and any other property and assets (including any lease, license, permit or agreement) to the extent that the DIP Agent may not validly possess a security interest therein under, or such security interest is restricted by, applicable Laws (including, without limitation, rules and regulations of any Governmental Authority or agency) or the pledge or creation of a security interest in which would require the consent, approval, license or authorization of a Governmental Authority, other than to the extent such prohibition or limitation is rendered ineffective under the UCC, the Bankruptcy Code, other applicable insolvency laws or other applicable Law notwithstanding such prohibition, but in no event excluding the Proceeds thereof, (ii) any deposit account containing solely cash collateral supporting obligations in respect of letters of credit issued under the LC Agreement and (iii) any asset where the cost of obtaining a security interest therein exceeds the practical benefit to the Lenders, as determined in the sole discretion of the Required DIP Lenders (which may be communicated by means of a Direction of the Required DIP Lenders); *provided, however*, that Excluded Assets referred to in clauses (i) through (ii) shall not include any Proceeds, substitutions or replacements of any Excluded Assets. Except as specified by the Required DIP Lenders, no Loan Party shall be required to take any action under the Law of any non-U.S. jurisdiction to create or perfect a security interest in any assets located outside the United States or any other assets that require such action, including any intellectual property registered in any non-U.S. jurisdiction (and no security agreements or pledge agreements governed under the Laws of any non-U.S. jurisdiction shall be required).

“Excluded Subsidiary” means any Subsidiary that is prohibited by applicable Law on the Closing Date from guaranteeing the Obligations or if guaranteeing the Obligations would require governmental (including regulatory) consent, approval, license or authorization (unless and until (i) such restriction or prohibition no longer exists or (ii) any such governmental consent, approval, license or authorization is obtained).

“Exit Conversion” has the meaning set forth in Section 2.07(b).

“Exit Facility Credit Agreement” has the meaning set forth in Section 2.07(b).

“Fair Market Value” means, with respect to any asset or group of assets on any date of determination, the value of the consideration obtainable in a sale of such asset at such date of determination assuming a sale by a willing seller to a willing purchaser dealing at arm’s-length and arranged in an orderly manner over a reasonable period of time having regard to the nature and characteristics of such asset, as determined reasonably and in good faith by the Borrower.

“FATCA” means Sections 1471 through 1474 of the Code, as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), any current or future Treasury regulations or other administrative guidance promulgated thereunder, any agreement entered into pursuant to Section 1471(b) of the Code and any intergovernmental agreements (and related Laws and regulations) implementing the foregoing.

“FCC” means the Federal Communications Commission.

“FCC Authorizations” means all Licenses issued or granted by the FCC in connection with the operation of the business of the Borrower or any Subsidiary of the Borrower, all renewals

and extensions thereof, and all applications filed with the FCC to which the Borrower or any Subsidiary of the Borrower is a party.

“Federal Funds Effective Rate” means, for any day, the rate per annum equal to the weighted average of the rates on overnight federal funds transactions with members of the Federal Reserve System arranged by federal funds brokers on such day, as published by the Federal Reserve Bank on the Business Day next succeeding such day; *provided that* (a) if such day is not a Business Day, the Federal Funds Effective Rate for such day shall be such rate on such transactions on the next preceding Business Day as so published on the next succeeding Business Day, (b) if no such rate is so published on such next succeeding Business Day, the Federal Funds Effective Rate for such day shall be the average rate (rounded upward, if necessary, to a whole multiple of 1/100 of 1%) of the quotations for the day for such transactions received by the DIP Agent from three federal funds brokers of recognized standing selected by it, and (c) if the Federal Funds Effective Rate shall be less than zero, such rate shall be deemed to be zero.

“Fee Letters” means, collectively, (i) that certain Premium Letter, dated as of the Closing Date between the Borrower and [Citi] and (ii) that certain Fee Letter, dated as of the Closing Date, between the Borrower and Citigroup.

“Final Order” means an order entered by the Bankruptcy Court approving the DIP Facility on a final basis under the Bankruptcy Code, which order shall be in form and substance satisfactory to the DIP Agent and the Required DIP Lenders in their sole and absolute discretion (as such order may be amended, modified or extended in a manner satisfactory to the DIP Agent (at the Direction of the Required DIP Lenders)), which order has not been reversed or stayed or is otherwise subject to a timely filed motion for a stay, rehearing, reconsideration, appeal or any other review without the consent of the DIP Agent (at the Direction of the Required DIP Lenders).

“FIRREA” means the Financial Institutions Reform, Recovery and Enforcement Act of 1989, as amended.

“First Testing Period” shall mean the period commencing four weeks prior to, and ending on, July 31, 2020, which is the first Friday ending after the Closing Date (which shall include two full weeks prior to the Closing Date, the week of the Closing Date and one full week following the Closing Date).

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

“Flow of Funds Statement” means a flow of funds statement relating to payments to be made and credited by all of the parties on the Funding Date (including wire instructions therefor) as prepared by the Borrower and its financial advisor in consultation with (and approved by) the DIP Agent and the Specified Lender Advisors.

“Foreign Casualty Event” has the meaning set forth in Section 2.05(b)(vi).

“**Foreign Disposition**” has the meaning set forth in Section 2.05(b)(vi).

“**Foreign Plan**” means any employee benefit plan, program, policy, arrangement or agreement maintained or contributed to or by, or entered into with, any Loan Party or any Subsidiary with respect to employees outside the United States.

“**Foreign Subsidiary**” means any direct or indirect Subsidiary (which is not a Domestic Subsidiary). As used herein, reference to a first-tier Foreign Subsidiary means a Foreign Subsidiary whose direct parent entity is a Domestic Subsidiary.

“**Full Payment**” means, with respect to any Obligations, the full and complete cash payment thereof, including any interest, fees and other charges accruing during the Chapter 11 Cases (whether or not allowed by the Chapter 11 Cases). No Loans shall be deemed to have been paid in full until all Commitments related to such Loans have expired or been terminated.

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

“**Funding Date**” means the date the conditions precedent set forth in Section 4.02 with respect to the Borrowing hereunder are satisfied (or waived by the Required DIP Lenders in accordance with this Agreement).

“**GAAP**” means generally accepted accounting principles in the United States of America, as in effect from time to time.

“**Governmental Authority**” means any nation or government, any state or other political subdivision thereof, any agency, authority, instrumentality, regulatory body, court, administrative tribunal, 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 body exercising such powers or functions, such as the European Union or the European Central Bank).

“**Granting Lender**” has the meaning set forth in Section 10.07(h).

“**Guarantee**” means, as to any Person, without duplication, any obligation, contingent or otherwise, of such Person guaranteeing or having the economic effect of guaranteeing any Indebtedness 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, (ii) to purchase or lease property, securities or services for the purpose of assuring the obligee in respect of such Indebtedness of the payment or performance of such Indebtedness, (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 (iv) entered into for the purpose of assuring in any other manner the obligee in respect of such Indebtedness of the payment or performance thereof or to protect such obligee against loss in respect thereof (in whole or in part). 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**” has the meaning set forth in Section 11.01.

“**Guarantors**” has the meaning set forth in the definition of “Collateral and Guarantee Requirement” and shall include the Borrower (solely with respect to its Secured Obligations other than its direct Secured Obligations as a Primary Obligor (as opposed to a guarantor) under the Loan Documents), Post Modern Edit, Inc., Global Eagle Entertainment Operations Solutions, Inc., Airline Media Productions Inc., Entertainment in Motion, Inc., Row 44, Inc., Global Eagle Telecom Licensing Subsidiary LLC, Inflight Productions USA, Inc., N44HQ, LLC, Global Eagle Services, LLC, The Lab Aero, Inc., IFE Services (USA), Inc., Emerging Markets Communications, LLC, Maritime Telecommunications Network, Inc., MTN Government Services, Inc., MTN International, Inc., MTN License Corp. and each other Subsidiary of the Borrower that shall have become a Guarantor pursuant to Section 6.11, it being understood and agreed that the Borrower in its sole discretion may cause any Subsidiary of the Borrower that is not a Guarantor to Guarantee the Obligations by causing such Subsidiary to execute a Joinder Agreement and comply with Section 6.11 and the Collateral and Guaranty Requirement, and thereafter any such Subsidiary shall be a Guarantor and Subsidiary Guarantor hereunder for all purposes.

“**Guaranty**” means, collectively, the guaranty of the Obligations by the Guarantors pursuant to this Agreement.

“**Hazardous Materials**” means all materials, pollutants, contaminants, chemicals, compounds, constituents, substances or wastes, in any form, including petroleum or petroleum distillates, asbestos or asbestos-containing materials, polychlorinated biphenyls, radon gas, mold, medical waste, in each case regulated under Environmental Laws.

“**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) all obligations, contingent or otherwise, of such Person as an account party in respect of outstanding letters of credit (including standby and commercial), bankers’ acceptances and bank guaranties;
- (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;
- (e) Indebtedness (excluding prepaid interest thereon) of others secured by a Lien on property owned or being purchased by such Person, whether or not such Indebtedness shall have been assumed by such Person;

- (f) all Attributable Indebtedness;
- (g) all obligations of such Person in respect of Disqualified Equity Interests if and to the extent that the foregoing would constitute indebtedness or a liability in accordance with GAAP; and
- (h) to the extent not otherwise included above, all Guarantees of such Person in respect of Indebtedness of others described in clauses (a) through (g) in respect of any of the foregoing.

For all purposes hereof, the Indebtedness of any Person shall (A) 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, except to the extent such Person's liability for such Indebtedness is otherwise limited, and (B) exclude (i) trade accounts and accrued expenses payable in the ordinary course of business, (ii) any earn-out obligation until such obligation is not paid after becoming due and payable, (iii) accruals for payroll and other liabilities accrued in the ordinary course of business, (iv) purchase price holdbacks in respect of a portion of the purchase price of an asset to satisfy warranty or other unperformed obligations of the respective seller and (v) Indebtedness of any parent entity appearing on the balance sheet of the Borrower, or by reason of push down accounting under GAAP. 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) that is expressly made non-recourse or limited recourse (limited solely to the assets securing such Indebtedness) to such Person shall be deemed to be equal to the lesser of (x) the aggregate unpaid amount of such Indebtedness and (y) the fair market value of the property encumbered thereby as determined by such Person in good faith.

“Indemnified Taxes” means, with respect to the DIP Agent, any Lender or any other recipient of any payment to be made by or on account of any obligation of any Loan Party hereunder or under any other Loan Document, all Taxes imposed on or with respect to any payment under any Loan Documents, other than (i) any Taxes imposed on or measured by its net income, however denominated, and franchise and branch profits Taxes imposed on it in lieu of net income Taxes, in each case, (a) imposed by a jurisdiction as a result of such recipient being organized in or having its principal office or, in the case of any Lender, its applicable Lending Office, located in the jurisdiction imposing such Tax, or (b) as a result of any other present or former connection between such recipient and the jurisdiction imposing such Tax, other than any connections arising solely from the recipient executing, delivering, being a party to, engaging in any transactions pursuant to, performing its obligations under, receiving payments under, or enforcing, any Loan Document, (ii) any Taxes attributable to the failure of such Agent or Lender to comply with Section 3.01(e), (iii) in the case of a Lender (other than an assignee pursuant to a request by the Borrower under Section 3.07(a)), any U.S. federal withholding Tax that is in effect and would apply to amounts payable hereunder pursuant to a Law in effect at the time such Lender becomes a party to this Agreement, or designates a new Lending Office, except to the extent such Lender (or its assignor, if any) was entitled, immediately prior to the time of designation of a new Lending Office (or assignment), to receive additional amounts from the Borrower or any Guarantor with respect to such withholding Tax pursuant to Section 3.01, and (iv) any U.S. federal withholding Taxes imposed under FATCA (all such amounts described in clauses (i) through (iv), **“Excluded Taxes”**).

“**Indemnitees**” has the meaning set forth in Section 10.05.

“**Information**” has the meaning set forth in Section 10.08.

“**Intellectual Property Security Agreement**” has the meaning set forth in the Security Agreement.

“**Interest Payment Date**” means the [last] Business Day of each calendar month.

“**Interest Period**” means, as to each Eurocurrency Rate Loan, the period commencing on the date such Eurocurrency Rate Loan is disbursed or converted to or continued as a Eurocurrency Rate Loan, and ending on the date one month thereafter; *provided that*:

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

(b) any Interest Period that begins on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period) shall end on the last Business Day of the calendar month at the end of such Interest Period; and

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

“**Interim Order**” means an order entered by the Bankruptcy Court approving the DIP Facility on an interim basis under the Bankruptcy Code, which order shall be in form and substance satisfactory to the DIP Agent and the Required DIP Lenders in their sole and absolute discretion (as such order may be amended, modified or extended in a manner satisfactory to the DIP Agent and the Required DIP Lenders), which order is not subject to a stay, injunction or other limitation not approved by the DIP Agent and the Required DIP Lenders.

“**Investment**” means, as to any Person, any direct or indirect acquisition or investment by such Person in another Person by (a) the purchase or other acquisition 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 or (c) the purchase or other acquisition (in one transaction or a series of transactions) 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 increases or decreases in the value of such Investment.

“**IP Rights**” has the meaning set forth in Section 5.15.

“**Joinder Agreement**” means a joinder agreement substantially in the form of Joinder Agreement attached as Exhibit J hereto or in such other form agreed by the Required DIP Lenders in their sole discretion.

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

“**LC Agreement**” means that certain [Letter of Credit Agreement], dated as of the Closing Date, between the Borrower and Citi, providing for issuance of up to \$10,000,000 in letters of credit, minus the aggregate face amount of issued and outstanding letters of credit from time to time under the Pre-Petition Priority Loan Agreement.

“**Lender**” has the meaning set forth in the introductory paragraph to this Agreement, and their respective successors and assigns as permitted hereunder, each of which is referred to herein as a “Lender.”

“**Lender Advisors**” means (x) the Specified Lender Advisors, and (y) any other financial advisor, auditor, attorney, accountant, appraiser, auditor, business valuation expert, environmental engineer or consultant, turnaround consultant, and other consultants, professionals and experts retained by the Ad Hoc Group of Lenders and/or the Required DIP Lenders.

“**Lender Default**” means (i) the refusal (which may be given verbally or in writing and has not been retracted) or failure of any Lender to make available its portion of any incurrence of Loans, which refusal or failure is not cured within two Business Days after the date of such refusal or failure, unless such Lender notifies the DIP Agent in writing that such refusal or failure is the result of such Lender’s good faith determination that one or more conditions precedent to funding (each of which conditions precedent, together with any applicable default, shall be specifically identified in writing) has not been satisfied, (ii) the failure of any Lender to pay over to the DIP Agent or any other Lender any other amount required to be paid by it hereunder within two Business Days of the date when due, unless the subject of a good faith dispute, (iii) a Lender has notified the Borrower or the DIP Agent that it does not intend to comply with its funding obligations under this Agreement or has stated publicly that it will generally not comply with its funding obligations under any loan agreements, credit agreements, and other similar agreements, (iv) a Lender has failed to confirm in a manner reasonably satisfactory to the DIP Agent (at the Direction of the Required DIP Lenders) that it will comply with its funding obligations under this Agreement (*provided that* such Lender shall cease to be a Defaulting Lender pursuant to this clause (iv) upon receipt of such written confirmation by the DIP Agent (acting at the Direction of the Required DIP Lenders) and the Borrower), or (v) a Distressed Person has admitted in writing that it is insolvent or such Distressed Person becomes subject to a Lender-Related Distress Event.

“**Lender-Related Distress Event**” means, with respect to any Lender or any other Person that directly or indirectly controls such Lender (each, a “**Distressed Person**”), (i) a voluntary or involuntary case with respect to such Distressed Person under any debt relief law, (ii) a custodian, conservator, receiver, or similar official is appointed for such Distressed Person or any substantial part of such Distressed Person’s assets, (iii) such Distressed Person, or any Person that directly or indirectly controls such Distressed Person or is subject to a forced liquidation, (iv) such Distressed Person makes a general assignment for the benefit of creditors or is otherwise adjudicated as, or

determined by any Governmental Authority having regulatory authority over such Distressed Person to be, insolvent or bankrupt or (v) such Distressed Person becomes the subject of a Bail-In Action; *provided that* a Lender-Related Distress Event shall not be deemed to have occurred solely by virtue of the ownership or acquisition of any Equity Interests in any Lender or any Person that directly or indirectly controls such Lender by a Governmental Authority or an instrumentality thereof.

“**Lending Office**” means, as to any Lender, such office or offices as a Lender may from time to time notify the Borrower and the DIP Agent.

“**License**” means any license, registration, accreditation, approval, qualification, provider number, right, privilege, consent, permit or other authorization issued by any Governmental Authority (including the FCC), together with any amendments, supplements and other modifications thereto.

“**Licensed Activities**” means, with respect to any Person, any transactions, investments or other activities by such Person in or with a Sanctioned Country to the extent that such transactions, investments or other activities are in compliance with a license issued to such Person by OFAC, the U.S. Department of State, or the U.S. Department of Commerce Bureau of Industry and Security, as required by the applicable requirements of Law.

“**Lien**” means, with respect to any asset, any mortgage, deed of trust, pledge, hypothecation, collateral assignment, security deposit arrangement, encumbrance, lien (statutory or other), charge or other security interest of any kind or nature in respect of such asset (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).

“**Loan**” means an extension of credit under Article 2 by a Lender to the Borrower.

“**Loan Documents**” means, collectively, (i) this Agreement, (ii) the Notes, (iii) the Collateral Documents, (iv) the Fee Letters, (v) the Escrow Agreement, (vi) the Specified Lender Advisors Fee Letters, (vii) the Approved DIP Budget, (viii) any other document or instrument designated by the Borrower and the DIP Agent and/or the Required DIP Lenders as a “Loan Document” and (ix) any amendment or joinder (including, without limitation, any Joinder Agreement) to this Agreement or any of the foregoing agreements.

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

“**Loan Proceeds Account**” means an escrow account with the Escrow Agent into which the proceeds of the Loans shall be deposited and retained subject to withdrawal thereof by the Borrower pursuant to a Withdrawal Notice for use in accordance with the terms hereof and of the Approved DIP Budget or return thereof to the Lenders upon the occurrence of the Maturity Date for any reason whatsoever.

“**Margin Stock**” shall have the meaning assigned to such term in Regulation U of the Board of Governors of the Federal Reserve System, or any successor thereto.

“Material Adverse Effect” means any event, change or condition that, individually or in the aggregate, has had, or would reasonably be expected to have a material adverse effect on (i) the business, assets, financial condition or results of operations of the Borrower and its Subsidiaries, taken as a whole (excluding (w) any matters publicly disclosed in writing or disclosed to the DIP Agent and the Lenders in writing prior to the filing of the Chapter 11 Cases, (x) any matters disclosed in the schedules hereto, (y) any matters disclosed in any first day pleadings or declarations and (z) the filing of the Chapter 11 Cases, the events and conditions related and/or leading up thereto and the effects thereof and any action required to be taken under the Loan Documents or under the Chapter 11 Orders), (ii) the ability of the Borrower and the Guarantors (taken as a whole) to perform their payment obligations under any Loan Document to which the Borrower or any of the Loan Parties is a party, (iii) the rights and remedies of, or benefits available to, the DIP Agent, the Escrow Agent or the Lenders under the Loan Documents, taken as a whole, including the legality, validity, binding effect or enforceability of the Loan Documents, or (iv) the Collateral (taken as a whole) or the DIP Agent’s liens on the Collateral.

“Material Contract” any vendor or supply contract, customer contract, media and content license, games and applications license, satellite or broadband capacity contract or any similar or related contract necessary for the operations of the business of the Loan Parties entered into by a Loan Party with a Person that is not a Loan Party or any of its Subsidiaries, and the termination of which, or the failure of which to be in full force and effect, would reasonably be expected to have a material adverse effect on the business, assets, financial condition or results of operations of the Borrower and its Subsidiaries, taken as a whole.

“Material Non-Public Information” means information which is (a) not publicly available, (b) material with respect to the Borrower and its Subsidiaries or their respective securities for purposes of United States federal and state securities laws and (c) not of a type that would be publicly disclosed in connection with any issuance by the Borrower or any of its Subsidiaries of debt or equity securities issued pursuant to a public offering, a Rule 144A offering or other private placement where assisted by a placement agent.

“Maturity Date” means the date that is the earliest of (i) the date that is six (6) months after the Petition Date (subject to an extension of up to thirty (30) days to the extent necessary if the Sale Order has been entered and the parties are awaiting required Federal Communications Commission consents and approvals), (ii) the date on which the Obligations become due and payable pursuant to this Agreement, whether by acceleration or otherwise, (iii) the effective date of a Chapter 11 Plan for the Debtors, (iv) the date of consummation of a sale of all or substantially all of the Debtors’ assets under Section 363 of the Bankruptcy Code, including the Sale Transaction, (v) the first Business Day on which the Interim Order expires by its term or is terminated, unless the Final Order has been entered and become effective prior thereto, (vi) conversion of any of the Chapter 11 Cases to a case under Chapter 7 of the Bankruptcy Code unless otherwise consented to by the DIP Agent (at the Direction of the Required DIP Lenders), (vii) dismissal of any of the Chapter 11 Cases, unless otherwise consented to in writing by the DIP Agent (at the Direction of the Required DIP Lenders), (viii) dismissal of any of the Chapter 11 Cases, unless otherwise consented to in writing by the DIP Agent (at the Direction of the Required DIP Lenders), or (ix) the Final Order is vacated, terminated, rescinded, revoked, declared null and void or otherwise ceases to be in full force and effect (unless otherwise consented to in writing by the DIP Agent (at the Direction of the Required DIP Lenders)).

“**Maximum Rate**” has the meaning set forth in Section 10.10.

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

“**Mortgage Policies**” has the meaning set forth in the definition of “Collateral and Guarantee Requirement.”

“**Mortgaged Properties**” has the meaning set forth in the definition of “Collateral and Guarantee Requirement.”

“**Mortgages**” means collectively, the deeds of trust, trust deeds, hypothecs and mortgages made by the Loan Parties in favor or for the benefit of the DIP Agent on behalf of the Secured Parties creating and evidencing a Lien on a Mortgaged Property in form and substance reasonably satisfactory to the DIP Agent (at the Direction of the Required DIP Lenders) and any other mortgage executed and delivered pursuant to Sections 6.11 and 6.13, in each case, as the same may from time to time be amended, restated, supplemented or otherwise modified.

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

“**Nantahala**” means Nantahala Capital Management, LLC and any of its Controlled Investment Affiliates and funds under its control.

“**Net Proceeds**” means:

(a) 100% of the cash proceeds actually received by the Borrower or any of its Subsidiaries (including any cash payments received by way of deferred payment of principal pursuant to a note or installment receivable or purchase price adjustment receivable or otherwise and including casualty insurance settlements and condemnation awards, but in each case only as and when received) from any Disposition or Casualty Event, net of (i) attorneys’ fees, accountants’ fees, investment banking fees, survey costs, title insurance premiums, and related search and recording charges, transfer taxes, deed or mortgage recording taxes, other customary expenses and brokerage, consultant and other customary fees and expenses actually incurred in connection therewith; (ii) the principal amount of any Indebtedness that is secured by a Lien (other than a Lien that ranks *pari passu* with or is subordinated to the Liens securing the Obligations) on the asset subject to such Disposition or Casualty Event and that is required to be repaid in connection with such Disposition or Casualty Event (other than Indebtedness under or pursuant to the Pre-Petition Loan Documents or any other Indebtedness outstanding as of the Petition Date (unless senior to the Indebtedness under the Pre-Petition Loan Documents)), together with any applicable premium, penalty, interest and breakage costs; (iii) in the case of any Disposition or Casualty Event by a non-wholly owned Subsidiary of the Borrower, the *pro rata* portion of the Net Proceeds thereof (calculated without regard to this clause (iii)) attributable to minority interests and not available for distribution to or for the account of the Borrower or a wholly owned Subsidiary of the Borrower as a result thereof; (iv) Taxes paid or reasonably estimated to be payable or, without duplication, permitted to be paid as a result thereof; (v) the amount of any reasonable reserve established in accordance with GAAP against any adjustment to the sale price or any liabilities (other than any

taxes deducted pursuant to clause (i) above) (x) related to any of the applicable assets and (y) retained by the Borrower or any of its Subsidiaries including, without limitation, pension and other postemployment benefit liabilities and liabilities related to environmental matters or against any indemnification obligations (however, the amount of any subsequent reduction of such reserve (other than in connection with a payment in respect of any such liability) shall be deemed to be Net Proceeds of such Disposition or Casualty Event occurring on the date of such reduction); and (vi) any funded escrow established pursuant to the documents evidencing any such sale or disposition to secure any indemnification obligations or adjustments to the purchase price associated with any such sale or disposition (*provided that*, to the extent that any amounts are released from such escrow to the Borrower or a Subsidiary thereof, such amounts net of any related expenses shall constitute Net Proceeds); and

(b) 100% of the cash proceeds from the incurrence, issuance or sale by the Borrower or any of the Subsidiaries thereof of any Indebtedness, net of all taxes paid or reasonably estimated to be payable as a result thereof and fees (including investment banking fees and discounts), commissions, costs and other expenses, in each case incurred in connection with such incurrence, issuance or sale.

“**Non-Consenting Lender**” has the meaning set forth in Section 3.07(c).

“**Non-Defaulting Lender**” means, at any time, a Lender that is not a Defaulting Lender.

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

“**Note**” means a promissory note of the Borrower payable to any Lender or its registered assigns, in substantially the form of Exhibit C-1 hereto, evidencing the aggregate Indebtedness of the Borrower to such Lender resulting from the Loans made by such Lender.

“**Obligations**” means all advances to, and debts, liabilities, obligations, covenants and duties of, any Loan Party and its Subsidiaries 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 or Subsidiary 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 of their Subsidiaries to the extent they have obligations under the Loan Documents) include (a) the obligation (including guarantee obligations) to pay principal, interest, reimbursement obligations, charges, expenses, fees, Attorney Costs, indemnities and other amounts payable by any Loan Party under any Loan Document and (b) the obligation of any Loan Party to reimburse any amount in respect of any of the foregoing that any Lender may elect to pay or advance on behalf of such Loan Party in accordance with the terms of the Loan Documents.

“**OFAC**” means the U.S. Department of the Treasury’s Office of Foreign Assets Control.

“**Organization Documents**” means, (a) with respect to any corporation, the certificate or articles of incorporation and the bylaws (or equivalent or comparable constitutive documents with respect to any non-U.S. jurisdiction); (b) with respect to any limited liability company, the

certificate or articles of formation or organization and operating agreement or limited liability company agreement; and (c) with respect to any partnership, joint venture, trust or other form of business entity, the partnership, joint venture or other applicable agreement of formation or organization and any agreement, instrument, filing or notice with respect thereto filed in connection with its formation or organization with the applicable Governmental Authority in the jurisdiction of its formation or organization and, if applicable, any certificate or articles of formation or organization of such entity.

“Other Connection Taxes” means, with respect to the DIP Agent, any Lender or any other recipient of any payment to be made by or on account of any obligation of any Loan Party hereunder or under any other Loan Document, Taxes imposed as a result of a present or former connection between such recipient and the jurisdiction imposing such Tax (other than connections arising from such recipient having executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, engaged in any other transaction pursuant to or enforced any Loan Document, or sold or assigned an interest in any Loan or Loan Document).

“Other Taxes” means any and all present or future stamp, court or documentary Taxes and any other excise, property, intangible or mortgage recording Taxes, imposed by any Governmental Authority, 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 excluding, in each case, any such Tax imposed as a result of an Agent or Lender’s Assignment and Assumption, other than any such Taxes that are Other Connection Taxes imposed pursuant to an assignment or participation that is requested or required in writing by the Borrower.

“Outstanding Amount” means the outstanding principal amount thereof after giving effect to the Borrowing and any prepayments or repayments of the Loans.

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

“Participant” has the meaning set forth in Section 10.07(e).

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

“PBGC” means the Pension Benefit Guaranty Corporation.

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

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

“**Petition Date**” shall have the meaning assigned to such term in the Recitals to this Agreement.

“**Plan**” means any “employee benefit plan” (as such term is defined in Section 3(3) of ERISA) other than a Foreign Plan, established or maintained by any Loan Party or, with respect to any such plan that is subject to Section 412 of the Code or Section 302 or Title IV of ERISA, any ERISA Affiliate.

“**Platform**” has the meaning set forth in Section 6.01.

“**Pledged Debt**” has the meaning set forth in the Security Agreement.

“**Pledged Equity**” has the meaning set forth in the Security Agreement.

“**Pre-Petition**” means the time period ending immediately prior to the filing of the Chapter 11 Cases.

“**Pre-Petition Collateral**” means the “Collateral” as defined in the Pre-Petition Priority Loan Agreement.

“**Pre-Petition Lenders**” has the meaning assigned to such term in the introductory paragraph of this Agreement.

“**Pre-Petition Loan Documents**” means the “Loan Documents” as defined in the Pre-Petition Priority Loan Agreement.

“**Pre-Petition Obligations**” means the “Secured Obligations” as defined in the Pre-Petition Priority Loan Agreement.

“**Pre-Petition Priority Loan Agreement**” has the meaning assigned to such term in the Recitals to this Agreement.

“**Pre-Petition Second Lien Loan Documents**” means the “Loan Documents” as defined in the Pre-Petition Second Lien Securities Purchase Agreement.

“**Pre-Petition Second Lien Obligations**” means the “Note Obligations” as defined in the Pre-Petition Second Lien Securities Purchase Agreement.

“**Pre-Petition Second Lien Securities Purchase Agreement**” means the Securities Purchase Agreement dated as of March 8, 2018 among the Borrower, the Purchasers thereto and the Second Lien Agent.

“**Prior Week**” means for any week, the immediately preceding calendar week (Saturday through Friday) ending on the Friday of such week.

“**Proceeds**” has the meaning set forth in the Security Agreement.

“**Pro Rata Share**” means, with respect to each Lender, at any time a fraction (expressed as a percentage, carried out to the ninth decimal place), the numerator of which is the amount of

the Commitments and, if applicable and without duplication, Loans of such Lender under the applicable DIP Facility or DIP Facilities at such time and the denominator of which is the amount of the Aggregate Commitments under the applicable DIP Facility or DIP Facilities and, if applicable and without duplication, Loans under the applicable DIP Facility or DIP Facilities at such time.

“**Public Lender**” has the meaning set forth in Section 6.01.

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

“**Quarterly Financial Statements**” means the unaudited consolidated balance sheets and related consolidated statements of income and cash flows of the Borrower and its Subsidiaries for the fiscal quarters ended March 31, 2019, June 30, 2019, September 30, 2019 and March 31, 2020.

“**Real Property**” means, collectively, all right, title and interest (including any leasehold, mineral or other estate) in and to any and all parcels of or interests in real property owned or leased by any Person, whether by lease, license or other means, together with, in each case, all easements, hereditaments and appurtenances relating thereto, all improvements and appurtenant fixtures.

“**Register**” has the meaning set forth in Section 10.07(d).

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

“**Release**” means any spilling, leaking, seepage, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, disposing, depositing, dispersing or migrating in, into, onto or through the Environment or in an uncontained manner from or through any facility, property or equipment.

“**Reportable Event**” means any of the events set forth in Section 4043(c) of ERISA or the regulations issued thereunder, other than events for which the otherwise applicable notice period has been waived by regulation or otherwise by the PBGC.

“**Representative**” means, with respect to any series of Indebtedness permitted hereby, the trustee, DIP Agent, collateral agent, security agent or similar agent under the indenture or agreement pursuant to which such Indebtedness is issued, incurred or otherwise obtained, as the case may be, and each of their successors in such capacities.

“**Required DIP Lenders**” means, as of any date of determination, Lenders having more than 50% of the sum of the aggregate Outstanding Amount of all Loans; *provided that* the portion of the aggregate Outstanding Amount of all Loans held or deemed held by, any Defaulting Lender shall be excluded for purposes of making a determination of Required DIP Lenders.

“**Required Milestones**” means the milestone set forth in Section 6.25 or “Milestones,” “Required Milestones” or similar undertakings or requirements set forth in the DIP Order and/or the RSA.

“Responsible Officer” means the chief executive officer, president, vice president, chief financial officer, chief administrative officer, secretary or assistant secretary, treasurer or assistant treasurer, controller or other similar officer 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.

“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 Subsidiary thereof, 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 a Borrower’s Subsidiary’s equity holders, partners or members (or the equivalent Persons thereof).

“Rolling Four-Week Testing Period” means each cumulative period of four weeks ending on the Friday of each calendar week ending after the fourth week following the Closing Date.

“RSA” means the Restructuring Support Agreement, dated as of July [21], 2020 among the Loan Parties and the Lenders party thereto.

“S&P” means Standard & Poor’s Financial Services LLC, a division of McGraw Hill Financial, and any successor thereto.

“Sale Order” means an order approving the Sale Transaction in accordance with the Bidding Procedures (as defined in the RSA).

“Sale Process” means the marketing and sale process for the Sale Transaction, which shall be consistent in all material respects with the requirements of the RSA.

“Sale Transaction” means the transaction to effectuate the sale of all or substantially all of the Borrower’s consolidated assets, free and clear of liabilities (subject to customary exceptions) under Section 363 of the Bankruptcy Code pursuant to the Chapter 11 Cases, which transaction shall be consistent in all material respects with the requirements of the RSA.

“Same Day Funds” means immediately available funds.

“Sanctioned Country” means, at any time, a country or territory which is itself the subject or target of any comprehensive Sanctions (at the time of this Agreement, the Crimean region of Ukraine, Cuba, Iran, North Korea, Sudan and Syria).

“Sanctioned Person” means, at any time, (a) any Person listed in any Sanctions-related list of designated Persons maintained by the Office of Foreign Assets Control of the U.S. Department of the Treasury or the U.S. Department of State, or to the extent applicable, the United Nations Security Council, the European Union or Her Majesty’s Treasury of the United Kingdom,

(b) any Person operating, organized or resident in a Sanctioned Country or (c) any Person owned or controlled by any such Person or Persons described in clauses (a) and (b).

“**Sanctions**” means economic or financial sanctions or trade embargoes imposed, administered or enforced from time to time by (a) the U.S. government, including those administered by the Office of Foreign Assets Control of the U.S. Department of the Treasury or the U.S. Department of State, or (b) as applicable, the United Nations Security Council, the European Union or Her Majesty’s Treasury of the United Kingdom.

“**Searchlight**” means Searchlight Capital Partners, L.P. and any of its Controlled Investment Affiliates and funds under its control.

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

“**Second Lien Agent**” means Cortland Capital Market Services LLC.

“**Second Testing Period**” shall mean the period commencing four weeks prior to, and ending on, August 7, 2020, which is the Friday of the second calendar week ending after the Closing Date (which shall include one full week prior to the Closing Date, the week of the Closing Date and two full weeks following the Closing Date).

“**Secured Obligations**” means, collectively, the Obligations, and all obligations owing to the Secured Parties by the Borrower, whether direct or indirect, absolute or contingent, and whether for principal, reimbursement obligations, interest, fees, premiums, penalties, indemnifications, contract causes of action, costs, expenses or otherwise.

“**Secured Parties**” means, collectively, the DIP Agent, the Lenders, the Escrow Agent and each co-agent or sub-agent appointed by the DIP Agent from time to time pursuant to Section 9.05.

“**Securities Act**” means the Securities Act of 1933, as amended.

“**Security Agreement**” means a debtor-in-possession security agreement, substantially in the form of Exhibit F.

“**Security Agreement Supplement**” has the meaning set forth in the Security Agreement.

“**SPC**” has the meaning set forth in Section 10.07(h).

“**Specified Lender Advisors**” means (i) Gibson, Dunn & Crutcher LLP, as legal counsel, and (ii) Rothschild & Co US Inc., as financial advisor.

“**Specified Lender Advisors Fee Letters**” means (i) with respect to Gibson, Dunn & Crutcher LLP, that certain engagement letter dated March 25, 2020 and (ii) with respect to Rothschild & Co US Inc., that certain engagement letter dated March 26, 2020.

“**Stalking Horse Bidder**” has the meaning set forth in the Bidding Procedures.

“**Stalking Horse Sale Transaction**” means a Sale Transaction with the Stalking Horse Bidder pursuant to the Asset Purchase Agreement.

“**Statutory Reserves**” means a fraction (expressed as a decimal), the numerator of which is the number one and the denominator of which is the number one minus the aggregate of the maximum reserve percentages (including any marginal, special, emergency or supplemental reserves) expressed as a decimal established by the Board of Governors of the Federal Reserve System of the United States (the “**Board**”) and any other banking authority, domestic or foreign, to which the DIP Agent or any Lender (including any branch, Affiliate or other fronting office making or holding a Loan) is subject for Eurocurrency Liabilities (as defined in Regulation D of the Board). Eurocurrency Rate Loans shall be deemed to constitute Eurocurrency Liabilities and to be subject to such reserve requirements without benefit of or credit for proration, exemptions or offsets that may be available from time to time to any Lender under such Regulation D or any comparable regulation. Statutory Reserves shall be adjusted automatically on and as of the effective date of any change in any reserve percentage.

“**Subsidiary**” of a Person means a corporation, partnership, joint venture, limited liability company or other business entity (excluding, for the avoidance of doubt, any charitable organizations, and any other Person that meets the requirements of Section 501(c)(3) of the Code) of which (i) a majority of the shares of securities or other interests having ordinary voting power for the election of directors or other governing body (other than securities or interests having such power only by reason of the happening of a contingency) are at the time beneficially owned, (ii) more than half of the issued share capital is at the time beneficially owned or (iii) the management of which is otherwise controlled, directly or indirectly, through one or more intermediaries, or both, by such Person. Unless otherwise specified, all references herein to a “Subsidiary” or to “Subsidiaries” shall refer to a Subsidiary or Subsidiaries of the Borrower.

“**Subsidiary Guarantor**” means any Guarantor other than the Borrower.

“**Successor Case**” means, with respect to the Chapter 11 Cases, any subsequent proceedings under Chapter 7 of the Bankruptcy Code.

“**Successor Rate**” has the meaning set forth in Section 3.03(b).

“**Successor Rate Conforming Changes**” means, with respect to any proposed Successor Rate, any conforming changes to the definition of Base Rate, Interest Period, timing and frequency of determining rates and making payments of interest and other administrative matters as may be appropriate, in the reasonable discretion of the DIP Agent (at the Direction of the Required DIP Lenders), in consultation with the Borrower, to reflect the adoption of such Successor Rate and to permit the administration thereof by the DIP Agent (at the Direction of the Required DIP Lenders).

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

“**Third Testing Period**” shall mean the period commencing four weeks prior to, and ending on, August 14, 2020, which is the Friday of the third calendar week ending after the Closing Date (which shall include the week during which the Closing Date occurs and three full weeks following the Closing Date).

“**Transaction Expenses**” means any fees or expenses incurred or paid by the Borrower or any of its Subsidiaries in connection with the Transactions (including expenses in connection with hedging transactions), this Agreement and the other Loan Documents and the transactions contemplated hereby and thereby.

“**Transactions**” means, collectively, the transactions to occur pursuant to the Loan Documents, including (a) the funding of the DIP Facilities, (b) the execution and delivery of Loan Documents to be entered into on the Closing Date, (c) the Chapter 11 Cases, and (d) the payment of Transaction Expenses earned, due and payable on the Closing Date and otherwise the use of the proceeds thereof, as applicable.

“**Transferred Guarantor**” has the meaning set forth in Section 11.09.

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

“**Uniform Commercial Code**” or “**UCC**” means (i) the Uniform Commercial Code as the same may from time to time be in effect in the State of New York or (ii) the Uniform Commercial Code (or similar code or statute) of another jurisdiction, to the extent it applies to any item or items of Collateral. References in this Agreement and the other Loan Documents to specific sections of the Uniform Commercial Code are based on the Uniform Commercial Code as in effect in the

State of New York on the date hereof. In the event such Uniform Commercial Code is amended or another Uniform Commercial Code described in clause (ii) is applicable, such Section reference shall be deemed to be references to the comparable Section in such amended or other Uniform Commercial Code.

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

“**United States Tax Compliance Certificate**” has the meaning set forth in Section 3.01(e)(ii)(C) and is in substantially the form of Exhibit G hereto.

“**USA Patriot Act**” means the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Public Law 10756.

“**Variance Testing Period**” means, as applicable, each of the First Testing Period, the Second Testing Period, the Third Testing Period and, thereafter, each Rolling Four-Week Testing Period ending on the Friday of each calendar week ending thereafter.

“**wholly owned**” means, with respect to a Subsidiary of a Person, a Subsidiary of such Person all of the outstanding Equity Interests of which (other than (x) director’s qualifying shares and (y) shares issued to foreign nationals to the extent required by applicable Law) are owned by such Person and/or by one or more wholly owned Subsidiaries of such Person.

“**Withdrawal**” means a withdrawal from the Loan Proceeds Account made in accordance with Section 4.02.

“**Withdrawal Date**” means the date of the making of any Withdrawal.

“**Withdrawal Notice**” means a notice substantially in the form attached hereto as Exhibit D-2 to be delivered by the Borrower to the Escrow Agent and the DIP Agent from time to time to request a Withdrawal from the Loan Proceeds Account.

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

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

(b) 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.

(c) Article, Section, Exhibit and Schedule references are to the Loan Document in which such reference appears.

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

(e) 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.”

(f) 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.

(g) For purposes of determining compliance with any Section of Article 7 at any time, in the event that any Lien, Investment, Indebtedness, Disposition, Restricted Payment, Affiliate transaction, Contractual Obligation or prepayment of Indebtedness meets the criteria of one or more than one of the categories of transactions permitted pursuant to any clause of such Sections, the Borrower, in its sole discretion, from time to time, may classify or reclassify such transaction or item (or portion thereof) and will only be required to include the amount and type of such transaction (or portion thereof) in any one category.

(h) All references to “knowledge” of any Loan Party or a Subsidiary of the Borrower means the actual knowledge of a Responsible Officer.

(i) The words “asset” and “property” shall be construed as having the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights.

(j) All references to any Person shall be constructed to include such Person’s successors and assigns (subject to any restriction on assignment set forth herein) and, in the case of any Governmental Authority, any other Governmental Authority that shall have succeeded to any or all of the functions thereof.

(k) The word “will” shall be construed to have the same meaning and effect as the word “shall.”

SECTION 1.03 Accounting Terms. All accounting terms not specifically or completely defined herein shall be construed in conformity with, and all financial data (including financial ratios and other financial calculations) required to be submitted pursuant to this Agreement shall be prepared in conformity with, GAAP, except as otherwise specifically prescribed herein. Notwithstanding any other provision contained herein, (a) any lease that is treated as an operating lease for purposes of GAAP as of January 6, 2017 shall not be treated as Indebtedness, Attributable Indebtedness or as a Capitalized Lease and shall continue to be treated as an operating lease (and any future lease, if it were in effect on January 6, 2017, that would be treated as an operating lease for purposes of GAAP as of January 6, 2017 shall be treated as an operating lease), in each case for purposes of this Agreement, notwithstanding any actual or proposed change in GAAP after January 6, 2017 and (b) all terms of an accounting or financial nature used herein shall be construed, and all computations of amounts and ratios referred to herein shall be made, without giving effect to (i) Statement of Financial Accounting Standards 141R or ASC 805 (or any other financial accounting standard having a similar result or effect) or (ii) any election under Financial Accounting Standards Codification No. 825-Financial Instruments, or any

successor thereto (including pursuant to the Accounting Standards Codification), to value any Indebtedness of the Borrower or any Subsidiary at “fair value” as defined therein.

SECTION 1.04 Rounding. Any financial ratios required to be maintained by the Borrower pursuant to this Agreement (or required to be satisfied in order for a specific action to be permitted under this Agreement) shall be calculated by dividing the appropriate component by the other component, carrying the result to one place more than the number of places by which such ratio is expressed herein and rounding the result up or down to the nearest number (with a rounding up if there is no nearest number).

SECTION 1.05 References to Agreements, Laws, Etc. Unless otherwise expressly provided herein, (a) references to Organization Documents, agreements (including the Loan Documents) and other contractual instruments shall be deemed to include all subsequent amendments, refinancings, restatements, renewals, restructurings, extensions, supplements and other modifications thereto, but only to the extent that such amendments, refinancings, restatements, renewals, restructurings, extensions, supplements and other modifications are not prohibited by the Loan Documents; and (b) references to any Law shall include all statutory and regulatory provisions consolidating, amending, replacing, supplementing or interpreting such Law.

SECTION 1.06 Times of Day. Unless otherwise specified, all references herein to times of day shall be references to Eastern time (daylight or standard, as applicable).

SECTION 1.07 Timing of Payment or Performance. When the payment of any obligation or the performance of any covenant, duty or obligation is stated to be due or performance required on a day which is not a Business Day, the date of such payment (other than as described in the definition of “Interest Period”) or performance shall extend to the immediately succeeding Business Day.

SECTION 1.08 [Reserved]

SECTION 1.09 [Reserved]

SECTION 1.10 Currency Generally. For purposes of determining compliance with Article 7 with respect to any amount of Indebtedness, Lien or Investment in a currency other than Dollars, (i) no Default or Event of Default shall be deemed to have occurred solely as a result of changes in rates of currency exchange occurring after the time such Indebtedness or Investment is incurred (so long as such Indebtedness or Investment, at the time incurred, made or acquired, was permitted hereunder) and (ii) the equivalent amount in Dollars of the principal amount of Indebtedness or Lien, or of the applicable Investment, as applicable, denominated in a foreign currency shall be calculated based on the Exchange Rate in effect on the applicable determination date.

SECTION 1.11 Certifications. All certifications to be made hereunder by an officer or representative of a Loan Party shall be made by such person in his or her capacity solely as an

officer or a representative of such Loan Party, on such Loan Party's behalf and not in such Person's individual capacity (and without personal liability).

ARTICLE 2.
THE COMMITMENTS AND BORROWINGS

SECTION 2.01 The Commitments.

(a) Upon the satisfaction (or waiver by each Lender (in its sole discretion)) of the conditions precedent set forth in Section 4.01 and Section 4.02 and the terms and conditions of the DIP Order, each Lender severally agrees to make the Loans to the Borrower on the Funding Date in an amount equal to such Lender's Commitment in a single borrowing to be funded into the Loan Proceeds Account; *provided that*, notwithstanding anything herein to the contrary, all such Commitments shall terminate automatically and be reduced to zero on July 31, 2020 to the extent that the Funding Date has not occurred on or prior to such date (or such later date as agreed to by the Borrower and the Required DIP Lenders). The Borrower may request disbursements from the Loan Proceeds Account in accordance with Section 4.02. Amounts borrowed under this Section 2.01(a) and subsequently repaid or prepaid may not be re-borrowed.

SECTION 2.02 Borrowings or Conversions of Loans.

(a) The Borrowing and each conversion of a Loan denominated in Dollars from one Type to the other shall be made upon the Borrower's irrevocable notice to the DIP Agent. Each such notice must be received by the DIP Agent not later than (1) 12:00 noon, three Business Days prior to the requested date of the Borrowing or any conversion of Base Rate Loans to Eurocurrency Rate Loans, and (2) 10:00 a.m. New York City time on the requested date of the Borrowing of Base Rate Loans. The Borrowing of, and each conversion to, Eurocurrency Rate Loans shall be in a minimum principal amount of \$500,000, or a whole multiple of \$100,000, in excess thereof (or if lesser, the remaining available balance of the applicable Commitments). Except as provided in herein, the Borrowing of or conversion to Base Rate Loans shall be in a minimum principal amount of \$250,000 or a whole multiple of \$100,000 in excess thereof (or if lesser, the remaining available balance of the applicable Commitments). Each Committed Loan Notice shall specify (i) whether the Borrower is requesting the Borrowing, a conversion of Loans denominated in Dollars from one Type to the other, (ii) the requested date of the Borrowing or conversion, as the case may be (which shall be a Business Day), (iii) the principal amount and currency of Loans to be borrowed or converted, (iv) the Type of Loans to be borrowed or to which existing Loans are to be converted, (v) if applicable, that the Interest Period with respect thereto shall be one month and (vi) wire instructions of the account(s) to which funds are to be disbursed (it being understood, for the avoidance of doubt, that the amount to be disbursed to any particular account may be less than the minimum or multiple limitations set forth above so long as the aggregate amount to be disbursed to all such accounts pursuant to the Borrowing meets such minimums and multiples). If the Borrower fails to specify a Type of Loan in a Committed Loan Notice or fails to give a timely notice requesting a conversion, then the applicable Loans shall be made as, or converted to, Base Rate Loans. Any such automatic conversion to Base Rate Loans shall be effective as of the last day of the Interest Period then in effect with respect to the applicable Eurocurrency Rate Loans. If the Borrower requests the Borrowing of or conversion to

Eurocurrency Rate Loans in any such Committed Loan Notice, but fails to specify an Interest Period, it will be deemed to have specified an Interest Period of one month.

(b) Following receipt of a Committed Loan Notice, the DIP Agent shall promptly notify each Lender of the amount of its Pro Rata Share or other applicable share provided for under this Agreement of the applicable Type of Loans, and if no timely notice of a conversion is provided by the Borrower, the DIP Agent shall notify each Lender of the details of any automatic conversion to Base Rate Loans described in Section 2.02(a). In the case of the Borrowing, each Lender shall make the amount of its Loan available to the DIP Agent in Same Day Funds at the DIP Agent's Office not later than 2:00 p.m. New York City time on the Business Day specified in the applicable Committed Loan Notice. Upon receipt of all requested funds pursuant to this Section 2.02, the DIP Agent, subject to Section 4.01 and Section 4.02, will promptly (i) apply the proceeds of such Loans in accordance with the Flow of Funds Statement; *provided* that no less than \$50,000,000 of Loan proceeds (net of any fees set forth in the Premium Fee Letter paid on the Funding Date in respect of such Loans and any costs and expenses due and payable pursuant to Section 4.02) shall be deposited in the Loan Proceeds Account in accordance with the Flow of Funds Statement. The Loans shall be deemed made by the Lenders when so remitted and applied in accordance with the foregoing sentence. For the avoidance of doubt, the full amount of all Loans will begin to accrue interest on the Funding Date.

(c) Except as otherwise provided herein, a Eurocurrency Rate Loan may be continued or converted only on the last day of an Interest Period for such Eurocurrency Rate Loan unless the Borrower pays the amount due, if any, under Section 3.05 in connection therewith. During the occurrence and continuation of an Event of Default, the Required DIP Lenders may require that no Loans may be converted to or continued as Eurocurrency Rate Loans.

(d) The DIP Agent shall promptly notify the Borrower and the Lenders of the interest rate applicable to any Interest Period for Eurocurrency Rate Loans upon determination of such interest rate. The determination of the Eurocurrency Rate by the DIP Agent shall be conclusive in the absence of manifest error, unless otherwise objected to by the Required DIP Lenders by a Direction of the Required DIP Lenders. At any time that Base Rate Loans are outstanding, the DIP Agent shall notify the Borrower and the Lenders of any change in Citi's prime rate used in determining the Base Rate promptly following the public announcement of such change.

(e) After giving effect to the Borrowing, all conversions of Loans denominated in Dollars from one Type to the other, there shall not be more than 15 (or such greater amount as may be agreed by the DIP Agent in its sole discretion) Interest Periods in effect.

(f) The failure of any Lender to make the Loan to be made by it as part of the Borrowing shall not relieve any other Lender of its obligation, if any, hereunder to make its Loan on the date of the Borrowing, but no Lender shall be responsible for the failure of any other Lender to make the Loan to be made by such other Lender on the Funding Date.

(g) Unless the DIP Agent shall have received notice from a Lender prior to the date of the Borrowing that such Lender will not make available to the DIP Agent such Lender's Pro Rata Share or other applicable share provided for under this Agreement of such Borrowing,

the DIP Agent may assume that such Lender has made such Pro Rata Share or other applicable share provided for under this Agreement available to the DIP Agent on the date of such Borrowing in accordance with this Section 2.02, and the DIP Agent may, in reliance upon such assumption, make available on such date a corresponding amount in accordance with Section 2.02(b). If the DIP Agent shall have so made funds available, then, to the extent that such Lender shall not have made such portion available to the DIP Agent, each of such Lender and the Borrower severally agrees to repay to the DIP Agent promptly after written demand such corresponding amount together with interest thereon, for each day from the date such amount is made available to the Borrower until the date such amount is repaid to the DIP Agent at (i) in the case of the Borrower, the interest rate applicable at the time to the Loans comprising the Borrowing and in the case of such Lender, the Overnight Rate *plus* any administrative, processing, or similar fees customarily charged by the DIP Agent in accordance with the foregoing. A certificate of the DIP Agent submitted to any Lender with respect to any amounts owing under this Section 2.02(g) shall be conclusive in the absence of manifest error. If the Borrower and such Lender shall pay such interest to the DIP Agent for the same or an overlapping period, the DIP Agent shall promptly remit to the Borrower the amount of such interest paid by the Borrower for such period. If such Lender pays its share of the Borrowing to the DIP Agent, then the amount so paid shall constitute such Lender's Loan included in such Borrowing. Any payment by the Borrower shall be without prejudice to any claim the Borrower may have against a Lender that shall have failed to make such payment to the DIP Agent.

SECTION 2.03 [Reserved].

SECTION 2.04 [Reserved].

SECTION 2.05 Prepayments.

(a) Optional. The Borrower may, upon notice to the DIP Agent, at any time or from time to time voluntarily prepay the Loans in whole or in part without premium or penalty; *provided that* (1) such notice must be received by the DIP Agent not later than 11:00 a.m. New York City time (A) three Business Days prior to any date of prepayment of Eurocurrency Rate Loans and (B) on the date of prepayment of Base Rate Loans; (2) any prepayment of Eurocurrency Rate Loans shall be in a minimum principal amount of \$500,000, or a whole multiple of \$100,000 in excess thereof; and (3) any prepayment of Base Rate Loans shall be in a minimum principal amount of \$250,000 or a whole multiple of \$100,000 in excess thereof or, in each case, if less, the entire principal amount thereof then outstanding. Each such notice shall specify the date and amount of such prepayment and the Type(s) of Loans to be prepaid. The DIP Agent will promptly notify each Lender of its receipt of each such notice, and of the amount of such share provided for under Sections 2.12(g) of such prepayment. If such notice is given by the Borrower, the Borrower shall make such prepayment and the payment amount specified in such notice shall be due and payable on the date specified therein. Any prepayment of a Eurocurrency Rate Loan shall be accompanied by all accrued interest thereon, together with any additional amounts required pursuant to Section 3.05.

(b) Mandatory.

(i) [Reserved].

(ii) If (1) the Borrower or any Subsidiary thereof Disposes of any property or assets (other than any Disposition of any property or assets permitted by Sections 7.05(a), (b), (d), (e), (g), (h), (i), (j), and (l)), or (2) any Casualty Event occurs, which results in the realization or receipt by the Borrower or any Subsidiary of Net Proceeds, the Borrower shall cause to be prepaid on or prior to the date which is one (1) Business Day after the date of the realization or receipt by the Borrower or that Subsidiary of such Net Proceeds, an aggregate principal amount of Loans in an amount equal to 100% of all such Net Proceeds.

(iii) If the Borrower or any Subsidiary of the Borrower incurs or issues any Indebtedness after the Closing Date not permitted to be incurred or issued pursuant to Section 7.03 in an amount equal to 100% of all Net Proceeds received therefrom on or prior to the date which is one (1) Business Day after the receipt by the Borrower or such Subsidiary of such Net Proceeds.

(iv) [Reserved].

(v) [Reserved].

(vi) Notwithstanding any other provision of this Section 2.05, to the extent that the repatriation to the United States of any or all of the Net Proceeds of any Disposition by a Foreign Subsidiary (“**Foreign Disposition**”) or the Net Proceeds of any Casualty Event incurred by a Foreign Subsidiary (“**Foreign Casualty Event**”) would be (x) prohibited or delayed by applicable local law or (y) restricted by applicable material constituent documents, including as a result of minority ownership (so long as such restrictions were not implemented for the purpose of avoiding such mandatory prepayment requirements), an amount equal to the Net Proceeds that would be so affected were the Borrower or any Subsidiary of the Borrower to attempt to repatriate such cash will not be required to be applied to repay Loans at the times provided in this Section 2.05 so long, but only so long, as the applicable local law or applicable material constituent documents would not otherwise permit repatriation to the United States, and if within one year following the date on which the respective prepayment would otherwise have been required such repatriation of any of such affected Net Proceeds is permissible under the applicable local law or applicable material constituent documents, even if such cash is not actually repatriated at such time, an amount equal to the amount of the Net Proceeds will be promptly (and in any event not later than five Business Days) applied (net of an amount equal to the additional taxes of the Borrower, its Subsidiaries and the direct and indirect holders of Equity Interests in the Borrower that would be payable or reserved against and any additional costs that would be incurred as a result of a repatriation, whether or not a repatriation actually occurs) by the Borrower or its Subsidiaries to the repayment of the Loans pursuant to this Section 2.05; *provided that* such nonpayment shall not constitute an Event of Default (and such amounts shall be available (A) to repay local foreign Indebtedness, if any, or to be retained by the relevant Foreign Subsidiary, and (B) for

working capital purposes of the Borrower and its Subsidiaries, in each case, subject to the prepayment provisions in this Section 2.05(b)(vi)). For the avoidance of doubt, nothing in this Section 2.05 shall require the Borrower to cause any amounts to be repatriated to the United States (whether or not such amounts are used in or excluded from the determination of the amount of any mandatory prepayments hereunder).

(vii) [Reserved].

(viii) Concurrently with any mandatory prepayment of Loans required to be made by the Borrower pursuant to clauses (i) and (ii) of this Section 2.05(b), the Borrower shall notify the DIP Agent in writing of such payment. Each such notice shall specify the date of such prepayment and provide a reasonably detailed calculation of the aggregate amount of such prepayment to be made by the Borrower. The DIP Agent will promptly notify each Lender of the contents of the Borrower's prepayment notice and of such Lender's Pro Rata Share of the prepayment.

(c) Interest, Funding Losses, Etc. All prepayments under this Section 2.05 shall be accompanied by all accrued interest thereon, together with, in the case of any such prepayment of a Eurocurrency Rate Loan on a date prior to the last day of an Interest Period therefor, any amounts owing in respect of such Eurocurrency Rate Loan pursuant to Section 3.05.

SECTION 2.06 Termination or Reduction of Commitments. The Commitments of each Lender shall be automatically and permanently reduced to \$0 upon the funding of the Loans on the Funding Date.

SECTION 2.07 Repayment of Loans.

(a) The Borrower shall repay to the DIP Agent for the ratable account of the Lenders on the Maturity Date the aggregate principal amount of all Loans outstanding on such date.

(b) Upon the consummation of the Stalking Horse Sale Transaction, subject to the satisfaction, or waiver, of the conditions set forth in the Exit Facility Credit Agreement and otherwise substantially in accordance with the terms and conditions set forth in the Exit Facility Credit Agreement, and notwithstanding anything to the contrary herein or in any of the other Loan Documents, the Lenders and the Loan Parties acknowledge and agree, with the prior written consent of the Required DIP Lenders, that the Loans and other Obligations hereunder and under the other Loan Documents may be continued and/or converted into an exit term facility financing (the "**Exit Conversion**"). If the Required DIP Lenders provide such written consent to exercise the Exit Conversion, subject to the satisfaction or waiver by the Required DIP Lenders of the conditions contained in the Exit Facility Credit Agreement each Lender, severally and not jointly, hereby agrees to continue and/or convert its Loans hereunder outstanding on the closing date of the Stalking Horse Sale Transaction as loans and obligations under, and subject entirely and exclusively to the terms and provisions of, the definitive documentation to be mutually agreed (including a credit agreement governing the continuation and conversion of the Loans (the "**Exit Facility Credit Agreement**")) and related documentation to the extent that such documentation is substantially consistent with the Exit Facility Credit Agreement (as determined by the Required

DIP Lenders in their sole discretion) and is otherwise in form and substance satisfactory to the Required DIP Lenders.

SECTION 2.08 Interest.

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

(b) During the continuance of an Event of Default, the Borrower shall pay interest on principal and other amounts owing by it hereunder at a fluctuating interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by applicable Laws; *provided that* no interest at the Default Rate shall accrue or be payable to a Defaulting Lender so long as such Lender shall be a Defaulting Lender. Accrued and unpaid interest on such amounts (including interest on past due interest) shall be due and payable in cash upon written demand.

(c) Interest on each Loan shall be due and payable in arrears on each Interest Payment Date applicable thereto and at such other times as may be specified herein. Interest hereunder shall be due and payable in accordance with the terms hereof before and after judgment, and before and after the commencement of any proceeding under any Debtor Relief Law.

(d) For the avoidance of doubt, all interest accruing with respect to any Loans that have been fronted by the DIP Agent prior to the date on which such Loans have been purchased by the applicable Lender shall accrue for the account of the DIP Agent; provided, that to the extent such Loans have been purchased by the applicable Lender from the DIP Agent prior to 5:00 pm New York City time on the Funding Date, all interest with respect to such Loans shall accrue to the account of such Lender beginning on the Funding Date and ending on the date on which such Loans have been purchased by the applicable Lender.

SECTION 2.09 Fees.

(a) [Reserved]

(b) DIP Agent Fees. The Borrower shall pay to the DIP Agent and Escrow Agent such fees as shall have been separately agreed upon in writing in the amounts and at the times so specified. Such fees shall be fully earned when paid and shall not be refundable for any reason whatsoever (except as expressly agreed between the Borrower and the applicable Agent).

SECTION 2.10 Computation of Interest and Fees. All computations of interest for Base Rate Loans (except when the Base Rate is determined in accordance with clause (iii) of the definition thereof) shall be made on the basis of a year of 365 days, or 366 days, as applicable, and actual days elapsed. All other computations of fees and interest shall be made on the basis of a 360-day year and actual days elapsed. Interest shall accrue on each Loan for the day on which the Loan is made, and shall not accrue on a Loan, or any portion thereof, for the day on which the Loan or such portion is paid; *provided that* any Loan that is repaid on the same day on which it is

made shall, subject to Section 2.12(a), bear interest for one day. Each determination by the DIP Agent of an interest rate or fee hereunder shall be conclusive and binding for all purposes, absent manifest error, unless otherwise objected to by the Required DIP Lenders by a Direction of the Required DIP Lenders.

SECTION 2.11 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 DIP Agent, acting solely for this purpose as a non-fiduciary agent for the Borrower, in each case in the ordinary course of business. The accounts or records maintained by the DIP 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 DIP Agent in respect of such matters, the accounts and records of the DIP Agent shall control in the absence of manifest error. Upon the request of any Lender made through the DIP Agent, the Borrower shall execute and deliver to such Lender (through the DIP Agent) a Note payable to such Lender, which shall evidence such Lender's Loans in addition to such accounts or records. Each Lender may attach schedules to its Note and endorse thereon the date, Type (if applicable), amount and maturity of its Loans and payments with respect thereto.

(b) [Reserved].

(c) Entries made in good faith by the DIP Agent in the Register pursuant to Sections 2.11(a) and (b), and by each Lender in its account or accounts pursuant to Sections 2.11(a) and (b), 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 DIP 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.

SECTION 2.12 Payments Generally

(a) All payments to be made by the Borrower shall be made without condition or deduction for any counterclaim, defense, recoupment or setoff. Except as otherwise expressly provided herein, all payments by the Borrower hereunder shall be made to the DIP Agent, for the account of the respective Lenders to which such payment is owed, at the applicable DIP Agent's Office in Dollars and in Same Day Funds not later than 2:00 p.m. New York City time on the date specified herein. The DIP Agent will promptly distribute to each Lender its Pro Rata Share (or other applicable share provided for under this Agreement) of such payment in like funds as received by wire transfer to such Lender's applicable Lending Office. All payments received by the DIP Agent after 2:00 p.m. New York City time shall in each case be deemed received (in the

DIP Agent's sole discretion) on the next succeeding Business Day and any applicable interest or fee shall continue to accrue.

(b) Except as otherwise provided herein, if any payment to be made by the Borrower shall come due on a day other than a Business Day, payment shall be made on the next following Business Day, and such extension of time shall be reflected in computing interest or fees, as the case may be; *provided that*, if such extension would cause payment of interest on or principal of Eurocurrency Rate Loans to be made in the next succeeding calendar month, such payment shall be made on the immediately preceding Business Day.

(c) Unless the Borrower or any Lender has notified the DIP Agent, prior to the date any payment is required to be made by it to the DIP Agent hereunder, that the Borrower or such Lender, as the case may be, will not make such payment, the DIP Agent may assume that the Borrower or such Lender, as the case may be, has timely made such payment and may (but shall not be so required to), in reliance thereon, make available a corresponding amount to the Person entitled thereto. If and to the extent that such payment was not in fact made to the DIP Agent in Same Day Funds, then:

(i) if the Borrower failed to make such payment, each Lender shall forthwith on demand repay to the DIP Agent the portion of such assumed payment that was made available to such Lender in Same Day Funds, together with interest thereon in respect of each day from and including the date such amount was made available by the DIP Agent to such Lender to the date such amount is repaid to the DIP Agent in Same Day Funds at the applicable Overnight Rate from time to time in effect; and

(ii) if any Lender failed to make such payment, such Lender shall forthwith on demand pay to the DIP Agent the amount thereof in Same Day Funds, together with interest thereon for the period from the date such amount was made available by the DIP Agent to the Borrower to the date such amount is recovered by the DIP Agent (the "**Compensation Period**") at a rate per annum equal to the applicable Overnight Rate from time to time in effect. When such Lender makes payment to the DIP Agent (together with all accrued interest thereon), then such payment amount (excluding the amount of any interest which may have accrued and been paid in respect of such late payment) shall constitute such Lender's Loan included in the Borrowing. If such Lender does not pay such amount forthwith upon the DIP Agent's demand therefor, the DIP Agent may make a demand therefor upon the Borrower, and the Borrower shall pay such amount to the DIP Agent, together with interest thereon for the Compensation Period at a rate per annum equal to the rate of interest applicable to the Borrowing. Nothing herein shall be deemed to relieve any Lender from its obligation to fulfill its Commitment or to prejudice any rights which the DIP Agent or the Borrower may have against any Lender as a result of any default by such Lender hereunder.

A notice of the DIP Agent to any Lender or the Borrower with respect to any amount owing under this Section 2.12(c) shall be conclusive, absent manifest error.

(d) If any Lender makes available to the DIP Agent funds for any Loan to be made by such Lender as provided in the foregoing provisions of this Article 2, and such funds are

not made available to the Borrower by the DIP Agent because the conditions to the Borrowing set forth in Article 4 are not satisfied or waived in accordance with the terms hereof, the DIP Agent shall return such funds (in like funds as received from such Lender) to such Lender, without interest.

(e) The obligations of the Lenders hereunder to make Loans are several and not joint. The failure of any Lender to make any Loan or to fund any such participation on any date required hereunder shall not relieve any other Lender of its corresponding obligation to do so on such date, and no Lender shall be responsible for the failure of any other Lender to so make its Loan or purchase its participation.

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

(g) Pre-Default Allocation of Payments. At all times when Section 2.12(h) does not apply and except as otherwise expressly provided herein, monies to be applied to the Obligations and the Pre-Petition Obligations, whether arising from payments by the Loan Parties, realization on Collateral, setoff or otherwise, shall be allocated as follows (subject, in all respects, to the Carve-Out and the other terms of the DIP Order):

(i) *First*, to payment of that portion of the Obligations constituting fees, indemnities, expenses and other amounts (other than principal and interest, but including Attorney Costs and fees and expenses of the DIP Agent Counsel payable under the Loan Documents) payable to the DIP Agent and the Escrow Agent in their capacity as such pursuant to any Loan Document, until Full Payment;

(ii) *Second*, to payment of that portion of the Obligations constituting fees, indemnities and other amounts (other than principal and interest) payable to the Lenders pursuant to any Loan Document (including Attorney Costs and fees and expenses of Lender Advisors payable hereunder), ratably among them in proportion to the amounts described in this clause (ii) payable to them, until Full Payment;

(iii) *Third*, to pay interest and principal due in respect of all Loans, until Full Payment;

(iv) *Fourth*, to the payment of all other Obligations of the Loan Parties that are due and payable to the DIP Agent or the Escrow Agent and the other Secured Parties (other than any Defaulting Lenders) on such date, ratably based upon the respective aggregate amounts of all such Obligations owing to the DIP Agent or the Escrow Agent and the other Secured Parties (other than any Defaulting Lenders) on such date, until Full Payment;

(v) *Fifth*, ratably to pay any Obligations that are that are due and payable to Defaulting Lenders, until Full Payment;

(vi) *Sixth*, subject to the terms of the DIP Order and any applicable intercreditor agreement, (y) first, to the Pre-Petition Agent for the payment of the Pre-

Petition Obligations in accordance with the Pre-Petition Priority Loan Agreement until payment in full and (z) next to the Second Lien Agent for the payment of the Pre-Petition Second Lien Obligations in accordance with the Pre-Petition Second Lien Securities Purchase Agreement until payment in full; and

(vii) *Last*, the balance, if any, to the Borrower or as otherwise required by law.

Amounts shall be applied to each category of Obligations set forth above until Full Payment thereof and then to the next category. If amounts are insufficient to satisfy a category, they shall be applied on a *pro rata* basis among the Obligations in the category.

(h) Post-Default Allocation of Payments. Notwithstanding anything herein to the contrary, after the occurrence and during the continuation of an Event of Default, the Required DIP Lenders may elect that monies to be applied to the Obligations, whether arising from payments by the Loan Parties, realization on Collateral, setoff or otherwise, shall, to the extent elected by the Required DIP Lenders (in writing to the DIP Agent), be allocated as follows (subject, in all respects, to the Carve-Out and the other terms of the DIP Order):

(i) *First*, to payment of that portion of the Obligations constituting fees, indemnities, expenses and other amounts (other than principal and interest, but including Attorney Costs and fees and expenses of DIP Agent Counsel payable under the Loan Documents) payable to the DIP Agent and the Escrow Agent pursuant to any Loan Document in their capacity as such, until Full Payment;

(ii) *Second*, to payment of that portion of the Obligations constituting fees, indemnities and other amounts (other than principal and interest) payable to the Lenders pursuant to any Loan Document (including Attorney Costs and fees and expenses of the Lender Advisors payable hereunder), ratably among them in proportion to the amounts described in this clause (ii) payable to them, until Full Payment;

(iii) *Third*, to pay interest and principal due in respect of all Loans, until Full Payment;

(iv) *Fourth*, to the payment of all other Obligations of the Loan Parties that are due and payable to the DIP Agent or the Escrow Agent and the other Secured Parties (other than any Defaulting Lenders) on such date, ratably based upon the respective aggregate amounts of all such Obligations owing to the DIP Agent and the other Secured Parties (other than any Defaulting Lenders) on such date, until Full Payment;

(v) *Fifth*, ratably to pay any Obligations that are that are due and payable to Defaulting Lenders, until Full Payment;

(vi) *Sixth*, to pay any other Obligations until Full Payment;

(vii) *Seventh*, to the Pre-Petition Agents for the payment of the Pre-Petition Obligations in accordance with the Pre-Petition Credit Agreements; and

(viii) *Last*, the balance, if any, after Full Payment of the Obligations, to the Borrower or as otherwise required by any Laws.

Amounts shall be applied to each category of Obligations set forth above until Full Payment thereof and then to the next category. The allocations set forth in this Section 2.12(h) may be changed by agreement among the DIP Agent, the Escrow Agent and the Lenders without the consent of any Loan Party and are subject to Section 2.17 (regarding Defaulting Lenders). If amounts are insufficient to satisfy a category, they shall be applied on a *pro rata* basis among the Obligations in the category. Appropriate adjustments shall be made with respect to payments from other Loan Parties to preserve the allocation to Obligations otherwise set forth above in this Section 2.12(h). For the avoidance of doubt, subject to the terms of any applicable intercreditor agreement, nothing contained in this Agreement shall relieve or waive payment of the Pre-Petition Obligations in accordance with the Pre-Petition Priority Loan Agreement.

SECTION 2.13 **Sharing of Payments.** If, other than as provided elsewhere herein, any Lender shall obtain on account of the Loans made by it, any payment (whether voluntary, involuntary, through the exercise of any right of setoff, or otherwise) in excess of its ratable share (or other share contemplated hereunder) thereof, such Lender shall immediately (a) notify the DIP 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 in respect of 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 10.06 (including pursuant to any settlement entered into by the purchasing Lender in its discretion), such purchase shall to that extent be rescinded and each other Lender shall repay to the purchasing Lender the purchase price paid therefor, together with an amount equal to such paying Lender's ratable share (according to the proportion of (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. For the 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 (including the application of funds arising from the existence of a Defaulting Lender) or (B) any payment obtained by a Lender as consideration for the assignment or purchase of or sale or purchase of a participation in any of its Loans in connection with any assignment or participation 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 setoff, but subject to Section 10.09) 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 DIP Agent will keep records (which shall be conclusive and binding in the absence of manifest error) of participations purchased under this Section 2.13 and will in each case notify the Lenders following any such purchases or repayments. Each Lender that purchases a participation pursuant to this Section 2.13 shall from and after such purchase have the right to give all notices, requests, demands, directions and other communications under this Agreement with respect to the portion of the Obligations

purchased to the same extent as though the purchasing Lender were the original owner of the Obligations purchased.

SECTION 2.14 [Reserved].

SECTION 2.15 [Reserved].

SECTION 2.16 Reorganization Matters.

(a) The Chapter 11 Cases were commenced on the Petition Date in accordance with applicable law and proper notice thereof was given for (x) the motion seeking approval of the Interim Order, (y) the hearing for the entry of the Interim Order and (z) the hearing for the entry of the Final Order. The Debtors shall give, on a timely basis as specified in the DIP Orders, all notices required to be given to all parties specified in the DIP Orders.

(b) After entry of the Interim Order, and pursuant to and to the extent permitted in the Interim Order and the Final Order, the Obligations will constitute allowed administrative expense claims in the Chapter 11 Cases having priority over all administrative expense claims and unsecured claims against each Loan Party now existing or hereafter arising of any kind whatsoever, including, without limitation, all administrative expense claims of the kind specified in Sections 105, 326, 328, 330, 331, 503(b), 506(c), 507(a), 507(b), 546(c), 546(d), 726, 1113, 1114 or any other provision of the Bankruptcy Code or otherwise, as provided under Section 364(c)(1) of the Bankruptcy Code, subject only to the Carve-Out and the priorities set forth in the Interim Order or the Final Order, as applicable.

(c) After entry of the Interim Order (and the Final Order when applicable) and pursuant to and to the extent provided in the Interim Order and the Final Order, as applicable, the Obligations will be secured by a valid and perfected first priority Lien on all of the Collateral, (i) encumbered by no Liens other than Liens permitted by Section 6.02 and (ii) prior and superior to any other Person or Lien, in each case, other than the Carve-Out and subject to the priorities set forth in the Interim Order or the Final Order, as applicable.

(d) The Interim Order (with respect to the period prior to the entry of the Final Order) or the Final Order (with respect to the period on and after the entry of the Final Order), as the case may be, is in full force and effect and has not been reversed, stayed (whether by statutory stay or otherwise), modified or amended without the written consent of the DIP Agent (at the Direction of the Required DIP Lenders).

(e) Notwithstanding the provisions of Section 362 of the Bankruptcy Code and subject to the applicable provisions of the Interim Order or the Final Order, as the case may be, upon the Maturity Date (whether by acceleration or otherwise), the DIP Agent and Lenders shall be entitled to immediate payment of such Obligations in cash and to enforce the remedies provided for hereunder or under applicable law, without further notice, motion or application to, hearing before, or order by the Bankruptcy Court.

SECTION 2.17 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 10.01.

(ii) Reallocation of Payments. Any payment of principal, interest, fees or other amounts received by the DIP Agent for the account of that Defaulting Lender (whether voluntary or mandatory, at maturity, pursuant to Article 8 or otherwise), shall be applied at such time or times as may be determined by the DIP Agent as follows: *first*, to the payment of any amounts owing by that Defaulting Lender to the DIP Agent hereunder; *second*, as the Borrower may request (so long as no Default or Event of Default has occurred and is continuing), to the funding of any Loan in respect of which that Defaulting Lender has failed to fund its portion thereof as required by this Agreement, as reasonably determined by the DIP Agent; *third*, if so determined by the DIP 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 has occurred and is continuing, to the payment of any amounts owing to the Borrower as a result of any judgment of a court of competent jurisdiction obtained by the Borrower against that Defaulting Lender as a result of that Defaulting Lender's breach of its obligations under this Agreement; and *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 4.02 were satisfied or waived, such payment shall be applied solely to pay the Loans of all Non-Defaulting Lenders on a *pro rata* basis prior to being applied to the payment of any Loans of that Defaulting Lender until such time as all Loans are held by the Lenders *pro rata* in accordance with the Commitments. Any payments, prepayments or other amounts paid or payable to a Defaulting Lender that are applied (or held) to pay amounts owed by a Defaulting Lender shall be deemed paid to and redirected by that Defaulting Lender, and each Lender irrevocably consents hereto.

SECTION 2.18 Super Priority Nature of Obligations and DIP Agent's Liens; Payment of Obligations

(a) The priority of the Obligations and the DIP Agent's liens on the Collateral, claims and other interests shall be as set forth in the DIP Order.

(b) Upon the maturity (whether by acceleration or otherwise) of any of the Obligations under this Agreement or any of the other Loan Documents, the DIP Agent and the Lenders shall be entitled to immediate payment of such Obligations without application to or order of the Bankruptcy Court.

ARTICLE 3.
TAXES, INCREASED COSTS PROTECTION AND ILLEGALITY

SECTION 3.01 **Taxes.**

(a) For purposes of this Section, the term “applicable Laws” includes FATCA.

(b) Except as provided in this Section 3.01, any and all payments made by or on account of the Borrower or any Guarantor under any Loan Document shall be made free and clear of and without deduction for any Taxes, except to the extent required by any Laws. If the Borrower, any Guarantor or other applicable withholding agent shall be required by any Laws to make any deduction or withholding for or on account of any Taxes from or in respect of any sum payable under any Loan Document to the DIP Agent or any Lender, (i) if the Tax in question is an Indemnified Tax or Other Tax, the sum payable by the Borrower or any Guarantor shall be increased as necessary so that after all required deductions for Indemnified Taxes or Other Taxes have been made (including deductions applicable to additional sums payable under this Section 3.01), each Lender (or, in the case of a payment made to the DIP Agent for its own account, the DIP Agent) receives an amount equal to the sum it would have received had no such deductions for Indemnified Taxes or Other Taxes been made, (ii) the applicable withholding agent shall make such deductions, (iii) the applicable withholding agent shall pay the full amount deducted to the relevant taxation authority or other authority in accordance with applicable Laws, 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 possible thereafter), if the Borrower or any Guarantor is the applicable withholding agent, it shall furnish to the DIP Agent or such Lender (as the case may be) the original or a certified copy of a receipt evidencing payment thereof or other evidence acceptable to the DIP Agent or such Lender.

(c) In addition, the Borrower agrees to pay to the relevant Governmental Authority in accordance with applicable Laws, or at the option of the DIP Agent timely reimburse it for the payment of, any Other Taxes.

(d) The Borrower and each Guarantor agree to indemnify the DIP Agent and each Lender, within ten (10) days after demand therefor, for (i) the full amount of Indemnified Taxes and Other Taxes paid or payable by the DIP Agent or such Lender (including Indemnified Taxes or Other Taxes imposed on or attributable to amounts payable under this Section 3.01) and (ii) any expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the Governmental Authority. A certificate as to the amount of such payment or liability prepared in good faith and delivered by the DIP Agent or such Lender (or by the DIP Agent on behalf of such Lender), accompanied by a written statement thereof setting forth in reasonable detail (*provided that* the Lender need not be required to disclose any price sensitive or confidential information or to the extent prohibited by law or regulation) the calculation of such amounts, shall be conclusive absent manifest error.

(e) Each Lender shall, at such times as are reasonably requested by the Borrower or the DIP Agent, provide the Borrower and the DIP Agent with any documentation prescribed by Law or reasonably requested by the Borrower or the DIP Agent certifying as to any entitlement of such Lender to an exemption from, or reduction in, any applicable withholding Tax with respect to any payments to be made to such Lender under the Loan Documents. Each such Lender shall, whenever a lapse in time or change in circumstances renders such documentation (including any specific documentation required below in this Section 3.01(d)) obsolete, expired or inaccurate in any material respect, deliver promptly and on or before the date such documentation expires, becomes obsolete or inaccurate to the Borrower and the DIP Agent updated or other appropriate documentation (including any new documentation reasonably requested by the Borrower or the DIP Agent) or promptly notify the Borrower and the DIP Agent in writing of its inability to do so. In addition, each Lender shall, at such times as are reasonably requested by the Borrower or the DIP Agent, provide the Borrower and the DIP Agent with such other documentation prescribed by Law or reasonably requested by the Borrower or DIP Agent as will enable the Borrower or the DIP Agent to determine whether such Lender is subject to backup withholding or information reporting requirements. Notwithstanding any other provision of this Section 3.01(e), a Lender shall not be required to deliver any form pursuant to this Section 3.01(e) that such Lender is not legally eligible to deliver. Without limiting the foregoing:

(i) Each Lender that is a “United States person” (as defined in Section 7701(a)(30) of the Code) shall deliver to the Borrower and the DIP Agent on or before the date on which it becomes a party to this Agreement (and from time to time thereafter upon the request of the Borrower or the DIP Agent) executed copies of Internal Revenue Service Form W-9 certifying that such Lender is exempt from U.S. federal backup withholding Tax.

(ii) Each Lender that is not a United States person (as defined in Section 7701(a)(30) of the Code) shall deliver to the Borrower and the DIP Agent on or before the date on which it becomes a party to this Agreement (and from time to time thereafter upon the request of the Borrower or the DIP Agent) whichever of the following is applicable:

(A) executed copies of Internal Revenue Service Form W-8BEN or Form W-8BEN-E (or any successor forms) claiming eligibility for the benefits of an income tax treaty to which the United States is a party,

(B) executed copies of Internal Revenue Service Form W-8ECI (or any successor forms),

(C) in the case of a Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Code, (A) a certificate substantially in the form of Exhibit G hereto (any such certificate a “**United States Tax Compliance Certificate**”) and (B) executed copies of Internal Revenue Service Form W-8BEN or Form W-8BEN-E (or any successor forms),

(D) to the extent a Lender is not the beneficial owner (for example, where the Lender is a partnership, or has sold a participation), executed copies of Internal Revenue Service Form W-8IMY (or any successor forms) of the Lender,

accompanied by a Form W-8ECI, Form W-8BEN, Form W-8BEN-E, United States Tax Compliance Certificate, Form W-9, Form W-8IMY and/or any other required information from each beneficial owner, as applicable (*provided that*, if the Lender is a partnership (and not a participating Lender) and if one or more direct or indirect partners are claiming the portfolio interest exemption, the United States Tax Compliance Certificate may be provided by such Lender on behalf of such direct or indirect partner(s)), or

(E) executed copies of any other form prescribed by applicable U.S. federal income Tax Laws (including the Treasury Regulations) as a basis for claiming a complete exemption from, or a reduction in, United States federal withholding tax on any payments to such Lender under the Loan Documents.

(iii) Each Agent that is a “United States person” (as defined in Section 7701(a)(30) of the Code) shall deliver to the Borrower and the DIP Agent executed copies of Internal Revenue Service Form W-9 with respect to fees received on its own behalf, certifying that such Agent is exempt from U.S. federal backup withholding Tax.

(iv) Each Agent that is not a “United States person” (as defined in Section 7701(a)(30) of the Code) shall deliver to the Borrower and the DIP Agent executed copies of Internal Revenue Service Form W-8ECI with respect to fees received on its own behalf.

(v) If a payment made to a Lender under any Loan Document would be subject to U.S. federal withholding Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Lender shall deliver to the Borrower and the DIP Agent at the time or times prescribed by Laws and at such time or times reasonably requested by the Borrower or the DIP Agent such documentation prescribed by applicable Laws and such additional documentation reasonably requested by the Borrower or the DIP Agent as may be necessary for the Borrower and the DIP Agent to comply with their obligations under FATCA, to determine whether such Lender has or has not complied with such Person’s obligations under FATCA and, if necessary, to determine the amount to deduct and withhold from such payment. Solely for purposes of this Section 3.01(e)(v), “FATCA” shall include any amendments made to FATCA after the date of this Agreement.

(f) Any Lender claiming any additional amounts payable pursuant to this Section 3.01 shall use its commercially reasonable efforts (subject to such Lender’s overall internal policies of general application and legal and regulatory restrictions) to mitigate or reduce the additional amounts payable, which commercially reasonable efforts may include a change in the jurisdiction of its Lending Office (or any other measures reasonably requested by the Borrower) if such a change or other measures would reduce any such additional amounts (or any similar amount that may thereafter accrue) and would not, in the sole determination of such Lender, result in any unreimbursed cost or expense or be otherwise materially disadvantageous to such Lender.

(g) If any Lender or the DIP Agent determines, in its sole discretion exercised in good faith, that it has received a refund in respect of any Indemnified Taxes or Other Taxes as

to which indemnification or additional amounts have been paid to it by a Loan Party pursuant to this Section 3.01, it shall promptly remit such refund to such Loan Party (but only to the extent of indemnification or additional amounts paid by a Loan Party under this Section 3.01 with respect to the Indemnified Taxes or Other Taxes giving rise to such refund), net of all out-of-pocket expenses (including any Taxes) of the Lender or the DIP Agent, as the case may be, and without interest (other than any interest paid by the relevant taxing authority with respect to such refund net of any Taxes payable by the DIP Agent or Lender on such interest); *provided that* the Loan Parties, upon the request of the Lender or DIP Agent, as the case may be, agree promptly to return such refund (plus any penalties, interest or other charges imposed by the relevant taxing authority) to such party in the event such party is required to repay such refund to the relevant taxing authority. This Section 3.01 shall not be construed to require the DIP Agent or any Lender to make available its tax returns (or any other information relating to Taxes that it deems confidential) to any Loan Party or any other person.

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

SECTION 3.02 Illegality. If any Lender determines that any Law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for any Lender or its applicable Lending Office to make, maintain or fund Eurocurrency Rate Loans or to determine or charge interest rates based upon the Eurocurrency Rate, or any Governmental Authority has imposed material restrictions on the authority of such Lender to purchase or sell, or to take deposits of, Dollars in the London interbank market, in each case after the Closing Date then, on written notice thereof by such Lender to the Borrower through the DIP Agent, any obligation of such Lender to make or continue Eurocurrency Rate Loans, or to convert Base Rate Loans to Eurocurrency Rate Loans shall be suspended until such Lender notifies the DIP Agent and the Borrower that the circumstances giving rise to such determination no longer exist. Upon receipt of such notice, the Borrower shall promptly following written demand from such Lender (with a copy to the DIP Agent), convert all applicable Eurocurrency Rate Loans of such Lender to Base Rate Loans, either on the last day of the Interest Period therefor, if such Lender may lawfully continue to maintain such Eurocurrency Rate Loans to such day, or promptly, if such Lender may not lawfully continue to maintain such Eurocurrency Rate Loans. Upon any such prepayment or conversion, the Borrower shall also pay accrued interest on the amount so prepaid or converted and all amounts due, if any, in connection with such prepayment or conversion under Section 3.05. Each Lender agrees to use commercially reasonable efforts (subject to such Lender's overall internal policies of general application and legal and regulatory restrictions) to designate a different Lending Office if such designation will avoid the need for such notice, will not, in the good faith judgment of such Lender, otherwise be materially disadvantageous to such Lender and would not, in the sole determination of such Lender, result in any unreimbursed cost or expense or be otherwise materially disadvantageous to such Lender.

SECTION 3.03 Inability to Determine Rates.

(a) If the Required DIP Lenders determine (which determination shall be conclusive and binding upon the Borrower) after the Closing Date (i) that for any reason adequate

and reasonable means do not exist for determining the applicable Eurocurrency Rate for any requested Interest Period with respect to a proposed Eurocurrency Rate Loan, or (ii) that the Eurocurrency Rate for any requested Interest Period with respect to a proposed Eurocurrency Rate Loan does not adequately and fairly reflect the cost to such Lenders of funding such Loan, or that Dollar deposits are not being offered to banks in the London interbank eurodollar, or other applicable market for the applicable amount and the Interest Period of such Eurocurrency Rate Loan, the Required DIP Lenders will promptly so notify the Borrower and the DIP Agent in writing (after which the DIP Agent will promptly so notify each Lender). Thereafter, (x) the obligation of the Lenders to make or maintain Eurocurrency Rate Loans, or to convert Base Rate Loans to Eurocurrency Rate Loans shall be suspended and (y) in the event of a determination described in the preceding sentence with respect to the Eurocurrency Rate component of the Base Rate, the utilization of the Eurocurrency Rate component in determining the Base Rate shall be suspended, in each case, until the DIP Agent (upon the instruction of the Required DIP Lenders) revokes such notice. Upon receipt of such notice, the Borrower may revoke any pending request for a Borrowing of or conversion to such Eurocurrency Rate Loans or, failing that, will be deemed to have converted such request, if applicable, into a request for a Borrowing of Base Rate Loans in the amount specified therein.

(b) Notwithstanding anything to the contrary in this Agreement or any other Loan Documents, if the Required DIP Lenders notify the DIP Agent (with a copy to the Borrower) (after which the DIP Agent will promptly notify each Lender) that the Required DIP Lenders have determined, that:

(i) adequate and reasonable means do not exist for ascertaining the Eurocurrency Rate for any requested Interest Period, including, without limitation, because the screen rate used by the DIP Agent pursuant to the definition of “Eurocurrency Rate” is not available or published on a current basis and such circumstances are unlikely to be temporary; or

(ii) the supervisor for the administrator of the Eurocurrency Rate, or a Governmental Authority having jurisdiction over the DIP Agent has made a public statement identifying a specific date after which the Eurocurrency Rate, or the screen rate used by the DIP Agent pursuant to the definition of “Eurocurrency Rate”, shall no longer be made available, or used for determining the interest rate of loans,

then, after such receipt by the DIP Agent of such notice, as applicable, the DIP Agent (acting at the Direction of the Required DIP Lenders) and the Borrower may amend this Agreement to replace the Eurocurrency Rate with an alternate benchmark rate (including any mathematical or other adjustments to the benchmark (if any) incorporated therein) that has been broadly accepted by the syndicated loan market in the United States in lieu of the Eurocurrency Rate (any such proposed rate, a “**Successor Rate**”), together with any proposed Successor Rate Conforming Changes and, notwithstanding anything to the contrary in Section 10.01, any such amendment shall become effective at 5:00 p.m. (New York time) on the fifth Business Day after the DIP Agent (acting at the Direction of the Required DIP Lenders) shall have posted such proposed amendment to all Lenders and the Borrower.

If no Successor Rate has been determined and the circumstances under clause (b)(i) above exist, the obligation of the Lenders to make or maintain Eurocurrency Rate Loans shall be suspended, (to the extent of the affected Eurocurrency Rate Loans or Interest Periods). Upon receipt of such notice, the Borrower may revoke any pending request for a Borrowing of Eurocurrency Loans, conversion to Eurocurrency Rate Loans (to the extent of the affected Eurocurrency Loans or Interest Periods) or, failing that, will be deemed to have converted such request into a request for a Borrowing of Base Rate Loans in the amount specified therein.

SECTION 3.04 Increased Cost and Reduced Return; Capital Adequacy; Eurocurrency Rate Loan Reserves.

(a) If any Lender reasonably determines that as a result of the introduction of or any change in or in the interpretation of any Law, in each case after the Closing Date, or such Lender's compliance therewith, there shall be any material increase in the cost to such Lender of agreeing to make or making, funding or maintaining any Eurocurrency Rate Loans, or a material reduction in the amount received or receivable by such Lender in connection with any of the foregoing (excluding for purposes of this Section 3.04(a) any such increased costs or reduction in amount resulting from (i) Indemnified Taxes or Other Taxes indemnified pursuant to Section 3.01, or any Excluded Taxes or (ii) reserve requirements contemplated by Section 3.04(c)) and the result of any of the foregoing shall be to increase the cost to such Lender of making or maintaining the Eurocurrency Rate Loans (or of maintaining its obligations to make any Loan), or to reduce in any material respect the amount of any sum received or receivable by such Lender, then from time to time within fifteen (15) Business Days after written demand by such Lender setting forth in reasonable detail (*provided that* the Lender need not be required to disclose any price sensitive or confidential information or to the extent prohibited by law or regulation) such increased costs (with a copy of such demand to the DIP Agent given in accordance with Section 3.06), the Borrower shall pay to such Lender such additional amounts as will compensate such Lender for such increased cost or reduction. Notwithstanding anything herein to the contrary, for all purposes under this Agreement, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (y) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a change in Law, regardless of the date enacted, adopted or issued; *provided that* the applicable Lender is imposing such charges on other similarly situated borrowers under comparable credit facilities; *provided, further*, that any such payments due to increased costs from market disruption shall be limited to circumstances generally affecting the banking market.

(b) If any Lender determines that the introduction of any Law regarding capital adequacy or liquidity requirements or any change therein or in the interpretation thereof, in each case after the Closing Date, or compliance by such Lender (or its Lending Office) therewith, has the effect of reducing the rate of return on the capital of such Lender or any company controlling such Lender as a consequence of such Lender's obligations hereunder (taking into consideration its policies with respect to capital adequacy and such Lender's desired return on capital), then from time to time promptly following written demand of such Lender setting forth in reasonable detail (*provided that* the Lender need not be required to disclose any price sensitive or confidential information or to the extent prohibited by law or regulation) the charge and the calculation of such

reduced rate of return (with a copy of such demand to the DIP Agent given in accordance with Section 3.06), the Borrower shall pay to such Lender such additional amounts as will compensate such Lender for such reduction within fifteen (15) Business Days after receipt of such demand. Notwithstanding anything herein to the contrary, for all purposes under this Agreement, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (y) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a change in Law, regardless of the date enacted, adopted or issued; *provided that* the applicable Lender is imposing such charges on other similarly situated borrowers under comparable credit facilities; *provided, further*, that any such payments due to increased costs from market disruption shall be limited to circumstances generally affecting the banking market.

(c) The Borrower shall pay to each Lender, (i) as long as such Lender shall be required to maintain reserves with respect to liabilities or assets consisting of or including Eurocurrency funds or deposits, additional interest on the unpaid principal amount of each applicable Eurocurrency Rate Loan of the Borrower equal to the actual costs of such reserves allocated to such Loan by such Lender (as determined by such Lender in good faith, which determination shall be conclusive in the absence of manifest error), and (ii) as long as such Lender shall be required to comply with any reserve ratio requirement or analogous requirement of any other central banking or financial regulatory authority imposed in respect of the maintenance of the Commitments or the funding of any Eurocurrency Rate Loans of the Borrower, 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 in each case shall be due and payable on each date on which interest is payable on such Loan; *provided* the Borrower shall have received at least fifteen (15) days' prior notice (with a copy to the DIP Agent) of such additional interest or cost from such Lender. If a Lender fails to give notice fifteen (15) days prior to the relevant Interest Payment Date, such additional interest or cost shall be due and payable fifteen (15) days from receipt of such notice.

(d) Failure or delay on the part of any Lender to demand compensation pursuant to this Section 3.04 shall not constitute a waiver of such Lender's right to demand such compensation.

(e) If any Lender requests compensation under this Section 3.04, then such Lender will, if requested by the Borrower, use commercially reasonable efforts (subject to such Lender's overall internal policies of general application and legal and regulatory restrictions) to designate another Lending Office for any Loan affected by such event; *provided that* such efforts are made on terms that, in the commercially reasonable judgment of such Lender, cause such Lender and its Lending Office(s) to suffer no material economic, legal or regulatory disadvantage and would not, in the sole determination of such Lender, result in any unreimbursed cost or expense or be otherwise materially disadvantageous to such Lender; *provided, further*, that nothing in this Section 3.04(e) shall affect or postpone any of the Obligations of the Borrower or the rights of such Lender pursuant to Section 3.04(a), (b), (c) or (d).

SECTION 3.05 Funding Losses. Promptly following written demand of any Lender (with a copy to the DIP Agent) from time to time, which demand shall set forth in reasonable detail (*provided that* the Lender need not be required to disclose any price sensitive or confidential information or to the extent prohibited by law or regulation) the basis for requesting such amount, the Borrower shall promptly compensate such Lender for and hold such Lender harmless from any loss, cost or expense (excluding loss of anticipated profits and calculated without giving effect to any interest rate floor) actually incurred by it as a result of:

(a) any conversion, payment or prepayment of any Eurocurrency Rate Loan of the Borrower on a day other than the last day of the Interest Period for such Loan; or

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

including any loss or expense (excluding loss of anticipated profits) arising from the liquidation or reemployment of funds obtained by it to maintain such Loan or from fees payable to terminate the deposits from which such funds were obtained.

For purposes of calculating amounts payable by the Borrower to the Lenders under this Section 3.05, each Lender shall be deemed to have funded each Eurocurrency Rate Loan made by it at the Eurocurrency Rate for such Loan by a matching deposit or other borrowing in the London interbank eurodollar market for a comparable amount and for a comparable period, whether or not such Eurocurrency Rate Loan was in fact so funded.

SECTION 3.06 Matters Applicable to All Requests for Compensation.

(a) The DIP Agent or any Lender claiming compensation under this Article 3 shall deliver a certificate to the Borrower setting forth the additional amount or amounts to be paid to it hereunder which shall be conclusive in the absence of manifest error. In determining such amount, such Agent or such Lender may use any reasonable and customary averaging and attribution methods.

(b) With respect to any Lender's claim for compensation under Section 3.02, 3.03 or 3.04, the Borrower shall not be required to compensate such Lender for any amount incurred if such Lender notifies the Borrower of the event that gives rise to such claim more than 180 days after such event; *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. If any Lender requests compensation by the Borrower under Section 3.04, the Borrower may, by notice to such Lender (with a copy to the DIP Agent), suspend the obligation of such Lender to make or continue from one Interest Period to another applicable Eurocurrency Rate Loan or, if applicable, to convert Base Rate Loans into Eurocurrency Rate Loans, until the event or condition giving rise to such request ceases to be in effect (in which case the provisions of Section 3.06(c) shall be applicable); *provided that* such suspension shall not affect the right of such Lender to receive the compensation so requested.

(c) If the obligation of any Lender to make or continue any Eurocurrency Rate Loan, or to convert Base Rate Loans into Eurocurrency Rate Loans shall be suspended pursuant

to Section 3.06(b) hereof, such Lender's applicable Eurocurrency Rate Loans shall be automatically converted into Base Rate Loans (or, if such conversion is not possible, repaid), in each case, on the last day(s) of the then current Interest Period(s) for such Eurocurrency Rate Loans (or, in the case of an immediate conversion or repayment required by Section 3.02, on such earlier date as required by Law) and, unless and until such Lender gives notice as provided below that the circumstances specified in Section 3.02, 3.03 or 3.04 hereof that gave rise to such conversion no longer exist:

(i) to the extent that such Lender's Eurocurrency Rate Loans have been so converted, all payments and prepayments of principal that would otherwise be applied to such Lender's applicable Eurocurrency Rate Loans shall be applied instead to its Base Rate Loans; and

(ii) all Loans that would otherwise be made or continued from one Interest Period to another by such Lender as Eurocurrency Rate Loans shall be made or continued instead as Base Rate Loans (if possible), and all Base Rate Loans of such Lender that would otherwise be converted into Eurocurrency Rate Loans shall remain as Base Rate Loans.

(d) If any Lender gives notice to the Borrower (with a copy to the DIP Agent) that the circumstances specified in Section 3.02, 3.03 or 3.04 hereof that gave rise to the conversion of any of such Lender's Eurocurrency Rate Loans pursuant to this Section 3.06 no longer exist (which such Lender agrees to do promptly upon such circumstances ceasing to exist) at a time when Eurocurrency Rate Loans made by other Lenders under the applicable Facility are outstanding, if applicable, 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 Eurocurrency Rate Loans, to the extent necessary so that, after giving effect thereto, all Loans held by the Lenders holding Eurocurrency Rate Loans under such Facility and by such Lender are held *pro rata* (as to principal amounts, interest rate basis, and Interest Periods) in accordance with their respective Commitments for the applicable Facility.

SECTION 3.07 Replacement of Lenders under Certain Circumstances.

(a) If at any time (i) the Borrower becomes obligated to pay additional amounts or indemnity payments described in Section 3.01 or 3.04 as a result of any condition described in such Sections or any Lender ceases to make any Eurocurrency Rate Loans as a result of any condition described in Section 3.02 or 3.04 or requires the Borrower to pay additional amounts as a result thereof, (ii) any Lender becomes a Defaulting Lender, or (iii) any Lender becomes a Non-Consenting Lender, then the Borrower may, on five (5) Business Days' prior written notice to the DIP Agent and such Lender, (x) replace such Lender by causing such Lender to (and such Lender shall be obligated to) assign pursuant to Section 10.07(b) (so long as the assignment fee is paid by the Borrower in such instance) all of its rights and obligations under this Agreement, or clause (iii) to one or more Eligible Assignees; *provided that* neither the DIP Agent nor any Lender shall have any obligation to the Borrower to find a replacement Lender or other such Person; *provided, further,* that (A) in the case of any such assignment resulting from a claim for compensation under Section 3.04 or payments required to be made pursuant to Section 3.01, such assignment will result in a reduction in such compensation or payments and (B) in the case of any such assignment

resulting from a Lender becoming a Non-Consenting Lender, the applicable Eligible Assignees shall have agreed to, and shall be sufficient (together with all other consenting Lenders) to cause the adoption of, the applicable departure, waiver or amendment of the Loan Documents; or (y) terminate the Commitment (if any) of such Lender and in the case of a Lender, repay all Obligations of the Borrower due and owing to such Lender relating to the Loans and participations held by such Lender as of such termination date; *provided that* in the case of any such termination of a Non-Consenting Lender such termination shall be sufficient (together with all other consenting Lenders after giving effect hereto) to cause the adoption of the applicable departure, waiver or amendment of the Loan Documents and such termination shall be in respect of any applicable facility only in the case of clause (i).

(b) Any Lender being replaced pursuant to Section 3.07(a) above shall (i) execute and deliver an Assignment and Assumption with respect to such Lender's applicable Commitment, and (ii) deliver any Notes evidencing such Loans to the Borrower or the DIP Agent. Pursuant to such Assignment and Assumption, (A) the assignee Lender shall acquire all or a portion, as the case may be, of the assigning Lender's Commitment and outstanding Loans, (B) all obligations of the Borrower owing to the assigning Lender relating to the Loans, Commitments and participations so assigned shall be paid in full by the assignee Lender to such assigning Lender concurrently with such Assignment and Assumption and (C) upon such payment and, if so requested by the assignee Lender, delivery to the assignee Lender of the appropriate Note or Notes executed by the Borrower, the assignee Lender 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. In connection with any such replacement, if any such Lender does not execute and deliver to the DIP Agent a duly executed Assignment and Assumption reflecting such replacement within five (5) Business Days of the date on which the assignee Lender executes and delivers such Assignment and Assumption to such Lender, then such Lender shall be deemed to have executed and delivered such Assignment and Assumption without any action on the part of the Lender and the DIP Agent shall be entitled (but not obligated) to execute and deliver such Assignment and Assumption and/or such other documentation on behalf of such Lender.

(c) In the event that (i) the Borrower or the DIP 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, the consent, waiver or amendment in question requires the agreement of each affected Lender in accordance with the terms of Section 10.01 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.**"

SECTION 3.08 Survival. All the Loan Parties' obligations under this Article 3 shall survive termination of the Aggregate Commitments and repayment of all other Obligations hereunder.

ARTICLE 4.

CONDITIONS PRECEDENT OF EFFECTIVENESS, LENDING AND WITHDRAWALS

SECTION 4.01 Conditions to Closing Date. The effectiveness of this Agreement and the obligation of each Lender to make its Commitments and its Loans hereunder on the Closing Date is subject to satisfaction (or waiver, by the Required DIP Lenders in their sole discretion) of the following conditions precedent:

(a) The DIP Agent's receipt of the following, each of which shall be original, .pdf or facsimile copies or delivered by other electronic method unless otherwise specified, each properly executed (if applicable) by a Responsible Officer of each signing Loan Party, each in form and substance reasonably satisfactory to the Required DIP Lenders:

(i) executed counterparts of this Agreement;

(ii) a Note executed by the Borrower in favor of each Lender that has requested a Note at least two Business Days in advance of the Closing Date;

(iii) a copy of the Organization Documents in relation to each Loan Party;

(iv) the Interim Order shall have been entered by the Bankruptcy Court providing for the liens and claims thereunder pursuant to the Bankruptcy Code, and the Security Agreement and each other Collateral Document set forth on Schedule 4.01(a) required to be executed on the Closing Date as indicated on such schedule, duly executed by each Loan Party thereto, together with:

(A) each financing statements (Form UCC-1 or the equivalent) required by the Collateral Documents to be filed in order to create in favor of the DIP Agent, for the benefit of itself and the other Secured Parties, a perfected Lien on the Collateral described therein; and

(B) copies of Lien searches in each jurisdiction reasonably requested by the Specified Lender Advisors with respect to each Loan Party;

(v) (A) drafts of the "first day" pleadings for the Chapter 11 Cases, in each case, in form and substance reasonably satisfactory to the Required DIP Lenders (and with respect to any provisions that affect the rights or duties of the DIP Agent, the DIP Agent), not later than a reasonable time in advance of the Petition Date for the DIP Agent's counsel and the Specified Lender Advisors to review and analyze the same; (B) all motions, orders (including the "first day" orders) and other documents to be filed with or submitted to the Bankruptcy Court on the Petition Date shall be in form and substance reasonably satisfactory to the Required DIP Lenders (and with respect to any provisions that affect the rights or duties of the DIP Agent, the DIP Agent); and (C) all "first day" orders shall have been approved and entered by the Bankruptcy Court except as otherwise agreed by the Required DIP Lenders;

(vi) such certificates of good standing (to the extent such concept exists) from the applicable secretary of state of the state of organization of each Loan Party, certificates of resolutions or other corporate or limited liability company action, specimen signatures and/or incumbency certificates and/or other certificates of Responsible Officers of each Loan Party and resolutions of the board of directors, board of managers or members of each Loan Party (in each case, as appropriate or applicable) as the Specified Lender Advisors may reasonably require evidencing the identity, authority and capacity of each Responsible Officer thereof authorized to act as a Responsible Officer in connection with this Agreement and the other Loan Documents to which such Loan Party is a party or is to be a party on the Closing Date;

(vii) the RSA shall be in full force and effect and no default by any of the Loan Parties shall have occurred and be continuing (with all applicable grace periods having expired) under the RSA; and

(viii) the Asset Purchase Agreement, in form and substance satisfactory to the Required DIP Lenders shall have been filed with the Bankruptcy Court.

(b) The Debtors shall have completed a detailed internal and external communications plan relating to the Chapter 11 Cases and the restructuring contemplated thereunder, to be in form and substance satisfactory to the Required DIP Lenders.

(c) The Petition Date shall have occurred and each Debtor shall be a debtor and debtor-in-possession in the Chapter 11 Cases.

(d) All fees and expenses required to be paid hereunder, under the RSA, or under the Fee Letter (including reimbursement or payment of all out-of-pocket expenses (including the fees and expenses of the Lender Advisors, including the Specified Lender Advisors, as counsel to the Ad Hoc Group of Lenders, the DIP Agent Counsel and counsel to the Escrow Agent, and the fees and expenses of any local counsel, regulatory counsel, or other counsel of the Lenders or the Ad Hoc Group of Lenders)) (and, with respect to expenses, to the extent invoiced at least one (1) Business Day before the Closing Date (except as otherwise reasonably agreed by the Borrower)) shall have been paid on or prior to, or will be paid on, the Closing Date or will be paid from or offset against the proceeds of the initial funding under the Facilities.

(e) The DIP Agent shall have received at least two (2) Business Days prior to the Closing Date all documentation and other information about the Borrower and the Guarantors as shall have been reasonably requested in writing by the DIP Agent or any Lender at least four (4) calendar days prior to the Closing Date and as determined by the DIP Agent or any Lender to be required under applicable “know your customer” and anti-money laundering rules and regulations, including the USA Patriot Act.

Without limiting the generality of the provisions of Section 9.03(e), for purposes of determining compliance with the conditions specified in this Section 4.01, each Lender that has signed this Agreement shall be deemed to have consented to, approved or accepted or to be satisfied with, each document or other matter required thereunder to be consented to or approved

by or acceptable or satisfactory to a Lender unless the DIP Agent shall have received notice from such Lender prior to the proposed Closing Date specifying its objection thereto.

SECTION 4.02 Conditions to Borrowing and Each Withdrawal. In addition to the conditions set forth in Section 4.01 (all of which shall be conditions hereto as well), the Borrowing on the Funding Date and any Withdrawal on or after the Funding Date is subject to satisfaction or waiver of the following additional conditions precedent:

(a) With respect to the Borrowing only, the DIP Agent shall have received a Committed Loan Notice in accordance with the requirements hereof.

(b) With respect to the Borrowing only, the DIP Agent shall have received the Flow of Funds Statement.

(c) With respect to the Borrowing only, (i) the Bankruptcy Court shall have entered the Interim Order, which shall not have been reversed, modified, amended, stayed or vacated absent prior written consent of the DIP Agent (at the Direction of the Required DIP Lenders) (and with respect to any provisions that affect the rights or duties of the DIP Agent, the DIP Agent), and (ii) the DIP Agent and each Lender shall have received the Approved DIP Budget, in form and substance satisfactory to the Required DIP Lenders.

(d) The representations and warranties of each Loan Party set forth in Article 5 and in each other Loan Document shall be true and correct in all material respects on and as of the date of such Borrowing or Withdrawal, as applicable, with the same effect as though made on and as of such date, except to the extent such representations and warranties expressly relate to an earlier date, in which case they shall be true and correct in all material respects as of such earlier date; *provided that* any representation and warranty that is qualified as to “materiality,” “Material Adverse Effect” or similar language shall be true and correct (after giving effect to any qualification therein) in all respects on such respective dates.

(e) No Default or Event of Default shall exist or would result from such proposed Borrowing or Withdrawal or from the application of the proceeds therefrom.

(f) With respect to any Withdrawal after the Funding Date, (i) the Final Order shall have been entered and shall not have been vacated, stayed, reversed, modified, or amended, in whole or in any part, without the prior written consent of the DIP Agent (at the Direction of the Required DIP Lenders) and shall otherwise be in full force and effect; (ii) no motion for reconsideration of the Final Order shall have been timely filed by a Debtor or any of their Subsidiaries; and (iii) no appeal of the Final Order shall have been timely filed.

(g) The RSA shall be in full force and effect and no default by any of the Loan Parties shall have occurred and be continuing (with all applicable grace periods having expired) under the RSA.

(h) Subject to the terms of the DIP Order, all reasonable and documented out-of-pocket fees and expenses required to be paid under the Loan Documents shall have been paid (or will be paid from the proceeds of such Borrowing or Withdrawal, as applicable).

(i) With respect to any Withdrawal after the Funding Date, the Borrower shall have prepared and provided to the DIP Agent (for distribution to the Lenders) and the Specified Lender Advisors not later than 12:00 noon, two (2) Business Days prior to the requested date of the Withdrawal:

(i) an attachment, signed by a Responsible Officer of the Borrower, to the Withdrawal Notice certifying:

(A) the proceeds of the Loans will be used as set forth in the Approved DIP Budget;

(B) that Actual Liquidity shall not aggregate more than \$50,000,000 (less the amount of any wires that have been initiated on checks, in each case, that have not cleared at the time of the applicable Withdrawal Notice) at the time of the applicable Withdrawal Notice (the “**Withdrawal Condition**”);

(C) without giving effect to the withdrawal and the use of proceeds thereof, the Borrower was in compliance with Section 6.24 as of the most recently ended Variance Testing Period; and

(D) the aggregate Withdrawals made by the Borrower from the Loan Proceeds Accounts since the Petition Date does not exceed the amount permitted to be withdrawn pursuant to the terms of the DIP Order; and

(ii) a fully executed and completed Withdrawal Notice for countersignature and delivery to the DIP Agent (for distribution to the Lenders) and the Specified Lender Advisors in accordance with the Escrow Agreement to request the proposed Withdrawal thereunder (which draw notice shall correspond in all material respects, including the amount, use and disbursement instructions, to the Withdrawal Notice); and

(j) The minimum amount of such Withdrawal shall not be less than \$15,000,000; and

(k) the DIP Agent, the Specified Lender Advisors and the Lenders shall have received a written Withdrawal Notice by no later than 12:00 noon, two (2) Business Days prior to a proposed funding of such Withdrawal;

(l) prior to 12:00 noon on the proposed funding date of such Withdrawal, the DIP Agent has received a Direction of the Required DIP Lenders approving such Withdrawal Notice; provided that if the DIP Agent does not receive such Direction of the Required DIP Lenders prior to 12:00 noon on such date, such Withdrawal Notice shall be deemed withdrawn; and

(m) no more than three Withdrawals including the Withdrawal that is the subject of the Withdrawal Notice, shall have been made during the term of this Agreement.

By delivery of any Withdrawal Notice (and acceptance of any Withdrawal), the Borrower shall be deemed to have further represented and warranted to the Lenders that the calculations of the Withdrawal Condition are reasonable and accurate based on the facts and circumstances in existence at the time of its preparation, calculation and delivery. Upon receipt of the Withdrawal Notice and satisfaction of the conditions set forth in Section 4.01 and 4.02, the DIP Agent shall promptly direct the Escrow Agent to disburse funds. For the avoidance of doubt, proceeds of the Borrowing made on the Funding Date shall be disbursed in accordance with the Flow of Funds Statement and Section 2.02(b).

Notwithstanding the foregoing, if the Required DIP Lenders determine that the Borrower has failed to satisfy the conditions precedent set forth in Section 4.01 and 4.02 of this Agreement for a Withdrawal Notice and so advise the DIP Agent in writing (directly or through the Specified Lender Advisors), the DIP Agent (at the Direction of the Required DIP Lenders) shall communicate the same to the Escrow Agent.

On any date on which the Loans shall have been accelerated, any amounts remaining in the Loan Proceeds Account, as the case may be, may be applied by the DIP Agent (at the Direction of the Required DIP Lenders) to reduce the Loans then outstanding (other than with respect to amounts to fund the Carve-Out). None of the Loan Parties shall have (and each Loan Party hereby affirmatively waives) any right to withdraw, claim or assert any property interest in any funds on deposit in the Loan Proceeds Account upon the occurrence and continuance of any Default or Event of Default (except to fund the Carve-Out).

The acceptance by the Borrower of the Loans on the Funding Date or proceeds of a Withdrawal on the applicable Withdrawal Date shall conclusively be deemed to constitute a representation by the Borrower that each of the conditions precedent set forth in Sections 4.01 and 4.02 (as applicable) shall have been satisfied in accordance with its respective terms or shall have been irrevocably waived by the applicable relevant Person; *provided, however*, that the making of any such Loan or Withdrawal (regardless of whether the lack of satisfaction was known or unknown at the time), shall not be deemed a modification or waiver by the DIP Agent, any Lender or other Secured Party of the provisions of this Article 4 on any future occasion or operate as a waiver of (i) the right of DIP Agent and Lenders to insist upon satisfaction of all conditions precedent with respect to any subsequent funding or issuance, (ii) any Default or Event of Default due to such failure of conditions or otherwise or (iii) any rights of DIP Agent, the Escrow Agent or any Lender as a result of any such failure of the Loan Parties to comply.

ARTICLE 5. REPRESENTATIONS AND WARRANTIES

In order to induce the DIP Agent and the Lenders to enter into this Agreement and to furnish the Loans hereunder, each of Loan Parties and their Subsidiaries represent and warrant to the DIP Agent, the Escrow Agent and the Lenders on the Closing Date, the Funding Date and each Withdrawal Date (to the extent required to be true and correct for such Withdrawal or Borrowing, as applicable, pursuant to Article 4) that:

SECTION 5.01 Existence, Qualification and Power; Compliance with Laws.

Each Loan Party and each of their Subsidiaries (a) is a Person duly organized, incorporated or formed, validly existing and in good standing under the Laws of the jurisdiction of its incorporation, organization or formation to the extent such concept exists in such jurisdiction, (b) subject to the entry of the DIP Order, and subject to any restrictions arising on account of any Loan Party's status as a "debtor" under the Bankruptcy Code, has all requisite organizational power and authority to, in the case of the Loan Parties, execute, deliver and perform its obligations under the Loan Documents to which it is a party, (c) subject to the entry of the DIP Order, is duly qualified and in good standing (where relevant) under the Laws of each jurisdiction where its ownership, lease or operation of properties or the conduct of its business requires such qualification, (d) subject to the entry of DIP Order, and subject to any restrictions arising on account of any Loan Party's status as a "debtor" under the Bankruptcy Code, is in compliance with all Laws, orders, writs and injunctions and (e) subject to the entry of the DIP Order, and subject to any restrictions arising on account of any Loan Party's status as a "debtor" under the Bankruptcy Code, has all requisite governmental Licenses, authorizations, consents and approvals to operate its business as currently conducted; except in each case, referred to in clauses (a) (other than with respect to the Borrower), (c), (d) or (e), to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect.

SECTION 5.02 Authorization; No Contravention. The execution, delivery and performance by each Loan Party of each Loan Document to which such Person is a party, and the consummation of the Transactions, (a) have been duly authorized by all necessary corporate or other organizational action, and (b) do not (except where such is excused by the Bankruptcy Code) (i) contravene the terms of any of such Person's Organization Documents; (ii) subject to the entry of the DIP Order, conflict with or result in any breach or contravention of, or the creation of any Lien under (other than as permitted by Section 7.01, including the DIP Order, any restrictions arising on account of such Loan Party's status as a "debtor" under the Bankruptcy Code), or require any payment to be made under (x) any Contractual Obligation to which such Person is a party or by which it or any of its property or assets is bound or (y) any material order, injunction, writ or decree of any Governmental Authority or any arbitral award to which such Person or its property is subject; or (iii) subject to the entry of the Interim Order or Final Order, as applicable, violate any Law; except with respect to any conflict, breach or contravention or payment (but not creation of Liens) referred to in clauses (ii) and (iii), to the extent that such violation, conflict, breach, contravention or payment could not reasonably be expected to have a Material Adverse Effect.

SECTION 5.03 Governmental Authorization; Other Consents. Except for the entry of, or pursuant to the terms of, the DIP Order, no material approval, consent, exemption, authorization, or other action by, or notice to, or filing with, any Governmental Authority is necessary or required in connection with the execution, delivery or performance by, or enforcement against, any Loan Party of this Agreement or any other Loan Document, the grant by any Loan Party of the Liens granted by it pursuant to the Collateral Documents, the perfection or maintenance of the Liens created under the Collateral Documents (including the priority thereof) or the exercise by the DIP Agent or any Lender of its rights under the Loan Documents or the remedies in respect of the Collateral pursuant to the Collateral Documents, except for (i) the consent of the FCC to any transfer of control or assignment of the FCC Authorizations to the extent necessary to enforce any rights or remedies under this Agreement or under any other Loan Document, and (ii) those approvals, consents, exemptions, authorizations or other actions, notices

or filings, the failure of which to obtain or make could not reasonably be expected to have a Material Adverse Effect.

SECTION 5.04 Binding Effect. This Agreement and each other Loan Document has been duly executed and delivered by each Loan Party that is a party thereto. Upon entry by the Bankruptcy Court of the DIP Order, this Agreement and each other Loan Document constitutes a legal, valid and binding obligation of such Loan Party, enforceable against each Loan Party that is a party thereto in accordance with its terms, except as such enforceability may be limited by the effect of foreign Laws, rules and regulations as they relate to the granting of security interests in assets of, pledges of Equity Interests in or Indebtedness owed by Foreign Subsidiaries (the “**Enforcement Qualifications**”).

SECTION 5.05 Financial Statements; No Material Adverse Effect.

(a) The Annual Financial Statements and the Quarterly Financial Statements fairly present in all material respects the financial condition of the Loan Parties and their Subsidiaries (as applicable) as of the dates thereof and their results of operations for the period covered thereby in accordance with GAAP consistently applied throughout the periods covered thereby, (A) except as otherwise expressly noted therein and (B) subject, in the case of the Quarterly Financial Statements, to changes resulting from normal year-end adjustments and the absence of footnotes.

(b) Since December 31, 2019, there has been no event, circumstance or change, either individually or in the aggregate, that has had or could reasonably be expected to have a Material Adverse Effect.

(c) Except as set forth in the Annual Financial Statements, the Quarterly Financial Statements and the Chapter 11 Cases, there are no liabilities of any Loan Party of any kind, whether accrued, contingent, absolute, determined, determinable or otherwise, which would reasonably be expected to reasonably result in a Material Adverse Effect.

Each Lender and the DIP Agent hereby acknowledges and agrees that the Loan Parties and their Subsidiaries may be required to restate historical financial statements as the result of the implementation of changes in GAAP, or the interpretation thereof, and that any such restatement required solely as a result of such changes will not in itself result in a Default under the Loan Documents.

SECTION 5.06 Litigation. Except for the Chapter 11 Cases, there are no actions, suits, proceedings, claims or disputes pending or, to the knowledge of the Borrower, threatened in writing, at law, in equity, in arbitration or before any Governmental Authority, by or against a Loan Party or any of their Subsidiaries or against any of their properties or revenues that have a reasonable likelihood of adverse determination and such determination, either individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

SECTION 5.07 Ownership of Property; Liens. The Borrower and each of its Subsidiaries has good record title 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 (a) as set forth on Part I of Schedule 5.07, (b) minor defects in title that

do not materially interfere with its ability to conduct its business or to utilize such assets for their intended purposes, (c) Liens permitted by Section 7.01 and (d) where the failure to have such title could not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect. Part II of Schedule 5.07 sets forth a list of all real property owned in fee simple by each Loan Party as of the Closing Date.

SECTION 5.08 Environmental Matters. Except as could not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect:

(a) each Loan Party and its respective properties and operations are and have been in compliance with all Environmental Laws, which includes obtaining and maintaining all applicable Environmental Permits required under such Environmental Laws to carry on the business of the Loan Parties;

(b) the Loan Parties have not received any written notice that alleges any of them is in violation of or potentially liable under any Environmental Laws, and none of the Loan Parties nor any of the Real Property is the subject of any claims, investigations, liens, demands, or judicial, administrative or arbitral proceedings pending or, to the knowledge of the Borrower, threatened in writing, under any Environmental Law or to revoke or modify any Environmental Permit held by any of the Loan Parties;

(c) there has been no Release of Hazardous Materials on, at, under or from any Real Property or facilities owned, operated or leased by any of the Loan Parties, or, to the knowledge of the Borrower, Real Property formerly owned, operated or leased by any Loan Party or arising out of the conduct of the Loan Parties that could reasonably be expected to require investigation, remedial activity or corrective action or cleanup or could reasonably be expected to result in the Borrower or any of its Subsidiaries incurring liability under any Environmental Laws; and

(d) there are no facts, circumstances or conditions arising out of or relating to the operations of the Loan Parties or Real Property or facilities owned, operated or leased by any of the Loan Parties or, to the knowledge of the Borrower, Real Property or facilities formerly owned, operated or leased by the Loan Parties that could reasonably be expected to result in Borrower or any of its Subsidiaries incurring liability under any Environmental Laws.

The representations and warranties contained in this Section 5.08 are the sole and exclusive representations and warranties of the Loan Parties with respect to matters arising under or relating to Environmental Laws, Environmental Permits, Environmental Liabilities or Hazardous Materials.

SECTION 5.09 Taxes. Except as would not, either individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect, or is excused by the Bankruptcy Court or as a result of the filing of the Chapter 11 Cases, each of the Loan Parties and their Subsidiaries have timely filed all tax returns required to be filed, and have paid all Taxes levied or imposed upon them or their properties, income, profits or assets, that are due and payable (including in their capacity as a withholding agent), except those which are being contested in good faith by appropriate proceedings diligently conducted and for which adequate reserves have

been provided in accordance with GAAP or the nonpayment of which is required under the Bankruptcy Code. To the knowledge of the Loan Parties, there is no proposed Tax deficiency or assessment against the Loan Parties or any of their Subsidiaries that, if made would, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect.

SECTION 5.10 ERISA Compliance.

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

(b) (i) No ERISA Event has occurred or is reasonably expected to occur; (ii) neither any Loan Party, any Subsidiary thereof, nor any ERISA Affiliate has incurred, or reasonably expects to incur, any liability under Title IV of ERISA with respect to any Pension Plan (other than premiums due but not delinquent under Section 4007 of ERISA); (iii) neither any Loan Party, any Subsidiary thereof, nor any ERISA Affiliate 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 or 4243 of ERISA with respect to a Multiemployer Plan; and (iv) neither any Loan Party, any Subsidiary thereof, nor any ERISA Affiliate has engaged in a transaction that could reasonably be expected to be subject to Sections 4069 or 4212(c) of ERISA; except, with respect to each of the foregoing clauses of this Section 5.10(b), as would not reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect.

(c) Except as could not, either individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect, each Foreign Plan is in compliance with its terms and with the requirements of any and all applicable laws, statutes, rules, regulations and orders and has been maintained, where required, in good standing with applicable regulatory authorities. Except as could not, either individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect: (i) all contributions required to be made with respect to a Foreign Plan have been timely made; (ii) no Loan Party has incurred any obligations in connection with the termination of, or withdrawal from, any Foreign Plan; and (iii) the present value of the accrued benefit liabilities (whether or not vested) under each Foreign Plan, determined as of the end of the Borrower's most recently ended fiscal year on the basis of reasonable actuarial assumptions, did not exceed the current value of the assets of such Foreign Plan allocable to such benefit liabilities.

SECTION 5.11 Subsidiaries; Equity Interests. After giving effect to the Transactions, no Loan Party has any Subsidiaries other than those specifically disclosed on Schedule 5.11, and all of the outstanding Equity Interests owned by the Loan Parties (or a Subsidiary of any Loan Party) in such Subsidiaries have been validly issued and are fully paid and all Equity Interests owned by a Loan Party (or a Subsidiary of any Loan Party) in such Subsidiaries are owned free and clear of all Liens except any Lien that is permitted under Section 7.01. As of the Closing Date, Schedule 5.11 (a) sets forth the name and jurisdiction of each Subsidiary that is a Loan Party, the location of the chief executive office of each Loan Party, the organizational identification number, if any, of each Loan Party that is a registered organization, and the Federal Taxpayer Identification Number, if any, of each Loan Party, (b) sets forth the ownership interest of each Subsidiary thereof in each Subsidiary, including the percentage of such ownership and (c)

identifies each Subsidiary that is a Subsidiary the Equity Interests of which are required to be pledged on the Closing Date (or such later time as provided herein) pursuant to the Collateral and Guarantee Requirement.

SECTION 5.12 Margin Regulations; Investment Company Act.

(a) The Borrower is not engaged and will not engage, principally or as one of its important activities, in the business of purchasing or carrying Margin Stock, or extending credit for the purpose of purchasing or carrying Margin Stock, and no proceeds of the Borrowing will be used for any purpose that violates Regulation T, U or X of the Board.

(b) No Loan Party nor any of Subsidiary thereof is or is required to be registered as an “investment company” under the Investment Company Act of 1940.

SECTION 5.13 Disclosure. No report, financial statement, certificate or other written information furnished by or on behalf of any Loan Party (other than projected financial information, *pro forma* financial information, budgets, estimates and information of a general economic or industry nature) to the DIP 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 (as modified or supplemented by other information so furnished) when taken as a whole contains any material misstatement of fact or omits to state any material fact necessary to make the statements therein (when taken as a whole), in the light of the circumstances under which they were made, not materially misleading. With respect to projected financial information and *pro forma* financial information, the Borrower represents that such information was prepared in good faith based upon assumptions believed to be reasonable at the time furnished, it being understood that such projected financial information and *pro forma* financial information are not to be viewed as facts or as a guarantee of performance or achievement of any particular results and that actual results may vary from such forecasts and that such variations may be material and that no assurance can be given that the projected results will be realized.

SECTION 5.14 Labor Matters. Except as, individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect: (a) there are no strikes or other labor disputes against the Borrower or any of its Subsidiaries pending or, to the knowledge of the Borrower, threatened; (b) hours worked by and payments made to employees of the Borrower or any of its Subsidiaries have not been in violation of the Fair Labor Standards Act of 1938 or any other applicable Laws dealing with such matters; and (c) all payments due from the Borrower or any of its Subsidiaries on account of employee health and welfare insurance have been paid or accrued as a liability on the books of the relevant party.

SECTION 5.15 Intellectual Property; Licenses, Etc. The Borrower and each of its Subsidiaries owns, licenses, possesses or otherwise has the right to use all of the trademarks, service marks, trade names, domain names, copyrights, patents, patent rights, software, know-how, trade secrets, database rights, design rights and other intellectual property rights (collectively, “**IP Rights**”) that are material to, or are reasonably necessary for, the operation of its businesses as currently conducted, except to the extent the failure to own, license, possess or otherwise have the right to use such IP Rights, either individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect. Each Loan Party’s (and each of their Subsidiary’s) present

business operations do not infringe upon any IP Rights held by any Person except for such infringements, individually or in the aggregate, which could not reasonably be expected to have a Material Adverse Effect or be material to the business of the Loan Parties. No claim or litigation regarding any IP Rights owned, used or held for use by the Borrower or any Subsidiary thereof is pending or, to the knowledge of the Borrower, threatened, against any Loan Party or any of their Subsidiaries, which, either individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect or be material to the business of a Loan Party or Subsidiary thereof.

As of the Closing Date, all registrations and applications for registration of IP Rights under the name of each Loan Party listed on Schedule 5.15 are solely owned by such Loan Party free and clear of all Liens (other than Liens permitted hereunder), and are valid and in full force and effect, except, in each case, to the extent failure of any of the foregoing to be valid and in full force and effect could not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect.

SECTION 5.16 **[Reserved].**

SECTION 5.17 **FCC Authorizations.** The FCC Authorizations constitute all Licenses and authorizations issued by the FCC that are necessary for the operation of the business of the Borrower and its Subsidiaries as currently conducted except as could not reasonably be expected to have a Material Adverse Effect. The FCC Authorizations are in full force and effect and have not expired, been revoked, suspended, rescinded, or terminated and are not subject to any conditions or requirements that have not been imposed upon all such authorizations generally except as could not reasonably be expected to have a Material Adverse Effect. Except as could not reasonably be expected to result in a Material Adverse Effect, the Borrower and its Subsidiaries operate their business in compliance with the terms of the FCC Authorizations and the Communications Act. To the knowledge of Borrower and except as would not reasonably be expected to result in a Material Adverse Effect, there is no action pending or, to the knowledge of the Borrower, threatened before the FCC to revoke, refuse to renew, suspend, or modify any of the FCC Authorizations other than proceedings to amend FCC rules of general applicability.

SECTION 5.18 **USA Patriot Act; OFAC; FCPA.**

(a) To the extent applicable, each the Borrower and its Subsidiaries (i) is in compliance, in all material respects, with (x) the Trading with the Enemy Act, as amended, and each of the foreign assets control regulations of the United States Department of the Treasury (31 CFR Subtitle B, Chapter V, as amended) and any other enabling legislation or executive order relating thereto, (y) the USA Patriot Act and (z) Sanctions, and (ii) will not directly or indirectly use the proceeds of the Loans, or lend, contribute or otherwise make available such proceeds to any Subsidiary, joint venture partner or other Person to fund or facilitate any activities or business of any kind that would constitute or result in a violation of Sanctions.

(b) None of the Borrower, any Subsidiary thereof nor, to the knowledge of the Borrower, any director or officer of the Borrower or any Subsidiary thereof is a Sanctioned Person; and the Borrower will not, directly or indirectly, use the proceeds of the Loans or otherwise make available such proceeds to any Person, for the purpose of financing activities (except for Licensed

Activities) of or with any Person that, at the time of such financing, is (i) a Sanctioned Person or (ii) located in a Sanctioned Country.

(c) No part of the proceeds of the Loans will be used, directly or indirectly, by the Loan Parties or any Subsidiary thereof 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.

(d) Schedule 5.18(d) sets forth as of the Closing Date each License pursuant to which the Borrower or any of its Subsidiaries is conducting Licensed Activities.

SECTION 5.19 **Security Documents.** The Collateral Documents are effective to create (to the extent described therein) in favor of the DIP Agent, for the benefit of the Secured Parties, a legal, valid and enforceable security interest in or liens on the Collateral described therein and the proceeds thereof, except as to enforcement, as the same may be limited by Bail-In Action, general equitable principles (whether considered in a proceeding in equity or at law) and an implied covenant of good faith and fair dealing. Upon the entry by the Bankruptcy Court of the DIP Order, and in accordance therewith, the security interests and liens granted pursuant to the DIP Order shall automatically, and without further action, constitute a perfected security interest in (to the extent intended to be created thereby and required to be perfected under the Loan Documents) all right, title and interest of each pledgor or mortgagor (as applicable) party thereto in the Collateral described therein with respect to such pledgor or mortgagor (as applicable, and subject to the Carve-Out).

SECTION 5.20 **EEA Financial Institutions.** Neither the Borrower nor any Guarantor is an EEA Financial Institution.

SECTION 5.21 **Beneficial Ownership Certification.** As of the Closing Date, the information included in any Beneficial Ownership Certification provided on or before the Closing Date to any Lender in connection with this Agreement is true and correct in all respects.

ARTICLE 6.

AFFIRMATIVE COVENANTS

So long as any Lender shall have any Commitment hereunder, any Loan or other Obligation (other than contingent obligations not yet due and owing as to which no claim has been asserted) hereunder which is accrued and payable shall remain unpaid or unsatisfied, then from and after the Closing Date, the Borrower shall, and shall (except in the case of the covenants set forth in Sections 6.01, 6.02 and 6.03) cause each of its respective Subsidiaries to:

SECTION 6.01 **Financial Statements.**

(a) Commencing with the fiscal year ended December 31, 2020, deliver to the DIP Agent for prompt further distribution to each Lender, within one hundred twenty (120) days after the end of each fiscal year, a consolidated balance sheet of the Borrower and its Subsidiaries, as at the end of such fiscal year and the related consolidated statements of income or operations, stockholders' equity and cash flows for such fiscal year, setting forth in each case in comparative

form the figures for the previous fiscal year, all in reasonable detail (together with, in all cases, a customary management summary) and prepared in accordance with GAAP, audited and accompanied by a report and opinion of Marcum LLP or other independent registered public accounting firm of nationally recognized standing or other independent registered public accounting firm approved by the Required DIP Lenders, which report and opinion shall be prepared in accordance with generally accepted auditing standards;

(b) Deliver to the DIP Agent for prompt further distribution to each Lender, as soon as available but in any event within sixty (60) days after the end of each of the first three fiscal quarters of each fiscal year of the Borrower, a consolidated balance sheet of the Borrower and its Subsidiaries, as at the end of such fiscal quarter and the related (i) consolidated statements of income or operations for such fiscal quarter and for the portion of the fiscal year then ended and (ii) consolidated statements of cash flows for such fiscal quarter and the portion of the fiscal year then ended, setting forth in each case in comparative form the figures for the corresponding fiscal quarter of the previous fiscal year and the corresponding portion of the previous fiscal year, all in reasonable detail (together with, in all cases, a customary management summary) and certified by a Responsible Officer of the Borrower as fairly presenting in all material respects the financial condition, results of operations and cash flows of the Borrower and its Subsidiaries in accordance with GAAP, subject only to normal year-end audit adjustments and the absence of footnotes; and

(c) Deliver to the DIP Agent for prompt further distribution to each Lender, as soon as available but in any event within thirty (30) days after the end of each month of the Borrower (or, with respect to the first month ending after the Closing Date, forty-five (45) days after the end of such month), (x) a consolidated balance sheet of the Borrower and its Subsidiaries, as at the end of such month and the related (i) consolidated statements of income or operations for such month and for the portion of the fiscal year then ended and (ii) consolidated statements of cash flows for such month and the portion of the fiscal year then ended, setting forth in each case in comparative form the figures for the corresponding month of the previous fiscal year and the corresponding portion of the previous fiscal year, all in reasonable detail and certified by a Responsible Officer of the Borrower as fairly presenting in all material respects the financial condition, results of operations and cash flows of the Borrower and its Subsidiaries in accordance with GAAP, subject only to normal year-end audit adjustments and the absence of footnotes and (y) to the extent that any Subsidiaries are not Debtors, the monthly financial information required to be provided by this clause (c) will include a reasonably detailed presentation of the financial condition and results of operations of the Debtors separate from the financial condition and results of operations of the Subsidiaries of the Borrower that are not Debtors.

The required date of delivery of any financial statement or other document referenced in Sections 6.01(a)-(c) may be extended to such later date as the DIP Agent (acting at the Direction of the Required DIP Lenders in their sole discretion) may agree in writing.

Documents required to be delivered pursuant to Sections 6.01 and 6.02(a) through (d) may be delivered electronically and if so delivered, shall be deemed to have been delivered (a) on the date (i) on which the Borrower posts such documents, or provides a link thereto on the website on the Internet at the website address listed on Schedule 10.02(a); or (ii) on which such documents are posted on the Borrower's behalf on IntraLinks or another relevant website, if any, to which each Lender and the DIP Agent have access (whether a commercial, third-party website or whether

sponsored by the DIP Agent) and (b) with respect to documents required to be delivered pursuant to Sections 6.01(a) and (b) and Section 6.02(b), on the date which such documents are filed for public availability on the Securities and Exchange Commission's Electronic Data Gathering and Retrieval System (EDGAR); *provided that* (x) upon written request by the DIP Agent, the Borrower shall deliver to the DIP Agent by electronic mail electronic versions (i.e., soft copies or links to access such documents) of such documents and (y) with respect to the foregoing clause (a), the Borrower shall notify (which may be by facsimile or electronic mail) the DIP Agent of the posting of any such documents. Each Lender shall be solely responsible for timely accessing posted documents or requesting delivery of paper copies of such documents from the DIP Agent and maintaining its copies of such documents. The Required DIP Lenders may waive any delivery requirements set forth in Section 6.01 or 6.02 (which waiver may be communicated via e-mail by any Specified Lender Advisor on behalf of the Required DIP Lenders).

The Borrower hereby acknowledges that (a) the DIP Agent will make available to the Lenders materials and/or information provided by or on behalf of the Borrower hereunder (collectively, "**Borrower Materials**") by posting the Borrower Materials on IntraLinks or another similar electronic system (the "**Platform**") and (b) certain of the Lenders (each, a "**Public Lender**") may have personnel who do not wish to receive Material Non-Public Information and who may be engaged in investment and other market-related activities with respect to such Persons' securities. The Borrower hereby agrees that it will use commercially reasonable efforts to identify that portion of the Borrower Materials that may be distributed to the Public Lenders and that (w) all such Borrower Materials shall be clearly and conspicuously marked "PUBLIC" which, at a minimum, shall mean that the word "PUBLIC" shall appear prominently on the first page thereof; (x) by marking Borrower Materials "PUBLIC," the Borrower shall be deemed to have authorized the DIP Agent and the Lenders to treat such Borrower Materials as not containing any Material Non-Public Information (although it may be sensitive and proprietary) (*provided, however,* that to the extent such Borrower Materials constitute Information, they shall be treated as set forth in Section 10.08); (y) all Borrower Materials marked "PUBLIC" are permitted to be made available through a portion of the Platform designated "Public Side Information"; and (z) the DIP Agent shall treat any Borrower Materials that are not marked "PUBLIC" as being suitable only for posting on a portion of the Platform not designated "Public Side Information." Notwithstanding the foregoing, the Borrower shall be under no obligation to mark any Borrower Materials "PUBLIC."

SECTION 6.02 **Certificates; Other Information**. Deliver to the DIP Agent for prompt further distribution to each Lender (or to the Specified Lender Advisors only in the case of clauses (c) and (e)):

(a) concurrently with the delivery of the financial statements referred to in Section 6.01(a), (b) and (c), duly completed Compliance Certificate;

(b) promptly after the same are publicly available, copies of all annual, regular, periodic and special reports and registration statements which the Borrower or any Subsidiary thereof files with the SEC or with any Governmental Authority that may be substituted therefor (other than amendments to any registration statement (to the extent such registration statement, in the form it became effective, is delivered), 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 DIP Agent pursuant to any other clause of this Section 6.02;

(c) to the Specified Lender Advisors at least two (2) calendar days (or such shorter review period as is necessary in the event of exigent circumstances as determined by the Borrower in its reasonable discretion) prior to the filing with the Bankruptcy Court or delivering to the Committee appointed in a Chapter 11 Case, if any, or to the U.S. Trustee, as the case may be (i) drafts of the Interim Order, Final Order, and all other proposed orders and pleadings (1) implementing and achieving the Restructuring (as defined in the RSA) and the Asset Purchase Agreement (or any other purchase agreement in connection with the Sale Transaction) or (2) related to the RSA, this Agreement and the credit facilities contemplated hereby and (ii) any other material pleading or filing (but excluding retention applications, fee applications and other declaration in support thereof or related thereto);

(d) together with the delivery of each Compliance Certificate pursuant to Section 6.02(a), (i) in the case of annual Compliance Certificates only, a report setting forth the legal name and the jurisdiction of formation of each Loan Party, the location of the chief executive office of each Loan Party, the organizational identification number, if any, of each Loan Party that is a registered organization, and the Federal Taxpayer Identification Number, if any, of each Loan Party on Schedule 5.11 or confirming that there has been no change in such information since the Closing Date or the date of the last such report; and (ii) a description of each event, condition or circumstance during the last fiscal quarter or fiscal year covered by such Compliance Certificate requiring a mandatory prepayment under Section 2.05(b) (to the extent notice of such event has not been previously furnished to the DIP Agent);

(e) to the Specified Lender Advisors, promptly, but in no event later than 48 hours after receipt (subject to any confidentiality obligations therein), copies of all (i) formal process or offering or marketing materials provided generally to participants in the Sale Process (which shall not be required to include individual Q&A responses to diligence requests, unless requested by the Specified Lender Advisors), (ii) written proposals, term sheets, commitment letters, and any other similar materials received in connection with the Sale Process, as applicable, and (iii) all bidding materials on a redacted basis, including, but not limited to, marketing materials; *provided that* the Borrower shall also (x) promptly, but in no event later than 48 hours after receipt, provide all binding bids received in connection with the Sale Process on an un-redacted basis when, and if, received, and (y) promptly communicate any material developments with respect to the Sale Process to the Specified Lender Advisors, in good faith; and *provided, further* that notwithstanding the foregoing, the Borrower will not be required to deliver such materials set forth in this clause (e) as related solely to the Stalking Horse Bidder, its bid or the Stalking Horse Agreement (it being understood that the information provided pursuant to this clause (e) shall be delivered on a professional-eyes-only basis unless otherwise agreed by the Specified Lender Advisors and the Borrower); and

(f) promptly, such additional information regarding the business, legal, financial or corporate affairs of the Loan Parties or any of their respective Subsidiaries, or compliance with the terms of the Loan Documents, as the DIP Agent or any Lender through the DIP Agent may from time to time reasonably request (it being understood that it may be reasonable

for certain confidential or sensitive information to be delivered only to the Specified Lender Advisors, as reasonably agreed by the Specified Lender Advisors and the Borrower).

In no event shall the requirements set forth in Section 6.02(f) require the Borrower or any of its Subsidiaries to provide any such information which (i) constitutes non-financial trade secrets or non-financial proprietary information, (ii) in respect of which disclosure to the DIP Agent or any Lender (or their respective representatives or contractors) is prohibited by Law or any binding agreement, provided that such binding agreement was not entered into in contemplation of the Transactions or (iii) is subject to attorney-client or similar privilege or constitutes attorney work product.

SECTION 6.03 **Notices.** Promptly after a Responsible Officer of the Borrower has obtained knowledge thereof, notify the DIP Agent:

(a) of the occurrence of any Event of Default which notice shall specify the nature thereof, the period of existence thereof and what action the Borrower proposes to take with respect thereto;

(b) of the occurrence of an ERISA Event or similar event with respect to a Foreign Plan which would reasonably be expected to result in a Material Adverse Effect;

(c) of the filing or commencement of, or any threat or notice of intention of any person to file or commence, any action, suit, litigation or proceeding, whether at law or in equity by or before any Governmental Authority against the Borrower or any of its Subsidiaries that would reasonably be expected to result in a Material Adverse Effect;

(d) any change in the information provided in the Beneficial Ownership Certification delivered to such Lender that would result in a change to the list of beneficial owners identified in parts (c) or (d) of such certification;

(e) of the occurrence of any other matter or development that has had or would reasonably be expected to result in a liability exceeding \$1,000,000; and

(f) receipt by a Loan Party of a written notice of termination or written notice of non-renewal, or any non-renewal threatened in writing, of any Material Contract.

Each notice pursuant to this Section 6.03 shall be accompanied by a written statement of a Responsible Officer of the Borrower delivered to the DIP Agent for prompt further distribution to each Lender (x) that such notice is being delivered pursuant to Section 6.03(a), (b), (c), (d), (e) or (f) (as applicable) and (y) setting forth details of the occurrence referred to therein and stating what action the Borrower has taken and proposes to take with respect thereto.

SECTION 6.04 **Payment of Taxes.** Pay, discharge or otherwise satisfy as the same shall become due and payable in the normal conduct of its business, all its obligations and liabilities in respect of Taxes imposed upon it or upon its income or profits or in respect of its property, except, in each case, to the extent (a) any such Tax is being contested in good faith and by appropriate proceedings for which appropriate reserves have been established in accordance with GAAP, (b) the failure to pay or discharge the same would not reasonably be expected to have,

individually or in the aggregate, a Material Adverse Effect or (c) the nonpayment of which is required under the Bankruptcy Code.

SECTION 6.05 Preservation of Existence, Etc.

(a) Subject to any necessary Bankruptcy Court approval, 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 maintain all rights, privileges (including its good standing where applicable in the relevant jurisdiction), permits, IP Rights, authorizations, licenses and franchises necessary or desirable in the normal conduct of its business;

except, in the case of Section 6.05(a) (other than with respect to the Borrower) or this Section 6.05(b), to the extent (i) that failure to do so would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect or (ii) pursuant to any merger, consolidation, liquidation, dissolution or Disposition permitted by Article 7.

SECTION 6.06 Maintenance of Properties. Except (i) pursuant to any necessary Bankruptcy Court approval, or (ii) if the failure to do so would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, maintain, preserve and protect all of its material properties and equipment necessary in the operation of its business in good working order, repair and condition, ordinary wear and tear excepted and fire, casualty or condemnation excepted.

SECTION 6.07 Maintenance of Insurance. Maintain with insurance companies that 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 such amounts as are customarily carried under similar circumstances by such other Persons. Within ten (10) days following the Closing Date (or the date any such insurance is obtained, in the case of insurance obtained after the Closing Date or, in each case, such later date as the DIP Agent (acting at the Direction of the Required DIP Lenders in their sole discretion) may agree), each such policy of insurance (other than business interruption insurance (if any), director and officer insurance and worker's compensation insurance) shall as appropriate (i) name the DIP Agent as additional insured thereunder or (ii) in the case of each casualty insurance policy, contain a loss payable clause or endorsement that names the DIP Agent, on behalf of the Lenders, as a loss payee thereunder. If the improvements on any Mortgaged Property are at any time located in an area identified by the Federal Emergency Management Agency (or any successor agency) as a special flood hazard area with respect to which flood insurance has been made available under the National Flood Insurance Act of 1968 (as now or hereafter in effect or successor act thereto), then, to the extent required by applicable Flood Insurance Laws, the Borrower shall, or shall cause each Loan Party to, (i) maintain, or cause to be maintained, with a financially sound and reputable insurer, flood insurance in an amount reasonably satisfactory to the DIP Agent and otherwise sufficient to comply with all applicable rules and regulations promulgated pursuant to the Flood Insurance Laws and (ii) upon the reasonable request of the DIP Agent, deliver to the DIP Agent evidence of

such compliance in form and substance reasonably acceptable to the DIP Agent (at the Direction of the Required DIP Lenders).

SECTION 6.08 Compliance with Laws. Comply with the requirements of all Laws and all orders, writs, injunctions and decrees applicable to it or to its business or property, except if the failure to comply therewith could not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

SECTION 6.09 Books and Records. Maintain proper books of record and account, in which entries that are full, true and correct in all material respects and are in conformity with GAAP and which reflect all material financial transactions and matters involving the assets and business of the Borrower or a Subsidiary thereof, as the case may be (it being understood and agreed that certain Foreign Subsidiaries maintain individual books and records in conformity with generally accepted accounting principles in their respective countries of organization and that such maintenance shall not constitute a breach of the representations, warranties or covenants hereunder).

SECTION 6.10 Inspection Rights. Permit representatives and independent contractors of the DIP Agent (at the Direction of the Required DIP Lenders) or the Required DIP Lenders 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 any time during normal business hours and as often as may be reasonably desired, upon reasonable advance notice to the Borrower. The DIP Agent or the representatives and independent contractors of the DIP Agent or the Required DIP Lenders, as applicable, 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 6.10, none of the Borrower or any Subsidiary will be required to disclose, permit the inspection, examination or making copies or abstracts of, or discussion of, any document, information or other matter than (a) constitutes non-financial trade secrets or non-financial proprietary information, (b) in respect of which disclosure to the DIP Agent or any DIP Lender (or their respective representatives or contractors (including the Specified Lender Advisors)) is prohibited by Law or any binding agreement, provided that such binding agreement was not entered into in contemplation of the Transactions or (c) is subject to attorney-client or similar privilege or constitutes attorney work product.

SECTION 6.11 Additional Collateral; Additional Guarantors. At the Borrower's expense, subject to the terms, conditions and provisions of the Collateral and Guarantee Requirement and any applicable limitation in any Collateral Document, take all action necessary or reasonably requested by the DIP Agent to ensure that the Collateral and Guarantee Requirement continues to be satisfied, including:

(a) upon the formation or acquisition of any new direct or indirect wholly owned Domestic Subsidiary (in each case, other than an Excluded Subsidiary) by any Loan Party

or any Subsidiary becoming a wholly owned Domestic Subsidiary (in each case, other than an Excluded Subsidiary) or any Excluded Subsidiary ceasing to be an Excluded Subsidiary:

(i) within fifteen (15) days after such formation, acquisition or occurrence or such longer period as the DIP Agent (acting at the Direction of the Required DIP Lenders) may agree in writing in its discretion:

(A) cause each such Domestic Subsidiary (other than an Excluded Subsidiary) that is required to become a Guarantor pursuant to the Collateral and Guarantee Requirement to duly execute and deliver to the DIP Agent, a Joinder Agreement to become a Guarantor under this Agreement, Security Agreement Supplements, Intellectual Property Security Agreements, and other security agreements and documents as reasonably requested by and in form and substance reasonably satisfactory to the DIP Agent (acting at the Direction of the Required DIP Lenders) (consistent with the Security Agreement, Intellectual Property Security Agreements and other security agreements in effect on the Closing Date), in each case granting Liens required by the Collateral and Guarantee Requirement;

(B) cause each such Domestic Subsidiary (other than an Excluded Subsidiary) that is required to become a Guarantor pursuant to the Collateral and Guarantee Requirement (and the parent of each such Domestic Subsidiary that is the Borrower or a Guarantor) to deliver any and all certificates representing Equity Interests (to the extent certificated) and intercompany notes constituting negotiable instruments (to the extent certificated) that are required to be pledged pursuant to the Collateral and Guarantee Requirement, accompanied by undated stock powers or other appropriate instruments of transfer executed in blank and instruments evidencing Indebtedness held by such Domestic Subsidiary or such other Loan Party and required to be delivered pursuant to the Collateral and Guarantee Requirement indorsed in blank to the DIP Agent;

(C) take and cause such Domestic Subsidiary that is required to become a Guarantor pursuant to the Collateral and Guarantee Requirement and each direct or indirect parent of such Domestic Subsidiary to take whatever action (including the recording of Mortgages, the filing of UCC-1 financing statements and delivery of stock and membership interest certificates) as may be necessary in the reasonable opinion of the DIP Agent (acting at the Direction of the Required DIP Lenders) to vest in the DIP Agent (or in any representative of the DIP Agent designated by it) valid and perfected Liens to the extent required by the Collateral and Guarantee Requirement, and to otherwise comply with the requirements of the Collateral and Guarantee Requirement;

(ii) as promptly as practicable after the request therefor by the DIP Agent, deliver to the DIP Agent with respect to each parcel of owned real property any existing title reports, abstracts or environmental assessment reports, to the extent available and in the possession or control of a Loan Party; *provided, however*, that there shall be no obligation to deliver to the DIP Agent any environmental assessment report whose disclosure to the DIP Agent would require the consent of a Person other than a Loan Party, where, despite the commercially reasonable efforts of the Borrower to obtain such consent, such consent cannot be obtained; and

(iii) if reasonably requested by the DIP Agent (acting at the Direction of the Required DIP Lenders), within ten (10) days after such request (or such longer period as the DIP Agent (acting at the Direction of the Required DIP Lenders) may agree in writing in its discretion), deliver to the DIP Agent any other items necessary from time to time to satisfy the Collateral and Guarantee Requirement with respect to perfection and existence of security interests with respect to property of any Guarantor (and the direct parent of each such Guarantor) acquired after the Closing Date and subject to the Collateral and Guarantee Requirement, but not specifically covered by the preceding clauses (i), (ii) or (iii).

SECTION 6.12 Compliance with Environmental Laws. Except, in each case, (i) pursuant to any necessary Bankruptcy Court approval, or (ii) to the extent that the failure to do so could not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect: comply, and take all commercially reasonable actions to cause all lessees and other Persons operating or occupying its properties to comply, with all Environmental Laws and Environmental Permits; obtain and renew all Environmental Permits necessary for its operations and occupancy of its properties; and, in each case to the extent the Loan Parties are required to do so by Environmental Laws, conduct any investigation, remedial or other corrective action necessary to address Hazardous Materials at any property or facility in accordance with Environmental Laws. If an Event of Default arising out of an Environmental Liability has occurred and is continuing, within sixty (60) days of receiving a written request by the DIP Agent (acting at the Direction of the Required DIP Lenders), the Borrower will provide the DIP Agent with an environmental assessment report regarding the scope of the Environmental Liability and the likely cost of mitigating such Environmental Liability, prepared at the Borrower's sole cost and expense and by an environmental consultant reasonably acceptable to the DIP Agent (acting at the Direction of the Required DIP Lenders). If such report is not timely provided, the DIP Agent (acting at the Direction of the Required DIP Lenders) may have them prepared by an environmental consultant of its choosing, at Borrower's sole cost and expense.

SECTION 6.13 Further Assurances. Promptly upon reasonable request by the DIP Agent (acting at the Direction of the Required DIP Lenders), take action necessary to (i) correct any mutually identified material defect or error that may be discovered in the execution, acknowledgment, filing or recordation of any Collateral Document or other document or instrument relating to any Collateral, and (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 DIP Agent (acting at the Direction of the Required DIP Lenders) may reasonably request from time to time in order to carry out more effectively the purposes of this Agreement and the Collateral Documents, to the extent required pursuant to the Collateral and Guarantee Requirement and subject in all respects to the limitations therein. If the DIP Agent (acting at the Direction of the Required DIP Lenders) reasonably determines that it is required by applicable Law to have appraisals prepared in respect of the Real Property of any Loan Party subject to a mortgage constituting Collateral, the Borrower shall promptly provide to the DIP Agent appraisals that satisfy the applicable requirements of the Real Estate Appraisal Reform Amendments of FIRREA. In furtherance and not in limitation of the foregoing, each Loan Party shall take such actions as the Required DIP Lenders may reasonably request from time to time to ensure that the Obligations are guaranteed by the Guarantors and the Liens granted by the Security

Documents and the DIP Order are perfected to the extent and with the priority required by the Loan Documents and the DIP Order.

SECTION 6.14 **[Reserved]**.

SECTION 6.15 **Maintenance of Ratings**. Use commercially reasonable efforts to obtain, prior to the earlier to occur of (i) thirty (30) days after the Petition Date and (ii) the entry of the Final Order, and at all times thereafter maintain, a public rating (but not any specific rating) in respect of the Loans from each of S&P and Moody's, or, with the consent of the DIP Agent (at the Direction of the Required DIP Lenders) in the event that Moody's and/or S&P are not willing to so rate the Loans, such other rating agency or rating agencies, as applicable, in their stead as are acceptable to the Required DIP Lenders.

SECTION 6.16 **Use of Proceeds**. Subject to the terms and conditions herein, use the proceeds of the Loans made hereunder, solely in accordance with the DIP Order and the Approved DIP Budget: (i) to pay related transaction costs, fees and expenses with respect to the DIP Facility, (ii) to make the adequate protection payments (if any) in accordance with the Approved DIP Budget and the DIP Order, and (iii) to provide working capital, and for other general corporate purposes of the Loan Parties, and to pay administration costs of the Chapter 11 Cases and claims or amounts approved by the Bankruptcy Court in accordance with the Approved DIP Budget, including, without limitation, to cash collateralize obligations in respect of letters of credit issued under the LC Agreement; it being agreed that \$5,000,000 of the proceeds of the Loans shall be available solely to cash collateralize obligations in respect of letters of credit issued under the LC Agreement and such portion of the proceeds may not be used for any other purpose without approval from the Required DIP Lenders. The Loan Parties shall not be permitted to use the proceeds of the Loans or any cash collateral in contravention of the provisions of the Loan Documents, the Approved DIP Budget, the DIP Order or the applicable insolvency laws, including any restrictions or limitations on the use of proceeds contained therein. In addition to the foregoing, the proceeds of the Loans may be used to prepay outstanding obligations or liabilities under the Pre-Petition Priority Loan Agreement (including the letters of credit issued thereunder or reimbursement obligations in respect thereof).

SECTION 6.17 **Lender Meetings**. No more frequently than weekly from and after the Petition Date through the Maturity Date, participate in a telephonic meeting (including a customary question and answer session) with the DIP Agent and all Lenders and management of the Borrower on a Business Day at a mutually agreeable time.

SECTION 6.18 **End of Fiscal Years**. For financial reporting purposes, cause its fiscal year to end on any date other than December 31.

SECTION 6.19 **Lines of Business**. With respect to the Loan Parties, taken as a whole, not engage in any material line of business substantially different from those lines of business conducted by the Borrower and its Subsidiaries on the Closing Date or reasonable extensions thereof.

SECTION 6.20 **Communications Regulations**. Except as could not reasonably be expected to have a Material Adverse Effect, (i) take all actions reasonably necessary to maintain

the FCC Authorizations in full force and effect, (ii) timely file renewal applications, (iii) remit any necessary regulatory fees, (iv) file any reports and information requested by the FCC, and (v) conduct its business in compliance with the terms of the FCC Authorizations and the Communications Act, including changes in applicable law and regulations that become effective during the terms of the FCC Authorizations.

SECTION 6.21 Anti-Terrorism Law; Anti-Money Laundering; Embargoed Persons; Anti-Corruption; Licenses.

(a) Except for Licensed Activities, conduct its business in such a manner so as to not, directly or indirectly, (i) deal in, or otherwise engage in any transaction relating to, any property or interests in property blocked pursuant to Executive Order No. 13224 effective September 24, 2001, or (ii) engage in or conspire to engage in any transaction that violates, or attempts to violate, any Sanctions in any material respect.

(b) Repay the Loans exclusively with funds that are not derived from any unlawful activity such that the result of any such repayment would not cause the making of the Loans to be in material violation of any applicable Law, including the United States Foreign Corrupt Practices Act of 1977, as amended.

(c) Except for Licensed Activities, use funds or properties of the Borrower or any of the Subsidiaries thereof to repay the Loans only to the extent it does not constitute, to the knowledge of the Borrower, property of, or is beneficially owned, to the knowledge of the Borrower, directly or indirectly, by any Sanctioned Person.

(d) Maintain and enforce policies and procedures with respect to itself and its Subsidiaries designed to ensure compliance with applicable Sanctions.

SECTION 6.22 ERISA Compliance. Except where the failure to so comply would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect: (a) each Loan Party shall, and shall cause each ERISA Affiliate to, establish, maintain and operate all Plans and Foreign Plans in compliance in all material respects with the provisions of ERISA, the Code and all applicable Laws, the regulations and interpretation thereunder and the respective requirements of the governing documents for such Plans, and (b) the Borrower shall take, or shall cause to be taken, any and all actions required in order to be in compliance at all times with the representations and warranties in Section 5.10.

SECTION 6.23 Post-Closing Matters. Cause the promissory notes set forth in items 4-7 of Schedule II to the Security Agreement Security Agreement to be pledged and delivered to the DIP Agent pursuant to the terms of the Security Agreement within 30 days following the Closing Date (or such later date as the DIP Agent (acting at the Direction of the Required DIP Lenders in their sole discretion) may agree in writing).

SECTION 6.24 Approved DIP Budget.

(a) The use of Loans by the Loan Parties under this Agreement and the other Loan Documents shall be limited in accordance with the Approved DIP Budget (subject to variances permitted hereunder and other than amounts set forth for professional and advisory fees,

which are included solely for information purposes and shall be payable pursuant to and in accordance with the DIP Order and other applicable orders of the Bankruptcy Court). The Approved DIP Budget shall set forth, on a weekly basis, among other things, Budgeted Cash Receipts and Budgeted Disbursement Amounts for the 13-week period commencing with the week that includes the Closing Date and shall be approved by, and be in form and substance satisfactory to, the Required DIP Lenders in their sole discretion (it being acknowledged and agreed that the Approved DIP Budget attached hereto as Schedule 2.01(c) is approved by and satisfactory to the Required DIP Lenders and is and shall be the Approved DIP Budget unless and until replaced in accordance with terms of this Section).

(b) The Approved DIP Budget shall be updated, modified, replaced or supplemented by the Borrower on the final business day of each four-consecutive-week period, commencing with the final business day of the fourth full week after the Closing Date (or more frequently if determined by the Borrower), and each such updated, modified or supplemented budget shall be in form and substance satisfactory to the Required DIP Lenders in their sole discretion (which satisfaction may be communicated via an email from either of the Specified Lender Advisors), and no such updated, modified, replaced or supplemented budget shall be effective if Required DIP Lenders object in writing within three (3) Business Days of receipt and if no written objection is received by 5:00 p.m. three (3) Business Days after receipt, the updated, modified, replaced or supplemented budget shall be deemed an Approved DIP Budget; *provided, however,* that in the event the Required DIP Lenders, on the one hand, and the Borrower, on the other hand, cannot agree as to an updated, modified, replaced or supplemented budget, the then-current Approved DIP Budget shall remain in effect unless and until a new Approved DIP Budget is not objected to the Required DIP Lenders. Each Approved DIP Budget delivered to the Lenders shall be accompanied by such supporting documentation as reasonably requested by the Lenders. Each Approved DIP Budget shall be prepared in good faith based upon assumptions believed by the Borrower to be reasonable.

(c) For each Variance Testing Period shall not permit (x) the Actual Cash Receipts to be less than 85% of the Budgeted Cash Receipts (each calculated on a cumulative basis as opposed to on a line by line basis) for such Variance Testing Period and (y) Actual Disbursement Amounts to exceed 115% of the Budgeted Disbursement Amounts (each calculated on a cumulative basis as opposed to on a line by line basis) for such Variance Testing Period.

(d) Deliver to the DIP Agent and the Lenders on or before 5:00 p.m. New York City time on Thursday of each week (commencing on August 6, 2020) a certificate which shall include such detail as is reasonably satisfactory to the Required DIP Lenders, signed by a Responsible Officer of the Borrower certifying that attached thereto is an Approved DIP Budget Variance Report, which shall be prepared by the Borrower as of the last day of the Variance Testing Period then most recently ended, and shall be in a form and substance satisfactory to the Required DIP Lenders in their sole discretion. In addition, on July 30, 2020 the Company shall deliver to the DIP Agent and the Lenders a report containing Actual Cash Receipts and Actual Disbursement Amounts for the four-week period ending July 24, 2020 for informational purposes only.

(e) The Lenders (i) may assume that the Loan Parties will comply with the Approved DIP Budget (subject to permitted variances), (ii) shall have no duty to monitor such compliance and (iii) shall not be obligated to pay (directly or indirectly from the Collateral) any

unpaid expenses incurred or authorized to be incurred pursuant to any Approved DIP Budget. The line items in the Approved DIP Budget for payment of interest, expenses and other amounts to the DIP Agent and the Lenders are estimates only, and the Loan Parties remain obligated to pay any and all Obligations in accordance with the terms of the Loan Documents regardless of whether such amounts exceed such estimates. Nothing in any Approved DIP Budget shall constitute an amendment or other modification of any Loan Document or other lending limits set forth therein.

SECTION 6.25 **Required Milestones.** By the times and dates set forth below (as any such time and date may be extended with the consent of the DIP Agent (at the Direction of the Required DIP Lenders)) cause the following to occur; *provided that* where used in this Section 6.25, any “delivery” required by this Section 6.25 shall require delivery to the DIP Agent (which shall promptly furnish to each of the Lenders and the Specified Lender Advisors, as well as to any other Person specified below):

(a) By no later than three (3) days following the Petition Date, the Debtors shall have filed a motion seeking approval of the Bidding Procedures Order, in form and substance acceptable to the Required DIP Lenders.

(b) By no later than five (5) days following the Petition Date, the Bankruptcy Court shall enter the Interim Order.

(c) By no later than twenty-eight (28) days following the Petition Date, the Borrower shall have obtained entry of the Bidding Procedures Order, in form and substance acceptable to the Required DIP Lenders (the “**Bidding Procedures Order**”).

(d) By no later than forty (40) days following the Petition Date, the Bankruptcy Court shall enter the Final Order authorizing the DIP Facility, in form and substance acceptable to the Required DIP Lenders.

(e) By no later than forty-two (42) days following the Petition Date, the Borrower shall have obtained receipt of Initial Acceptable Bids (as defined in the Bidding Procedures Order or equivalent term used therein).

(f) By no later than seventy-five (75) days following the Petition Date, the Borrower shall have obtained receipt of Qualified Bids (as defined in the Bidding Procedures Order or equivalent term used therein).

(g) By no later than eighty (80) days following the Petition Date, the Borrower shall conduct the Auction (as defined in the Bidding Procedures Order or equivalent term used therein) in accordance with the Bidding Procedures Order.

(h) By no later than eighty-five (85) days following the Petition Date, the Bankruptcy Court shall have conducted, to the extent necessary, the Sale Hearing (as defined in the Bidding Procedures Order) and entered the Sale Order in form and substance acceptable to the Required DIP Lenders and the Borrower approving the Sale Transaction.

(i) By no later than one hundred (100) days following the Petition Date, the Sale Transaction shall have closed; provided that if regulatory approvals associated with a Sale

Transaction remain pending as of such date, such date shall be automatically extended to the date that is the third Business Day following receipt of all necessary regulatory approvals.

Notwithstanding the foregoing or any other provision hereof or of any other Loan Document, in the event that no Initial Acceptable Bids (as defined in the Bidding Procedures Order or equivalent term used therein) are timely received providing for a purchase price that would result in the Discharge of the DIP and First Lien Obligations (including, for the avoidance of doubt, any Initial Acceptable Bids for an individual asset or combination of assets that are less than all of the Loan Parties' Assets (as defined in the Bidding Procedures or equivalent term used therein), but, when taken together, would result in the Discharge of the DIP and First Lien Obligations), then, to the extent consistent with the exercise of their fiduciary duties, the Loan Parties (in consultation with the Consultation Parties (as defined in the Bidding Procedures Order or equivalent term used therein)) will terminate the Sale Process and will seek an expedited Sale Hearing (as defined in the Bidding Procedures Order or equivalent term used therein) to approve the Sale (as defined in the Bidding Procedures Order or equivalent term used therein) to the Stalking Horse Bidder pursuant to the terms of the Stalking Horse Agreement as promptly as practicable and subject to the Bankruptcy Court's availability.

SECTION 6.26 DIP Agent's Advisors/Specified Lender Advisors. The DIP Agent, on behalf of itself and the Lenders, the Specified Lender Advisors, and the Pre-Petition Lenders, shall each be entitled to retain or continue to retain (either directly or through counsel) any advisor of the DIP Agent that the DIP Agent may deem necessary and any Specified Lender Advisors the Ad Hoc Group of Lenders may deem necessary, to provide advice, analysis and reporting for the benefit of the DIP Agent and some or all of the Lenders. The Loan Parties shall pay all fees and expenses of such advisors to the extent permitted under the DIP Order or any other order of the Bankruptcy Court and all such fees and expenses shall constitute Obligations and be secured by the Collateral. Subject to the limitations set forth in this Agreement, the Loan Parties and their advisors shall grant access to, and cooperate in all respects with, the DIP Agent, the Lenders and the Specified Lender Advisors and any other representatives of the foregoing and provide all information that such parties may request in a timely manner.

SECTION 6.27 Additional Bankruptcy Matters. Promptly provide the DIP Agent, the Lenders and the Specified Lender Advisors with updates of any material developments in connection with the Loan Parties' efforts under the Chapter 11 Cases; *provided*, the Borrower's obligations to provide updates of developments with respect to the Sale Process shall be limited to the extent set forth in Section 6.02(e).

SECTION 6.28 Debtor-In-Possession Obligations. Comply in a timely manner with their obligations and responsibilities as debtors-in-possession under the Bankruptcy Code, the Bankruptcy Rules, the DIP Order, and any other order of the Bankruptcy Court.

ARTICLE 7. NEGATIVE COVENANTS

So long as any Lender shall have any Commitment hereunder, any Loan or other Obligation hereunder (other than contingent obligations not yet due and owing as to which no claim has been asserted), then from and after the Closing Date, the Loan Parties shall not and shall not permit any of their Subsidiaries to, directly or indirectly:

SECTION 7.01 **Liens.** Create, incur, assume or suffer to exist any Lien upon any of its property, assets or revenues, whether now owned or hereafter acquired, other than the following:

(a) Liens created pursuant to (i) any Loan Document on the Collateral, (ii) the DIP Order, (iii) the Pre-Petition Priority Loan Agreement and the other Pre-Petition Loan Documents and (iv) the Pre-Petition Second Lien Securities Purchase Agreement and the other Pre-Petition Second Lien Loan Documents;

(b) Liens existing on the Closing Date and listed on Schedule 7.01(b);

(c) Liens for taxes, assessments or governmental charges that are not overdue for a period of more than any applicable grace period related thereto 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 to the extent required by GAAP;

(d) statutory or common law Liens of landlords, sub-landlords, carriers, warehousemen, mechanics, materialmen, repairmen, construction contractors or other like Liens, 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 Liens 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;

(e) pledges or deposits in the ordinary course of business in connection with workers' compensation, unemployment insurance and other social security legislation and pledges and deposits in the ordinary course of business securing liability for reimbursement or indemnification obligations of (including obligations in respect of letters of credit or bank guarantees for the benefit of) insurance carriers providing property, casualty or liability insurance to the Borrower or any of its Subsidiaries;

(f) pledges or deposits to secure the performance of bids, trade contracts, utilities, governmental contracts and leases (other than Indebtedness for borrowed money), statutory obligations, surety, stay, customs and appeal bonds, performance bonds and other obligations of a like nature (including those to secure health, safety and environmental obligations) incurred in the ordinary course of business;

(g) covenants, conditions, easements, rights-of-way, building codes, restrictions (including zoning restrictions), encroachments, licenses, protrusions and other similar encumbrances and minor title defects, in each case affecting Real Property and that do not in the aggregate materially interfere with the ordinary conduct of the business of the Borrower and its Subsidiaries, taken as a whole, and any exceptions on the Mortgage Policies issued in connection with the Mortgaged Properties;

(h) Liens (i) securing judgments or orders for the payment of money not constituting an Event of Default under Section 8.01(h), (ii) arising out of judgments or awards against the Borrower or any Subsidiary with respect to which an appeal or other proceeding for review is then being pursued and (iii) notices of *lis pendens* and associated rights related to

litigation being contested in good faith by appropriate proceedings for which adequate reserves have been made;

(i) leases, licenses, subleases or sublicenses (including licenses and sublicenses of software and other IP Rights) and terminations thereof, in each case either granted to others with respect to IP Rights that are not material to the business of the Borrower and Subsidiaries or in the ordinary course of business, which (i) do not interfere in any material respect with the business of the Borrower and its Subsidiaries, taken as a whole, (ii) do not secure any Indebtedness and (iii) are permitted by Section 7.05;

(j) 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 or (ii) on specific items of inventory or other goods and proceeds of any Person securing such Person's obligations in respect of bankers' acceptances or letters of credit issued or created for the account of such person to facilitate the purchase, shipment or storage of such inventory or other goods in the ordinary course of business;

(k) Liens (i) of a collection bank arising under Section 4-208 of the Uniform Commercial Code on items in the course of collection, (ii) attaching to commodity trading accounts or other commodities brokerage accounts incurred in the ordinary course of business, in favor of a banking or other financial institution arising as a matter of Law or under customary general terms and conditions 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 or arising pursuant to such banking institution's general terms and conditions, and (iii) that are contractual rights of setoff or rights of pledge relating to purchase orders and other agreements entered into with customers of the Borrower or any of its Subsidiaries in the ordinary course of business;

(l) Liens consisting of an agreement to Dispose of any property in a Disposition permitted under Section 7.05, in each case, solely to the extent such Investment or Disposition, as the case may be, would have been permitted on the date of the creation of such Lien;

(m) Liens in favor of a Loan Party;

(n) any interest or title of a lessor, sub-lessor, licensor or sub-licensor under leases, subleases, licenses or sublicenses entered into by the Borrower or any of its Subsidiaries in the ordinary course of business or with respect to IP Rights that are not material to the business of the Borrower and its Subsidiaries;

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

(p) Liens deemed to exist in connection with Investments in repurchase agreements permitted under Section 7.02;

(q) Liens encumbering reasonable customary initial deposits and margin deposits and similar Liens attaching to commodity trading accounts or other brokerage accounts incurred in the ordinary course of business and not for speculative purposes;

(r) Liens that are contractual rights of set-off or rights of pledge (i) relating to the establishment of depository relations with banks or other deposit-taking financial institutions and not given in connection with the issuance of Indebtedness, (ii) relating to pooled deposit or sweep accounts of the Borrower or any of its Subsidiaries to permit satisfaction of overdraft or similar obligations incurred in the ordinary course of business of the Borrower or any of its Subsidiaries or (iii) relating to purchase orders and other agreements entered into with customers of the Borrower or any of its Subsidiaries in the ordinary course of business;

(s) Liens on cash collateral supporting obligations in respect of letters of credit issued under the LC Agreement;

(t) ground leases in respect of Real Property on which facilities leased by the Borrower or any of its Subsidiaries are located;

(u) Liens to secure Indebtedness permitted under Section 7.03(e); *provided that* (i) such Liens are created within 180 days of the acquisition, construction, repair, lease or improvement of the property subject to such Liens, (ii) such Liens do not at any time encumber property (except for replacements, additions, accessions and proceeds to such property) other than the property financed by such Indebtedness and the proceeds and products thereof and customary security deposits and (iii) with respect to Capitalized Leases, such Liens do not at any time extend to or cover any assets (except for replacements, additions and accessions to such assets) other than the assets subject to such Capitalized Leases and the proceeds and products thereof and customary security deposits; *provided that* individual financings of equipment provided by one lender may be cross collateralized to other financings of equipment provided by such lender; and the modification, replacement, renewal or extension of any Lien permitted by this clause (u); *provided that* (x) the Lien does not extend to any additional property, other than (1) after-acquired property that is affixed or incorporated into the property covered by such Lien and (2) proceeds and products thereof, and (y) the renewal, extension, restructuring or refinancing of the obligations secured or benefited by such Liens is permitted by Section 7.03 (to the extent constituting Indebtedness);

(v) Liens on property of any Subsidiary (including any Foreign Subsidiary) that is not a Loan Party, which Liens secure Indebtedness or otherwise permitted under Section 7.03 (other than in respect of Indebtedness for borrowed money and Guarantees of Indebtedness for borrowed money);

(w) the Carve-Out;

(x) (i) zoning, building, entitlement and other land use regulations by Governmental Authorities with which the normal operation of the business complies, and (ii) any zoning or similar law or right reserved to or vested in any Governmental Authority to control or regulate the use of any Real Property that does not materially interfere with the ordinary conduct of the business of the Borrower and its Subsidiaries, taken as a whole;

(y) Liens arising from precautionary Uniform Commercial Code financing statement or similar filings;

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

(aa) Liens with respect to property or assets of the Borrower or any of its Subsidiaries securing obligations in an aggregate principal amount outstanding at any time not to exceed \$500,000;

(bb) deposits of cash with the owner or lessor of premises leased and operated by the Borrower or any of its Subsidiaries to secure the performance of the Borrower's or such Subsidiary's obligations under the terms of the lease for such premises;

(cc) customary rights of first refusal and tag, drag and similar rights in joint venture agreements and agreements with respect to non-wholly owned Subsidiaries of the Borrower in existence as of the Closing Date;

(dd) in the case of any non-wholly owned Subsidiary of the Borrower, any put and call arrangements or restrictions on disposition related to its Equity Interests set forth in its organizational documents or any related joint venture or similar agreement in existence as of the Closing Date;

(ee) [reserved];

(ff) any restriction on the transfer or pledge of assets contained in any License or otherwise imposed by the Communications Act or any FCC Authorization or comparable state or local legislation, regulations or ordinances or otherwise imposed by Law; and

(gg) Liens arising by operation of law in the United States under Article 2 of the UCC in favor of a reclaiming seller of goods or buyer of goods.

SECTION 7.02 **Investments.** Make or hold any Investments, except:

(a) Investments by the Borrower or any of its Subsidiaries in assets that were cash or Cash Equivalents when such Investment was made;

(b) loans or advances to officers, directors and employees of any Loan Party (or any direct or indirect parent thereof) or any of its Subsidiaries for reasonable and customary relocation expenses; provided that the aggregate principal amount outstanding at any time under this clause (b) shall not exceed \$150,000 at any time outstanding;

(c) Investments (i) by a Loan Party in any other Loan Party, (ii) by any Non-Loan Party in any other Non-Loan Party and (iii) so long as no Event of Default exists or would result therefrom, by any Loan Party in any Subsidiary that is not a Loan Party for the purposes of funding payments to vendors of such Non-Loan Parties and paying operating expenses (including, without limitation, payroll expenses, taxes and other general and administrative expenses) of such Non-Loan Parties in the ordinary course of business and consistent with past practice; provided

that (A) no such Investments made pursuant to clause (iii) in the form of intercompany loans shall be evidenced by a promissory note unless any such promissory note constituting a negotiable instrument is pledged to the DIP Agent (or to the Pre-Petition Agent) in accordance with the terms of the Security Agreement, (B) any Investments in the form of intercompany loans constituting Indebtedness of any Loan Party owed to any Subsidiary that is not a Loan Party shall be unsecured and subordinated to the Obligations on terms satisfactory to the Required DIP Lenders and (C) the aggregate amount of Investments made pursuant to clause (iii) shall not exceed \$5,000,000, in aggregate, from and after the Closing Date (it being agreed that such amount, to the extent of any such Investments constituting intercompany loans, may be repaid and such amount shall be replenished by such repayment, but not above \$5,000,000);

(d) Investments consisting of extensions of credit in the nature of accounts receivable or notes receivable arising from the grant of trade credit in the ordinary course of business, and Investments received in satisfaction or partial satisfaction thereof from financially troubled account debtors and other credits to suppliers in the ordinary course of business;

(e) Investments consisting of transactions permitted under Sections 7.01, 7.03 (other than 7.03(c) and (d)), Section 7.04, Section 7.05 (other than Section 7.05(d)(ii) or (e)), Section 7.06 (other than Section 7.06(d)) and Section 7.13, respectively;

(f) Investments existing on the Closing Date or made pursuant to legally binding written contracts in existence on the Closing Date, in each case set forth on Schedule 7.02(f);

(g) the issuance of any letter of credit under the LC Agreement for the benefit of any Subsidiary of the Borrower;

(h) 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;

(i) Investments (including debt obligations and Equity Interests) received in connection with the bankruptcy or reorganization of suppliers and customers or in settlement of delinquent obligations of, or other disputes with, customers and suppliers arising in the ordinary course of business or upon the foreclosure with respect to any secured Investment or other transfer of title with respect to any secured Investment;

(j) advances of payroll payments to employees in the ordinary course of business;

(k) Investments made in the ordinary course of business consisting of deposits made in connection with obtaining, maintaining or renewing client and vendor contracts in the ordinary course of business and as set forth in the Approved DIP Budget in an amount not to exceed \$5,000,000 in the aggregate from and after the Closing Date;

(l) intercompany receivables that arise solely from customary transfer pricing arrangements among (i) the Borrower and its Subsidiaries in each case in the ordinary course of business; or (ii) Non-Loan Parties;

(m) Investments in deposit accounts, securities accounts and commodities accounts maintained by the Borrower or such Subsidiary in the ordinary course of business, as the case may be; and

(n) so long as no Event of Default has occurred and is continuing or would result therefrom, the Borrower or any Subsidiary may make Investments in an amount not to exceed \$250,000, in the aggregate, from and after the Closing Date.

SECTION 7.03 Indebtedness. Create, incur, assume, guarantee, suffer to exist or otherwise become liable, contingently or otherwise, any Indebtedness, except:

(a) Indebtedness of the Borrower and any Guarantor or Loan Party under the Loan Documents and the Pre-Petition Obligations;

(b) Indebtedness outstanding on the Closing Date and listed on Schedule 7.03(b); *provided that* all such Indebtedness of any Guarantor owed to any Subsidiary that is not a Loan Party shall be unsecured and subordinated to the Obligations pursuant to terms substantially consistent with Section 5.01 of the Security Agreement;

(c) Guarantees by the Borrower and any Subsidiary thereof in respect of Indebtedness of a Loan Party; *provided that* if the Indebtedness being guaranteed is subordinated to the Obligations, such Guarantee shall be subordinated to the Guarantee of the Obligations on terms at least as favorable (as reasonably determined by the Borrower and the DIP Agent (acting at the Direction of the Required DIP Lenders)) to the Lenders as those contained in the subordination of such Indebtedness;

(d) Indebtedness of the Borrower or any Subsidiary thereof owing to any Loan Party or any other Subsidiary thereof (or issued or transferred to any direct or indirect parent of a Loan Party which is substantially contemporaneously transferred to another Loan Party or any Subsidiary of a Loan Party) to the extent constituting an Investment permitted by Section 7.02; *provided that* (x) no such Indebtedness owed to a Loan Party shall be evidenced by a promissory note unless such promissory note constitutes a negotiable instrument and is pledged to the DIP Agent to the extent required by (and in accordance with) the terms of the Security Agreement and (y) all such Indebtedness of any Loan Party owed to any Non-Loan Party shall be unsecured and subordinated to the Obligations pursuant to subordination terms substantially consistent with the terms set forth in Section 5.01 of the Security Agreement;

(e) Attributable Indebtedness and Capitalized Leases financing an acquisition, construction, repair, replacement, lease or improvement of a fixed or capital asset (including maritime equipment or aviation antennae equipment) incurred by the Borrower or any Subsidiary thereof within 180 days of the acquisition, construction, repair, replacement, lease or improvement of the applicable asset, (and the renewal, extension, restructuring or refinancing of Indebtedness permitted by this clause (e) so long as the principal amount thereof does not exceed the Indebtedness refinanced and such renewal, extension, restructuring or refinancing is on terms not materially less favorable (taken as a whole) to the Lenders as those contained in the documentation governing the Indebtedness being renewed, extended, restructured or financed), in an aggregate amount not to exceed \$500,000 at any time outstanding;

(f) Indebtedness in respect of Swap Contracts designed to hedge against the Borrower's or any Subsidiary's exposure to interest rates, foreign exchange rates or commodities pricing risks incurred in the ordinary course of business and not for speculative purposes and Guarantees thereof;

(g) Indebtedness representing deferred compensation to employees of the Borrower or any of its Subsidiaries incurred in the ordinary course of business;

(h) Indebtedness consisting of promissory notes issued by the Borrower or any of its Subsidiaries to current or former officers, managers, consultants, directors and employees, their respective estates, spouses or former spouses to finance the purchase or redemption of Equity Interests of the Borrower permitted by Section 7.06 in an aggregate amount not to exceed \$250,000 at any time outstanding; *provided that* such Indebtedness shall be subordinated in right of payment to the Obligations on terms reasonably satisfactory to the DIP Agent (acting at the Direction of the Required DIP Lenders);

(i) 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 or the honoring by a bank or other financial institution of a check, draft or similar instrument drawn against insufficient funds in the ordinary course of business, so long as such Indebtedness is extinguished in the ordinary course of business;

(j) Indebtedness in an aggregate principal amount that at the time of, and after giving effect to, the incurrence thereof, would not exceed \$500,000, in the aggregate, at any time outstanding;;

(k) Indebtedness consisting of (i) the financing of insurance premiums or (ii) take-or-pay obligations contained in supply arrangements, in each case, in the ordinary course of business;

(l) Indebtedness incurred by the Borrower or any of its 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 employee benefits or property, casualty or liability insurance or self-insurance or other Indebtedness with respect to reimbursement-type obligations regarding workers' compensation claims;

(m) obligations in respect of performance, bid, appeal and surety bonds and performance and completion guarantees and similar obligations provided by the Borrower or any of its Subsidiaries or obligations in respect of letters of credit, bank guarantees or similar instruments related thereto, in each case in the ordinary course of business or consistent with past practice;

(n) Indebtedness incurred by a Foreign Subsidiary which is not a Loan Party which, when aggregated with the principal amount of all other Indebtedness incurred pursuant to this Section 7.03(n) and then outstanding for all such Persons taken together, does not exceed in the aggregate \$500,000;

(o) Indebtedness under the LC Agreement; and

(p) all premiums (if any), interest (including post-petition interest), fees, expenses, charges and additional or contingent interest on obligations described in Sections 7.03(a) through Section 7.03(n).

For purposes of determining compliance with any Dollar-denominated restriction on the incurrence of Indebtedness, the Dollar-equivalent principal amount of Indebtedness denominated in a foreign currency shall be calculated based on the relevant currency Exchange Rate in effect on the date such Indebtedness was incurred, in the case of term debt, or first committed, in the case of revolving credit debt; *provided that* if such Indebtedness is incurred to extend, replace, refund, refinance, renew or defease other Indebtedness denominated in a foreign currency, and such extension, replacement, refunding, refinancing, renewal or defeasance would cause the applicable Dollar-denominated restriction to be exceeded if calculated at the relevant currency Exchange Rate in effect on the date of such extension, replacement, refunding, refinancing, renewal or defeasance, such Dollar-denominated restriction shall be deemed not to have been exceeded so long as the principal amount of such refinancing Indebtedness does not exceed the principal amount of such Indebtedness being extended, replaced, refunded, refinanced, renewed or defeased, *plus* the aggregate amount of fees, underwriting discounts, premiums (including tender premiums) and other costs and expenses (including OID) incurred in connection with such refinancing.

The accrual of interest, the accretion of accreted value and the payment of interest in the form of additional Indebtedness shall not be deemed to be an incurrence of Indebtedness for purposes of this Section 7.03. The principal amount of any non-interest bearing Indebtedness or other discount security constituting Indebtedness at any date shall be the principal amount thereof that would be shown on a balance sheet of the Borrower dated such date prepared in accordance with GAAP.

For purposes of determining compliance with this Section 7.03, in the event that an item of Indebtedness meets the criteria of more than one of the categories of Indebtedness described in Sections 7.03(a) through 7.03(o), the Borrower shall, in its sole discretion, classify and reclassify or later divide, classify or reclassify such item of Indebtedness (or any portion thereof) and will only be required to include the amount and type of such Indebtedness in one or more of the above clauses; *provided that* all Indebtedness outstanding under the Loan Documents and listed on Schedule 7.03(a) will at all times be deemed to be outstanding in reliance only on the exception in Section 7.03(a).

SECTION 7.04 Fundamental Changes. Except in connection with the Sale Transaction or pursuant to an order of the Bankruptcy Court that is consistent with the RSA and the Approved DIP Budget, merge, dissolve, liquidate, consolidate with or into another Person, or Dispose of (whether in one transaction or in a series of related transactions) all or substantially all of its assets (whether now owned or hereafter acquired) to or in favor of any Person, except that:

(a) the Loan Parties may consummate transactions contemplated by the RSA;
and

(b) so long as no Event of Default has occurred and is continuing or would result therefrom, (i) any Subsidiary of the Borrower may be merged, amalgamated or consolidated with or into the Borrower in a transaction in which the Borrower is the surviving corporation, (ii) any Subsidiary of the Borrower may be merged, amalgamated or consolidated with or into a Subsidiary that is a Loan Party in a transaction in which a Loan Party is the surviving corporation and (iii) any Subsidiary of the Borrower that is not a Loan Party may be merged, amalgamated or consolidated with or into another Subsidiary that is not a Loan Party.

SECTION 7.05 **Dispositions.** Except in connection with the Sale Transaction, make any Disposition, except:

(a) Dispositions of obsolete, worn out, used or surplus property, whether now owned or hereafter acquired, in the ordinary course of business and Dispositions of property no longer used or useful in the conduct of the business of the Borrower or any of its Subsidiaries in an aggregate amount not to exceed \$250,000 on and after the Closing Date;

(b) Dispositions of (i) inventory in the ordinary course of business or consistent with past practice and goods held for sale in the ordinary course of business and (ii) immaterial assets (including allowing any registrations or any applications for registration of any immaterial IP Rights to lapse or go abandoned in the ordinary course of business) in the ordinary course of business;

(c) [reserved];

(d) Dispositions of property (including Equity Interests in or Indebtedness of Foreign Subsidiaries) to the Borrower or any Subsidiary thereof; *provided that* if the transferor of such property is a Loan Party, (i) the transferee thereof must be a Loan Party or (ii) if such transaction constitutes an Investment, such transaction is permitted under Section 7.02 (other than Section 7.02(e));

(e) to the extent constituting Dispositions, transactions permitted by (i) Section 7.01 (other than Section 7.01(i) and (l)), (ii) Section 7.02(c) or (k), (iii) Section 7.04 and (iv) Section 7.06 (other than 7.06(d));

(f) other sales, transfers or Dispositions pursuant to an order of the Bankruptcy Court which sale, transfer or Disposition are consistent with the RSA and the Approved DIP Budget;

(g) Dispositions of cash and Cash Equivalents;

(h) (i) leases, subleases, licenses or sublicenses (including licenses and sublicenses of software or other IP Rights) and terminations thereof, in each case in the ordinary course of business, and which do not materially interfere with the business of the Borrower and its Subsidiaries (taken as a whole) and (ii) Dispositions of IP Rights (including inbound licenses) that are no longer material to the business of the Borrower and its Subsidiaries;

(i) transfers of property subject to Casualty Events;

(j) Dispositions or discounts without recourse of accounts receivable in connection with the compromise or collection thereof in the ordinary course of business;

(k) Dispositions of Investments in joint ventures to the extent required by, or made pursuant to, customary buy/sell arrangements between, the joint venture parties set forth in joint venture arrangements and similar binding arrangements in existence as of the Closing Date;

(l) the unwinding or settlement of any Swap Contract in accordance with the Approved DIP Budget;

(m) Dispositions pursuant to agreements, instruments or arrangements in existence on the Closing Date and set forth on Schedule 7.05(m); and

(n) Dispositions of assets of Foreign Subsidiaries that are not Loan Parties in an aggregate amount not to exceed \$250,000;

provided that any Disposition of any property pursuant to this Section 7.05 (except pursuant to Sections 7.05(b)(ii) and (h)(i)(with respect to terminations of leases, subleases, licenses or sublicenses), and except for Dispositions from a Loan Party to any other Loan Party) shall be for no less than the Fair Market Value of such property at the time of such Disposition. To the extent any Collateral is Disposed of as permitted by this Section 7.05 to any Person other than a Loan Party, such Collateral shall be sold free and clear of the Liens created by the Loan Documents, and the DIP Agent shall be authorized to take any actions deemed appropriate in order to effect the foregoing.

SECTION 7.06 **Restricted Payments.** Declare or make, directly or indirectly, any Restricted Payment, except:

(a) (i) each Subsidiary may make Restricted Payments to the Borrower, and other Subsidiaries of the Borrower that are Loan Parties and (ii) each Subsidiary that is not a Loan Party may make Restricted Payments to another Subsidiary that is not a Loan Party (and, with respect to each of clauses (i) and (ii), in the case of a Restricted Payment by a non-wholly owned Subsidiary of the Borrower, if consented to by the DIP Agent (at the Direction of the Required DIP Lenders), to the Borrower and any other Subsidiary and to each other owner of Equity Interests of such Subsidiary based on their relative ownership interests of the relevant class of Equity Interests);

(b) the Borrower and each Subsidiary thereof may declare and make dividend payments or other Restricted Payments payable solely in the Equity Interests of such Person (and, in the case of such a Restricted Payment by a non-wholly owned Subsidiary, to the Borrower and any other Subsidiary and to each other owner of Equity Interests of such Subsidiary based on their relative ownership interests of the relevant class of Equity Interests);

(c) [reserved];

(d) to the extent constituting Restricted Payments, the Borrower and its Subsidiaries may enter into and consummate transactions permitted by any provision of

Section 7.02 (other than 7.02(e)), Section 7.04, 7.05 (other than 7.05(e) and 7.05(g)) or Section 7.08 (other than 7.08(d));

(e) repurchases of Equity Interests in the Borrower or Subsidiary thereof deemed to occur upon exercise of stock options or warrants if such Equity Interests represent a portion of the exercise price of such options or warrants;

(f) [reserved]; and

(g) any Restricted Payment by the Borrower to pay listing fees and other costs and expenses attributable to being a publicly traded company which are reasonable and customary.

SECTION 7.07 Orders. Notwithstanding anything to the contrary herein, no Loan Party nor any Subsidiary shall use any portion or proceeds of the Loans or the Collateral, or disbursements set forth in the Approved DIP Budget, for payments or for purposes that would violate the terms of the DIP Order.

SECTION 7.08 Transactions with Affiliates. Enter into any transaction of any kind with any Affiliate of the Loan Parties or any of their Subsidiaries, whether or not in the ordinary course of business in each case involving aggregate payments or consideration in excess of \$500,000, other than:

(a) transactions among the Loan Parties;

(b) on terms substantially as favorable to the Borrower or such Subsidiary as would be obtainable by the Borrower or such Subsidiary at the time in a comparable arm's length transaction with a Person other than an Affiliate;

(c) the Pre-Petition Second Lien Loan Documents;

(d) loans and other Investments among the Borrower and its Subsidiaries and joint ventures (to the extent any such joint venture is only an Affiliate as a result of Investments by the Borrower and/or its Subsidiaries in such joint venture) to the extent otherwise expressly permitted under Section 7.02;

(e) transactions by the Borrower and its Subsidiaries to the extent permitted under and in accordance with an express provision (including any exceptions thereto) of this Article 7;

(f) employment and severance arrangements between the Borrower and its Subsidiaries and their respective officers and employees (i) in the ordinary course of business and transactions pursuant to stock option plans and employee benefit plans and arrangements in the ordinary course of business, in each case, to the extent such is in effect on the Closing Date or (ii) any KEIP/KERP consented to by the Required DIP Lenders or in effect on the Closing Date;

(g) the payment of customary fees and reasonable out of pocket costs to, and indemnities provided on behalf of, directors, officers, employees and consultants of the Borrower and its Subsidiaries in the ordinary course of business to the extent attributable to the ownership

or operation of the Borrower and its Subsidiaries and pursuant to arrangements in effect on the Closing Date;

(h) transactions pursuant to agreements, instruments or arrangements in existence on the Closing Date and set forth on Schedule 7.08(h); and

(i) the issuance or transfer of Equity Interests (other than Disqualified Equity Interests) of the Borrower, including to any former, current or future director, manager, officer, employee or consultant (or any spouses, former spouses, successors, executors, administrators, heirs, legatees, distributees or Affiliate of any of the foregoing) of the Borrower or any of its Subsidiaries for consideration deemed reasonably sufficient by the Borrower's board of directors, in each case, to the extent such is in effect on the Closing Date;

provided, that notwithstanding the foregoing, except as described in Section 7.08(g) and (h), no transaction with Searchlight or Nantahala shall be permitted under this Section 7.08.

SECTION 7.09 Burdensome Agreements. Enter into or permit to exist any Contractual Obligation (other than this Agreement or any other Loan Document) that, directly or indirectly, limits the ability of:

(a) any Subsidiary to make Restricted Payments to the Borrower; or

(b) any Loan Party to create, incur, assume or suffer to exist Liens on property of such Person for the benefit of the Lenders with respect to the DIP Facilities and the Obligations;

provided that the foregoing Sections 7.09(a) and (b) shall not apply to Contractual Obligations which:

(i) exist on the Closing Date, as listed on Schedule 7.09;

(ii) the Pre-Petition Loan Documents and the Pre-Petition Second Lien Loan Documents;

(iii) represent Indebtedness of a Non-Loan Party which is permitted by Section 7.03 and which does not apply to any Loan Party;

(iv) are customary restrictions (as reasonably determined by the Borrower) that arise in connection with (x) any Lien permitted by Sections 7.01(a), (b), (f), (i), (j)(i), (k), (l), (p), (q), (r)(i), (r)(ii), (u), (v) and (z) and relate to the property subject to such Lien or (y) arise in connection with any Disposition permitted by Section 7.04 or 7.05 and relate solely to the assets or Person subject to such Disposition;

(v) are customary provisions in joint venture agreements and other similar agreements applicable to joint ventures permitted under Section 7.02 and applicable solely to such joint venture and its equity and in effect on the Closing Date;

(vi) [reserved];

(vii) are customary restrictions on leases, subleases, licenses or asset sale agreements otherwise permitted hereby so long as such restrictions relate to the property interest, rights or the assets subject thereto;

(viii) comprise restrictions imposed by any agreement relating to secured Indebtedness permitted pursuant to Sections 7.03(b) and (e) and to the extent that such restrictions apply only to the property or assets securing such;

(ix) are customary provisions restricting subletting, transfer or assignment of any lease governing a leasehold interest of the Borrower or any Subsidiary thereof;

(x) are customary provisions restricting assignment or transfer of any agreement entered into in the ordinary course of business;

(xi) are restrictions on cash or other deposits imposed by customers under contracts entered into in the ordinary course of business;

(xii) arise in connection with cash or other deposits permitted under Sections 7.01 and 7.02 and limited to such cash or deposit;

(xiii) [reserved];

(xiv) are restrictions on cash or other deposits or net worth imposed by customers under contracts entered into in the ordinary course of business; and

(xv) are restrictions regarding licensing or sublicensing by the Borrower and its Subsidiaries of IP Rights (including customary restrictions on assignment contained in license or sublicense agreements) entered into in the ordinary course of business.

SECTION 7.10 Bankruptcy Actions. Seek, consent to, or permit to exist, without the prior written consent of the DIP Agent (at the Direction of the Required DIP Lenders) (which consent shall constitute authorization under this Agreement), any order granting authority to take any action that is prohibited by the terms of this Agreement, the DIP Order or the other Loan Documents or refrain from taking any action that is required to be taken by the terms of the DIP Order or any of the other Loan Documents. It is understood and agreed that the filing of a chapter 11 plan of liquidation or the pursuit of confirmation of a chapter 11 plan of liquidation, confirmation of which plan shall take place solely following the Bankruptcy Court's entry of the Sale Order, with the occurrence of any "effective date" or similar concept under such plan subject to the occurrence of the Closing Date, if applicable, provided that such chapter 11 plan is not inconsistent with the Sale Process or Sale Transaction, shall not constitute or be deemed to be a breach or default of this Section 7.10 or of any other term or provision of this Agreement or of any other Loan Document, and shall not constitute or be deemed to be a Default or an Event of Default

for any purpose under the Loan Documents, including, without limitation, for purposes of Section 8.01(f).

SECTION 7.11 Minimum Actual Liquidity. Commencing after the Funding Date, permit, as of the Friday of each calendar week following the Funding Date, Actual Liquidity to be less than \$20,000,000.

SECTION 7.12 Modification of Organization Documents. Other than as required by the RSA or pursuant to the Sale Transaction, amend, modify or waive any of its rights under its certificate or articles of incorporation or organization, by-laws, operating, management or partnership agreement or other organizational documents, to the extent any such amendment, modification or waiver would be adverse to the Lenders (in their capacities as such).

SECTION 7.13 Prepayments, Etc. of Indebtedness.

(a) Make or agree to pay or make, directly or indirectly, (i) any payment or other distribution (whether in cash, securities or other property) of or in respect of principal of or interest on any Indebtedness incurred prior to the Petition Date (all such Indebtedness, including all loans and reimbursement obligations under the Pre-Petition Priority Loan Agreement, “**Pre-Petition Indebtedness**”), unless authorized pursuant to the DIP Order or any other order of the Bankruptcy Court and permitted in the Approved DIP Budget, in each case, in form and substance satisfactory to the Required DIP Lenders (which satisfaction may be communicated via an email from either of the Specified Lender Advisors). Furthermore, no Loan Party will, nor will it permit any of its Subsidiaries to, amend the documents evidencing any Pre-Petition Indebtedness other than as set forth in the RSA.

SECTION 7.14 Insolvency Proceeding Claims. Incur, create, assume, suffer to exist or permit any other super priority administrative claim which is *pari passu* with or senior to the claim of any Agent, the Escrow Agent or the Lenders against the Debtors, except as set forth in the DIP Order.

**ARTICLE 8.
EVENTS OF DEFAULT AND REMEDIES**

SECTION 8.01 Events of Default. Notwithstanding the provisions of Section 362 of the Bankruptcy Code to the extent provided in the DIP Order, with respect to the Debtors and without notice, application or motion, hearing before, order of the Bankruptcy Court or any notice to any Loan Party, any of the following from and after the Closing Date shall constitute an event of default (an “**Event of Default**”):

(a) Non-Payment. Any Loan Party fails to pay (i) when and as required to be paid herein, any amount of principal of any Loan, or (ii) within two (2) Business Days after the same becomes due, any interest on any Loan, any fees or other amounts payable hereunder or with respect to any other Loan Document; or

(b) Specific Covenants. The Borrower or any Subsidiary thereof fails to perform or observe any term, covenant or agreement contained in any of Section 6.03(a) or 6.05(a)

(solely with respect to the Borrower), Section 6.23, Section 6.24, Section 6.25, or Article 7 (other than Section 7.11); or

(c) Other Defaults. The Borrower or any Subsidiary thereof fails to perform or observe (i) any term, covenant or agreement contained in Section 7.11 and such failure continues for one (1) Business Day after the occurrence thereof (or such later date as the DIP Agent (acting at the Direction of the Required DIP Lenders in their sole discretion) may agree in writing), or (ii) any other covenant or agreement (not specified in Section 8.01(a), (b), (c)(i) or (d)) contained in any Loan Document on its part to be performed or observed and such failure continues for five (5) Business Days (or such later date as the DIP Agent (acting at the Direction of the Required DIP Lenders in their sole discretion) may agree in writing) after receipt by the Borrower of written notice thereof from the DIP 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, including the Approved DIP Budget Variance Report, shall be incorrect in any material respect (or, in the case of any representation and warranty qualified by materiality, in all respects) when made or deemed made; or

(e) Material Contracts. (i) Any Material Contract shall be terminated in accordance with its terms (other than as a result of the expiration thereof in accordance with its terms), or (ii) a party to a Material Contract (other than a Loan Party or its Subsidiary) shall deliver a written notice of non-renewal in accordance with the terms thereof, and such termination or non-renewal shall not be revoked, rescinded, suspended or enjoined within ten (10) days thereof (or such later date as the DIP Agent (acting at the Direction of the Required DIP Lenders in their sole discretion) may agree in writing); or

(f) Chapter 11. The occurrence of any of the following in any of the Chapter 11 Cases:

(i) other than a motion in support of the DIP Order, the bringing of a motion, taking of any action or the filing of any plan of reorganization or plan of liquidation (subject to the last sentence of Section 7.10) or disclosure statement attendant thereto by any of the Loan Parties or any of their Subsidiaries, in the Chapter 11 Cases: (A) to obtain additional financing under Section 364(c) or Section 364(d) of the Bankruptcy Code not otherwise permitted pursuant to this Agreement; (B) to grant any Lien other than Liens permitted pursuant to Section 6.01 upon or affecting any Collateral; (C) except as provided in the DIP Order, to use cash collateral of the DIP Agent and the other Secured Parties or Pre-Petition Lenders or Pre-Petition Agent under Section 363(c) of the Bankruptcy Code without the prior written consent of the DIP Agent (at the Direction of the Required DIP Lenders); or (D) any other action or actions adverse to (x) the DIP Agent and Lenders or the Pre-Petition Agent and Pre-Petition Lenders or their rights and remedies hereunder, under any other Loan Documents, or their interest in the Collateral or (y) the Pre-Petition Agent, the Pre-Petition Lenders or their rights under the Pre-Petition Priority Loan Agreement or the other Pre-Petition Loan Documents or their interest in the Pre-Petition Collateral;

(ii) (A) the filing of any plan of reorganization or plan of liquidation (subject to the last sentence of Section 7.10) or disclosure statement attendant thereto, or any direct or indirect amendment to any such plan or disclosure statement, by a Loan Party that does not propose to indefeasibly repay in full in cash the Obligations under this Agreement and the Pre-Petition Obligations, or by any other Person to which the DIP Agent (at the Direction of the Required DIP Lenders) does not consent, or any of the Loan Parties or their Subsidiaries shall seek, support or fail to contest in good faith the filing or confirmation of any such plan or entry of any such order, (B) the entry of any order terminating any Loan Party's exclusive right to file a plan of reorganization or plan of liquidation, or (C) the expiration of any Loan Party's exclusive right to file a plan of reorganization or plan of liquidation;

(iii) the entry of an order in any of the Chapter 11 Cases confirming a plan of reorganization or plan of liquidation (subject to the last sentence of Section 7.10) that (A) is not acceptable to the Required DIP Lenders in their sole discretion or (B) does not contain a provision for termination of the Commitments and indefeasible repayment in full in cash of all of the Obligations under this Agreement and the Pre-Petition Obligations on or before the effective date of such plan or plans;

(iv) (x) the entry of an order amending, supplementing, staying, vacating or otherwise modifying the Loan Documents, the Interim Order, the Final Order, the Cash Management Order or any other order with respect to any of the Chapter 11 Cases affecting in any material respect this Agreement and/or the other Loan Documents (including any order in respect of the Required Milestones specified herein and/or in the DIP Order or the RSA) without the written consent of the DIP Agent (at the Direction of the Required DIP Lenders) or the filing by a Loan Party of a motion to alter, amend, vacate, supplement, modify, or reconsider, in any respect, the Interim Order, the Final Order or the Cash Management Order, or any other order with respect to any of the Chapter 11 Cases affecting in any material respect this Agreement and/or the other Loan Documents, or the failure of any of the Interim Order, the Final Order or the Cash Management Order to be in full force and effect or (y) any Loan Party or any Subsidiary shall fail to comply with the DIP Order, the Cash Management Order or any other order with respect to any of the Chapter 11 Cases affecting in any material respect this Agreement and/or the other Loan Documents, in any material respect;

(v) the Bankruptcy Court's (A) entry of an order granting relief from the Automatic Stay to permit foreclosure of security interests in assets of the Loan Parties of a value in excess of \$500,000; or (B) entry of an order terminating exclusivity having been entered (or such an order is sought by any party and not actively contested by the Loan Parties);

(vi) the allowance of any claim or claims under Section 506(c) of the Bankruptcy Code or otherwise against the DIP Agent, any Lender or any of the Collateral or against the Pre-Petition Agent, any Pre-Petition Lender or any Pre-Petition Collateral;

(vii) the appointment of an interim or permanent trustee in the Chapter 11 Cases or the appointment of a trustee receiver or an examiner in the Chapter 11 Cases

with expanded powers to operate or manage the financial affairs, the business, or reorganization of the Loan Parties (without consent of the DIP Agent (at the Direction of the Required DIP Lenders));

(viii) (A) the dismissal of any Chapter 11 Case or (B) any Loan Party shall file a motion or other pleading seeking the dismissal of the Chapter 11 Cases under Section 1112 of the Bankruptcy Code or otherwise;

(ix) any Loan Party shall file a motion (without consent of the DIP Agent (at the Direction of the Required DIP Lenders)) seeking, or the Bankruptcy Court shall enter an order granting, relief from or modifying the Automatic Stay of Section 362 of the Bankruptcy Code (A) to allow any creditor (other than the DIP Agent) to execute upon or enforce a Lien on any Collateral, (B) approving any settlement or other stipulation not approved by the Required DIP Lenders with any creditor of any Loan Party providing for payments as adequate protection or otherwise to such secured creditor or (C) permit other actions that would have a Material Adverse Effect on the Debtors or their estates (taken as a whole);

(x) the commencement of a suit or an action (but not including a motion for standing to commence a suit or an action) against either the DIP Agent or any Lender or the Pre-Petition Agent or any Pre-Petition Lender and, as to any suit or action brought by any Person other than a Loan Party or a Subsidiary, officer or employee of a Loan Party, and the continuation thereof without dismissal for thirty (30) days after service thereof on either the DIP Agent or such Lender or Pre-Petition Agent or any Pre-Petition Lender, that asserts or seeks by or on behalf of a Loan Party, any state or federal environmental protection or health and safety agency, any official committee in any Chapter 11 Case or any other party in interest in any of the Chapter 11 Cases, a claim or any legal or equitable remedy that would (x) have the effect of invalidating, subordinating or challenging any or all of the Obligations or Liens of the DIP Agent or any Lender under the Loan Documents or the Pre-Petition Obligations or Liens of the Pre-Petition Agent or Pre-Petition Lenders under the Pre-Petition Loan Documents to any other claim, or (y) have a material adverse effect on the rights and remedies of the DIP Agent or any Lender or Pre-Petition Agent or any Prior Lender under any Loan Document or the Pre-Petition Agent or Pre-Petition Lenders under the Pre-Petition Loan Documents or the collectability of all or any portion of the Obligations under the Loan Documents or the Pre-Petition Obligations;

(xi) the entry of an order in the Chapter 11 Cases avoiding or permitting recovery of any portion of the payments made on account of the Obligations owing under this Agreement or the other Loan Documents;

(xii) the failure of any Loan Party to perform any of its obligations under the Interim Order, the Final Order, the Cash Management Order, or any order of the Bankruptcy Court approving any Transaction or to perform in any material respect its obligations under any order of the Bankruptcy Court approving bidding procedures;

(xiii) the existence of any claims or charges, or the entry of any order of the Bankruptcy Court authorizing any claims or charges, other than in respect of this

Agreement and the other Loan Documents, or as otherwise permitted under the applicable Loan Documents or permitted under the DIP Order, entitled to superpriority administrative expense claim status in any Chapter 11 Case pursuant to Section 364(c)(1) of the Bankruptcy Code *pari passu* with or senior to the claims of the DIP Agent and the Secured Parties under this Agreement and the other Loan Documents, or there shall arise or be granted by the Bankruptcy Court (i) any claim having priority over any or all administrative expenses of the kind specified in clause (b) of Section 503 or clause (b) of Section 507 of the Bankruptcy Code or (ii) any Lien on the Collateral having a priority senior to or *pari passu* with the Liens and security interests granted herein, except, in each case, as expressly provided in the Loan Documents or in the DIP Order then in effect (but only in the event specifically consented to by the DIP Agent (at the Direction of the Required DIP Lenders)), whichever is in effect;

(xiv) the DIP Order shall cease to create a valid and perfected Lien (which creation and perfection shall not require any further action other than the entry of the DIP Order) on the Collateral or to be in full force and effect, shall have been reversed, modified, amended, stayed, vacated, or subject to stay pending appeal, in the case of modification or amendment, without prior written consent of the DIP Agent (at the Direction of the Required DIP Lenders);

(xv) an order in the Chapter 11 Cases shall be entered (i) charging any of the Collateral under Section 506(c) of the Bankruptcy Code against the DIP Agent and the Secured Parties, or (ii) limiting the extension under Section 552(b) of the Bankruptcy Code of the Liens of the Pre-Petition Agent on the Collateral to any proceeds, products, offspring, or profits of the Collateral acquired by any Loan Party after the Petition Date, or the commencement of other actions that is materially adverse to the DIP Agent, the Secured Parties or their respective rights and remedies under the Loan Documents in any of the Chapter 11 Cases or inconsistent with any of the Loan Documents;

(xvi) any order having been entered or granted (or requested, unless actively opposed by the Loan Parties) by either the Bankruptcy Court or any other court of competent jurisdiction materially adversely impacting the rights and interests of the DIP Agent and the Lenders, as determined by the Required DIP Lenders, acting reasonably, without the prior written consent of the DIP Agent (at the Direction of the Required DIP Lenders);

(xvii) an order of the Bankruptcy Court shall be entered denying or terminating use of cash collateral by the Loan Parties authorized by the DIP Order;

(xviii) if the Final Order does not include a waiver, in form and substance satisfactory to the DIP Agent and the Lenders (which satisfaction may be communicated via an email from either of the Specified Lender Advisors), of (i) the right to surcharge the Collateral under Section 506(c) of the Bankruptcy Code and (ii) any ability to limit the extension under Section 552(b) of the Bankruptcy Code of the Liens of the Pre-Petition Agent on the Collateral to any proceeds, products, offspring, or profits of the Collateral acquired by any Loan Party after the Petition Date;

(xix) any Loan Party shall challenge, support or encourage a challenge of any payments made to the DIP Agent or any Lender with respect to the Obligations or to the Pre-Petition Agent or the Pre-Petition Lenders with respect to the Pre-Petition Obligations, or without the consent of the DIP Agent (at the Direction of the Required DIP Lenders), the filing of any motion by the Loan Parties seeking approval of (or the entry of an order by the Bankruptcy Court approving) adequate protection to any Pre-Petition agent or lender that is inconsistent with the DIP Order;

(xx) without the DIP Agent's and the Required DIP Lenders' consent, the entry of any order by the Bankruptcy Court granting, or the filing by any Loan Party or any of its Subsidiaries of any motion or other request with the Bankruptcy Court (in each case, other than the DIP Order and motions seeking entry thereof or permitted amendments or modifications thereto) seeking authority to use any cash proceeds of any of the Collateral without the consent of the DIP Agent's and the Required DIP Lenders' consent or to obtain any financing under Section 364 of the Bankruptcy Code other than the Loan Documents;

(xxi) if, unless otherwise approved by the DIP Agent and the Required DIP Lenders, an order of the Bankruptcy Court shall be entered providing for a change in venue with respect to the Chapter 11 Cases and such order shall not be reversed or vacated within ten (10) days (or such later date as the DIP Agent (acting at the Direction of the Required DIP Lenders in their sole discretion) may agree in writing);

(xxii) without the DIP Agent's and the Required DIP Lenders' consent (at the Direction of the Required DIP Lenders), any Loan Party or any Subsidiary thereof shall file any motion or other request with the Bankruptcy Court seeking (a) to grant or impose, under Section 364 of the Bankruptcy Code or otherwise, liens or security interests in any DIP Collateral, whether senior, equal or subordinate to the DIP Agent's liens and security interests; or (b) to modify or affect any of the rights of the DIP Agent or the Lenders under the DIP Order, the Loan Documents, and related documents by any plan of reorganization confirmed in the Chapter 11 Cases or subsequent order entered in the Chapter 11 Cases;

(xxiii) any Loan Party or any Subsidiary thereof or any Debtor shall take any action in support of any matter set forth in this Section 8.01(f) or any other Person shall do so and such application is not contested in good faith by the Loan Parties and the relief requested is granted in an order that is not stayed pending appeal;

(xxiv) any Debtor shall be enjoined from conducting any material portion of its business, any disruption of the material business operations of the Debtors shall occur, or any material damage to or loss of material assets of any Debtor shall occur and, in each case and, in each case, such event or circumstance would reasonably be expected to have a Material Adverse Effect;

(xxv) any Debtor shall deny in writing that such Debtor has liability or obligation under this Agreement for the Obligations or seeks to recover any monetary damages from the DIP Agent, any Lender, any of the Prepetition Secured Parties;

(xxvi) a Challenge (as defined in the DIP Orders) shall be filed by any party in interest and shall be sustained by the Bankruptcy Court, in whole or in part;

(xxvii) the Bankruptcy Court shall grant relief under any motion or other pleading filed by any Debtor that results in the occurrence of an Event of Default; provided that the Loan Parties hereby agree that the DIP Agent shall be entitled to request an expedited hearing on any such motion and hereby consent to such expedited hearing (and the DIP Agent is authorized to represent to the Bankruptcy Court that the Loan Parties have consented to such expedited hearing on the motion);

(xxviii) the RSA is terminated in accordance with its terms (other than as a result of the breach thereof by the Required Consenting First Lien Lenders (as defined in the RSA) or the consummation of a Sale Transaction that results in the Discharge of the DIP and First Lien Obligations or as a result of the Debtors' designation of a Successful Bid that provides for a purchase price that would result in the Discharge of the DIP and First Lien Obligations), or the failure to achieve or satisfy any Required Milestone in the RSA or the DIP Order (unless waived in accordance with the terms of the RSA), and subject to the final paragraph of Section 6.25;

(xxix) any Debtor shall deny in writing such Debtor's liability or obligations under this Agreement or seeks to recover any monetary damage from the DIP Agent, any Lender or any of the Prepetition Secured Parties;

(xxx) failure of the Borrower or any other Loan Party to use the proceeds of the Loans as set forth in and in compliance with the Approved DIP Budget (subject to variances permitted hereunder) and this Agreement; or

(g) Pre-Petition Loan Documents. Any material provision of any Pre-Petition Loan Document shall for any reason cease to be valid and binding on or enforceable against any Loan Party (other than as a result of the Automatic Stay resulting from the commencement of the Chapter 11 Cases); or any Loan Party shall so state in writing or bring an action to limit its obligations or liabilities under the Pre-Petition Loan Documents; or any Security Document (as defined in the Pre-Petition Priority Loan Agreement) shall for any reason cease to create a valid security interest in any Pre-Petition Collateral, in each case, purported to be covered thereby or such security interest shall for any reason cease to be a perfected Lien with the status and priority provided in the DIP Order; or

(h) Judgments. Except for the allowance in the Chapter 11 Cases of a general unsecured claim, one or more judgments or decrees shall be entered against any Loan Party or any Subsidiary thereof after the Petition Date involving a liability in excess of \$1,000,000 in the aggregate for all such judgments and decrees (to the extent not covered by insurance or indemnities as to which the applicable insurance company has not denied coverage) and such judgments or decrees shall not have been satisfied, vacated, discharged or stayed or bonded pending appeal within twenty (20) days after the entry thereof (or such later date as the DIP Agent (acting at the Direction of the Required DIP Lenders in their sole discretion) may agree in writing); or

(i) Invalidity of Loan Documents. Any material provision of the Loan Documents, at any time after its execution and delivery and for any reason other than as expressly permitted hereunder or thereunder (including as a result of a transaction permitted under Section 7.04 or 7.05) or as a result of acts or omissions by the DIP Agent or any Lender or the satisfaction in full of all the 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 Loan Document or the validity or priority of a Lien as required by the DIP Order or the Collateral Documents on a material portion of the Collateral; or any Loan Party denies in writing that it has any or further liability or obligation under any Loan Document (other than as a result of repayment in full of the Obligations (other than in accordance with its terms) and termination of the Aggregate Commitments), or purports in writing to revoke or rescind any Loan Document (other than in accordance with its terms); or

(j) Change of Control. Other than pursuant to the Sale Transaction, there occurs any Change of Control; or

(k) Collateral Documents. Any Collateral Document shall for any reason (other than pursuant to the terms thereof including as a result of a transaction not prohibited under this Agreement and subject to the Carve-Out and other Liens specified in the DIP Orders) cease to create a valid and perfected Lien, with the priority required by the Collateral Documents on and security interest in any material portion of the Collateral purported to be covered thereby, subject to Liens permitted under Section 7.01 or any Loan Party contests in writing the validity or priority of a Lien, (i) except to the extent that any such perfection or priority is not required pursuant to the Collateral and Guarantee Requirement or results from the failure of the DIP Agent to maintain possession of certificates actually delivered to it representing securities or negotiable instruments pledged under the Collateral Documents which does not arise from a breach by a Loan Party of its obligations under the Loan Documents or take other required actions required to be taken by the DIP Agent under the Loan Documents and (ii) except as to Collateral consisting of Real Property to the extent that such losses are covered by a lender's title insurance policy and such insurer has not denied coverage; or

(l) ERISA. (i) An ERISA Event occurs which has resulted or would reasonably be expected to result in a liability to any Loan Party in excess of \$1,000,000, (ii) a Loan Party, any Subsidiary thereof or any ERISA Affiliate fails to pay when due, after the expiration of any applicable grace period, any installment payment with respect to its withdrawal liability under Section 4201 of ERISA under a Multiemployer Plan and a would reasonably be expected to result in a liability to any Loan Party in excess of \$1,000,000 or (iii) a termination, withdrawal or noncompliance with applicable Law or plan terms or other event similar to an ERISA Event occurs with respect to a Foreign Plan that would reasonably be expected to result in a liability to any Loan Party in excess of \$1,000,000, either individually or in the aggregate with each other such event.

SECTION 8.02 Remedies Upon Event of Default.

(a) Subject to the terms of the DIP Order and the Remedies Notice Period, if any Event of Default occurs and is continuing, notwithstanding the provisions of Section 362 of the Bankruptcy Code, and any stay under the CCAA, without any application, motion or notice to, hearing before, or order from the Bankruptcy Court, then, the DIP Agent, upon the Direction of the Required DIP Lenders shall declare the Loans hereunder (with accrued interest thereon) and

all other amounts owing under this Agreement immediately become due and payable, but without affecting the DIP Agent's Liens or the Obligations, and the DIP Agent, upon the request of the Required DIP Lenders, shall: (i) terminate, reduce or restrict the right or ability of the Loan Parties to use any cash collateral; (ii) declare the Loans hereunder (with accrued interest thereon) and all other amounts owing under this Agreement to be due and payable forthwith, whereupon the same shall immediately become due and payable; (iii) subject to the Remedies Notice Period, (A) exercise on behalf of itself and the Lenders all rights and remedies available to it and the Lenders under the Loan Documents or applicable law or (B) take any and all actions described in the DIP Order; and (iv) deliver a Carve-Out Trigger Notice.

(b) At any hearing during the Remedies Notice Period to contest the enforcement of remedies, the only issue that may be raised by any party in opposition thereto shall be whether, in fact, an Event of Default has occurred, and the Loan Parties hereby waive their right to and shall not be entitled to seek relief, including, without limitation, under Section 105 of the Bankruptcy Code, to the extent that such relief would in way impair or restrict the rights and remedies of the DIP Agent or the Secured Parties, as set forth in this Agreement, the applicable DIP Order, Canadian DIP Recognition Order or other Loan Documents. Except as expressly provided above in this Section 8.02(b), to the maximum extent permitted by applicable law, presentment, demand, protest and all other notices of any kind are hereby expressly waived.

(c) Subject to any previously granted licenses, each of the DIP Agent and the DIP Agent is hereby granted an irrevocable, non-exclusive license or other right to use, license or sub-license (to the extent permitted under the applicable licenses and without payment of royalty or other compensation to any Person) any or all IP Rights of Loan Parties, computer hardware and software, trade secrets, brochures, customer lists, promotional and advertising materials, labels, packaging materials and other property, in advertising for sale, marketing, selling, collecting, completing manufacture of, or otherwise exercising any rights or remedies with respect to, any Collateral (in each case after the occurrence, and during the continuance, of an Event of Default). Each of the DIP Agent and the DIP Agent (together with its agents, representatives and designees) is hereby granted a non-exclusive right to have access to, and a rent free right to use, any and all owned or leased locations (including, without limitation, warehouse locations, distribution centers and store locations) for the purpose of arranging for and effecting the sale or disposition of Collateral, including the production, completion, packaging and other preparation of such Collateral for sale or disposition (it being understood and agreed that each of the DIP Agent and the DIP Agent and its representatives (and Persons employed on their behalf), may continue to operate, service, maintain, process and sell the Collateral, as well as to engage in bulk sales of Collateral). Upon the occurrence and the continuance of an Event of Default and the exercise by the DIP Agent or Lenders of their rights and remedies under this Agreement and the other Loan Documents, the Borrower shall assist the DIP Agent, the DIP Agent and Lenders in effecting a sale or other disposition of the Collateral upon such terms as are reasonably acceptable to the DIP Agent (at the Direction of the Required DIP Lenders).

**ARTICLE 9.
DIP AGENT.**

SECTION 9.01 Appointment and Authority.

(a) Each of the Lenders hereby irrevocably appoints Citi to act on its behalf as the DIP Agent hereunder and under the other Loan Documents and authorizes the DIP Agent to take such actions on its behalf and to exercise such powers as are delegated to the DIP Agent by the terms hereof or thereof, together with such actions and powers as are reasonably incidental or related thereto. The provisions of this Article 9 (other than Sections 9.01, 9.06 and 9.09 through and including 9.12) are solely for the benefit of the DIP Agent, the Lenders, and no Loan Party has rights as a third-party beneficiary of any of such provisions.

(b) The DIP Agent shall also act as the “collateral agent” under the Loan Documents, and each of the Lenders hereby irrevocably appoints and authorizes the DIP Agent to act as the agent of 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 Secured Obligations, together with such powers and discretion as are reasonably incidental thereto. In this connection, the DIP Agent, as “collateral agent” and any co-agents, sub-agents and attorneys-in-fact appointed by the DIP Agent pursuant to Section 9.05 for purposes of holding or enforcing any Lien on the Collateral (or any portion thereof) granted under the Collateral Documents, or for exercising any rights and remedies thereunder at the direction of the DIP Agent, shall be entitled to the benefits of all provisions of this Article 9 and Article 10 (including the second paragraph of Section 10.05), 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 DIP Agent to (i) execute any and all documents (including releases) with respect to the Collateral (including any intercreditor agreement permitted by this Agreement and any amendment, supplement, modification or joinder with respect thereto) and the rights of the Secured Parties with respect thereto, as contemplated by and in accordance with the provisions of this Agreement and the Collateral Documents and acknowledge and agree that any such action by the DIP Agent shall bind the Lenders and (ii) negotiate, enforce or settle any claim, action or proceeding affecting the Lenders in their capacity as such, at the Direction of the Required DIP Lenders, which negotiation, enforcement or settlement will be binding upon each Lender.

(c) Each Lender hereby irrevocably authorizes the DIP Agent, based upon the instruction of the Required DIP Lenders (but subject in all respects to the RSA), to credit bid and purchase (either directly or through one or more acquisition vehicles) all or any portion of the Collateral at any sale thereof conducted by the DIP Agent or the DIP Agent under the provisions of the UCC, including pursuant to Sections 9-610 or 9-620 of the UCC (or any equivalent provision of the UCC), and the PPSA, at any sale thereof conducted under the provisions of the Bankruptcy Code, including Section 363 of the Bankruptcy Code, or at any other sale or foreclosure conducted by the DIP Agent (whether by judicial action or otherwise) in accordance with applicable Requirements of Law. In no event shall the DIP Agent be obligated to take title to or possession of Collateral in its own name, or otherwise in a form or manner that may, in its reasonable judgment, expose it to liability; *provided that* if the DIP Agent declines to take title to or possession

of Collateral because it exposes it to liability, it will promptly notify the Specified Lender Advisors thereof.

(d) Each Lender irrevocably appoints each other Lender as its agent and bailee for the purpose of perfecting Liens (whether pursuant to Section 8-301(a)(2) of the UCC or otherwise), for the benefit of the Secured Parties, in assets in which, in accordance with the UCC and the PPSA or any other applicable Requirement of Law a security interest can be perfected by possession or control. Should any Lender obtain possession or control of any such Collateral, such Lender shall notify the DIP Agent thereof, and, promptly following the DIP Agent's request therefor, shall deliver such Collateral to the DIP Agent or otherwise deal with such Collateral in accordance with the DIP Agent's instructions.

SECTION 9.02 Rights as a Lender. The Person serving as the DIP Agent hereunder shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not the DIP Agent and the term "Lender" or "Lenders" shall, unless otherwise expressly indicated or unless the context otherwise requires, include the Person serving as the DIP 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 thereof or other Affiliate thereof as if such Person were not the DIP Agent hereunder and without any duty to account therefor to the Lenders.

SECTION 9.03 Exculpatory Provisions. The DIP Agent shall not have any duties or obligations except those expressly set forth herein and in the other Loan Documents. Without limiting the generality of the foregoing, the DIP Agent:

(a) shall not be subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing;

(b) shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by the other Loan Documents that the DIP 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* the DIP Agent shall not be required to take any action that, in its opinion or the opinion of its counsel, may (i) expose the DIP Agent to liability or that is contrary to any Loan Document or applicable law or (ii) be in violation of the Automatic Stay under any Debtor Relief Law or that may effect a forfeiture, modification or termination of property of a Defaulting Lender in violation of any Debtor Relief Law;

(c) shall not, except as expressly set forth herein and in the other Loan Documents, have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to the Borrower or any of its Affiliates that is communicated to or obtained by the Person serving as the DIP Agent or any of its Affiliates in any capacity;

(d) shall not be liable for any action taken or not taken by it (i) with the consent or at the request of the DIP Agent (at the Direction of the Required DIP Lenders) (or such other number or percentage of the Lenders as shall be necessary, or as the DIP Agent shall believe in

good faith shall be necessary, under the circumstances as provided in Sections 10.01 and 8.02) or (ii) in the absence of its own gross negligence or willful misconduct as determined by a court of competent jurisdiction in a final and non-appealable judgment. The DIP Agent shall be deemed not to have knowledge of any Default unless and until written notice describing such Default is given to the DIP Agent by the Borrower or a Lender; and

(e) shall not be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with this Agreement or any other Loan Document, (ii) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or therein or the occurrence of any Default, (iv) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Loan Document or any other agreement, instrument or document, or 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 4 or elsewhere herein, other than to confirm receipt of items expressly required to be delivered to the DIP Agent. The DIP Agent shall not have any responsibility or liability for monitoring the list of identities of, or enforcing provisions relating to, Disqualified Institutions.

SECTION 9.04 Reliance by DIP Agent. The DIP 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 in good faith to be genuine and to have been signed, sent or otherwise authenticated by the proper Person. The DIP Agent also may rely upon any statement made to it orally or by telephone and believed by it in good faith 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 DIP Agent may presume that such condition is satisfactory to such Lender unless the DIP Agent shall have received notice to the contrary from such Lender prior to the making of such Loan. The DIP Agent may consult with legal counsel (who may be counsel for the Borrower), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

SECTION 9.05 Delegation of Duties. The DIP Agent may perform any and all of its duties and exercise its rights and powers hereunder or under any other Loan Document by or through any one or more sub-agents appointed by the DIP Agent. The DIP Agent and any such sub-agent may perform any and all of its duties and exercise its rights and powers by or through their respective Related Parties. The exculpatory provisions of this Article 9 shall apply to any such sub-agent and to the Related Parties of the DIP 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 DIP Agent. The DIP Agent shall not be responsible for the negligence or misconduct of any sub-agents except to the extent that a court of competent

jurisdiction determines in a final and non-appealable judgment that the DIP Agent acted with gross negligence or willful misconduct in the selection of such sub-agents.

SECTION 9.06 Resignation of DIP Agent. The DIP Agent may at any time give notice of its resignation to the Lenders and the Borrower. If the DIP Agent is a Defaulting Lender, Borrower may remove such Defaulting Lenders from such role upon fifteen (15) days' notice to the Lenders. Upon receipt of any such notice of resignation or upon such removal, the Required DIP Lenders shall have the right to appoint a successor, which shall be a bank with an office in the United States, or an Affiliate of any such 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 DIP Agent gives notice of its resignation, then the retiring DIP Agent may on behalf of the Lenders, appoint a successor DIP Agent meeting the qualifications set forth above; *provided that* if the DIP Agent 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 (a) the retiring DIP Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents (except that in the case of any collateral security held by the DIP Agent on behalf of the Lenders under any of the Loan Documents, the retiring DIP Agent shall continue to hold such collateral security until such time as a successor DIP Agent is appointed) and (b) all payments, communications and determinations provided to be made by, to or through the DIP Agent shall instead be made by or to each Lender directly, until such time as the Required DIP Lenders appoint a successor DIP Agent as provided for above in this Section 9.06. Upon the acceptance of a successor's appointment as DIP Agent hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring (or retired) DIP Agent, and the retiring DIP Agent shall be discharged from all of its duties and obligations hereunder or under the other Loan Documents (if not already discharged therefrom as provided above in this Section 9.06). The fees payable by the Borrower to a successor DIP Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Borrower and such successor. After the retiring DIP Agent's resignation hereunder and under the other Loan Documents, the provisions of this Article 9 and Sections 10.04 and 10.05 shall continue in effect for the benefit of such retiring DIP Agent, its sub-agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while the retiring DIP Agent was acting as DIP Agent.

SECTION 9.07 Non-Reliance on DIP Agent and Other Lenders. Each Lender acknowledges that it has, independently and without reliance upon the DIP Agent or any other Lender or any of their Related Parties and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Lender also acknowledges that it will, independently and without reliance upon the DIP Agent or any other Lender or any of their Related Parties and based on such documents and information as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Agreement, any other Loan Document or any related agreement or any document furnished hereunder or thereunder.

SECTION 9.08 No Other Duties, Etc. Anything herein to the contrary notwithstanding, the DIP Agent shall have no any powers, duties or responsibilities under this Agreement or any of the other Loan Documents, except in its capacity, as applicable, as the DIP Agent.

SECTION 9.09 DIP 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 DIP 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 DIP 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 Secured 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 DIP Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of the Lenders and the DIP Agent and their respective agents and counsel and all other amounts due the Lenders and the DIP Agent under Sections 2.09, 10.04 and 10.05) allowed in such judicial proceeding; and

(b) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same; and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender to make such payments to the DIP Agent and, if the DIP Agent shall consent to the making of such payments directly to the Lenders, to pay to the DIP Agent any amount due for the reasonable compensation, expenses, disbursements and advances of the DIP Agent and its agents and counsel, and any other amounts due the DIP Agent under Sections 2.09, 10.04 and 10.05.

Nothing contained herein shall be deemed to authorize the DIP 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 DIP Agent to vote in respect of the claim of any Lender or in any such proceeding.

SECTION 9.10 Collateral and Guaranty Matters. Each Lender hereby agrees, and each holder of any Note by the acceptance thereof will be deemed to agree, that, except as otherwise set forth herein, any action taken by the Required DIP Lenders in accordance with the provisions of this Agreement or the Collateral Documents, and the exercise by the Required DIP Lenders of the powers set forth herein or therein, together with such other powers as are reasonably incidental thereto, shall be authorized and binding upon all of the Lenders. The DIP Agent is hereby authorized on behalf of all of the Lenders, without the necessity of any notice to or further consent from any Lender, from time to time prior to the occurrence and continuance of an Event of Default, to take any action with respect to any Collateral or Collateral Documents which may be necessary to create, perfect and maintain perfected security interests in and liens upon the Collateral granted pursuant to the Collateral Documents. Each of the Lenders irrevocably authorizes the DIP Agent, at its option, and in its sole discretion:

(a) to enter into and sign for and on behalf of the Lenders as Secured Parties the Collateral Documents for the benefit of the Lenders and the other Secured Parties;

(b) to automatically release any Lien on any property granted to or held by the DIP Agent under any Loan Document (i) upon termination of the Aggregate Commitments and

payment in full of all Obligations, (ii) at the time the property subject to such Lien is Disposed or to be Disposed as part of or in connection with any Disposition permitted hereunder or under any other Loan Document, (iii) subject to Section 10.01, 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 Section 9.10(d);

(c) to subordinate any Lien on any property granted to or held by the DIP Agent under any Loan Document to the holder of any Lien on such property that is permitted to be senior to the Liens securing the Secured Obligations pursuant to Sections 7.01(b), (u), (w) (with respect to assumed Indebtedness) and (aa) (with respect to Section 7.01(b) and (u) and (bb)); and

(d) to release any Subsidiary Guarantor from its obligations under its Guaranty if such Person ceases to be a Subsidiary of the Borrower as a result of a transaction permitted hereunder.

Upon request by the DIP Agent at any time, the Required DIP Lenders will confirm in writing the DIP Agent's authority to release or subordinate its interest in particular types or items of property, or to release any Guarantor from its obligations under the Guaranty pursuant to this Section 9.10. In each case as specified in this Section 9.10, the DIP Agent will (and each Lender irrevocably authorizes the DIP Agent to), at the Borrower's expense, execute and deliver to the applicable Loan Party such documents as such Loan Party may reasonably request to evidence the release of such item of Collateral from the assignment and security interest granted under the Collateral Documents or to subordinate its interest in such item, 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 9.10.

The DIP Agent shall not be responsible for or have a duty to ascertain or inquire into any representation or warranty regarding the existence, value or collectability of the Collateral, the existence, priority or perfection of the DIP Agent's Lien thereon, or any certificate prepared by the Borrower or any of its Subsidiaries in connection therewith, nor shall the DIP Agent be responsible or liable to the Lenders for any failure to monitor or maintain any portion of the Collateral.

SECTION 9.11 [Reserved].

SECTION 9.12 Withholding Tax Indemnity. To the extent required by any applicable Laws (as determined in good faith by the DIP Agent), the DIP Agent may withhold from any payment to any Lender an amount equivalent to any applicable withholding Tax. If the Internal Revenue Service or any other authority of the United States or other jurisdiction asserts a claim that the DIP Agent did not properly withhold Tax from amounts paid to or for the account of any Lender for any reason (including because the appropriate form was not delivered or not properly executed, or because such Lender failed to notify the DIP Agent of a change in circumstance that rendered the exemption from, or reduction of withholding Tax ineffective or if any payment has been made by the DIP Agent to any Lender without applicable withholding tax being deducted from such payment), such Lender shall, within ten (10) days after written demand therefor, indemnify and hold harmless the DIP Agent (to the extent that the DIP Agent has not already been reimbursed by the Borrower pursuant to Section 3.01 and 3.04 and without limiting

or expanding the obligation of the Borrower to do so) for (i) any Indemnified Taxes or Other Taxes attributable to such Lender, (ii) any Taxes attributable to such Lender's failure to comply with the provisions of Section 10.07(e) relating to the maintenance of a Participant Register and (iii) any Excluded Taxes attributable to such Lender, in each case together with all reasonable expenses incurred, including legal expenses and any other out-of-pocket expenses, whether or not such Tax was correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Lender by the DIP Agent shall be conclusive absent manifest error. Each Lender hereby authorizes the DIP Agent to set off and apply any and all amounts at any time owing to such Lender under this Agreement or any other Loan Document against any amount due the DIP Agent under this Section 9.12. The agreements in this Section 9.12 shall survive the resignation and/or replacement of the DIP Agent, any assignment of rights by, or the replacement of, a Lender and the repayment, satisfaction or discharge of all other Obligations.

ARTICLE 10. MISCELLANEOUS

SECTION 10.01 **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 any Loan Party therefrom, shall be effective unless in writing signed by the Required DIP Lenders (or by the DIP Agent (at the Direction of the Required DIP Lenders)) (other than with respect to any amendment or waiver contemplated in Sections 10.01(a) through (j) below, which shall only require the consent of the Lenders expressly set forth therein and not Required DIP Lenders) and the applicable Loan Party, as the case may be, 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 holding such Commitment (it being understood that a waiver of any condition precedent set forth in Section 4.01 or 4.02, or the waiver of any Default, Event of Default, mandatory prepayment or mandatory reduction of any Commitments shall not constitute such an extension or increase);

(b) postpone any date scheduled for any payment of principal (including final maturity), interest or fees under Section 2.07, 2.08 or 2.09, respectively, without the written consent of each Lender directly and adversely affected thereby (it being understood that the waiver (or amendment to the terms) of any mandatory prepayment of the Loans or any obligation of the Borrower to pay interest at the Default Rate, any Default or Event of Default, mandatory prepayment or mandatory reduction of any Commitments shall not constitute such a postponement of any date scheduled for the payment of principal or interest);

(c) reduce or forgive the principal of, or the rate of interest specified herein on, any Loan, or (subject to clause (iv) of the second proviso to this Section 10.01) any fees or other amounts payable hereunder or under any other Loan Document (or extend the timing of payments of such fees or other amounts) without the written consent of each Lender directly and adversely affected thereby (it being understood that the waiver of (or amendment to the terms of) any obligation of the Borrower to pay interest at the Default Rate, any mandatory prepayment of the

Loans or mandatory reduction of any Commitments or any Default or Event of Default shall not constitute such a reduction shall not constitute a reduction or forgiveness in any rate of interest);

(d) change any provision of Section 2.12(a), 2.13 or 8.03 or the definition of “Pro Rata Share” in any manner that would alter the *pro rata* sharing of payments or other amounts required thereby, without the written consent of each Lender directly and adversely affected thereby;

(e) change any provision of (i) this Section 10.01 or (ii) 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 to reduce the percentage set forth therein, without the written consent of each Lender directly and adversely affected thereby (it being understood that, with the consent of the Required DIP Lenders (if such consent is otherwise required), or the DIP Agent (if the consent of the Required DIP Lenders is not otherwise required), additional extensions of credit pursuant to this Agreement may be included in the determination of the Required DIP Lenders on substantially the same basis as the Commitments, as applicable);

(f) other than in connection with a transaction permitted under Section 7.04 or 7.05, release all or substantially all of the Collateral in any transaction or series of related transactions, without the written consent of each Lender; or

(g) other than in connection with a transaction permitted under Section 7.04 or 7.05, release all or substantially all of the aggregate value of the Guarantees, without the written consent of each Lender;

provided, further, that (i) [reserved]; (ii) [reserved]; (iii) no amendment, waiver or consent shall, unless in writing and signed by the DIP Agent in addition to the Lenders required above, adversely affect the rights or duties of, or any fees or other amounts payable to, the DIP Agent under this Agreement or any other Loan Document; (iv) only the consent of the parties to the Fee Letter shall be required to amend, modify or supplement the terms thereof; (v) Section 10.07(h) may not be amended, waived or otherwise modified without the consent of each Granting Lender all or any part of whose Loans are being funded by an SPC at the time of such amendment, waiver or other modification; and (vi) [reserved]. 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 (x) in respect of an amendment, waiver or consent under Section 10.01(a) or (b) and (y) any waiver, amendment or modification requiring the consent of all Lenders or each directly and adversely affected Lender that by its terms materially and adversely affects any Defaulting Lender to a greater extent than other affected Lenders shall require the consent of such Defaulting Lender.

Notwithstanding anything to the contrary herein, with the consent of the DIP Agent at the request of the Borrower (without the need to obtain any consent of any Lender), (i) any Loan Document may be amended to cure any obvious error or any error or omission of a technical nature that is jointly identified by the DIP Agent and the Borrower and (ii) this Agreement

(including the amount of amortization due and payable with respect to any Class of Loans) may be amended to the extent necessary to create a fungible Class of Loans.

SECTION 10.02 Notices and Other Communications; Facsimile Copies.

(a) Notices; Effectiveness; Electronic Communications.

(i) *Notices Generally.* Except in the case of notices and other communications expressly permitted to be given by telephone and except as provided in Section 10.02(a)(ii), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by facsimile as follows, and all notices and other communications expressly permitted hereunder to be given by telephone shall be made to the applicable telephone number, as follows:

(A) if to the Borrower or the DIP Agent, to the address, facsimile number, electronic mail address or telephone number specified for such Person on Schedule 10.02(a); and

(B) if to any other Lender, to the address, facsimile number, electronic mail address or telephone number specified in its Administrative Questionnaire.

Notices and other communications sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received; notices and other communications sent by facsimile shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next Business Day for the recipient). Notices and other communications delivered through electronic communications to the extent provided in Section 10.02(a)(ii) shall be effective as provided in such Section 10.02(a)(ii).

(ii) *Electronic Communications.* Notices and other communications to the Lenders hereunder may be delivered or furnished by electronic communication (including e-mail and Internet or intranet websites) pursuant to procedures approved by the DIP Agent; *provided that* the foregoing shall not apply to notices to any Lender pursuant to Article 2 if such Lender, has notified the DIP Agent that it is incapable of receiving notices under such Article by electronic communication. The DIP 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.

Unless the DIP 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.

(b) 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 DIP Agent or any of its Related Parties (collectively, the “**Agent Parties**”) have any liability to the Loan Parties, 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 DIP Agent’s transmission of the Borrower Materials through the Internet, except to the extent that such losses, claims, damages, liabilities or expenses are determined by a court of competent jurisdiction by a final and non-appealable judgment to have resulted from the gross negligence, bad faith, material breach or willful misconduct of such Agent Party (or its representatives); *provided, however*, that in no event shall any Person have any liability to any other Person hereunder for indirect, special, incidental, consequential or punitive damages (as opposed to direct or actual damages); *provided that* nothing in this sentence shall limit any Loan Party’s indemnification obligations set forth herein.

(c) Change of Address, Etc. Each of the Borrower and the DIP Agent may change its address, electronic mail address, facsimile or telephone number for notices and other communications hereunder by notice to the other parties hereto. Each Lender may change its address, electronic mail address, facsimile or telephone number for notices and other communications hereunder by notice to the Borrower and the DIP Agent. In addition, each Lender agrees to notify the DIP Agent from time to time to ensure that the DIP Agent has on record (i) an effective address, contact name, telephone number, facsimile number and electronic mail address to which notices and other communications may be sent and (ii) accurate wire instructions for such Lender. Furthermore, each Public Lender agrees to cause at least one individual at or on behalf of such Public Lender to at all times have selected the “Private Side Information” or similar designation on the content declaration screen of the Platform in order to enable such Public Lender or its delegate, in accordance with such Public Lender’s compliance procedures and applicable Law, including United States federal and state securities Laws, to make reference to the Borrower Materials that are not made available through the “Public Side Information” portion of the Platform and that may contain Material Non-Public Information.

(d) Reliance by DIP Agent and Lenders. The DIP Agent and the Lenders shall be entitled to rely and act upon any notices purportedly given by or on behalf of the Borrower even if (i) such notices were not made in a manner specified herein, were incomplete or were not preceded or followed by any other form of notice specified herein, or (ii) the terms thereof, as understood by the recipient, varied from any confirmation thereof. The Borrower shall indemnify the DIP Agent, each Lender and the Related Parties of each of them from all losses, costs, expenses and liabilities resulting from the reliance by such Person on each notice purportedly given by or

on behalf of the Borrower in accordance with Section 10.05 hereof. All telephonic notices to and other telephonic communications with the DIP Agent may be recorded by the DIP Agent, and each of the parties hereto hereby consents to such recording.

SECTION 10.03 No Waiver; Cumulative Remedies. No failure by any Lender or the DIP Agent to exercise, and no delay by any such Person in exercising, any right, remedy, power or privilege hereunder or under any other Loan Document shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges herein provided, and provided under each other Loan Document, are cumulative and not exclusive of any rights, remedies, powers and privileges provided by Law.

Notwithstanding anything to the contrary contained herein or in any other Loan Document, the authority to enforce rights and remedies hereunder and under the other Loan Documents against the Loan Parties or any of them shall be vested exclusively in, and all actions and proceedings at law in connection with such enforcement shall be instituted and maintained exclusively by, the DIP Agent in accordance with Section 8.02 for the benefit of all the Lenders; *provided, however*, that the foregoing shall not prohibit (a) the DIP Agent from exercising on its own behalf the rights and remedies that inure to its benefit (solely in its capacity as DIP Agent) hereunder and under the other Loan Documents, (b) [reserved], (c) any Lender from exercising setoff rights in accordance with Section 10.09 (subject to the terms of Section 2.13) or (d) any Lender from filing proofs of claim or appearing and filing pleadings on its own behalf during the pendency of a proceeding relative to any Loan Party under any Debtor Relief Law; *provided, further*, that if at any time there is no Person acting as DIP Agent hereunder and under the other Loan Documents, then (i) the Required DIP Lenders shall have the rights otherwise ascribed to the DIP Agent pursuant to Section 8.02 and (ii) in addition to the matters set forth in clauses (b), (c) and (d) of the preceding proviso and subject to Section 2.13, any Lender may, with the consent of the DIP Agent (at the Direction of the Required DIP Lenders), enforce any rights and remedies available to it and as authorized by the Required DIP Lenders.

SECTION 10.04 Costs and Expenses. (a) The Loan Parties shall, jointly and severally, pay promptly following demand all reasonable and documented legal, accounting, appraisal, consulting, financial advisory and other fees, costs and expenses (including, without limitation, in respect of the Lender Advisors and the DIP Agent Counsel) incurred by the DIP Agent, the Escrow Agent, the Ad Hoc Group of Lenders, the Lenders and their respective Affiliates in connection with the negotiation, preparation and administration of the Loan Documents, the Interim Order, the Final Order and the Sale Transaction or incurred in connection with, whether occurring before or after the Closing Date:

- (i) amendment, modification or waiver of, consent with respect to, or termination of, any of the Loan Documents or advice in connection with the syndication and administration of the Loans made pursuant hereto, including any Withdrawal, or its rights hereunder or thereunder;
- (ii) any litigation, contest, dispute, suit, proceeding or action (whether instituted by the DIP Agent, any Lender, the Borrower or any other Person and

whether as a party, witness or otherwise) in any way relating to the Collateral, any of the Loan Documents, the Pre-Petition Loan Documents, the RSA, or any other agreement to be executed or delivered in connection herewith or therewith, including any litigation, contest, dispute, suit, case, proceeding or action, and any appeal or review thereof, in connection with a case or proceeding commenced by or against the Borrower or any other Person that may be obligated to the DIP Agent or the Lenders by virtue of the Loan Documents, including any such litigation, contest, dispute, suit, proceeding or action arising in connection with any work-out or restructuring of the Loans during the pendency of one or more Events of Default; *provided that* no Person shall be entitled to reimbursement under this clause (ii) in respect of any litigation, contest, dispute, suit, proceeding or action to the extent any of the foregoing results from such Person's gross negligence or willful misconduct (as determined by a final non-appealable judgment of a court of competent jurisdiction);

(iii) any attempt to enforce or prosecute any rights or remedies of the DIP Agent or any Lender against any or all of the Loan Parties or any other Person that may be obligated to the DIP 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 prior to or during the pendency of one or more Events of Default;

(iv) any work-out or restructuring of the Obligations prior to or during the pendency of one or more Events of Default;

(v) the obtaining of approval of the Loan Documents by the Bankruptcy Court or any other court;

(vi) the preparation and review of pleadings, documents and reports related to the Chapter 11 Cases and any Successor Cases, attendance at meetings, court hearings or conferences related to the Chapter 11 Cases and any Successor Cases, and general monitoring of the Chapter 11 Cases and any Successor Cases and any action, arbitration or other proceeding (whether instituted by or against the DIP Agent, any Lender, any Loan Party, any representative of creditors of an Loan Party or any other Person) in any way relating to any Collateral (including the validity, perfection, priority or avoidability of the DIP Agent's Liens with respect to any Collateral), the Pre-Petition Loan Documents, Loan Documents or the Obligations, including any lender liability or other claims;

(vii) efforts to (1) monitor the Loans or any of the other Obligations, (2) evaluate, observe or assess any of the Loan Parties or their respective affairs, (3) verify, protect, evaluate, assess, appraise, collect, sell, liquidate or otherwise dispose of any of the Collateral or (4) settle or otherwise satisfy any taxes, charges or Liens with respect to any Collateral;

(viii) any lien searches or request for information listing financing statements or liens filed or searches conducted to confirm receipt and due filing of financing statements and security interests in all or a portion of the Collateral; and

(ix) including, as to each of clauses (i) through (ix) above, all reasonable attorneys' and other professional and service providers' fees arising from such services and other advice, assistance or other representation, including those in connection with any appellate proceedings, and all reasonable expenses, costs, charges and other fees incurred by such counsel and others in connection with or relating to any of the events or actions described in this Section 10.04, all of which shall be payable by Borrower to the DIP Agent or the Lenders.

Without limiting the generality of the foregoing, such reasonable expenses, costs, charges and fees may include: reasonable fees, costs and expenses of accountants, sales consultants, financial advisors, the DIP Agent Counsel, any Lender Advisor, environmental advisors, appraisers, investment bankers, management and other consultants and paralegals; court costs and expenses; photocopying and duplication expenses; court reporter fees, costs and expenses; air express charges, and reasonable expenses for travel, lodging and food paid or incurred in connection with the performance of such legal, professional or other advisory services.

(b) All amounts reimbursable by the Borrower under this Section 10.04 shall constitute Obligations secured by the Collateral. The agreements in this Section 10.04 shall survive the termination of the Commitments and repayment of all other Obligations. All amounts due under this Section 10.04 shall be paid within five (5) Business Days of receipt by the Borrower of an invoice relating thereto. If the Borrower fails to pay when due any amounts payable by it hereunder or under any Loan Document, such amount may be paid on behalf of the Borrower by the DIP Agent in its discretion by charging any loan account(s) of the Borrower, without notice to or consent from the Borrower, and any amounts so paid shall constitute Obligations hereunder. For the avoidance of doubt, this Section 10.04 shall not apply to Taxes, except any Taxes that represent fees, costs and expenses arising from any non-Tax claim.

SECTION 10.05 Indemnification by the Borrower. The Loan Parties shall, jointly and severally, indemnify and hold harmless the DIP Agent, each Agent-Related Person, the Escrow Agent, each Lender, the Specified Lender Advisors and their respective Affiliates, and their respective officers, directors, employees, partners, agents, advisors and other representatives of each of the foregoing and their respective successors and permitted assignees (collectively the "**Indemnitees**") from and against any and all actual liabilities, obligations, losses, damages, penalties, claims, demands, actions, judgments, suits, costs, expenses and disbursements (including Attorney Costs but limited in the case of legal fees and expenses to the reasonable and documented out-of-pocket fees, disbursements and other charges of one counsel to all Indemnitees taken as a whole and, if reasonably necessary, one local counsel for all Indemnitees taken as a whole in each relevant jurisdiction that is material to the interests of the Lenders, and in the case of an actual or potential conflict of interest, where the Indemnitees affected by such conflict notify the Borrower of the existence of such conflict and thereafter, after receipt of the Borrower's consent (which consent shall not be unreasonably withheld or delayed), one additional counsel to each group of similarly situated affected Indemnitees), joint or several, 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 (a) 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, (b) any Commitment or Loan, or (c) any actual or alleged presence or Release of Hazardous Materials at, in, on, under or from any property or facility currently or formerly owned, leased or operated by the Loan Parties or any Subsidiary thereof, or any Environmental Liability or (d) 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) (a “**Proceeding**”) and regardless of whether any Indemnatee is a party thereto or whether or not such Proceeding is brought by the Borrower or any other person and, in each case, whether or not caused by or arising, in whole or in part, out of the negligence of the Indemnatee; *provided that* such indemnity shall not, as to any Indemnatee, be available to the extent that such liabilities, obligations, losses, damages, penalties, claims, demands, actions, judgments, suits, costs, expenses or disbursements resulted from (w) the gross negligence or willful misconduct of such Indemnatee, as determined by a final non-appealable judgment of a court of competent jurisdiction, (x) a material breach of any obligations under any Loan Document by such Indemnatee, as determined by a final non-appealable judgment of a court of competent jurisdiction, or (y) any dispute solely among Indemnitees other than any claims against an Indemnatee in its capacity or in fulfilling its role as an DIP Agent or an arranger or any similar role under any Facility and other than any claims arising out of any act or omission of the Borrower or any of its Affiliates. No Indemnatee shall be liable for any damages arising from the use by others of any information or other materials obtained through electronic, telecommunications or other information transmission systems, including, without limitation, SyndTrak, IntraLinks, the internet, email or similar electronic transmission systems in connection with this Agreement, in each case, except to the extent any such damages are found in a final non-appealable judgment of a court of competent jurisdiction to have resulted from the gross negligence or willful misconduct of, or material breach of this Agreement or the other Loan Documents by, such Indemnatee, nor shall any Indemnatee, Loan Party or any Subsidiary 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 Closing Date); it being agreed that this sentence shall not limit the indemnification obligations of the Borrower or any Subsidiary thereof (including, in the case of any Loan Party, in respect of any such damages incurred or paid by an Indemnatee to a third party and for any out-of-pocket expenses). In the case of an investigation, litigation or other proceeding to which the indemnity in this Section 10.05 applies, such indemnity shall be effective whether or not such investigation, litigation or proceeding is brought by any Loan Party, any Subsidiary of any Loan Party, its directors, equity holders or creditors or an Indemnatee or any other Person, whether or not any Indemnatee is otherwise a party thereto and whether or not any of the transactions contemplated hereunder or under any of the other Loan Documents are consummated. All amounts due under this Section 10.05 shall be paid within fifteen (15) days after written demand therefor (together with reasonable backup documentation supporting such reimbursement request); *provided, however*, that such Indemnatee shall promptly refund such amount to the extent that there is a final judicial determination that such Indemnatee was not entitled to indemnification rights with respect to such payment pursuant to the express terms of clauses (w) through (y) above. All amounts reimbursable by the Borrower under this Section 10.05

shall constitute Obligations secured by the Collateral. If the Borrower fails to pay when due any amounts payable by it hereunder or under any Loan Document, such amount may be paid on behalf of the Borrower by the DIP Agent in its discretion by charging any loan account(s) of the Borrower, without notice to or consent from the Borrower, and any amounts so paid shall constitute Obligations hereunder. The agreements in this Section 10.05 shall survive the resignation of the DIP Agent, the replacement of any Lender, the termination of the Aggregate Commitments and the repayment, satisfaction or discharge of all the other Obligations. For the avoidance of doubt, this Section 10.05 shall not apply to Taxes, except any Taxes that represent liabilities, obligations, losses, damages, penalties, claims, demands, actions, prepayments, suits, costs, expenses and disbursements arising from any non-Tax claims.

To the extent that the Borrower for any reason fails to indefeasibly pay any amount required under this Section 10.05 or Section 10.04 to be paid by it to the DIP Agent (or any sub-agent thereof) or any Related Party of any of the foregoing, each Lender severally agrees to pay to the DIP Agent (or any such sub-agent) or such Related Party, as the case may be, such Lender's Pro Rata Share (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought) of such unpaid amount; provided that the unreimbursed expense or indemnified loss, claim, damage, liability or related expense, as the case may be, was incurred by or asserted against the DIP Agent (or any such sub-agent) in its capacity as such, or against any Related Party of any of the foregoing acting for the DIP Agent (or any such sub-agent) in connection with such capacity. The obligations of the Lenders under this paragraph are subject to the provisions of Section 2.12(e).

SECTION 10.06 Payments Set Aside. To the extent that any payment by or on behalf of the Borrower is made to the DIP Agent, the Escrow Agent or any Lender, or the DIP Agent, the Escrow Agent or any Lender exercises its right of setoff, and such payment or the proceeds of such setoff or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by the DIP Agent or such Lender in its discretion) to be repaid to a trustee, receiver or any other party, in connection with any proceeding under any Debtor Relief Law or otherwise, then (a) to the extent of such recovery, the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such setoff had not occurred, and (b) each Lender severally agrees to pay to the DIP Agent and the Escrow Agent (as applicable) upon demand its applicable share (without duplication) of any amount so recovered from or repaid by the DIP Agent and the Escrow Agent (as applicable), plus interest thereon from the date of such demand to the date such payment is made at a rate per annum equal to the Federal Funds Effective Rate from time to time in effect. The obligations of the Lenders under clause (b) of the preceding sentence shall survive the payment in full of the Obligations and the termination of this Agreement.

SECTION 10.07 Successors and Assigns.

(a) The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that the Borrower may not assign or otherwise transfer any of its rights or obligations hereunder or under any other Loan Document without the prior written consent of the DIP Agent and each Lender (except as permitted by Section 7.04) and no Lender may assign or otherwise transfer any

of its rights or obligations hereunder except (i) to an Assignee pursuant to an assignment made in accordance with the provisions of Section 10.07(b) (such an assignee, an “**Eligible Assignee**”), (ii) by way of participation in accordance with the provisions of Section 10.07(e), (iii) by way of pledge or assignment of a security interest subject to the restrictions of Section 10.07(g) or (iv) to an SPC in accordance with the provisions of Section 10.07(h) (and any other attempted assignment or transfer by any party hereto shall be null and void); *provided, however, that* notwithstanding the foregoing, no Lender may assign or transfer by participation any of its rights or obligations hereunder to (i) any Person that is a Defaulting Lender, (ii) a natural Person, (iii) any Disqualified Institution (provided that the list of Disqualified Institutions shall be made available to the transferring Lender upon request), (iv) the Borrower or any Affiliate of the Borrower. Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants to the extent provided in Section 10.07(e) and, to the extent expressly contemplated hereby, the Indemnitees) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) (i) Subject to the conditions set forth in Section 10.07(b)(ii) below and the proviso to Section 10.07(a), any Lender may at any time assign to one or more assignees (each, an “**Assignee**”) 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) with the prior written consent (such consent not to be unreasonably withheld, conditioned or delayed) of:

(A) the Borrower; *provided that* no consent of the Borrower shall be required for (i) an assignment of all or a portion of the Loans to a Lender or to an Affiliate of a Lender or an Approved Fund thereof, (ii) [reserved], (iii) [reserved] and (iv) after the occurrence and during the continuance of an Event of Default, an assignment to any Assignee; *provided, further,* that the Borrower shall be deemed to have consented to any such assignment unless it shall have objected thereto by written notice to the DIP Agent within three (3) Business Days after having received written notice thereof; and

(B) the DIP Agent; *provided that* no consent of the DIP Agent shall be required for an assignment of all or any portion of a Loan to a Lender, an Affiliate of a Lender or an Approved Fund.

Notwithstanding the foregoing or anything to the contrary set forth herein, to the extent any Lender is required to assign any portion of its Commitments, Loans and other rights, duties and obligations hereunder in order to comply with applicable Laws, such assignment may be made by such Lender without the consent of the Borrower, the DIP Agent or any other party hereto so long as such Lender complies with the requirements of Section 10.07(b)(ii).

(ii) Assignments shall be subject to the following additional conditions:

(A) except in the case of an assignment of the entire remaining amount of the assigning Lender’s Commitment or Loans of any Class or an assignment to any Lender or its Affiliates or Approved Funds, the amount of the Commitment or Loans of the assigning Lender subject to each such assignment (determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the DIP Agent) shall not be less than \$1,000,000, unless each of the Borrower and the DIP Agent otherwise

consents; *provided that* concurrent assignments from any Lender and its Affiliates or Approved Funds to a single Assignee (or to an Assignee and its Affiliates or Approved Funds) will be treated as a single assignment for purposes of determining whether such minimum amount has been met;

(B) the parties to each assignment shall execute and deliver to the DIP Agent an Assignment and Assumption via an electronic settlement system acceptable to the DIP Agent (or, if previously agreed with the DIP Agent, manually), and, other than in connection with a Lender that is a Fund to other Funds under common management or administration with such transferring Fund, shall pay to the DIP Agent a processing and recordation fee of \$3,500 (which fee may be waived or reduced in the sole discretion of the DIP Agent); *provided that* only one such fee shall be payable in the event of simultaneous assignments to or from two or more Approved Funds;

(C) if it shall not be a Lender, shall deliver to the DIP Agent an Administrative Questionnaire; and

(D) the Assignee shall execute and deliver to the DIP Agent and the Borrower the forms described in Sections 3.01(e) and 3.01(f) applicable to it.

This Section 10.07(b) shall not prohibit any Lender from assigning all or a portion of its rights and obligations among separate Facilities on a non-*pro rata* basis among such Facilities.

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 DIP Agent in an aggregate amount sufficient, upon distribution thereof as appropriate (which may be outright payment, purchases by the assignee of participations or sub-participations, or other compensating actions, including funding, with the consent of the Borrower and the DIP 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 DIP 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.

(c) Subject to acceptance and recording thereof by the DIP Agent pursuant to Section 10.07(d), from and after the effective date specified in each Assignment and Assumption, (1) the Eligible 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 (2) the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto

but shall continue to be entitled to the benefits of Sections 3.01, 3.04, 3.05, 10.04 and 10.05 with respect to facts and circumstances occurring prior to the effective date of such assignment). Upon request, and the surrender by the assigning Lender of its Note, the Borrower (at its expense) shall execute and deliver a Note to the assignee Lender. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this Section 10.07(c) shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with Section 10.07(e).

(d) The DIP Agent, acting solely for this purpose as an agent of the Borrower, shall maintain at the DIP Agent's Office a copy of each Assignment and Assumption 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**"). Upon its receipt of, and consent to, a duly completed Assignment and Assumption executed by an assigning Lender and an assignee, an Administrative Questionnaire completed in respect of the assignee (unless the assignee shall already be a Lender hereunder), the processing and recordation fee referred to in Section 10.07(b)(ii)(B) above, if applicable, and, if required, the written consent of the DIP Agent, the Borrower to such assignment and any applicable tax forms, the DIP Agent shall (i) accept such Assignment and Assumption and (ii) promptly record the information contained therein in the Register. No assignment shall be effective unless it has been recorded in the Register as provided in this Section 10.07(d). The entries in the Register shall be conclusive, absent manifest error, and the Borrower, the DIP Agent and the Lenders shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. The Register shall be available for inspection by the Borrower and, with respect to itself, any Lender, at any reasonable time and from time to time upon reasonable prior notice; *provided that* the information contained in the Register which is shared with each Lender (other than the DIP Agent and its Affiliates) shall be limited to the entries with respect to such Lender including the Commitment of, or principal amount of and stated interest on the Loans owing to such Lender. This Section 10.07(d) and Section 2.11 shall be construed so that all Loans are at all times maintained in "registered form" within the meaning of Section 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).

(e) Any Lender may at any time, without notice to or the consent of the Borrower, sell participations to any Person (other than a natural person, a Defaulting Lender, the Borrower, or any Subsidiary of the Borrower or a Disqualified Institution (provided that the list of Disqualified Institutions shall be made available to the participating Lender upon request)) (each, a "**Participant**") in all or a portion of such Lender's rights and/or obligations under this Agreement (including all or a portion of its Commitment and/or the Loans owing to it); *provided that* (i) such Lender's obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (iii) the Borrower, the DIP Agent and the other Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. 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 the other Loan Documents; *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 clauses (a) through (g) of the first proviso to Section 10.01 that requires the affirmative vote of such Lender. Subject to Section 10.07(f), the Borrower agrees that each Participant shall be entitled to the benefits of Sections 3.01, 3.04 and 3.05 (subject to the requirements and limitations of such Sections and Section 3.07, including Section 3.01(e), and it being understood that the documentation required under Section 3.01(e) shall be delivered solely to the participating Lender) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to Section 10.07(c). To the extent permitted by applicable Law, each Participant also shall be entitled to the benefits of Section 10.09 as though it were a Lender; *provided that* such Participant agrees to be subject to Section 2.13 as though it were a Lender. Each Lender that sells a participation shall, acting solely for this purpose as a non-fiduciary agent of the Borrower, maintain a register on which it enters the name and address of each Participant and the principal amounts (and related interest amounts) of each Participant's interest in the Loans or other obligations under this Agreement (the "**Participant Register**"); *provided that* no Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any information relating to a Participant's interest in any Commitments, Loans or its other obligations under any Loan Document) to any Person except to the extent that such disclosure is reasonably necessary to establish that such Commitment or Loan or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations. The Participant Register shall be conclusive, 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) A Participant shall not be entitled to receive any greater payment under Section 3.01, 3.04 or 3.05 than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant, unless the sale of the participation to such Participant is made with the Borrower's consent or except to the extent such entitlement to a greater payment results from a change in any Law after the sale of the participation takes place.

(g) Any Lender may, without the consent of the Borrower or the DIP Agent, at any time pledge or assign a security interest in all or any portion of its rights under this Agreement (including under its Note, if any) to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank or any central bank having jurisdiction over such Lender; *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.

(h) Notwithstanding anything to the contrary contained herein, any Lender (a "**Granting Lender**") may grant to a special purpose funding vehicle identified as such in writing from time to time by the Granting Lender to the DIP Agent and the Borrower (an "**SPC**") the option to provide all or any part of any Loan that such Granting Lender would otherwise be obligated to make pursuant to this Agreement; *provided that* (i) nothing herein shall constitute a commitment by any SPC to fund any Loan, (ii) if an SPC elects not to exercise such option or otherwise fails to make all or any part of such Loan, the Granting Lender shall be obligated to make such Loan pursuant to the terms hereof and (iii) such SPC and the applicable Loan or any applicable part thereof, shall be appropriately reflected in the Participant Register. Each party hereto hereby agrees that (i) an SPC shall be entitled to the benefit of Sections 3.01, and 3.05

(subject to the requirements and the limitations of such Sections and Section 3.07, including Section 3.01(e), and it being understood that the documentation required under Section 3.01(e) shall be delivered solely to the participating Lender), but neither the grant to any SPC nor the exercise by any SPC of such option shall increase the costs or expenses or otherwise increase or change the obligations of the Borrower under this Agreement except, in the case of Section 3.01 and 3.04, unless such entitlement to a greater payment results from a change in any Law after the grant to the SPC takes place, (ii) no SPC shall be liable for any indemnity or similar payment obligation under this Agreement for which a Lender would be liable, and (iii) the Granting Lender shall for all purposes, including the approval of any amendment, waiver or other modification of any provision of any Loan Document, remain the lender of record hereunder. The making of a Loan by an SPC hereunder shall utilize the Commitment of the Granting Lender to the same extent, and as if, such Loan were made by such Granting Lender. Notwithstanding anything to the contrary contained herein, any SPC may (i) with notice to, but without prior consent of the Borrower and the DIP Agent and with the payment of a processing fee of \$3,500, assign all or any portion of its right to receive payment with respect to any Loan to the Granting Lender and (ii) disclose on a confidential basis any non-public information relating to its funding of Loans to any rating agency, commercial paper dealer or provider of any surety or Guarantee or credit or liquidity enhancement to such SPC.

(i) Notwithstanding anything to the contrary contained herein, without the consent of the Borrower or the DIP Agent, (1) any Lender may in accordance with applicable Law create a security interest in all or any portion of the Loans owing to it and the Note, if any, held by it and (2) any Lender that is a Fund may create a security interest in all or any portion of the Loans owing to it and the Note, if any, held by it to the trustee for holders of obligations owed, or securities issued, by such Fund as security for such obligations or securities; *provided that* unless and until such trustee actually becomes a Lender in compliance with the other provisions of this Section 10.07, (i) no such pledge shall release the pledging Lender from any of its obligations under the Loan Documents and (ii) such trustee shall not be entitled to exercise any of the rights of a Lender under the Loan Documents even though such trustee may have acquired ownership rights with respect to the pledged interest through foreclosure or otherwise.

(j) Notwithstanding anything to the contrary contained in this Agreement, any Lender may assign all or a portion of its Loans in connection with a primary syndication of such Loans relating to any refinancing, extension, loan modification or similar transaction permitted by the terms of this Agreement, pursuant to cashless settlement mechanisms approved by the Borrower, the DIP Agent, the assignor Lender and the assignee of such Lender.

SECTION 10.08 Confidentiality. The DIP Agent and the Lenders agrees to maintain the confidentiality of the Information, except that Information may be disclosed (a) to its Affiliates and its and its Affiliates' managers, administrators, directors, officers, employees, trustees, partners, investors, funding sources, investment advisors and agents, including accountants, legal counsel and other advisors (collectively "**Advisors**") on a "need to know basis" (*provided that* (i) the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and agree or otherwise have an obligation to keep such Information confidential and (ii) such Agent or Lender, as applicable, shall be responsible for the compliance of its Affiliates and such Affiliates' Advisors with this paragraph); (b) to the extent required or requested by, or upon the good faith determination by counsel that such information should be disclosed in light of

ongoing oversight or review of such Person, by any Governmental Authority or self-regulatory authority having or asserting jurisdiction over such Person (including any Governmental Authority regulating any Lender or its Affiliates); *provided that* the DIP Agent or such Lender, as applicable, agrees that it will notify the Borrower as soon as practicable in the event of any such disclosure by such Person (other than at the request of a regulatory authority) unless such notification is prohibited by law, rule or regulation; (c) to the extent required by applicable Laws or regulations or by any subpoena or similar legal process; *provided that* the DIP Agent or such Lender, as applicable, agrees that it will notify the Borrower as soon as practicable in the event of any such disclosure by such Person (other than at the request of a regulatory authority) unless such notification is prohibited by law, rule or regulation; (d) to any other party to this Agreement; (e) to (i) any pledgee referred to in Section 10.07(g); (ii) subject to an agreement containing provisions at least as restrictive as those of this Section 10.08 (or as may otherwise be reasonably acceptable to the Borrower), any Eligible Assignee of or Participant in, or any prospective Eligible Assignee of or Participant in any of its rights or obligations under this Agreement (other than any Disqualified Institution (so long as the list of Disqualified Institutions has been made available to any Lender that requests it) or Person whom the Borrower has affirmatively denied to provide consent to assignment in accordance with Section 10.07(b)(i)(A) (so long as such list has been made available to any Lender that requests it)); or (iii) any actual or prospective party (or its Related Parties) to any swap, derivative or other transaction under which payments are to be made by reference to the Borrower and its obligations, this Agreement or payments hereunder (other than any Disqualified Institution (so long as the list of Disqualified Institutions has been made available to any Lender that requests it) or Person whom the Borrower has affirmatively denied to provide consent to assignment in accordance with Section 10.07(b)(i)(A) (so long as such list has been made available to any Lender that requests it)); (f) with the prior written consent of the Borrower; (g) to the extent such Information becomes publicly available other than as a result of a breach of this Section 10.08 or other obligation of confidentiality owed to the Borrower or its Affiliates or becomes available to the DIP Agent, any Lender or any of their respective Affiliates on a non-confidential basis from a source other than a Loan Party or its Related Parties (so long as such source is not known (after due inquiry) to the DIP Agent, such Lender or any of their respective Affiliates to be bound by confidentiality obligations to any Loan Party or its Affiliates); (h) to any rating agency when required by it (it being understood that, prior to any such disclosure, such rating agency shall undertake to preserve the confidentiality of any Information relating to Loan Parties and their Subsidiaries received by it from such Lender) or to the CUSIP Service Bureau or any similar organization; (i) 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 its rights hereunder or thereunder; (j) to the extent such information is independently developed by the DIP Agent, any Lender or any of their respective Affiliates; or (k) for purposes of establishing a due diligence defense. In addition, the DIP Agent and the Lenders may disclose the existence of this Agreement and publicly available information about this Agreement to market data collectors, similar service providers to the lending industry, and service providers to the DIP Agent and the Lenders in connection with the administration, settlement and management of this Agreement, the other Loan Documents, the Commitments and the Borrowing. For the purposes of this Section 10.08, “**Information**” means all information received from the Loan Parties relating to any Loan Party, its Affiliates or its Affiliates’ directors, officers, employees, trustees, investment advisors or agents, other than any such information that is publicly available to the DIP Agent or any Lender prior to disclosure by

any Loan Party other than as a result of a breach of this Section 10.08 or any other confidentiality obligation owed to any Loan Party or their Affiliates.

SECTION 10.09 **Setoff.** In addition to any rights and remedies of the Lenders provided by Law, upon the occurrence and during the continuance of any Event of Default, each Lender and its Affiliates (and the DIP Agent, in respect of any unpaid fees, costs and expenses payable hereunder) is authorized at any time and from time to time, without prior notice to the Borrower, any such notice being waived by the Borrower (on its own behalf and on behalf of each Loan Party and each of its Subsidiaries) 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) (other than escrow, payroll, petty cash, trust and tax accounts) at any time held by, and other Indebtedness at any time owing by, such Lender and its Affiliates or the DIP Agent to or for the credit or the account of the respective Loan Parties and their Subsidiaries against any and all Obligations owing to such Lender and its Affiliates or the DIP Agent hereunder or under any other Loan Document, now or hereafter existing, irrespective of whether or not such Agent or such Lender or Affiliate shall have made demand under this Agreement or any other Loan Document and although such Obligations may be contingent or unmatured; *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 DIP Agent for further application in accordance with the provisions of Section 2.17 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 DIP Agent and the Lenders, and (y) the Defaulting Lender shall provide promptly to the DIP 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 promptly to notify the Borrower and the DIP Agent after any such setoff and application made by such Lender; *provided that* the failure to give such notice shall not affect the validity of such setoff and application. The rights of the DIP Agent and each Lender under this Section 10.09 are in addition to other rights and remedies (including other rights of setoff) that the DIP Agent and such Lender may have at Law.

SECTION 10.10 **Interest Rate Limitation.** Notwithstanding anything to the contrary contained in any Loan Document, the interest paid or agreed to be paid under the Loan Documents shall not exceed the maximum rate of non-usurious interest permitted by applicable Law (the “**Maximum Rate**”). If the DIP Agent or any Lender shall receive interest in an amount that exceeds the Maximum Rate, the excess interest shall be applied to the principal of the Loans or, if it exceeds such unpaid principal, refunded to the Borrower. In determining whether the interest contracted for, charged, or received by an Agent or a Lender exceeds the Maximum Rate, such Person may, to the extent permitted by applicable Law, (a) characterize any payment that is not principal as an expense, fee, or premium rather than interest, (b) exclude voluntary prepayments and the effects thereof, and (c) amortize, prorate, allocate and spread in equal or unequal parts the total amount of interest throughout the contemplated term of the Obligations hereunder.

SECTION 10.11 **Counterparts.** This Agreement and each other Loan Document may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Delivery by facsimile or other electronic transmission of an executed counterpart of a signature page to this Agreement and each other Loan Document shall be effective as delivery of an original executed counterpart of this

Agreement and such other Loan Document. The DIP Agent may also require that any such documents and signatures delivered by facsimile or other electronic transmission be confirmed by a manually signed original thereof; *provided that* the failure to request or deliver the same shall not limit the effectiveness of any document or signature delivered by facsimile or other electronic transmission.

SECTION 10.12 Integration. This Agreement, together with the other Loan Documents, comprises the complete and integrated agreement of the parties on the subject matter hereof and thereof and supersedes all prior agreements, written or oral, on such subject matter. Subject to Section 10.20, in the event of any conflict between the provisions of this Agreement and those of any other Loan Document, the provisions of this Agreement shall control; *provided that* the inclusion of supplemental rights or remedies in favor of the DIP Agent or the Lenders in any other Loan Document shall not be deemed a conflict with this Agreement. Each Loan Document was drafted with the joint participation of the respective parties thereto and shall be construed neither against nor in favor of any party, but rather in accordance with the fair meaning thereof.

SECTION 10.13 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 DIP Agent and each Lender, regardless of any investigation made by the DIP Agent or any Lender or on their behalf and notwithstanding that the DIP Agent or any Lender may have had notice or knowledge of any Default at the time of the Borrowing or any Withdrawal, and shall continue in full force and effect as long as any Loan or any other Obligation hereunder shall remain unpaid or unsatisfied.

SECTION 10.14 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; *provided that* the Lenders shall charge no fee in connection with any such amendment. The invalidity of a provision in a particular jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. Without limiting the foregoing provisions of this Section 10.14, if and to the extent that the enforceability of any provisions in this Agreement relating to Defaulting Lenders shall be limited by Debtor Relief Laws, as determined in good faith by the DIP Agent, then such provisions shall be deemed to be in effect only to the extent not so limited.

SECTION 10.15 GOVERNING LAW

(a) THIS AGREEMENT, EACH OTHER LOAN DOCUMENT AND ANY CLAIMS, CONTROVERSY, DISPUTE OR CAUSE OF ACTION (WHETHER IN CONTRACT OR TORT OR OTHERWISE) BASED UPON OR ARISING OUT OF THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.

(b) ANY LEGAL ACTION OR PROCEEDING ARISING UNDER ANY LOAN DOCUMENT OR IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF THE PARTIES HERETO OR ANY OF THEM WITH RESPECT TO ANY LOAN DOCUMENT, OR THE TRANSACTIONS RELATED THERETO, IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING, SHALL BE BROUGHT IN THE COURTS OF THE STATE OF NEW YORK SITTING IN NEW YORK COUNTY (BOROUGH OF MANHATTAN) OR OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF SUCH STATE (BOROUGH OF MANHATTAN), OR ANY APPELLATE COURT FROM ANY THEREOF, AND BY EXECUTION AND DELIVERY OF THIS AGREEMENT, EACH LOAN PARTY, EACH AGENT AND EACH LENDER CONSENTS, FOR ITSELF AND IN RESPECT OF ITS PROPERTY, TO THE EXCLUSIVE JURISDICTION OF THOSE COURTS AND AGREES THAT IT WILL NOT COMMENCE OR SUPPORT ANY SUCH ACTION OR PROCEEDING IN ANOTHER JURISDICTION. EACH LOAN PARTY, EACH AGENT AND EACH LENDER IRREVOCABLY WAIVES (TO THE EXTENT PERMITTED BY APPLICABLE LAW) ANY OBJECTION, INCLUDING ANY OBJECTION TO THE LAYING OF VENUE OR BASED ON THE GROUNDS OF FORUM NON CONVENIENS, WHICH IT MAY NOW OR HEREAFTER HAVE TO THE BRINGING OF ANY ACTION OR PROCEEDING IN SUCH JURISDICTION IN RESPECT OF ANY LOAN DOCUMENT OR OTHER DOCUMENT RELATED THERETO. EACH PARTY HERETO IRREVOCABLY CONSENTS TO SERVICE OF PROCESS IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO ANY LOAN DOCUMENTS IN THE MANNER PROVIDED FOR NOTICES (OTHER THAN FACSIMILE) IN SECTION 10.02. NOTHING IN THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT WILL AFFECT THE RIGHT OF ANY PARTY HERETO TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY APPLICABLE LAW.

SECTION 10.16 Waiver of Right to Trial by Jury. EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 10.16.

SECTION 10.17 Binding Effect. This Agreement shall become effective when it shall have been executed and delivered by the Loan Parties and each other party hereto and the DIP Agent shall have been notified by each such Lender has executed it and thereafter shall be binding upon and inure to the benefit of the Loan Parties, the DIP Agent, the Escrow Agent and each Lender and their respective successors and assigns, in each case in accordance with Section 10.07 (if applicable) and except that no Loan Party shall have the right to assign its rights hereunder

or any interest herein without the prior written consent of the Lenders except as permitted by Section 7.04.

SECTION 10.18 USA Patriot Act. Each Lender that is subject to the USA Patriot Act and the DIP Agent (for itself and not on behalf of any Lender) hereby notifies the Borrower that pursuant to the requirements of the USA Patriot Act, it is required to obtain, verify and record information that identifies each Loan Party, which information includes the name, address and tax identification number of such Loan Party and other information regarding such Loan Party that will allow such Lender or the DIP Agent, as applicable, to identify such Loan Party in accordance with the USA Patriot Act. This notice is given in accordance with the requirements of the USA Patriot Act and is effective as to the Lenders and the DIP Agent. The Borrower shall, promptly following a reasonable request by the DIP Agent or any Lender, provide all documentation and other information that the DIP 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 10.19 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 Loan Party acknowledges and agrees, and acknowledges its Affiliates’ understanding, that: (i) (A) the arranging and other services regarding this Agreement provided by the DIP Agent are arm’s-length commercial transactions between the Loan Parties and their respective Affiliates, on the one hand, and the DIP Agent and the Lenders, on the other hand, (B) each Loan Party has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate, and (C) each Loan Party 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 DIP Agent and each Lender each is and has been acting solely as a principal and, except as expressly agreed in writing by the relevant parties, has not been, is not, and will not be acting as an advisor, agent or fiduciary for each Loan Party or any of their respective Affiliates, or any other Person and (B) neither the DIP Agent, nor any Lender has any obligation to the Loan Parties 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 DIP Agent, the Lenders and their respective Affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Loan Parties and their respective Affiliates, and neither the DIP Agent nor any other Lender has any obligation to disclose any of such interests to the Loan Parties or any of their respective Affiliates. To the fullest extent permitted by law, each Loan Party hereby waives and releases any claims that it may have against the DIP Agent, and the Lenders with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transaction contemplated hereby.

SECTION 10.20 [Reserved].

SECTION 10.21 [Reserved].

SECTION 10.22 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 Lender that is an 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 Lender 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 10.23 No Additional Perfection Steps Required. Upon entry of the Interim Order and pursuant to its terms, all Liens granted by Loan Parties in favor of the DIP Agent, for the benefit of the Secured Parties, shall be valid, binding, enforceable and perfected first priority Liens in the Collateral, senior in priority to all other Liens (subject to the terms of the DIP Order and the Carve-Out), and the DIP Agent shall not be required to file any financing statements, mortgages, notices of Lien or similar instruments in any jurisdiction or filing office, enter into any control agreements, or to take any other action in order to validate or perfect the Liens granted by Loan Parties to the DIP Agent, for the benefit of the Secured Parties, pursuant to the Loan Documents or the DIP Order. Without in any way suggesting that the entry of the Interim Order is not sufficient for such purpose, each Loan Party irrevocably and unconditionally authorizes the DIP Agent (or its agent) to file at any time and from time to time such financing statements with respect to the Collateral naming the DIP Agent, for the benefit of Secured Parties, as secured party and such Loan Party as debtor, as the DIP Agent may require, and including any other information with respect to such Loan Party or otherwise required by part 5 of Article 9 of the UCC, or otherwise, as the DIP Agent determine, together with any amendment and continuations with respect thereto, which authorization shall apply to all financing statements filed on, prior to or after the Closing Date. Each Loan Party hereby ratifies and approves all financing statements naming the DIP Agent, for the benefit of the Secured Parties, as secured party and such Loan Party as debtor with respect to the Collateral (and any amendments with respect to such financing statements) filed by or on behalf of the DIP Agent prior to the Closing Date and ratifies and confirms the authorization of the DIP Agent to file such financing statements (and amendments, if any). Without in any way suggesting that the entry of the Interim Order is not sufficient for such purpose, each Loan Party shall take any other actions requested by DIP Agent from time to time to cause the attachment, perfection and priority

of, and the ability of the DIP Agent to enforce, any Liens of the Secured Parties in any and all of the Collateral, including the filing of a financing statement, mortgage or the taking of delivery or control (including via any account control agreements) or by appropriate filings with the United States Patent and Trademark Office or United States Copyright Office, in accordance with the Laws and regulations of the United States of America and its political subdivisions, or otherwise. The foregoing grant of authority shall not relieve the Borrowers' of the obligation to perfect and maintain the perfection of the DIP Agent's Liens on the Collateral.

SECTION 10.24 Orders Control. In the event of any inconsistency between the provisions of the DIP Order and this Agreement, the provisions of the DIP Order shall govern.

SECTION 10.25 Parties including the Trustees; Bankruptcy Court Proceedings. This Agreement, the other Loan Documents, and all Liens and other rights and privileges created hereby or pursuant hereto or to any other Loan Document shall be binding upon each Loan Party, the bankruptcy estate of each Loan Party, and any trustee, other bankruptcy estate representative or any successor-in-interest of any Loan Party in the Chapter 11 Cases or any subsequent case commenced under Chapter 7 of the Bankruptcy Code, and shall not be subject to Section 365 of the Bankruptcy Code. The Liens created by the DIP Order, this Agreement and the other Loan Documents shall be and remain valid and perfected in the event of the substantive consolidation or conversion of the Chapter 11 Cases or any other bankruptcy case of any Loan Party to a case under Chapter 7 of the Bankruptcy Code or in the event of dismissal of the Chapter 11 Cases or the release of any Collateral from the jurisdiction of the Bankruptcy Court for any reason, without the necessity that the DIP Agent file financing statements or otherwise perfect its Liens under applicable law.

ARTICLE 11. GUARANTEE

SECTION 11.01 The Guarantee. Each Guarantor hereby jointly and severally with the other Guarantors guarantees, as a Primary Obligor and not as a surety to each Secured Party and their respective permitted successors and assigns, the prompt payment in full when due (whether at stated maturity, by required prepayment, declaration, demand, by acceleration or otherwise) of the principal of and interest (including any interest, fees, costs or charges that would accrue but for the provisions of (i) the Title 11 of the United States Code after any bankruptcy or insolvency petition under Title 11 of the United States Code and (ii) any other Debtor Relief Laws) on the Loans made by the Lenders to, and the Notes held by each Lender of, the Borrower, and all other Secured Obligations from time to time owing to the Secured Parties by any Loan Party under any Loan Document strictly in accordance with the terms thereof (such obligations being herein collectively called the "**Guaranteed Obligations**"). The Guarantors hereby jointly and severally agree that if the Borrower or other Guarantor(s) shall fail to pay in full when due (whether at stated maturity, by acceleration or otherwise) any of the Guaranteed Obligations, the Guarantors will promptly pay the same in cash, without any demand or notice whatsoever, and that in the case of any extension of time of payment or renewal of any of the Guaranteed Obligations, the same will

be promptly paid in full when due (whether at extended maturity, by acceleration or otherwise) in accordance with the terms of such extension or renewal.

SECTION 11.02 Obligations Unconditional. The obligations of the Guarantors under Section 11.01 shall constitute a guaranty of payment and to the fullest extent permitted by applicable Law, are absolute, irrevocable and unconditional, joint and several, irrespective of the value, genuineness, validity, regularity or enforceability of the Guaranteed Obligations of the Borrower under this Agreement, the Notes, if any, or any other agreement or instrument referred to herein or therein, or any substitution, release or exchange of any other guarantee of or security for any of the Guaranteed Obligations, and, irrespective of any other circumstance whatsoever that might otherwise constitute a legal or equitable discharge or defense of a surety or Guarantor (except for payment in full). Without limiting the generality of the foregoing, it is agreed that the occurrence of any one or more of the following shall not alter or impair the liability of the Guarantors hereunder which shall remain absolute, irrevocable and unconditional under any and all circumstances as described above:

(i) at any time or from time to time, without notice to the Guarantors, to the extent permitted by Law, the time for any performance of or compliance with any of the Guaranteed Obligations shall be extended, or such performance or compliance shall be waived;

(ii) any of the acts mentioned in any of the provisions of this Agreement or the Notes, if any, or any other agreement or instrument referred to herein or therein shall be done or omitted (including incurring any increase or decrease in the principal amount of the Guaranteed Obligations or the rate of interest or the fees thereon);

(iii) the maturity of any of the Guaranteed Obligations shall be accelerated, or any of the Guaranteed Obligations shall be amended in any respect, or any right under the Loan Documents or any other agreement or instrument referred to herein or therein shall be amended or waived in any respect or any other guarantee of any of the Guaranteed Obligations or except as permitted pursuant to Section 11.09, any security therefor shall be released or exchanged in whole or in part or otherwise dealt with;

(iv) any Lien or security interest granted to, or in favor of, any Lender or Agent as security for any of the Guaranteed Obligations shall fail to be perfected; or

(v) the release of any other Guarantor pursuant to Section 11.09.

The Guarantors hereby expressly waive (to the fullest extent permitted by Law) diligence, presentment, demand of payment, protest and, to the extent permitted by Law, all notices whatsoever, and any requirement that any Secured Party exhaust any right, power or remedy or proceed against the Borrower under this Agreement or the Notes, if any, or any other agreement or instrument referred to herein or therein, or against any other person under any other guarantee of, or security for, any of the Guaranteed Obligations. The Guarantors waive, to the extent permitted by Law, any and all notice of the creation, renewal, extension, waiver, termination or accrual of any of the Guaranteed Obligations and notice of or proof of reliance by any Secured Party upon this Guarantee or acceptance of this Guarantee, and the Guaranteed Obligations, and

any of them, shall conclusively be deemed to have been created, contracted or incurred in reliance upon this Guarantee, and all dealings between the Borrower and the Secured Parties shall likewise be conclusively presumed to have been had or consummated in reliance upon this Guarantee. This Guarantee shall be construed as a continuing, absolute, irrevocable and unconditional guarantee of payment without regard to any right of offset with respect to the Guaranteed Obligations at any time or from time to time held by Secured Parties, and the obligations and liabilities of the Guarantors hereunder shall not be conditioned or contingent upon the pursuit by the Secured Parties or any other person at any time of any right or remedy against the Borrower or against any other person which may be or become liable in respect of all or any part of the Guaranteed Obligations or against any collateral security or guarantee therefor or right of offset with respect thereto. This Guarantee shall remain in full force and effect and be binding in accordance with and to the extent of its terms upon the Guarantors and the successors and assigns thereof, and shall inure to the benefit of the Lenders, and their respective successors and assigns, notwithstanding that from time to time during the term of this Agreement there may be no Guaranteed Obligations outstanding.

SECTION 11.03 Reinstatement. The obligations of the Guarantors under this Article 11 shall be automatically reinstated if and to the extent that for any reason any payment by or on behalf of the Borrower or other Loan Party in respect of the Guaranteed Obligations is rescinded or must be otherwise restored by any holder of any of the Guaranteed Obligations, whether as a result of any proceedings in bankruptcy or reorganization or otherwise.

SECTION 11.04 Subrogation; Subordination. Each Guarantor hereby agrees that until the payment in full in cash and satisfaction in full of all Guaranteed Obligations (other than contingent obligations, in each case not yet due and owing) and the expiration and termination of the Commitments of the Lenders under this Agreement it shall subordinate any claim and shall not exercise any right or remedy, direct or indirect, arising by reason of any performance by it of its Guarantee in Section 11.01, whether by subrogation or otherwise, against the Borrower or any other Guarantor of any of the Guaranteed Obligations or any security for any of the Guaranteed Obligations.

SECTION 11.05 Remedies. The Guarantors jointly and severally agree that, as between the Guarantors and the Lenders, the obligations of the Borrower under this Agreement and the Notes, if any, may be declared to be forthwith due and payable as provided in Section 8.02 (and shall be deemed to have become automatically due and payable in the circumstances provided in Section 8.02) for purposes of Section 11.01, notwithstanding any stay, injunction or other prohibition preventing such declaration (or such obligations from becoming automatically due and payable) as against the Borrower and that, in the event of such declaration (or such obligations being deemed to have become automatically due and payable), such obligations (whether or not

due and payable by the Borrower) shall forthwith become due and payable by the Guarantors for purposes of Section 11.01.

SECTION 11.06 [Reserved].

SECTION 11.07 Continuing Guarantee. The guarantee in this Article 11 is a continuing guarantee of payment, and shall apply to all Guaranteed Obligations whenever arising.

SECTION 11.08 General Limitation on Guarantee Obligations. In any action or proceeding involving any state corporate limited partnership or limited liability company law, or any applicable state, federal or foreign bankruptcy, insolvency, reorganization or other Law affecting the rights of creditors generally, if the obligations of any Guarantor under Section 11.01 would otherwise be held or determined to be void, voidable, invalid or unenforceable, or subordinated to the claims of any other creditors, on account of the amount of its liability under Section 11.09, then, notwithstanding any other provision to the contrary, the amount of such liability shall, without any further action by such Guarantor, any Loan Party or any other Person, be automatically limited and reduced to the highest amount (after giving effect to the liability under this Guaranty and the right of contribution established in Section 11.10, but before giving effect to any other guarantee) that is valid and enforceable and not subordinated to the claims of other creditors as determined in such action or proceeding.

SECTION 11.09 Release of Guarantors. If, in compliance with the terms and provisions of the Loan Documents, (i) all or substantially all of the Equity Interests of any Subsidiary Guarantor are sold or otherwise transferred to a Person or Persons none of which is a Loan Party in a transaction permitted hereunder or (ii) any Subsidiary Guarantor becomes an Excluded Subsidiary as a result of a transaction or designation permitted hereunder (any such Subsidiary Guarantor, and any Subsidiary Guarantor referred to in clause (i), a “**Transferred Guarantor**”), such Transferred Guarantor shall, upon the consummation of such sale or transfer or other transaction (but subject to the proviso below), be automatically released from its obligations under this Agreement (including under Section 10.05 hereof) and the other Loan Documents, including its obligations to pledge and grant any Collateral owned by it pursuant to any Collateral Document and, in the case of a sale of all or substantially all of the Equity Interests of the Transferred Guarantor, the pledge of such Equity Interests to the DIP Agent pursuant to the Collateral Documents shall be automatically released, and, so long as the Borrower shall have provided the DIP Agent such certifications or documents as the DIP Agent shall reasonably request, the DIP Agent shall take such actions as are necessary to effect each release described in this Section 11.09 in accordance with the relevant provisions of the Collateral Documents; *provided, however*, that the release of any Subsidiary Guarantor from its obligations under this Agreement if such Subsidiary Guarantor becomes an Excluded Subsidiary of the type described in clause (a) of the definition thereof shall only be permitted if at the time such Guarantor becomes an Excluded Subsidiary of such type (1) no Default or Event of Default shall have occurred and be outstanding, (2) after giving *pro forma* effect to such release and the consummation of the transaction that causes such Person to be an Excluded Subsidiary of such type, the Borrower is deemed to have made a new Investment in such Person for purposes of Section 7.02 (as if such Person were then newly acquired) and such Investment is permitted pursuant to Section 7.02 (other than Section 7.02(f)) at such time and (3) a Responsible Officer of the Borrower certifies to the DIP Agent compliance with preceding clauses (1) and (2). When all Commitments hereunder have

terminated, and all Loans or other Obligations hereunder which are accrued and payable have been paid or satisfied (other than contingent obligations as to which no claim has been asserted), this Agreement and the Guarantees made herein shall terminate with respect to all Obligations, except with respect to Obligations that expressly survive such repayment pursuant to the terms of this Agreement.

SECTION 11.10 Right of Contribution. Each Guarantor hereby agrees that to the extent that a Guarantor shall have paid more than its proportionate share of any payment made hereunder, such Guarantor shall be entitled to seek and receive contribution from and against any other Guarantor hereunder which has not paid its proportionate share of such payment. Each Guarantor's right of contribution shall be subject to the terms and conditions of Section 11.04. The provisions of this Section 11.10 shall in no respect limit the obligations and liabilities of any Guarantor to the DIP Agent and the Lenders, and each Guarantor shall remain liable to the DIP Agent and the Lenders for the full amount guaranteed by such Guarantor hereunder.

SECTION 11.11 [Reserved].

SECTION 11.12 Independent Obligation. The obligations of each Guarantor hereunder are independent of the obligations of any other Guarantor, any other party or any Borrower, and a separate action or actions may be brought and prosecuted against such Guarantor whether or not action is brought against any other guarantor, any other party or any Borrower and whether or not any other guarantor, any other party or any Borrower be joined in any such action or actions. Each Guarantor waives, to the fullest extent permitted by law, the benefit of any statute of limitations affecting its liability hereunder or the enforcement thereof. Any payment by the Borrower or other circumstance which operates to toll any statute of limitations as to the Borrower shall operate to toll the statute of limitations as to the Guarantors.

[Signature Pages Follow]

BORROWER:

GLOBAL EAGLE ENTERTAINMENT INC.

By: _____

Name:

Title:

GUARANTORS:

GLOBAL EAGLE SERVICES, LLC
AIRLINE MEDIA PRODUCTIONS, INC.
ENTERTAINMENT IN MOTION, INC.
GLOBAL EAGLE ENTERTAINMENT
OPERATIONS SOLUTIONS, INC.
INFLIGHT PRODUCTIONS USA INC.
POST MODERN EDIT, INC.
THE LAB AERO, INC.
ROW 44, INC.
N44HQ, LLC
EMERGING MARKETS
COMMUNICATIONS, LLC
MARITIME TELECOMMUNICATIONS
NETWORK, INC.
MTN INTERNATIONAL, INC.
MTN GOVERNMENT SERVICES, INC.
MTN LICENSE CORP.
GLOBAL EAGLE TELECOM LICENSING
SUBSIDIARY LLC
IFE SERVICES (USA), INC.

By: _____

Name:

Title:

CITIBANK, N.A., as DIP Agent

By: _____

Name:

Title:

_____, as Lender

By: _____

Name:

Title:

EXHIBIT B

Budget

Project Glider - Weekly DIP Budget

(\$ in millions)

Forecast Week	Week Ending																										
	7/10/20	7/17/20	7/24/20	7/31/20	8/7/20	8/14/20	8/21/20	8/28/20	9/4/20	9/11/20	9/18/20	9/25/20	10/2/20	10/9/20	10/16/20	10/23/20	10/30/20	11/6/20	11/13/20	11/20/20	11/27/20	12/4/20	12/11/20	12/18/20	12/25/20	1/1/21	
	Actual	Actual	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	
Cash Balance:																											
Beginning Balance	\$35.7	\$30.5	\$22.5	\$35.8	\$29.6	\$30.7	\$28.7	\$28.9	\$31.4	\$30.0	\$29.1	\$50.6	\$46.9	\$45.4	\$45.2	\$39.0	\$36.1	\$35.0	\$33.0	\$29.5	\$50.3	\$53.0	\$51.5	\$50.4	\$48.0	\$43.9	
AR Collections	12.7	5.1	1.4	2.4	5.9	6.8	7.9	13.5	6.8	4.5	6.4	5.1	9.4	7.2	6.2	6.7	11.6	6.4	6.9	6.6	13.3	8.6	5.5	8.8	6.1	13.1	
Other Cash Inflows	0.0	0.0	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	
Total Cash Inflows	\$12.7	\$5.1	\$1.5	\$2.5	\$6.0	\$6.9	\$8.0	\$13.6	\$6.9	\$4.6	\$6.5	\$5.2	\$9.5	\$7.3	\$6.3	\$6.8	\$11.7	\$6.5	\$7.0	\$6.7	\$13.4	\$8.7	\$5.6	\$8.9	\$6.2	\$13.2	
Payroll	(0.1)	(6.5)	(1.8)	(3.5)	(0.0)	(2.5)	(0.3)	(4.6)	(0.4)	(0.0)	(2.8)	(1.8)	(3.5)	(0.0)	(2.8)	(0.3)	(4.5)	(0.0)	(2.8)	(0.3)	(1.7)	(2.8)	-	(2.8)	(1.5)	(2.5)	
Vendor AP	(15.8)	(4.2)	(7.2)	(1.8)	(1.3)	(3.2)	(3.1)	(2.9)	(5.4)	(4.8)	(6.4)	(5.8)	(6.2)	(6.5)	(8.4)	(7.7)	(7.1)	(7.3)	(6.7)	(9.0)	(7.9)	(6.3)	(5.7)	(7.6)	(7.0)	(6.8)	
Critical & Foreign Vendor, Lien Claimants, Vendor Deposits	-	-	-	(2.0)	(2.0)	(2.0)	(2.0)	(2.0)	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
Total Operating Disbursements	(\$15.9)	(\$10.7)	(\$9.0)	(\$7.3)	(\$3.4)	(\$7.7)	(\$5.4)	(\$9.6)	(\$5.8)	(\$4.8)	(\$9.2)	(\$7.6)	(\$9.8)	(\$6.5)	(\$11.2)	(\$8.0)	(\$11.6)	(\$7.3)	(\$9.4)	(\$9.3)	(\$9.6)	(\$9.1)	(\$5.7)	(\$10.4)	(\$8.6)	(\$9.2)	
Net Operating Cash Flow	(\$3.1)	(\$5.6)	(\$7.5)	(\$4.8)	\$2.7	(\$0.8)	\$2.5	\$4.1	\$1.1	(\$0.2)	(\$2.6)	(\$2.4)	(\$0.3)	\$0.8	(\$4.9)	(\$1.2)	\$0.2	(\$0.8)	(\$2.4)	(\$2.6)	\$3.8	(\$0.4)	(\$0.1)	(\$1.5)	(\$2.4)	\$4.0	
Legal & Advisor Fees	(1.7)	(1.9)	(2.6)	(0.6)	(1.5)	(1.1)	(1.5)	(1.1)	(2.4)	(0.6)	(0.8)	(0.6)	(1.1)	(0.8)	(1.1)	(0.8)	(1.1)	(1.0)	(1.0)	(0.7)	(1.0)	(0.9)	(0.8)	(0.6)	(0.8)	(0.9)	
Cash Interest	(0.2)	(0.4)	-	-	-	-	(0.8)	-	-	-	(0.8)	-	-	(0.8)	-	(0.1)	(0.8)	-	-	(0.8)	-	-	(0.2)	(0.8)	-	-	
Taxes	(0.1)	(0.1)	(0.1)	(0.8)	(0.1)	(0.1)	(0.1)	(0.5)	(0.1)	(0.1)	(0.1)	(0.1)	(0.1)	(0.2)	(0.2)	(0.2)	(0.2)	(0.2)	(0.2)	(0.2)	(0.2)	(0.2)	(0.2)	(0.2)	(0.2)	(0.2)	
Net Cash Flow Excluding Financing	(\$5.2)	(\$8.1)	(\$10.3)	(\$6.2)	\$1.1	(\$2.0)	\$0.2	\$2.4	(\$1.4)	(\$0.8)	(\$3.5)	(\$3.8)	(\$1.5)	(\$0.2)	(\$6.2)	(\$2.9)	(\$1.1)	(\$2.0)	(\$3.5)	(\$4.2)	\$2.7	(\$1.5)	(\$1.1)	(\$2.4)	(\$4.1)	\$3.0	
DIP Financing	-	-	30.0	-	-	-	-	-	-	-	25.0	-	-	-	-	-	-	-	-	-	25.0	-	-	-	-	-	
DIP Related Fees	-	-	(6.4)	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
Total Net Cash Flow	(\$5.2)	(\$8.1)	\$13.3	(\$6.2)	\$1.1	(\$2.0)	\$0.2	\$2.4	(\$1.4)	(\$0.8)	\$21.5	(\$3.8)	(\$1.5)	(\$0.2)	(\$6.2)	(\$2.9)	(\$1.1)	(\$2.0)	(\$3.5)	\$20.8	\$2.7	(\$1.5)	(\$1.1)	(\$2.4)	(\$4.1)	\$3.0	
Ending Balance	\$30.5	\$22.5	\$35.8	\$29.6	\$30.7	\$28.7	\$28.9	\$31.4	\$30.0	\$29.1	\$50.6	\$46.9	\$45.4	\$45.2	\$39.0	\$36.1	\$35.0	\$33.0	\$29.5	\$50.3	\$53.0	\$51.5	\$50.4	\$48.0	\$43.9	\$46.8	
Less: Restricted Cash	(0.7)	(0.7)	(0.7)	(1.7)	(1.7)	(1.7)	(1.7)	(1.7)	(2.7)	(2.7)	(2.7)	(2.7)	(3.7)	(3.7)	(3.7)	(3.7)	(4.7)	(4.7)	(4.7)	(5.7)	(5.7)	(5.7)	(5.7)	(5.7)	(5.7)	(5.7)	
Available Cash	\$29.8	\$21.8	\$35.2	\$27.9	\$29.0	\$27.0	\$27.3	\$29.7	\$27.3	\$26.5	\$48.0	\$44.2	\$41.7	\$41.6	\$35.4	\$32.4	\$30.4	\$28.4	\$24.8	\$44.7	\$47.3	\$45.8	\$44.7	\$42.3	\$38.2	\$41.2	
Available DIP Financing	-	-	50.0	50.0	50.0	50.0	50.0	50.0	50.0	50.0	25.0	25.0	25.0	25.0	25.0	25.0	25.0	25.0	-	-	-	-	-	-	-	-	
Total Adjusted Liquidity	\$29.9	\$21.8	\$85.2	\$77.9	\$79.0	\$77.0	\$77.3	\$79.7	\$77.3	\$76.5	\$73.0	\$69.2	\$66.7	\$66.6	\$60.4	\$57.4	\$55.4	\$53.4	\$49.8	\$44.7	\$47.3	\$45.8	\$44.7	\$42.3	\$38.2	\$41.2	

DIP assumes \$80m delay draw facility, interest rate of L+1,000 bps with a 1.25% LIBOR floor, 5% backstop fee, and 3% upfront fee.

EXHIBIT B

Greenhill Declaration

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

	X	
	:	
In re:	:	Chapter 11
	:	
GLOBAL EAGLE ENTERTAINMENT	:	Case No. 20-11835 (JTD)
INC., <i>et al.</i> , ¹	:	
	:	(Joint Administration Requested)
Debtors.	:	
	:	
	X	

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

I, Neil A. Augustine, hereby declare as follows under penalty of perjury:

1. I am a Vice Chairman and Co-Head of North American Financing Advisory and Restructuring at Greenhill & Co., LLC, LLC (“**Greenhill**”), a global investment banking and financing firm with a principal office located at 300 Park Avenue New York, NY 10022. Greenhill is the proposed financial advisor and investment banker to the above-captioned debtors and debtors-in-possession (the “**Debtors**”).

¹ The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number are: Global Eagle Entertainment Inc. (7800), Airline Media Productions, Inc. (2314), Emerging Markets Communications, LLC (0735), Entertainment in Motion, Inc. (3908), Global Eagle Entertainment Operations Solutions, Inc. (3375), Global Eagle Services, LLC (7899), Global Eagle Telecom Licensing Subsidiary LLC (2547), IFE Services (USA), Inc. (2120), Inflight Productions USA Inc. (8493), Maritime Telecommunications Network, Inc. (9974), MTN Government Services, Inc. (6069), MTN International, Inc. (8559), MTN License Corp. (0314), N44HQ, LLC (0570), Post Modern Edit, Inc. (6256), Row 44, Inc. (2959), and The Lab Aero, Inc. (9831). The Debtors’ address is 6080 Center Drive, Suite 1200, Los Angeles, California 90045.

2. I submit this declaration (“**Declaration**”) on behalf of the Debtors in support of the *Motion of Debtors for Entry of Interim and Final Orders (I) Authorizing The Debtors to Obtain Postpetition Financing, (II) Authorizing the Debtors to Use Cash Collateral, (III) Granting Liens And Providing Superpriority Administrative Expense Claims, (IV) Granting Adequate Protection, (V) Modifying Automatic Stay, (VI) Scheduling A Final Hearing, And (VII) Granting Related Relief* (the “**DIP Motion**”).²

3. Specifically, the DIP Motion seeks, among other items, authorization for the Debtors to enter into the proposed DIP Facility, which consists of (i) a superpriority senior secured multi-draw term loan credit facility in an aggregate principal amount of \$80,000,000 (the “**DIP Loans**” or “**DIP Facility**”) and (ii) a \$10 million letter of credit facility (the “**DIP L/C Facility**”). In addition, the DIP Motion seeks authorization for the use of Cash Collateral of the Prepetition Secured Parties. The DIP Facility, DIP L/C Facility, and use of Cash Collateral will provide the Debtors with working capital and liquidity to operate their businesses during these cases.

4. Unless otherwise indicated, all facts set forth in this Declaration are based upon (a) my personal knowledge of the Debtors’ current operations and financial performance; (b) information learned from my review of relevant documents and information concerning the Debtors’ operations, financial affairs, and restructuring initiatives; (c) information I have received from members of the Debtors’ management or advisors, including members of Greenhill working directly with me and under my supervision, direction or control; and/or (d) my opinions based upon my experience and knowledge.

² Capitalized terms used but not otherwise defined in this Declaration shall have the meanings used in the DIP Motion and the First Day Declaration.

5. I am over the age of 18 and authorized to submit this Declaration on behalf of the Debtors. I am not being specifically compensated for this testimony other than through payments received by Greenhill, as a proposed professional to be retained by the Debtors. If called upon to testify, I could and would testify as to the facts set forth herein.

QUALIFICATIONS

6. I am a Vice Chairman and Co-Head of North American Financing Advisory & Restructuring for Greenhill, a global investment banking and financial firm with a principal office located at 300 Park Avenue in New York, New York, as well as at other locations worldwide. Greenhill is a subsidiary of Greenhill & Co., Inc., a full-service independent investment banking firm that engages in mergers and acquisitions, capital raising, and restructuring advice across a broad range of industries. Greenhill and its senior professionals have extensive experience with respect to the reorganization and restructuring of distressed companies, both out-of-court and in chapter 11 proceedings. Greenhill is the proposed financial advisor and investment banker to the Debtors.

7. I have experience handling complex financial and other restructuring matters for a variety of companies (distressed or otherwise and both in- and out-of-court) across a wide spectrum of industries. My areas of expertise include, among other things, (a) advising on financial restructuring strategies, (b) sizing, structuring, raising, and executing all aspects of financing transactions, including rescue/bridge, debtor-in-possession and exit financings and (c) conducting sale processes both in and out of court for companies undergoing financial distress. I have more than thirty years of restructuring-related investment banking experience in a wide range of industries.

8. I have been employed by Greenhill since April 2018. For the seventeen years prior to joining Greenhill, I was employed by Rothschild & Co, serving most recently as an Executive

Vice Chairman and Co-Head of North American Debt Advisory and Restructuring. Before joining Rothschild & Co, I was the Group Portfolio Manager for the Distressed Debt Group of Morgens, Waterfall, Vintiadis & Company Inc. Earlier, I worked as a Director of Distressed Debt Research at Lehman Brothers, Inc., was the Director of Research at Whippoorwill Associates, Inc., and was a founding member of Blackstone's Restructuring and Recapitalization Group after my departure from Chemical Bank. I graduated with a B.A. and an M.B.A. from the University of Rochester.

GREENHILL'S ENGAGEMENT

9. Greenhill has been acting as the Debtors' financial advisor and investment banker since March 2020 in connection with developing, and advising the Debtors with respect to, various strategic alternatives. In this role, Greenhill has, among other things, (a) negotiated and evaluated amendment transactions, (b) assisted the Debtors in developing their business plan, (c) negotiated and evaluated restructuring proposals, (d) discussed potential restructuring solutions (including numerous interactions with the Debtors' existing creditor groups and respective advisors), (e) solicited third party strategic and financial sponsor interest in an investment or purchase of the Debtors, (f) led the Debtors' marketing process for debtor-in-possession financing transactions, (g) assisted the Debtors with documenting the DIP Facility and DIP L/C Facility, (h) assisted the Debtors in negotiating Bidding Procedures and the Stalking Horse Purchase Agreement, and (i) prepared for the commencement of these Chapter 11 Cases. Throughout this process, Greenhill has worked closely with the Debtors' management and other restructuring professionals and has become well acquainted with the Debtors' capital structure, liquidity needs, and business operations.

BACKGROUND TO THE PROPOSED DIP FINANCING

10. Pursuant to the DIP Motion, the Debtors seek authority to obtain postpetition financing in the form of a DIP Facility consisting of (i) DIP Loans in the aggregate amount of

\$80 million, which provide \$30 million in new capital upon entry of the Interim DIP Order and access to an additional \$50 million in new capital following entry of the Final DIP Order through up to two additional draws, and (ii) a DIP L/C Facility to provide replacement and additional letter of credit capacity in the aggregate amount of \$10. The DIP Facility is memorialized under that certain Senior Secured Super-Priority Term Loan Debtor-In-Possession Credit Agreement (the “**DIP Credit Agreement**”) dated as of July 22, 2020. The Debtors also seek authority to use Cash Collateral of the Prepetition Secured Parties as provided in the DIP Orders and the DIP Credit Agreement.

11. The Debtors’ substantial prepetition secured indebtedness and imminent need for additional liquidity drove negotiations related to and the eventual terms of the proposed DIP Facility and DIP L/C Facility. The Debtors are parties to the First Lien Credit Agreement with the First Lien Lenders. The First Lien Credit Agreement provides for term and revolving loans in an aggregate amount of \$585 million and \$85 million, respectively. As of the Petition Date, the Debtors have approximately \$584.4 million in outstanding obligations under the First Lien Credit Agreement.³ In addition, GEE has \$188.7 million outstanding in Second Lien Notes, due June 30, 2023.⁴ GEE’s Debtor affiliates are guarantors of the Second Lien Notes. GEE also has \$82.5 million outstanding unsecured Convertible Notes, due February 15, 2035. Thus, the Debtors have a highly levered capital structure.

12. As further described in the DIP Motion and the First Day Declaration, the Debtors are also facing significant liquidity constraints as a result of the COVID-19 pandemic, with

³ The First Lien Credit Agreement and Second Lien Notes substantially limit the Company’s ability to incur senior secured indebtedness, among other limitations. In addition, substantially all of the Company’s assets are pledged under the First Lien Credit Agreement.

⁴ Amount of funded debt is calculated as of June 30, 2020.

near-term improvement uncertain due to the possibility of future waves, and require immediate access to additional financing to operate their businesses and fund the Chapter 11 Cases.

THE DEBTORS' LIQUIDITY NEEDS AND BUDGET

13. Prior to the commencement of these cases, the Debtors, in consultation with their advisors, implemented internal cost reductions and carefully considered a number of other potential alternatives to address the Debtors' capital structure and liquidity challenges, including alternate transactions with stakeholders and third parties to reduce ongoing cash needs and leverage and to obtain additional financing. While these efforts were intended to support liquidity, the Debtors and their advisors were unable to identify viable, actionable alternatives that would provide sufficient liquidity to the Debtors to continue operations in the ordinary course or sufficiently reduce the Debtors' leverage. Therefore, the Debtors focused on preparing for a potential chapter 11 filing, including by commencing a marketing process led by Greenhill to obtain postpetition financing.

14. Greenhill has worked closely with the Debtors, their management, and their other advisors to evaluate the Debtors' cash requirements for their business. As part of such evaluation, Greenhill reviewed and analyzed the Debtors' near-term weekly and long-term cash flow forecasts. These forecasts take into account anticipated cash receipts and disbursements during the projected periods and consider a number of factors, including, but not limited to, the effect of the chapter 11 filing on the operations of the business, fees and interest associated with postpetition financing, professional fees, and customer and vendor obligations, as well as the operational performance of the Debtors' business.

15. As further described in the First Day Declaration and in the Initial Approved Budget, the Debtors are not projected to generate enough operating cash flow in the ordinary course of business to cover their normal course operating expenses and working capital needs and

the projected costs of these Chapter 11 Cases. Therefore, the Debtors will fall below minimum liquidity levels needed to operate their business imminently absent postpetition financing, even assuming unrestricted access to the Cash Collateral.

16. The Debtors have a critical need to use the DIP Facility proceeds, the DIP L/C Facility and the Cash Collateral to operate their business and preserve their going-concern value. The Debtors' business requires cash to satisfy unavoidable obligations to vendors and employees. Access to the DIP Facility and DIP L/C Facility will provide the Debtors with immediate access to liquidity and to the Cash Collateral, which will permit the Debtors to: (i) continue to provide goods and services to their customers and generate revenue during these Chapter 11 Cases; (ii) provide working capital for their businesses; (iii) fund payments to their workforce; (iv) fund other general corporate purposes; (v) fund the payments authorized by the Court pursuant to the "first-day motions" filed contemporaneously with the DIP Motion; (vi) operate the Cash Management System as described in the Cash Management Motion; and (vii) satisfy administrative costs and expenses of the Debtors incurred in the Chapter 11 Cases. Additionally, access to the DIP Facility and DIP L/C Facility is further underscored by the fact that I do not believe it would be prudent, or even possible, to administer the Chapter 11 Cases solely on a "cash collateral" basis.

**THE PROPOSED DIP FACILITY
REPRESENTS THE BEST POSTPETITION FINANCING
OPTION AVAILABLE TO THE DEBTORS UNDER THE CIRCUMSTANCES**

17. In the months leading up to the Petition Date, the Debtors and their advisors engaged in extensive discussions with the Debtors' existing stakeholders and potential third-party financing sources with respect to a range of transactions, including various out-of-court financing transactions, capital market transactions, sale transactions, and potential recapitalization or restructuring transactions. In addition, the Debtors engaged in discussions with U.S. Treasury and its advisors in an effort to obtain government-supported funding. Greenhill assisted the Debtors

in conducting a robust process to canvass the market for potential financing alternatives, including seeking out-of-court and postpetition financing from the Debtors' existing stakeholders and from third party investors. Despite undertaking this process, Greenhill and the Debtors were unable to identify any actionable alternatives.

18. Beginning in June 2020, Greenhill solicited third party interest in providing postpetition financing to the Debtors (on both a priming and non-priming basis) and contacted, in total, fourteen parties. Of the fourteen potential lenders that were contacted, four executed a non-disclosure agreement (or were already under a non-disclosure agreement with the Debtors) and were provided introductory materials and access to due diligence, including calls with the Debtors' advisors. Greenhill also contacted the Second Lien Noteholder and the holders of the majority of the Debtors' Convertible Notes, and neither offered to provide DIP financing.

19. The Debtors did not receive any actionable proposals for postpetition financing from third parties. Many of the third parties contacted by the Debtors' advisors indicated they were unwilling to extend financing to the Debtors due to factors including the Debtors' financial position, the Debtors' levered capital structure and lack of interest to provide postpetition financing on a junior basis, the lack of significant unencumbered collateral to secure postpetition financing on a non-priming basis, the challenges, uncertainty and legal expenses inherent in a priming fight with the Prepetition Secured Parties, and the volatile state of the global economy and the Company's outlook due to the COVID-19 crisis and associated uncertainty. While the Debtors continued to attempt to identify third party providers of postpetition financing until shortly prior to commencing these cases, the Debtors concluded, in consultation with Greenhill and their other advisors, that engaging with the Prepetition Secured Parties represented the path most likely to lead to successfully obtaining postpetition financing.

20. One party contacted Greenhill regarding their interest in providing DIP financing and verbally indicated, prior to conducting detailed diligence, that it would be willing to evaluate a potential transaction on a priming basis. Given the challenges, uncertainty, and legal expenses inherent to and limited likelihood of success of a priming fight with the Prepetition Secured Parties, the Debtors, Greenhill, and the Debtors' other advisors concluded that the cost and probability of success weighed against moving forward with such a framework, and determined not to pursue a transaction with this third party. Further, the Prepetition Secured Parties, when asked, indicated that they were unwilling to consent to a priming facility by a third party.

21. Additionally, during the same period, Greenhill also reached out to other third parties to gauge market interest in pursuing a capital investment or a potential acquisition of the Company. Despite reaching out to a large number of potential financing and strategic partners, which resulted in eleven signed non-disclosure agreements with third parties, as of the Petition Date, the Company had not received any actionable proposal for a potential financial or strategic solution. In addition, the Company and its advisors explored loans made available by way of governmental programs to assist businesses impacted by COVID-19, but was unable to secure the necessary financing.

22. During this period, the Debtors and their advisors continued to engage in intensive parallel-track negotiations with the Debtors' existing stakeholders, including certain of the Debtors' First Lien Lenders and Second Lien Noteholder. Throughout this iterative process, the parties were represented by experienced advisors and participated in hard-fought, arm's-length negotiations. Beginning in late July, the Debtors and an *ad hoc* group representing approximately 90% of the Debtors' first lien term loan and approximately 78% of the first lien lenders (the "**Ad Hoc First Lien Group**") began exchanging term sheets related to a potential debtor-in-

possession financing. The negotiations spanned several weeks and lasted until shortly before the Debtors' chapter 11 petitions were filed. Throughout this process, the Debtors and their advisors fought to improve material terms of the DIP financing proposed by the Ad Hoc First Lien Group—including the amount of financing available, economics, covenants, and milestones, among others. The Debtors engaged in a series of negotiations with the Second Lien Noteholder regarding a number of issues, including potential postposition financing, and engaged in outreach to the Ad Hoc Convertible Noteholder Group, but ultimately negotiations stalled with these two entities and neither submitted any indication of interest. As a result of these negotiations, the Debtors successfully improved the terms of the Ad Hoc First Lien Group's offer and the parties, in good faith, agreed upon the DIP Facility.

23. In summary, I believe that the DIP Facility, which provides an \$80 million delayed-draw new money term loan facility and a \$10 million letter of credit facility for the Debtors' estates, is necessary and the best possible postpetition financing option available to the Debtors under the circumstances.

THE TERMS UNDER THE DIP FACILITY ARE FAIR AND REASONABLE

24. The Debtors engaged in arm's-length negotiations with the Ad Hoc First Lien Group with respect to funding these Chapter 11 Cases. As part of the financing package, the parties focused on the DIP size necessary to fund the cases as well as costs that may be necessary to consummate a sale of all or substantially all of the Company's assets to be implemented pursuant to section 363 of the Bankruptcy Code. The Ad Hoc First Lien Group ultimately agreed to provide (i) an \$80 million multi-draw term facility, which provides \$30 million in new capital upon entry of the Interim DIP Order and access to an additional \$50 million in new capital following entry of the Final DIP Order through up to two additional draws and (ii) a \$10 million letter of credit facility.

25. The DIP Facility is backstopped by certain members of the Ad Hoc First Lien Group and open for participation to all First Lien Lenders. Importantly, the DIP Facility provides a framework for the Debtors to pursue a sale of their assets under section 363 of the Bankruptcy Code with sufficient liquidity.

26. The DIP Facility includes various fees and postpetition liens, which were expressly required by the lenders and the DIP Agent as a condition to provide the DIP Facility on the terms set forth in the DIP Documents and are an integral component of the financing. The fees include 5% of the amount committed in backstop fees to the Backstop Parties, a 3% upfront fee to participating lenders, and other administration and structuring fees. The DIP Facility also includes an interest rate of LIBOR plus 1,000 bps, subject to a 1.25% LIBOR floor. The DIP Facility does not have a roll-up component.⁵ These fees, liens and rates as set forth in the DIP Documents are in the best interests of the Debtors' estates, were each subject to arm's-length negotiations, and are reasonable, fair, and representative of market standards under the circumstances.

ACCESS TO CASH COLLATERAL IS CRITICAL

27. I believe that it is essential to the success of the Debtors' Chapter 11 Cases that the Debtors receive immediate authority and access to use Cash Collateral. I understand that the Debtors have an urgent need for use of the Cash Collateral to, among other things, pay operating expenses, including essential vendors, in order to ensure a continued supply of goods and services essential to the Debtors' businesses. I believe that, absent such relief, the Debtors' businesses may be brought to an immediate halt, with damaging consequences for the Debtors and their estates and creditors.

⁵ Note that as set forth in the DIP Motion and DIP Orders, in connection with the DIP L/C Facility, upon entry of this Interim Order, the Debtors' reimbursement obligations in connection with the Prepetition L/Cs shall be granted allowed DIP L/C Superpriority Claim status, subject to the Carve Out, but shall not be cash collateralized.

28. Moreover, I believe the terms and conditions of the Debtors' use of the Cash Collateral (including the provision of adequate protection) are appropriate and reasonable. Of note, adequate protection is limited to Adequate Protection Liens, Adequate Protection Superpriority Claims, and Adequate Protection Fees, and second lien secured parties are entitled to Second Lien Adequate Protection Liens.

CONCLUSION

29. As described in the foregoing, it is my belief that the proposed DIP Facility represents the best postpetition financing option available to provide for the Debtors' immediate liquidity needs under the circumstances of these Chapter 11 Cases and that the terms and conditions of the DIP Facility are consistent with the market, reasonable, and appropriate. The preservation of estate's assets, the Debtors' continuing viability, and their ability to reorganize successfully and maximize value for stakeholders depend heavily upon the expeditious approval of the relief requested in the DIP Motion. Accordingly, I respectfully submit that the Court should approve the DIP Facility.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing statements are true and correct to the best of my knowledge, information, and belief.

Dated: July 22, 2020
New York, New York

/s/ Neil A. Augustine
Neil A. Augustine