

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

In re:	)	Chapter 11
	)	
IEH AUTO PARTS HOLDING LLC, <i>et al.</i> , <sup>1</sup>	)	Case No. 23-90054 (CML)
	)	
Debtors.	)	(Jointly Administered)
	)	
	)	<b>Re: Docket Nos. 16, 40, 90</b>

**FINAL ORDER (I) AUTHORIZING POST-PETITION  
FINANCING SECURED BY SENIOR LIENS, (II) AUTHORIZING  
THE DEBTORS TO USE CASH COLLATERAL; (III) GRANTING  
ADEQUATE PROTECTION, AND (IV) GRANTING RELATED RELIEF**

The above-captioned debtors and debtors in possession (collectively, the “Debtors”) moved this Court on an emergency basis for entry of an interim order (Dkt. No. 90, the “Interim Order”) and a final order (this “Final Order” and, together with the Interim Order, the “Financing Orders”), (a) authorizing the Debtors to incur priming senior secured post-petition financing on a superpriority basis; (b) authorizing the Debtors to use cash collateral; (c) granting adequate protection, and (d) scheduling a final hearing to consider approval of the motion on a final basis (the “Motion”). The Court conducted an interim hearing on the Motion for February 1, 2023, at 4:00 p.m. and a final hearing on the Motion on May 2, 2023, at which counsel for the parties appeared and presented evidence and oral argument. The Motion was presented to the Court as a “first day” motion and complies with the requirements of Bankruptcy Rule 4001(d). Notice of the Motion, the interim hearing, and final hearing are proper and sufficient under the exigent

---

<sup>1</sup> The Debtor entities in these chapter 11 cases, along with the last four digits of each Debtor entity’s federal tax identification number, are: IEH Auto Parts Holding LLC (6529); AP Acquisition Company Clark LLC (4531); AP Acquisition Company Gordon LLC (5666); AP Acquisition Company Massachusetts LLC (7581); AP Acquisition Company Missouri LLC (7840); AP Acquisition Company New York LLC (7361); AP Acquisition Company North Carolina LLC (N/A); AP Acquisition Company Washington LLC (2773); Auto Plus Auto Sales LLC (6921); IEH AIM LLC (2233); IEH Auto Parts LLC (2066); IEH Auto Parts Puerto Rico, Inc. (4539); and IEH BA LLC (1428). The Debtors’ service address is: 112 Townpark Drive NW, Suite 300, Kennesaw, GA 30144.



circumstances of the Motion and the relief granted in this Final Order has been granted in accordance with Bankruptcy Code §§ 102(1), 105, 361, 362, 363, 364, 503, and 507, Bankruptcy Rules 2002, 4001, 6004, and 9014, and Local Rules 2002-1, 4001-1(b), 4002-1(i), and 9013-1. After careful consideration of all matters before it, the Court is of the opinion that the estate would suffer irreparable injury if the Motion were not granted.

Therefore, the Court makes the following findings of fact and conclusions of law:

A. **Jurisdiction; Venue.** This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334. This matter constitutes a core proceeding within the meaning of 28 U.S.C. § 157(b). The Court has the authority to enter a final order in this matter. Venue is proper in this jurisdiction pursuant to 28 U.S.C. §§ 1408 and 1409.

B. **Availability of Financing.** The Debtors are unable to obtain financing on more favorable terms than the DIP Facility (as defined below) and are unable to obtain unsecured credit allowable under section 503(b)(1) as an administrative expense or secured credit solely under section 364(c) of the Bankruptcy Code.

C. **Cash Collateral.** “Cash Collateral” means all cash and cash equivalents of the Debtors, whenever or wherever acquired, and the proceeds of all collateral pledged to American Entertainment Properties Corp. (“AEP”), in its capacity as Lender under the DIP Facility (together with its successors and assigns, the “DIP Lender”), as contemplated by section 363 of the Bankruptcy Code. The terms and conditions of the DIP Facility and the Debtors’ use of Cash Collateral, if any, are fair and reasonable, are the best available to the Debtors under the circumstances, reflect the Debtors’ exercise of prudent business judgment consistent with their fiduciary duties, and are supported by reasonably equivalent value and fair consideration, have been negotiated in good faith and at arm’s length between the Debtors and the DIP Lender, and in

express reliance upon the protections offered by Bankruptcy Code section 364(e).

D. **Debtors' Stipulations.** The Debtors, on their own behalf and on behalf of their estates, hereby admit, acknowledge, agree, and stipulate, that (clauses a-h below, collectively, the "Stipulations"):

a. That certain Credit and Guaranty Agreement, dated as of August 31, 2021, among IEH Auto Parts Holding LLC, certain of its subsidiaries, and AEP (in such capacity, the "Prepetition Lender") (as assigned to the Prepetition Lender by Icahn Enterprises Holdings, L.P. (the "Prior Prepetition Lender" and, collectively with the Prepetition Lender, the "Prepetition Lenders"), pursuant to that certain Assignment and Assumption dated as of January 30, 2023), as amended by electronic mail on November 12, 2021 pursuant to Section 8.02(b) thereto, the Second Amendment to Credit and Guaranty Agreement, dated as of December 30, 2021, the Third Amendment to Credit and Guaranty Agreement, dated as of January 1, 2022, the Fourth Amendment to Credit and Guaranty Agreement, dated as of September 1, 2022, and the Fifth Amendment to Credit and Guaranty Agreement and Release of Certain Borrowers and Guarantors, dated as of January 30, 2023, as further amended, supplemented, or otherwise modified, the "Prepetition Credit Agreement") and related prepetition collateral and loan documents related thereto (collectively with the Prepetition Credit Agreement, the "Prepetition Loan Documents" and the credit facility evidenced thereby, the "Prepetition Credit Facility") are valid, binding, and enforceable by the Prepetition Lender against each of the relevant Debtors.

b. As of the date these chapter 11 cases (the "Chapter 11 Cases") were filed (the "Petition Date"), each of the Debtors was indebted and liable, without any objection,

defense, counterclaim, recoupment, challenge, or offset of any kind, to the Prepetition Lender pursuant to the Prepetition Loan Documents, in the principal amount of not less than US \$187,994,803.06, plus, in each case, all accrued or thereafter accruing and unpaid interest thereon and any additional amounts, charges, fees and expenses (including any attorneys', accountants', appraisers' and financial advisors' fees and expenses that are chargeable or reimbursable under the Prepetition Loan Documents as to any Debtor) now or hereafter due under the Prepetition Loan Documents (all obligations of each Debtor arising under any Prepetition Loan Documents, including all loans, advances, debts, liabilities, principal, interest, fees, charges, expenses and obligations for the performance of covenants, tasks or duties, or for the payment of monetary amounts owing to the Prepetition Lender by any Debtor, of any kind or nature, whether or not evidenced by any note, agreement or other instrument, are referred to collectively as the "Prepetition Obligations"), which Prepetition Obligations are legal, valid, and binding obligations of each relevant Debtor and no portion of which is subject to avoidance, disallowance, reduction, recharacterization, subordination, or other challenge pursuant to the Bankruptcy Code or applicable non-bankruptcy law.

c. Pursuant to the Prepetition Loan Documents and to the extent set forth therein, as of the Petition Date, each Debtor has granted to the Prepetition Lender (as successor in interest under the Prepetition Loan Documents to the Prior Prepetition Lender), to secure such Debtor's Prepetition Obligations, a valid, duly authorized, non-voidable, binding, perfected, first-priority security interest in the Collateral (as specified more fully in the Prepetition Loan Documents, the "Prepetition Collateral," and the liens on such Prepetition Collateral securing the Prepetition Obligations, the

“Prepetition Liens”).

d. The Debtors have a critical need to obtain postpetition financing under the DIP Facility and to use Cash Collateral, as applicable, to, among other things, pay the costs and expenses associated with administering these Chapter 11 Cases, continue the orderly operation of the Debtors’ business, maximize and preserve the Debtors’ going concern value, make lease and other contractual payments, and satisfy other working capital and general corporate purposes, in each case, in accordance with the Approved Budget (as defined in the Interim Order and the DIP Credit Agreement (as defined below)), and to provide adequate protection. The Debtors do not have sufficient available sources of working capital and financing to operate their businesses or maintain their properties in the ordinary course of business without access to the DIP Facility and the authorized use of Cash Collateral, as applicable.

e. In light of the Debtors’ facts and circumstances, the Debtors would be unable to obtain (i) adequate unsecured credit allowable either (a) under sections 364(b) and 503(b)(1) of the Bankruptcy Code, or (b) under section 364(c)(1) of the Bankruptcy Code, (ii) adequate credit secured by (a) a senior lien on unencumbered assets of their estates under section 364(c)(2) of the Bankruptcy Code, and (b) a junior lien on encumbered assets under section 364(c)(3) of the Bankruptcy Code, or (iii) secured credit under section 364(d)(1) of the Bankruptcy Code from sources other than the DIP Lender on terms more favorable than the terms of the DIP Facility. The only viable source of secured credit available to the Debtors, other than the use of Cash Collateral, is the DIP Facility. The Debtors require both additional financing under the DIP Facility and the continued use of Cash Collateral, as applicable, under the terms of the Interim Order and

the DIP Loan Documents (as defined in the DIP Credit Agreement) and subject to this Final Order, to satisfy their postpetition liquidity needs. The DIP Lender indicated a willingness to provide the Debtors with certain financing commitments, and the Prepetition Lender authorizes the use of Prepetition Collateral, including Cash Collateral, but solely on the terms and conditions set forth in the Interim Order, the DIP Credit Agreement and subject to this Final Order.

f. After considering all of their practical alternatives, the Debtors concluded, in an exercise of their sound business judgment, that the financing to be provided by the DIP Lender pursuant to the terms of the Interim Order, the DIP Credit Agreement, and this Final Order represents the best financing currently available to the Debtors.

g. Good cause has been shown for immediate entry of this Final Order pursuant to Bankruptcy Rules 4001(b)(2) and (c)(2) and Local Rule 4001-2. Entry of this Final Order is in the best interest of the Debtors, their estates, and creditors. The terms of the DIP Credit Agreement (including the Debtors' continued use of the Prepetition Collateral, including Cash Collateral) are in the best interest of the Debtors' estates under the circumstances, reflect the Debtors' exercise of prudent business judgment consistent with their fiduciary duties, and are supported by reasonably equivalent value and fair consideration for the Prepetition Lender's consent thereto.

h. The Debtors, the DIP Lender and the Prepetition Lender negotiated the terms and conditions of the DIP Credit Agreement (including the Debtors' continued use of the Prepetition Collateral, including Cash Collateral) in good faith and at arm's length, and any credit extended and loans made to the Debtors pursuant to the Interim Order, the DIP Credit Agreement, this Final Order, and the Debtors' Stipulations are deemed to have

been extended, issued or made, as the case may be, in “good faith” within the meaning of section 364(e) of the Bankruptcy Code. Subject to the paragraph below titled “Challenge Period,” the Prepetition Lender is entitled to receive adequate protection as set forth in this Final Order pursuant to sections 361, 362, 363 and 364 of the Bankruptcy Code for any diminution in the value of the Prepetition Collateral, including Cash Collateral, resulting from the automatic stay or the Debtors’ use, sale, or lease of the Prepetition Collateral, including Cash Collateral, during these Chapter 11 Cases.

Therefore, it is ORDERED that

1. **Authorization of DIP Facility.** The Debtors are authorized to enter into and perform under a priming, senior secured, superpriority debtor-in-possession credit facility (the “DIP Facility”) with the DIP Lender on the terms reflected in the Priming Senior Secured Superpriority Debtor-in-Possession Credit Agreement attached as **Exhibit 1**,<sup>2</sup> (the “DIP Credit Agreement” and together with any related security agreement(s) and guarantees, security documents, and other agreements, instruments and documents required by the DIP Lender, the “DIP Loan Documents”) which is approved and incorporated in its entirety, and to perform all obligations under the DIP Credit Agreement, which upon being entered into constitute valid, binding, and non-avoidable obligations of the Debtors that are enforceable against the Debtors in accordance with the terms of the DIP Credit Agreement and this Final Order.

2. **Documentation of DIP Facility.** In furtherance of the foregoing and without further order of this Court, the Debtors are authorized and directed to (a) perform all acts to negotiate, make, enter into, and perform under the DIP Loan Documents and (b) perform all acts

---

<sup>2</sup> Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the DIP Credit Agreement.

to make, execute and deliver all instruments and documents, including, without limitation, the execution and delivery of, and performance under, one or more amendments, waivers, consents or other modifications to and under the DIP Credit Agreement and DIP Loan Documents (collectively, the “Ancillary Documents”), in each of (a) and (b), in such form as the Debtors and the DIP Lender may agree; provided that such Ancillary Documents are consistent in all material respects with the DIP Credit Agreement and DIP Loan Documents; provided further that no further approval of the Court is required for the Debtors to pay to the DIP Lender any fees and other expenses (including any attorneys’, accountants’, appraisers’ and financial advisors’ fees), amounts, charges, costs, indemnities and other obligations paid in connection therewith that do not shorten the maturity of the extensions of credit under the DIP Credit Agreement or DIP Loan Documents or increase the aggregate commitments or the rate of interest payable thereunder. To the extent of any conflict between the terms of this Final Order and the DIP Loan Documents, this Final Order shall control.

3. **Amount of Facility.** The Debtors may draw up to \$75 million in the aggregate (after giving effect to any Interim Advance (as defined in the DIP Credit Agreement)) of New Money Loans (as defined in the DIP Credit Agreement) extended by the DIP Lender as set forth in the DIP Credit Agreement.

4. **Roll-Up.** All Prepetition Obligations are hereby immediately, automatically, and irrevocably deemed to have converted to Roll-Up Loans under and as defined in the DIP Credit Agreement (the “Roll-Up Loans”), which Roll-Up Loans, except as otherwise provided in this Final Order and the DIP Credit Agreement, are entitled to all of the priorities, privileges, rights, and other benefits afforded to the other DIP Obligations (as defined below) under this Final Order and the DIP Loan Documents. The conversion of the Roll-Up Loans is hereby authorized as



compensation for, in consideration for, as a necessary inducement for, and on account of the agreement of the DIP Lender to consent to and fund New Money Loans and make other extension of credit under the DIP Facility and not as payments under, adequate protection for, or otherwise on account of any Prepetition Obligations. The Prepetition Lender would not otherwise consent to the use of their Cash Collateral or the subordination of their liens to the DIP Liens (as defined below), and the DIP Lender would not be willing to provide the DIP Facility or extend credit to the Debtors thereunder without the conversion of the Roll-Up Loans.

5. **Use of DIP Proceeds and Cash Collateral.** The Debtors are authorized to use the proceeds of the DIP Facility Loans (as defined in the DIP Credit Agreement) and Cash Collateral solely for the purposes set forth in Section 5.08 of the DIP Credit Agreement and solely in accordance with the Approved Budget attached hereto as Exhibit 2, subject to the Permitted Variances (as defined in the DIP Credit Agreement).

6. **DIP Superpriority Claims.** In accordance with Bankruptcy Code section 364(c)(1), the DIP Obligations constitute superpriority administrative expense claims (the “DIP Superpriority Claims”) (without the need to file any proofs of claim or request for payment of administrative expenses) against each of the Debtors with priority in payment over any and all administrative expenses, adequate protection claims, diminution claims, prepetition unsecured claims, and all other claims against the Debtors, now existing or hereafter arising, of any kind whatsoever, including, without limitation, any prepetition claims and adequate protection claims of the Prepetition Lender, any adequate protection claims granted in favor of any other parties, and any and all administrative expenses or other claims of the kinds specified or ordered pursuant to any provision of the Bankruptcy Code, including, but not limited to, Bankruptcy Code sections 105, 326, 328, 330, 331, 503(b), 506(c), 507(a), 507(b), 546, 726, 1113, and 1114 or otherwise,

including those resulting from the conversion of any of these Chapter 11 Cases pursuant to section 1112 of the Bankruptcy Code, whether or not such expenses or claims may become secured by a judgment lien or other non-consensual lien, levy, or attachment; provided, however, that the DIP Superpriority Claims are subject to the Carve-Out (as defined below). The DIP Superpriority Claims, for purposes of section 1129(a)(9)(A) of the Bankruptcy Code, are administrative expenses allowed under section 503(b) of the Bankruptcy Code, are against each Debtor on a joint and several basis, and are payable from and have recourse to all prepetition and post-petition property of the Debtors and all proceeds thereof, including proceeds of any of the estate's causes of action under Chapter 5 of the Bankruptcy Code to the extent not released pursuant to the 9019 Order (defined below) (such proceeds, "Avoidance Action Proceeds"). Except as set forth in, or permitted by, this Final Order, or with the consent of the DIP Lender, no other superpriority administrative expense claims or liens *pari passu* or senior to the DIP Superpriority Claims or DIP Liens are granted or allowed in these Chapter 11 Cases. The DIP Superpriority Claims and DIP Liens are entitled to the full protection of section 364(e) of the Bankruptcy Code in the event that this Final Order or any provision hereof is vacated, reversed, or modified on appeal or otherwise.

7. **DIP Liens**. Subject to the Carve-Out (as defined below), all Obligations (as defined in the DIP Credit Agreement) of the Debtors under the DIP Facility (the "DIP Obligations") are:

- (a) secured, pursuant to section 364(c)(2) of the Bankruptcy Code, by valid, enforceable, first priority, fully perfected security interests in and liens on all of the Debtors' rights in property of the Debtors' estates as of the Petition Date, other than "Excluded Assets" as defined in the Security Agreement (as defined in the DIP Credit Agreement), that, as of the Petition Date, were unencumbered (and do not become

perfected subsequent to the Petition Date as permitted by section 546(b) of the Bankruptcy Code) (including Avoidance Action Proceeds) (such liens, subject only to the Carve-Out);

(b) secured, pursuant to section 364(c)(3) of the Bankruptcy Code, by valid, enforceable, fully perfected security interests in and liens on all of the Debtors' rights in property of the Debtors' estates as of the Petition Date, other than Excluded Assets, that, as of the Petition Date, were subject to valid, perfected and non-avoidable liens and unavoidable liens in existence immediately prior to the Petition Date, if any, that are perfected subsequent to the Petition Date as permitted by section 546(b) of the Bankruptcy Code (the "Permitted Prior Liens"), which security interests and liens are junior and subordinate only to such Permitted Prior Liens and the Carve-Out;

(c) secured, pursuant to section 364(d)(1) of the Bankruptcy Code, by valid, enforceable, priming first priority, fully perfected security interests in and liens upon all of the Debtors' rights in property of the Debtors' estates as of the Petition Date, and all of the Debtors' rights in property acquired post-petition (and proceeds thereof), other than Excluded Assets, whether now existing or hereafter acquired or arising, that secure the Prepetition Obligations (such lien, together with the liens described in clauses (a) through (b) above, the "DIP Liens" and such collateral, together with the collateral described in paragraph 6 and clauses (a) through (b) above, along with any and all rents, issues, products, offspring, proceeds and profits generated by any such collateral, collectively, the "DIP Collateral"), which liens are subject to the Carve-Out.

8. **Prepetition Lender Adequate Protection.** Until the indefeasible repayment in full in cash of the Prepetition Obligations, the Prepetition Lender is entitled to adequate protection of its interests in the Prepetition Collateral on account of the diminution in the value thereof as a

result of (a) the provisions of this Final Order granting priming liens on such Prepetition Collateral to the DIP Lender; (b) the authorization of the use of Cash Collateral and other Prepetition Collateral; (c) the imposition of the automatic stay pursuant to section 362 of the Bankruptcy Code; and/or (d) otherwise (the “Diminution in Prepetition Collateral Value”), pursuant to sections 361(a), 363(c) and 364(d)(1) of the Bankruptcy Code. For the avoidance of doubt, the rights of the Prepetition Lender, Debtors, the statutory committee of unsecured creditors appointed in these Chapter 11 Cases by the U.S. Trustee (as defined below), if any (the “Committee”), and all other parties in interest in respect of whether any Diminution in Prepetition Collateral Value has occurred and the extent of any such diminution in value are reserved. The Prepetition Lender, is hereby granted the following (collectively, the “Prepetition Adequate Protection Obligations”):

a. *Payment of Interest.* Payment of all interest accruing under the Prepetition Loan Documents at the Applicable Rate (as defined in the Prepetition Loan Documents) as and when due pursuant to the Prepetition Loan Documents, to be paid in kind; provided that (i) default interest under the Prepetition Loan Documents shall be calculated from the Petition Date, (ii) the Prepetition Lender reserves its rights to assert default interest pursuant to the Prepetition Loan Documents in connection with the confirmation of a plan of liquidation or reorganization for the Debtors, and (iii) the automatic stay is modified to the extent necessary to permit the Prepetition Lender to deliver any notices or take any other actions to impose default interest under the Prepetition Loan Documents.

b. *Adequate Protection Liens.* Replacement liens and security interests in DIP Collateral and superpriority administrative expense claims under sections 503 and 507 of the Bankruptcy Code, in each case (and as applicable) junior only to the DIP Liens, Permitted Prior Liens, DIP Obligations, and the Carve-Out (as defined below), to the extent

of any Diminution in Prepetition Collateral Value (the “Adequate Protection Liens”).

c. *Reimbursement of Fees.* Reimbursement by the Debtors of the reasonable and documented fees, costs, and out-of-pocket expenses incurred or accrued by the Prepetition Lender (to include all unpaid prepetition reasonable and documented fees, costs, and out-of-pocket expenses) in connection with any and all aspects of these Chapter 11 Cases.

d. *Reporting.* Delivery of reporting and information as provided for in the DIP Credit Agreement.

e. *Right to Seek Additional Adequate Protection and Reservation of Rights.* The adequate protection provisions contained in this Final Order are without prejudice to the rights of the Prepetition Lender to seek any other, further, or additional adequate protection. Nothing in the DIP Term Sheet (as defined in the Interim Order), DIP Loan Documents, the Interim Order, or this Final Order are deemed to waive, modify, or otherwise impair the rights of the Prepetition Lender, and the Prepetition Lender shall expressly reserve all of its rights and remedies under the Prepetition Loan Documents and applicable law. Without limiting the foregoing, nothing in the DIP Term Sheet, DIP Loan Documents, the Interim Order, or this Final Order shall have the effect of, or are construed as having the effect of amending or waiving any covenant, term or provision of the Prepetition Loan Documents, or any rights or remedies of the Prepetition Lender thereunder, including (without limitation) any right to require strict compliance with such covenant, term or provision despite any consent or agreement contained in the DIP Term Sheet, DIP Loan Documents, the Interim Order, or this Final Order.

9. **Binding Effect of Stipulations; Challenge Period.** The Stipulations are

immediately binding on the Debtors and their successors in interest (including any trustee appointed in the Chapter 11 Cases or any subsequent chapter 7 case). Each Stipulation is binding on all parties-in-interest for all purposes unless the Committee, or any creditor or other party-in-interest (in either case which has obtained the requisite standing) timely commences an adversary proceeding, or files a motion requesting standing to file an adversary proceeding and attaching the adversary complaint such party-in-interest seeks standing to file, against the Prepetition Lenders for the purpose of challenging the validity, extent, priority, perfection and enforceability of the prepetition secured debt under the Prepetition Loan Documents, or the liens, claims and security interests in the Prepetition Collateral in favor of the Prepetition Lenders, or otherwise asserting any claims or causes of action against the Prepetition Lenders on behalf of the Debtors' estates (a "Challenge") and such Challenge is successful. Nothing contained in the DIP Loan Documents or the Financing Orders is deemed to confer standing on any Committee or any other party in interest to commence such an adversary proceeding. A Challenge is timely if it is commenced if:

- i) in the case of any Committee, the motion seeking standing to file such Challenge is filed by the later of May 8, 2023 and fourteen (14) days after the entry of any order denying or overturning on appeal the Debtors' *Emergency Motion for Entry of an Order Approving the Settlement Between the IEH Debtors, AEP, Pep Boys, the Committee, and the Committee Members* (the "9019 Motion") (the Committee's Challenge deadline is subject to extension by (x) agreement of the Committee, the Debtors, and the Prepetition Lender, or (y) by order of the Court), or
- ii) in the case that a chapter 7 or chapter 11 trustee is appointed or elected within 60 days after the Petition Date (including following a conversion of these Chapter 11 Cases to cases under chapter 7), then in the case of such chapter 7 or chapter 11 trustee, is the longer of 60 days from the Petition Date or 30 days from the appointment of such chapter 7 or chapter 11 trustee, or
- iii) in the case of any other party in interest (including a chapter 7 or chapter 11 trustee appointed or elected more than 60 days after the Petition Date), is within 60 days

of the Petition Date,

((i) through (iii), collectively, the “Challenge Period”). If a Challenge is not commenced within the relevant Challenge Period, then the Prepetition Lenders shall automatically receive full waivers and releases as provided in this Final Order, and the liens of the Prepetition Lenders, are valid, perfected, enforceable, and unavoidable without any further action by the Prepetition Lenders. In the case of an investigation, litigation, or other proceeding to which the indemnity in the DIP Credit Agreement applies, such indemnity is effective whether or not such investigation, litigation or proceeding is brought by any of the Debtors, any of their respective directors, security holders or creditors, an Indemnitee (as defined in the DIP Credit Agreement) or any other person or an Indemnitee is otherwise a party thereto and whether or not the transactions contemplated hereby are consummated.

10. **Release of Claims and Defenses.** Each Debtor, on its own behalf and on behalf of its estate, hereby absolutely, irrevocably, and unconditionally releases and forever discharges and acquits the DIP Lender, Prepetition Lenders, together with their respective current or former affiliates, agents, subsidiaries, partners, controlling persons, attorneys, advisors, professionals, officers, directors and employees (collectively, the “Released Parties”), of and from any and all obligations and liabilities to the Debtors (and their successors and assigns) and from any and all claims, controversies, disputes, obligations, counterclaims, offsets, defenses, demands, debts, damages, expenses, losses, liens, accounts, contracts, liabilities, actions, causes of action and any other rights of disgorgement or recovery arising prior the Petition Date of any kind, nature or description, whether known or unknown, foreseen or unforeseen, matured or unmatured, accrued or unaccrued, suspected or unsuspected, or liquidated or unliquidated, pending or threatened, arising in law or equity or upon contract or tort or under any state or federal law or otherwise,

arising out of, based upon or related to, in whole or in part, any of the DIP Loan Documents; the Prepetition Loan Documents; or any loans under the DIP Facility or Prepetition Credit Facility; any aspect of the relationship between the Debtors, on the one hand, and any or all of the Released Parties, on the other hand, relating to any of DIP Loan Documents, Prepetition Loan Documents, or any transaction contemplated thereby; or any other acts or omissions by any or all of the Released Parties in connection with the DIP Facility, the Prepetition Credit Facility, or their prepetition relationship with such Debtor or any affiliate thereof relating to any of the DIP Loan Documents, the Prepetition Loan Documents, or any transaction contemplated thereby; including, without limitation, any so-called “lender liability” claims or defenses or claims or defenses under chapter 5 of the Bankruptcy Code or any other causes of action, in each case that any Debtor at any time had, now has or may have, or that its successors or assigns hereafter can or may have against any of the Released Parties for or by any reason of any act, omission, matter, cause or thing whatsoever arising at any time on or prior to the date of this Final Order; provided that the releases set forth in this section do not release any claims against a Released Party or liabilities that a court of competent jurisdiction determines results from the bad faith, fraud, gross negligence or willful misconduct of such Released Party; provided, further, that nothing in this Final Order relieves the DIP Lender from fulfilling its commitments under the DIP Facility.

11. **Carve-Out.** As used in this Final Order, the “Carve-Out” means the sum of (a) all fees required to be paid to the Clerk of the Court and to the Office of the United States Trustee (“U.S. Trustee”) under section 1930(a) of title 28 of the United States Code plus interest at the statutory rate (without regard to the Carve-Out Notice), (b) all reasonable fees and expenses up to \$50,000 incurred by a trustee under section 726(b) of the Bankruptcy Code (without regard to the Carve-Out Notice), (c) to the extent allowed by the Bankruptcy Court at any time, unpaid fees and



expenses (“Allowed Professional Fees”) of estate professionals incurred through the date of delivery of a Carve-Out Notice (defined below) up to the amounts for such professional included in the Approved Budget through the date of the Carve-Out Notice, and (d) to the extent allowed by the Bankruptcy Court at any time, up to \$750,000 of fees and expenses incurred by persons or firms retained by (i) the Debtors pursuant to Sections 327, 328, or 363 of the Bankruptcy Code or (ii) any committee appointed in these Chapter 11 Cases ((i) and (ii) together, the “Estate Professionals”) after the first business day following delivery of a Carve-Out Notice (excluding, for the avoidance of doubt, any success fee, transaction fee, deferred fee or other similar fee set forth in any professional’s engagement letter, the amounts set forth in this clause (d) being the “Post Carve-Out Notice Cap”). For purposes of the foregoing, “Carve-Out Notice” means a written notice (which may be by email) by the DIP Lender to the Debtors, Debtors’ counsel, the U.S. Trustee, and counsel to any Committee stating that the Post Carve-Out Notice Cap has been invoked, which notice may be delivered only following the occurrence and during the continuation of an Event of Default.

a. *Carve-Out Reserves.* Delivery of a Carve-Out Notice shall constitute a demand to the Debtors to utilize all cash on hand (including the proceeds of DIP Facility Loans) to fund a reserve in an amount equal to the Carve-Out, which shall be earmarked and held in trust to pay unpaid fees and expenses incurred by Estate Professionals, to the extent allowed by the Bankruptcy Court at any time, prior to any and all other claims in these Chapter 11 Cases (the “Carve-Out Reserve”). All funds in the Carve-Out Reserve shall be used first to pay the obligations set forth in clauses (a) through (d) in the above definition of “Carve-Out” until paid in full, and second, to pay the DIP Lender until paid in full. Notwithstanding anything to the contrary in the DIP Loan Documents or the

Financing Orders, the failure of the Carve-Out Reserve to satisfy in full the fees of Estate Professionals shall not affect the priority of the Carve-Out.

12. **Restriction on Use of DIP Lenders' Funds and Cash Collateral.** None of the Carve-Out, any Cash Collateral, the DIP Facility Loans, the DIP Collateral, or the Prepetition Collateral may be used to challenge the amount, validity, perfection, priority or enforceability of, or assert any defense, counterclaim or offset to, the DIP Facility, the DIP Term Sheet, the DIP Credit Agreement, or the DIP Loan Documents or the Prepetition Obligations or the Prepetition Loan Documents, or the security interests and liens securing any of the DIP Obligations or the Prepetition Obligations, or to fund prosecution or assertion of any claims, or to otherwise litigate against the DIP Lender, provided that upon entry of an order by this Court approving the Debtors' *Emergency Motion for Entry of an Order Approving the Settlement Between The IEH Debtors, AEP, Pep Boys, the Committee, and the Committee Members* [Docket No. 444] (the "9019 Order"), this Paragraph 12 shall not apply to the Committee for so long as the 9019 Order has not been stayed, vacated, reversed, or modified on appeal or otherwise and the Committee or members of the Committee have not breached the settlement approved by the 9019 Order.

13. **506(c) Waiver.** Except to the extent of the Carve-Out, no expenses of administration of these Chapter 11 Cases or any future proceeding that may result therefrom, including liquidation in bankruptcy or other proceedings under the Bankruptcy Code, shall be charged against or recovered from any DIP Collateral pursuant to section 506(c) of the Bankruptcy Code or any similar principle of law, without the prior written consent of the DIP Lender, and no such consent shall be implied from any other action, inaction, or acquiescence by the DIP Lender; and the Debtors irrevocably waive and are prohibited from asserting any claim described in this paragraph, under section 506(c) of the Bankruptcy Code or otherwise, for any costs and expenses

incurred in connection with the preservation, protection or enhancement of, or realization by the DIP Lender upon the DIP Collateral.

14. **Waiver of Marshaling.** Except to the extent of the Carve-Out, in connection with any disposition of or exercise of rights and remedies with respect to the DIP Collateral, the DIP Lender may exercise all remedies available under the DIP Credit Agreement, the DIP Loan Documents, and Prepetition Loan Documents, as applicable, without any requirement first to look to exercise any of its or their rights against any particular collateral or party or to exhaust any remedies available to it or them against any particular collateral or party or to resort to any other source or means of obtaining payment of any of such obligations or to elect any other remedy. In no event shall the DIP Lender be subject to the equitable doctrine of “marshaling” or any other similar doctrine with respect to the collateral securing the DIP Facility Loans or the Prepetition Obligations.

15. **Section 552(b).** In light of the subordination of their liens and superpriority administrative claims (i) in the case of the DIP Lender, to the Carve-Out and the Permitted Prior Liens and (ii) in the case of the Prepetition Lender, to the Carve-Out and the DIP Liens, each of the DIP Lender and the Prepetition Lender is entitled to all of the rights and benefits of section 552(b) of the Bankruptcy Code, and the “equities of the case” exception shall not apply to any of the DIP Lender and Prepetition Lender with respect to the proceeds, products, rents, issues or profits of any of the DIP Collateral or the Prepetition Collateral, and no expenses of administration of the Chapter 11 Cases or any future proceeding that may result therefrom, including liquidation in bankruptcy or other proceedings under the Bankruptcy Code, may be charged against proceeds, product, offspring or profits from any of the DIP Collateral or the Prepetition Collateral under section 552(b) of the Bankruptcy Code. The Debtors irrevocably

waived, and agreed not to assert, any claim or right under section 552 of the Bankruptcy Code seeking to avoid the imposition of the DIP Liens, liens pursuant to the Prepetition Loan Documents, or the Adequate Protection Liens on any property acquired by any of the Debtors or any of their estates or, subject to the Carve-Out, seeking to surcharge any costs or expenses incurred in connection with the preservation, protection, or enhancement of, or realization by, the DIP Lender or the Prepetition Lender upon the DIP Collateral or the Prepetition Collateral, as applicable.

16. **Restrictions on Granting Post-Petition Liens.** Other than the Carve-Out, or as otherwise provided in this Final Order or the DIP Credit Agreement, no claim having a priority superior or *pari passu* with those granted by the Interim Order or this Final Order to the DIP Lender and Prepetition Lender shall be granted or permitted by any order of this Court entered in the Chapter 11 Cases, while any portion of the DIP Facility (or refinancing thereof), any loan under the DIP Facility, or any other obligations under the DIP Credit Agreement are outstanding. Except as expressly permitted by the DIP Loan Documents, the Debtors will not, at any time during the Chapter 11 Cases, grant mortgages, security interests, or liens in the DIP Collateral (or any portion thereof) to any other parties pursuant to section 364(d) of the Bankruptcy Code or otherwise.

17. **Ad Valorem Taxes.** Notwithstanding any other provisions included in the Interim Order or this Final Order, or any agreements approved hereby, any statutory liens (collectively, the “Texas Tax Liens”), including business personal property liens, of City of Mesquite, Dallas County, Fort Bend County WCID #2, Fort Bend County, Galveston County, Harris County, Irving Independent School District, Tarrant County, Texas City Independent School District, Richardson Independent School District, Plano Independent School District, Pasadena Independent School District, City of Houston, Clear Creek Independent School District, Dickinson Independent School

District, Brazoria County, City of Pearland, Brazoria County Drainage District #4, Brazoria County Special Road & Bridge Fund, Pearland Independent School District, Wichita Falls City, Wichita Falls Independent School District, Wichita County, City of Vernon, Wilbarger General Hospital, Vernon College, Vernon Independent School District, Lubbock Central Appraisal District, Dallam County Appraisal District, Dallam County, Stephens County, Collin County, and Collin County Tax Assessor (collectively, the “Texas Taxing Authorities”) shall not be primed by nor made subordinate to any liens granted to any party hereby to the extent such Texas Tax Liens are valid, senior, perfected, and unavoidable, and all parties' rights to object to the priority, validity, amount, and extent of the claims and liens asserted by the Texas Taxing Authorities are fully preserved.

18. **Chubb Reservation of Rights.** For the avoidance of doubt, (i) to the extent ACE American Insurance Company and/or any of its U.S.-based affiliates (collectively, and together with each of their successors, “Chubb”) had valid, enforceable, perfected, and non-avoidable liens and/or security interests on property (including Cash Collateral) of the Debtors as of the Petition Date, which liens and/or security interests were senior to the liens and/or security interests of the Prepetition Lender (collectively, the “Chubb Liens”), the Chubb Liens shall be senior to any liens and/or security interests granted pursuant to this Final Order; (ii) this Final Order does not grant the Debtors any right to use any property (or the proceeds thereof) held by Chubb as collateral to secure obligations under any insurance policies and related agreements; and (iii) nothing, including the DIP Loan Documents and/or this Final Order, alters or modifies the terms and conditions of any insurance policies issued by Chubb and/or any agreements related thereto.

19. **Element Fleet.** Notwithstanding anything to the contrary in the Financing Motion, any interim order entered with respect to the Financing Motion, or this Final Order, the liens

granted to the DIP Lender shall be applicable to, and the collateral securing the Debtors' obligations to the DIP Lender shall only include, the Debtors' interest (including any reversionary interest), and shall not include Element's interest, in: (i) the Letter of Intent for Lease dated July 16, 2015 and the attached Motor Vehicle Fleet Open-End Lease Agreement Lease No(s). 3585, a true copy of which is attached as Exhibit 1 to the Element Objection at Docket No. 146 (the "Vehicle Lease"), (ii) the Master Services Agreement dated as of October 28, 2020, a true copy of which is attached as Exhibit 2 to the Element Objection at Docket No. 146 (together with related documents and amendments, the "MSA"), (iii) any vehicles leased by IEH under the Vehicle Lease (the "Leased Vehicles"), and (iv) any proceeds of or from any or all of the Vehicle Lease, the MSA, the Leased Vehicles or the disposition of the Leased Vehicles.

20. **Milestones.** It is a condition to the DIP Facility that the Debtors comply with the following deadlines (each of which may be extended or waived with the prior written consent of the DIP Lender, which may be by e-mail, without further order of the Bankruptcy Court, and which consent shall be at the DIP Lender's sole discretion) (collectively, the "Milestones"). The failure to satisfy the following Milestones shall constitute an Event of Default in accordance with the terms of the DIP Credit Agreement and this Final Order.

a. The Bankruptcy Court shall have entered the Final Order by the date that is no later than March 7, 2023, which milestone has been extended to May 3, 2023 with the consent of the DIP Lender.

b. The Bankruptcy Court shall have entered an order approving the Sale by the date that is no later than May 21, 2023.

c. The Sale shall be consummated by the date that is no later than May 31, 2023.

d. A liquidating chapter 11 plan shall be consummated by the date that is no later than 90 days after consummation of the Sale.

21. **Automatic Effectiveness of Liens.** The DIP Liens and the Adequate Protection Liens automatically are deemed to be valid, perfected, enforceable, non-avoidable and effective by operation of law, and not subject to challenge as of the Petition Date, without the need for (x) filing any UCC-1 financing statements, security agreements, vehicle lien applications, filings with the U.S. Patent and Trademark Office, the United States Copyright Office, or the Library of Congress, state or federal notice, or any other similar instrument or document in any state or public record or office, (y) taking possession or control of any collateral, or (z) further action of any kind (including execution of any security agreements, mortgages, financing statements, collateral agreements, collateral trust agreements, deposit account control agreements, blocked account control agreements, securities account control agreements, or other collateral documents and agreements). All DIP Collateral is free and clear of other liens, claims and encumbrances, except the Permitted Prior Liens, Adequate Protection Liens, the Prepetition Liens, and any other liens expressly permitted under the Prepetition Loan Documents. If the DIP Lender or the Prepetition Lender hereafter reasonably requests that the Debtors execute and deliver to the DIP Lender or Prepetition Lender financing statements, security agreements, collateral assignments, or other instruments and documents considered by such agent to be reasonably necessary or desirable to further evidence the perfection of the DIP Liens or the Adequate Protection Liens, as applicable, the Debtors are hereby authorized to execute and deliver such financing statements, security agreements, collateral assignments, instruments, and documents, and the DIP Lender or Prepetition Lender, as applicable, is hereby authorized to file or record such documents in its discretion without seeking modification of the automatic stay under section 362 of the Bankruptcy Code, in

which event all such documents shall be deemed to have been filed or recorded at the time and on the date of entry of the Interim Order; provided that all financing statements, notices of liens or similar instruments filed by the Prepetition Lender shall conspicuously state that the Adequate Protection Liens are junior and subordinated to the DIP Liens.

22. **Remedies.** Upon the occurrence and during the continuance of any Event of Default (as defined in the DIP Credit Agreement), and without further application to the Bankruptcy Court, the automatic stay provisions of Section 362 of the Bankruptcy Code shall be vacated and modified to the extent necessary to permit the DIP Lender to take any of the following actions, at the same or different times: (a) issue a written notice (the “Remedies Notice”) (which may be by email) to the Debtors and their counsel, counsel for any Committee, and the U.S. Trustee (the “Remedies Notice Parties”) declaring the occurrence of the Termination Date (as defined in the DIP Credit Agreement); (b) issue a Carve-Out Notice (as defined above), (c) declare all DIP Obligations to be immediately due and payable without presentment, demand or protest or other notice of any kind, all of which are expressly waived by the Debtors; (d) declare the suspension or termination of the DIP Facility as to any further liability or obligation of the DIP Lender thereunder, but without affecting the DIP Liens or DIP Obligations (the “Termination Notice”); and (e) charge the default rate of interest under the DIP Facility. Prior to terminating the rights of the Debtors to use Cash Collateral or exercising any remedies against the DIP Collateral other than those specified in (a) through (e) above, the DIP Lender shall be required to file a motion with the Court using a CM/ECF emergency code seeking emergency relief from the automatic stay (the “Stay Relief Motion”) on at least three (3) business days’ written notice to the Remedies Notice Parties of the DIP Lender’s intent to exercise its rights and remedies (the “DIP Remedies Notice Period”). In the event the Bankruptcy Court determines during a hearing on the Stay Relief



Motion that an Event of Default has occurred, the Bankruptcy Court may fashion an appropriate remedy, which may include the exercise of any and all rights available to the DIP Lender under the DIP Term Sheet, DIP Loan Documents, the Interim Order, or this Final Order, as applicable.

23. **Credit Bid**. Subject to the Challenge Period, and notwithstanding anything to the contrary in an order of this Court approving bidding procedures for any sale of the Debtors' assets:

- a. The Prepetition Lender and DIP Lender, respectively, shall have the right to credit bid (pursuant to section 363(k) of the Bankruptcy Code and/or applicable law) the DIP Obligations and Prepetition Obligations, in whole or in part (including any known future DIP Obligations and/or Prepetition Obligations, as applicable, that will become outstanding prior to or in connection with the consummation of the credit bid), on a dollar-for-dollar basis, in connection with any sale or disposition of assets by the Debtors in these Chapter 11 Cases, and shall not be prohibited from making such credit bid "for cause" under section 363(k) of the Bankruptcy Code;
- b. In connection with any credit bid for any portion of the Debtors' assets by the Prepetition Lender and/or the DIP Lender (whether or not such bid also includes a cash component), the Prepetition Lender and/or DIP Lender, as applicable, shall not be required to (i) provide any information to the Debtors regarding the financial condition of the Prepetition Lender or DIP Lender or (ii) deposit any amounts with the Debtors prior to consummation of such bid;
- c. Such bid shall be a qualified bid, and the Prepetition Lender and/or DIP Lender, as applicable, (i) shall be qualified bidders for any auction for the

Debtors' assets and (ii) shall be entitled to participate as a bidder at such auction; and

- d. If, upon the expiration of any bid deadline approved by this Court, the DIP Lender and the Prepetition Lender shall have declined to submit a bid for any portion of the Debtors' assets (such portion of the Debtors' assets not included in any bid by the Prepetition Lender or DIP Lender or later removed from any bid by the Prepetition lender or DIP Lender, the "Excluded Assets"), then (i) the Debtors, within one Business Day of the expiration of such bid deadline, shall provide to DIP Lender copies of all bids which cover solely Excluded Assets, (ii) the DIP Lender shall have a consent right for the Debtors' selection of the baseline bid for bids that cover solely Excluded Assets, and (iii) the DIP Lender shall have a consent right to the Debtors' selection of a winning bidder for any bid covering solely Excluded Assets.

24. **Proofs of Claim.** The Prepetition Lender is not be required to file proofs of claim in any of these Chapter 11 Cases. The stipulations in Paragraph D of this Final Order are deemed to constitute a timely-filed proof of claim for the Prepetition Lender in respect of the Prepetition Obligations. However, in order to facilitate the processing of claims, to ease the burden upon the Court and to reduce an unnecessary expense to the Debtors' estates, the Prepetition Lender is authorized, at any time and notwithstanding any other Order of this Court setting the time by which proofs of claim must be filed, to file in the Debtors' lead Chapter 11 Case for IEH Auto Parts Holding LLC, Case No. 23-90054 (CML), a master proof of claim on behalf of the Prepetition Lender on account of any and all off its claims arising under the Prepetition Loan Documents and

hereunder (a “Master Proof of Claim”) against each of the Debtors. Upon the filing of a Master Proof of Claim by the Prepetition Lender, it shall be deemed to have filed a proof of claim in the amount set forth opposite its name therein in respect of its claims against each of the Debtors of any type or nature whatsoever with respect to the applicable security documents, and the claim of the Prepetition Lender (and each of its respective successors and assigns) named in a Master Proof of Claim shall be treated as if it had filed a separate proof of claim in each of these Chapter 11 Cases. In addition, the DIP Lender and the DIP Secured Parties will not be required to file any request for allowance and/or payment of any administrative expenses. This Final Order constitutes a timely filed request for allowance and/or payment of any Prepetition Obligations constituting administrative expenses or any DIP Obligations, as applicable.

25. **Fiduciary Duties.** Notwithstanding anything to the contrary in the DIP Term Sheet, DIP Loan Documents, the Interim Order, this Final Order, or any other document, order, or instrument, nothing in the DIP Term Sheet, DIP Credit Agreement, or the Financing Orders shall require the Debtors, the Debtors’ board of directors, or any similar governing body of the Debtors, after consulting with counsel, to take any action or to refrain from taking any action with respect to any alternative financing transaction to the extent taking or failing to take such action would be inconsistent with applicable law or its fiduciary obligations under applicable law. To extent of any conflict between this provision and any other provision in the DIP Term Sheet, DIP Credit Agreement, or the Financing Orders, this provision will control.

26. **Honoring of Disbursements.** Notwithstanding anything to the contrary in any other order of this Court, the financial institutions where the Debtors’ bank accounts are located (a) are authorized to accept and honor all representations from the Debtors as to which checks, drafts, wires, or ACH transfers should be honored or dishonored, consistent with any order of this

Court and governing law, and (b) have no duty to independently inquire as to whether such payments are authorized by an order of this Court.

27. **Disbursement Handling Procedures.** The financial institution where the Debtors' bank accounts are located shall implement reasonable handling procedures in coordination with the Debtors designed to effectuate the terms of this Final Order. No financial institution that implements such handling procedures and then honors a pre-petition check or other item drawn on any bank account that is the subject of this Final Order either (i) in good faith belief that the Court has authorized such pre-petition check or item to be honored or (ii) as a result of an innocent mistake made despite implementation of such handling procedures, shall be deemed to be liable to the Debtors or their estates otherwise in violation of this Final Order.

28. **No Obligation to Pay Professional Fees.** Nothing in this Final Order shall be construed to obligate the DIP Lender in any way, to pay compensation to, or to reimburse expenses of, any professionals or to guarantee that the Debtors have sufficient funds to pay such compensation or reimbursement, except to the extent provided in the 9019 Order.

29. **Conflict with 9019 Order.** If there is any conflict between the terms of this Final Order and the terms of the 9019 Order, the terms of the 9019 Order shall apply to give full force and effect to the settlement agreement of the parties set forth in the 9019 Motion and approved by the 9019 Order.

30. **Survival.** The provisions of this Final Order and any actions taken pursuant hereto shall survive the entry of any order confirming a plan, converting the Chapter 11 Cases, or dismissing the Chapter 11 Cases or any successor case, and the terms and provisions of this Final Order shall continue in full force notwithstanding any such order.

31. **Immediate Effect.** Notwithstanding Bankruptcy Rules 4001(a)(3), 6004(h), 7062

or 9024, any other Bankruptcy Rule or Rule 62(a) of the Federal Rules of Civil Procedure, this Final Order is immediately effective and enforceable upon its entry. There is no stay of execution or effectiveness of this Final Order.

32. **Further Actions.** The Debtors are authorized to take all actions necessary to effectuate the relief granted in this Final Order in accordance with the Motion.

33. **Retention of Jurisdiction.** This Court has exclusive jurisdiction with respect to any and all disputes or matters under, or arising out of or in connection with, either the DIP Facility or the Loan Documents. This Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Final Order.

Dated: \_\_\_\_\_, 2023

---

UNITED STATES BANKRUPTCY JUDGE

**Exhibit 1**

**DIP Credit Agreement**

*Sidley Draft: May 2, 2023*

---

PRIMING SENIOR SECURED SUPER-PRIORITY DEBTOR-IN-POSSESSION  
CREDIT AGREEMENT

dated as of

May 2, 2023

between

IEH AUTO PARTS HOLDING LLC, as Auto Plus and a Borrower,

CERTAIN SUBSIDIARIES OF THE BORROWER PARTY HERETO, as Guarantors

and

AMERICAN ENTERTAINMENT PROPERTIES CORP., as Lender

## TABLE OF CONTENTS

	Page
ARTICLE I Definitions .....	2
SECTION 1.01 <u>Defined Terms</u> .....	2
SECTION 1.02 <u>Classification of Loans and Borrowings</u> .....	19
SECTION 1.03 <u>Terms Generally</u> .....	19
SECTION 1.04 <u>Accounting Terms; GAAP</u> .....	20
SECTION 1.05 <u>[Reserved]</u> .....	20
SECTION 1.06 <u>Letters of Credit</u> .....	20
SECTION 1.07 <u>Divisions</u> .....	21
SECTION 1.08 <u>Orders</u> .....	21
ARTICLE II Credit Facilities. ....	21
SECTION 2.01 <u>New Money Loans</u> .....	21
SECTION 2.02 <u>Roll-Up Loans</u> .....	22
SECTION 2.03 <u>Borrowing Procedures</u> .....	22
SECTION 2.04 <u>LC Facility</u> .....	22
SECTION 2.05 <u>Termination of New Money Loan Commitments</u> .....	24
SECTION 2.06 <u>Repayment of Loans; Evidence of Indebtedness</u> .....	25
SECTION 2.07 <u>Prepayment of Loans</u> .....	25
SECTION 2.08 <u>Fees</u> .....	25
SECTION 2.09 <u>Interest</u> .....	25
SECTION 2.10 <u>Payments Generally; Allocation of Proceeds</u> .....	26
ARTICLE III Representations and Warranties.....	27
SECTION 3.01 <u>Organization; Powers</u> .....	27
SECTION 3.02 <u>Authorization; Enforceability</u> .....	27
SECTION 3.03 <u>Governmental Approvals; No Conflicts</u> .....	27
SECTION 3.04 <u>No Material Adverse Change</u> .....	28
SECTION 3.05 <u>Properties</u> .....	28
SECTION 3.06 <u>Litigation and Environmental Matters</u> .....	28
SECTION 3.07 <u>Compliance with Laws and Agreements; No Default</u> .....	29
SECTION 3.08 <u>Investment Company Status</u> .....	29
SECTION 3.09 <u>Taxes</u> .....	29
SECTION 3.10 <u>ERISA</u> .....	29



SECTION 3.11	<u>Disclosure</u> .....	29
SECTION 3.12	<u>Material Agreements</u> .....	29
SECTION 3.13	[Reserved] .....	30
SECTION 3.14	<u>Insurance</u> .....	30
SECTION 3.15	<u>Security Interest in Collateral</u> .....	30
SECTION 3.16	<u>Employment Matters</u> .....	30
SECTION 3.17	<u>Use of Proceeds</u> .....	30
SECTION 3.18	<u>No Burdensome Restrictions</u> .....	30
SECTION 3.19	<u>DIP Orders</u> .....	30
SECTION 3.20	<u>Budget</u> .....	30
ARTICLE IV	Conditions .....	31
SECTION 4.01	<u>Effectiveness of this Agreement</u> .....	31
SECTION 4.02	<u>Each Credit Extension</u> .....	32
ARTICLE V	Affirmative Covenants .....	33
SECTION 5.01	<u>Financial Statements and Other Information</u> .....	33
SECTION 5.02	<u>Notices of Material Events</u> .....	35
SECTION 5.03	<u>Existence; Conduct of Business</u> .....	35
SECTION 5.04	<u>Payment of Obligations</u> .....	35
SECTION 5.05	<u>Maintenance of Properties</u> .....	36
SECTION 5.06	<u>Books and Records; Inspection Rights</u> .....	36
SECTION 5.07	<u>Compliance with Laws and Material Contractual Obligations</u> .....	36
SECTION 5.08	<u>Use of Proceeds</u> .....	36
SECTION 5.09	<u>Accuracy of Information</u> .....	37
SECTION 5.10	<u>Insurance</u> .....	37
SECTION 5.11	<u>Casualty and Condemnation</u> .....	37
SECTION 5.12	<u>Collateral</u> .....	37
SECTION 5.13	<u>Post-Closing Obligations</u> .....	39
SECTION 5.14	<u>Bankruptcy Matters</u> .....	39
SECTION 5.15	<u>Chapter 11 Milestones</u> .....	39
ARTICLE VI	Negative Covenants .....	39
SECTION 6.01	<u>Indebtedness</u> .....	39
SECTION 6.02	<u>Liens</u> .....	40
SECTION 6.03	<u>Fundamental Changes</u> .....	41
SECTION 6.04	<u>Investments, Loans, Advances, Guarantees and Acquisitions</u> .....	41

SECTION 6.05	<u>Asset Sales</u> .....	42
SECTION 6.06	<u>Sale and Leaseback Transactions</u> .....	43
SECTION 6.07	<u>Swap Agreements</u> .....	43
SECTION 6.08	<u>Certain Payments of Indebtedness</u> .....	43
SECTION 6.09	<u>Restrictive Agreements</u> .....	43
SECTION 6.10	<u>Amendment of Material Documents</u> .....	43
SECTION 6.11	<u>Super-Priority Claims</u> .....	44
SECTION 6.12	<u>Bankruptcy Orders</u> .....	44
SECTION 6.13	<u>New Accounts</u> .....	44
SECTION 6.14	<u>Prepetition Claims</u> .....	44
SECTION 6.15	<u>Variance Covenant</u> .....	44
ARTICLE VII	Events of Default .....	45
ARTICLE VIII	Miscellaneous.....	49
SECTION 8.01	<u>Notices</u> .....	49
SECTION 8.02	<u>Waivers; Amendments</u> .....	50
SECTION 8.03	<u>Expenses; Limitation of Liability; Indemnity; Etc</u> .....	50
SECTION 8.04	<u>Successors and Assigns</u> .....	52
SECTION 8.05	<u>Survival</u> .....	53
SECTION 8.06	<u>Counterparts; Integration; Effectiveness; Electronic Execution</u> ....	54
SECTION 8.07	<u>Severability</u> .....	55
SECTION 8.08	<u>Right of Setoff</u> .....	55
SECTION 8.09	<u>Governing Law; Jurisdiction; Consent to Service of Process</u> .....	55
SECTION 8.10	<u>WAIVER OF JURY TRIAL</u> .....	56
SECTION 8.11	<u>Headings</u> .....	57
ARTICLE IX	Loan Guaranty .....	57
SECTION 9.01	<u>Guaranty</u> .....	57
SECTION 9.02	<u>Guaranty of Payment</u> .....	57
SECTION 9.03	<u>No Discharge or Diminishment of Loan Guaranty</u> .....	57
SECTION 9.04	<u>Defenses Waived</u> .....	58
SECTION 9.05	<u>Rights of Subrogation</u> .....	58
SECTION 9.06	<u>Reinstatement; Stay of Acceleration</u> .....	59
SECTION 9.07	<u>Information</u> .....	59
SECTION 9.08	<u>Termination</u> .....	59
SECTION 9.09	<u>Taxes</u> .....	59

SECTION 9.10	<u>Maximum Liability</u> .....	59
SECTION 9.11	<u>Contribution</u> .....	60
SECTION 9.12	<u>Liability Cumulative</u> .....	60

SCHEDULES:

Schedule 1.01	Prepetition Letters of Credit
Schedule 2.02	Roll-Up Loan Amount
Schedule 5.13	Post-Closing Obligations
Schedule 6.02	Existing Liens

EXHIBITS:

Exhibit A – Compliance Certificate
Exhibit B - Joinder Agreement
Exhibit C – Notice of Borrowing

THIS PRIMING SENIOR SECURED SUPER-PRIORITY DEBTOR-IN-POSSESSION CREDIT AGREEMENT dated as of May 2, 2023 (as it may be amended or modified from time to time, this “Agreement”), among IEH AUTO PARTS HOLDING LLC, a Delaware limited liability company, as a Borrower (“Auto Plus” and, the “Company” and/or the “Borrower”) and CERTAIN OTHER SUBSIDIARIES OF THE BORROWER AS PARTY HERETO, as Guarantors, and AMERICAN ENTERTAINMENT PROPERTIES CORP., as Lender.

W I T N E S E T H:

WHEREAS, on Jan. 31, 2023 (the “Petition Date”), the Borrower and the Initial Guarantors (as defined below) (in such capacity, each a “Debtor” and collectively, the “Debtors”) filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code in the Bankruptcy Court;

WHEREAS, the Borrower has requested that the Lender provide the Borrower with a debtor-in-possession, super-priority, senior secured loan credit facility (the “DIP Facility”), which shall consist of (x) a new money multiple-draw delayed draw term loan (“New Money Facility”) in the initial aggregate principal amount of up to \$76,125,000, (y) a loan in an amount equal to the Roll-Up Loan Amount to reflect the roll-up of outstanding Prepetition Term Loans made by the Lender under the Prepetition Credit Agreement and accrued and unpaid interest thereon and any other Prepetition Obligations (other than the Prepetition Letters of Credit or the Allocated Amounts thereof) and (z) additional credit (the “LC Facility”) in the form of the deemed issuance of the Prepetition Letters of Credit (or the portion thereof set forth in the “Allocated Amount” column on Schedule 1.01, the “Allocated Amount”) as Letters of Credit under this Agreement, in each case to be afforded the liens and priority set forth in the DIP Orders and as set forth in the other Loan Documents and to be used during the Bankruptcy Cases for the purposes set forth in Section 5.08;

WHEREAS the New Money Facility was made available in an amount not to exceed the Interim Advance pursuant to the Interim Order and shall be further available for borrowings as of the Effective Date, subject in all respects to the terms, conditions and limitations set forth herein and in the other Loan Documents;

WHEREAS, by execution and delivery of this Agreement and the other Loan Documents and entry of the applicable DIP Order, the Guarantors, as applicable, agree to guarantee the Obligations, and the Borrower and each Guarantor agrees to secure all of the Obligations by granting to the Lender, a lien and security interest in respect of, and on, substantially all of each Loan Party’s respective assets, on and subject to the terms and priorities set forth in the DIP Orders and the other Loan Documents; and

WHEREAS, the Lender is willing to extend such credit to the Borrower on the terms and subject to the conditions set forth herein.

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

ARTICLE I  
Definitions

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

“Account” has the meaning assigned to such term in the Security Agreement.

“Account Debtor” means any Person obligated on an Account.

“AEPC” means American Entertainment Properties Corp.

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

“Ancillary Document” has the meaning assigned to it in Section 8.06(b).

“Anti-Corruption Laws” means all laws, rules, and regulations of any jurisdiction applicable to the Company or any of its Subsidiaries from time to time concerning or relating to bribery or corruption.

“Applicable Rate” means, for any day, (i) with respect to any New Money Loan or LC Disbursement, a rate of 8.00% per annum, and (ii) with respect to the Roll-Up Loans, a rate of 3.50% per annum; provided that, at the Lender’s option, in connection with any plan of reorganization of the Debtors, the Applicable Rate in this clause (ii) shall be increased retroactively to 5.50%.

“Approved Budget” means the most recent Budget that has been approved by Lender in its sole discretion as set forth in Section 5.01(g).

“Authorized Officers” means [David Willetts and Jesse Lynn,] or any other authorized officer of the Lender or its Affiliates designated by the Lender.

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

“Availability Period” means the period from the Effective Date, to, but excluding, the Termination Date.

“Avoidance Action Proceeds” has the meaning specified in the DIP Orders.

“Avoidance Actions” has the meaning specified in the DIP Orders.

“Banking Services” means each and any of the following bank services provided to any Loan Party or any Subsidiary by any third party: (a) credit cards for commercial customers (including, without limitation, “commercial credit cards” and purchasing cards), (b) stored value cards, (c) merchant processing services, and (d) treasury management services (including, without

limitation, controlled disbursement, automated clearinghouse transactions, return items, any direct debit scheme or arrangement, overdrafts and interstate depository network services).

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

“Bankruptcy Cases” means the cases of the Debtors filed under Chapter 11 of the Bankruptcy Code, jointly administered under Case No. 23-90054 (CML), in the Bankruptcy Court from and after the Petition Date.

“Bankruptcy Code” means title 11 of the United States Code, 11 U.S.C. §§ 101–1532, as may be amended from time to time.

“Bankruptcy Court” means the United States Bankruptcy Court for the Southern District of Texas, Houston Division.

“Bankruptcy Orders” means the DIP Orders and any other judgments, decisions, rulings or orders by the Bankruptcy Court, whether interim or final.

“Borrower” means, the Company.

“Borrowing” means New Money Loans, Roll-Up Loans or LC Disbursements, made on the same date.

“Budget” means a 13-week detailed rolling cash projection in substantially the same form as the Initial Approved Budget (as defined in the DIP Order).

“Burdensome Restrictions” means any consensual encumbrance or restriction of the type described in clause (a) or (b) of Section 6.09.

“Business Day” means any day that is not a Saturday, Sunday or other day on which commercial banks in New York City are authorized or required by law to remain closed.

“Capital Lease Obligations” of any Person means the obligations of such Person to pay rent or other amounts under any lease of (or other arrangement conveying the right to use) real or personal property, or a combination thereof, which obligations are required to be classified and accounted for as capital leases or financing leases on a balance sheet of such Person under GAAP, and the amount of such obligations shall be the capitalized amount thereof determined in accordance with GAAP.

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

“Cash Management Order” means one or more orders of the Bankruptcy Court, including the DIP Orders, entered in the Bankruptcy Cases, together with all extensions, modifications and amendments thereto, in form and substance reasonably satisfactory to the Lender, which, among other matters, authorizes the Loan Parties to maintain their existing cash management system.

“Change in Control” means (a) at any time any “person” or “group” (as such terms are used in Sections 13(d) and 14(d) of the Exchange Act) other than Permitted Holders shall become the “beneficial owner” (as defined in Rules 13(d)-3 and 13(d)-5 under the Exchange Act), directly or indirectly, of more than 50% of the aggregate outstanding Equity Interests of Company or (b) the Company fails to be the beneficial owner, directly or indirectly, of the outstanding Equity Interests of any Guarantor.

“Chapter 11 Milestones” means the “Milestones” as defined in the DIP Order.

“Citi LC Facility” means that certain line of credit facility between AEPC and Citibank, N.A., as secured party and collateral agent, for the benefit of certain of AEPC’s Subsidiaries in respect of a letter of credit line with Citibank, N.A.

“Citi LC Facility Obligations” means any and all liabilities, fees, expenses, reimbursements, indemnities and other obligations and indebtedness owed by AEPC under the Citi LC Facility, including the aggregate amount of all deposits in the Citi LC Facility Pledged Account, in respect of letters of credit (or the Allocated Amounts thereof) issued under the Citi LC Facility for the benefit of the Company and its Subsidiaries.

“Citi LC Facility Pledged Account” means that certain Account ending with 1580 with Bank of America pursuant to that certain Pledge, Assignment and Control Agreement dated July 23, 2021 between AEPC, as pledgor and Citibank, N.A., as secured party and collateral agent, for the benefit of certain of AEPC’s Subsidiaries in respect of the Citi LC Facility.

“Class”, when used with respect to Loans or a Borrowing, refers to whether such Loans, or the Loans comprising such Borrowing, are New Money Loans, Roll-Up Loans or LC Disbursements, as applicable.

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

“Collateral” means any and all property owned, leased or operated by a Person covered by the Collateral Documents or the DIP Orders and any and all other property of any Loan Party, now existing or hereafter acquired, that may at any time be, become or be intended to be, subject to a security interest or Lien in favor of the Lender, on behalf of the Secured Parties, to secure the Secured Obligations.

“Collateral Access Agreement” has the meaning assigned to such term in the Security Agreement.

“Collateral Documents” means, collectively, the Security Agreement, and any other agreements, instruments and documents executed in connection with this Agreement that are intended to create, perfect or evidence Liens to secure the Secured Obligations, including, without limitation, all other security agreements, pledge agreements, mortgages, deeds of trust, loan agreements, notes, guarantees, subordination agreements, pledges, powers of attorney, consents, assignments, contracts, fee letters, notices, leases, financing statements and all other written matter whether theretofore, now or hereafter executed by any Loan Party and delivered to the Lender.

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

“Company” has the meaning as defined in the preamble hereto.

“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.

“Credit Extension” has the meaning assigned to such term in Section 4.01.

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

“DIP Facility” has the meaning as defined in the preamble hereto.

“DIP Facility Loans” means the Loans hereunder.

“DIP Loan Documents” means the Loan Documents.

“DIP Order” or “DIP Orders” means the Interim Order (including the DIP Term Sheet) and the Final Order, as applicable.

“DIP Term Sheet” means the Summary of Proposed Terms and Conditions for DIP Financing and use of Cash Collateral attached as Exhibit 1 to the Interim Order.

“Disposition” or “Dispose” means the sale, transfer, license, lease or other disposition (in one transaction or in a series of transactions and whether effected pursuant to a Division or otherwise) of any property by any Person (including any sale and leaseback transaction and any issuance of Equity Interests by a Subsidiary of such Person), including any sale, assignment, transfer or other disposal, with or without recourse, of any notes or accounts receivable or any rights and claims associated therewith.

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

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

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

“Document” has the meaning assigned to such term in the Security Agreement.



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

“Effective Date” means the date on which the conditions specified in Section 4.01 are satisfied (or waived in accordance with Section 8.02).

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

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

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

“Equipment” has the meaning assigned to such term in the Security Agreement.

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

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

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

“ERISA Event” means (a) any “reportable event”, as defined in Section 4043 of ERISA or the regulations issued thereunder, with respect to a Plan (other than an event for which the 30-day notice period is waived); (b) the failure to satisfy the “minimum funding standard” (as defined in Section 412 of the Code or Section 302 of ERISA), whether or not waived; (c) the filing pursuant to Section 412(c) of the Code or Section 302(c) of ERISA of an application for a waiver of the minimum funding standard with respect to any Plan; (d) the incurrence by the Company or any ERISA Affiliate of any liability under Title IV of ERISA with respect to the termination of any Plan; (e) the receipt by the Company or any ERISA Affiliate from the PBGC or a plan

administrator of any notice relating to an intention to terminate any Plan or Plans or to appoint a trustee to administer any Plan; (f) the incurrence by the Company or any ERISA Affiliate of any liability with respect to the withdrawal or partial withdrawal of the Company or any ERISA Affiliate from any Plan or Multiemployer Plan; or (g) the receipt by the Company or any ERISA Affiliate of any notice, or the receipt by any Multiemployer Plan from the Company or any ERISA Affiliate of any notice, concerning the imposition upon the Company or any ERISA Affiliate of Withdrawal Liability or a determination that a Multiemployer Plan is, or is expected to be, insolvent, in critical status or in reorganization, within the meaning of Title IV of ERISA.

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

“Final Order” means the *Final Order (I) Authorizing Post-Petition Financing Secured By Senior Liens, (II) Authorizing The Debtors To Use Cash Collateral, (III) Granting Adequate Protection, (IV) Scheduling a Final Hearing, and (V) Granting Related Relief* Docket No. [ ].

“Financial Officer” means the chief financial officer, principal accounting officer, treasurer or controller of the Borrower.

“Fixtures” has the meaning assigned to such term in the Security Agreement.

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

“Governmental Authority” means the government of the U.S., any other nation or any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government.

“Guarantee” of or by any Person (the “guarantor”) means any obligation, contingent or otherwise, of the guarantor guaranteeing or having the economic effect of guaranteeing any Indebtedness or other obligation of any other Person (the “primary obligor”) in any manner, whether directly or indirectly, and including any obligation of the guarantor, direct or indirect, (a) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or other obligation or to purchase (or to advance or supply funds for the purchase of) any security for the payment thereof, (b) to purchase or lease property, securities or services for the purpose of assuring the owner of such Indebtedness or other obligation of the payment thereof, (c) to maintain working capital, equity capital or any other financial statement condition or liquidity of the primary obligor so as to enable the primary obligor to pay such Indebtedness or other obligation or (d) as an account party in respect of any letter of credit or letter of guaranty issued to support such Indebtedness or obligation; provided that the term Guarantee shall not include endorsements for collection or deposit in the ordinary course of business.

“Guaranteed Obligations” has the meaning assigned to such term in Section 9.01.

“Guarantors” means the Debtors signatory hereto and any other Person who provides a Guarantee of the Guaranteed Obligations, and the term “Guarantor” means each or any one of them individually.

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

“Indebtedness” of any Person means, without duplication, (a) all obligations of such Person for borrowed money or with respect to deposits or advances of any kind, (b) all obligations of such Person evidenced by bonds, debentures, notes or similar instruments, (c) all obligations of such Person upon which interest charges are customarily paid, (d) all obligations of such Person under conditional sale or other title retention agreements relating to property acquired by such Person, (e) all obligations of such Person in respect of the deferred purchase price of property or services (excluding current accounts payable incurred in the ordinary course of business), (f) all Indebtedness of others secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any Lien on property owned or acquired by such Person, whether or not the Indebtedness secured thereby has been assumed, (g) all Guarantees by such Person of Indebtedness of others, (h) all Capital Lease Obligations of such Person, (i) all obligations, contingent or otherwise, of such Person as an account party in respect of letters of credit and letters of guaranty, (j) all obligations, contingent or otherwise, of such Person in respect of bankers’ acceptances, (k) obligations under any earn-out (which for all purposes of this Agreement shall be valued at the maximum potential amount payable with respect to each such earn-out), (l) any other Off-Balance Sheet Liability and (m) obligations, whether absolute or contingent and howsoever and whensoever created, arising, evidenced or acquired (including all renewals, extensions and modifications thereof and substitutions therefor), under (i) any and all Swap Agreements, and (ii) any and all cancellations, buy backs, reversals, terminations or assignments of any Swap Agreement transaction. The Indebtedness of any Person shall include the Indebtedness of any other entity (including any partnership in which such Person is a general partner) to the extent such Person is liable therefor as a result of such Person’s ownership interest in or other relationship with such entity, except to the extent the terms of such Indebtedness provide that such Person is not liable therefor.

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

“Initial Reporting Period” has the meaning assigned to such term in Section 5.01(h).

“Interest Payment Date” means, the last Business Day of each calendar month and the Termination Date.

“Interim Advance” means the loans advanced to the Borrower in the amount of \$17,500,000 on February 6, 2023 pursuant to the Interim Order.

“Interim Order” means the *Interim Order (I) Authorizing Post-Petition Financing Secured By Senior Liens, (II) Authorizing The Debtors To Use Cash Collateral, (III) Granting Adequate Protection, (IV) Scheduling a Final Hearing, and (V) Granting Related Relief* [Docket No. 40], as corrected by the *Corrected Interim Order (I) Authorizing Post-Petition Financing Secured By Senior Liens, (II) Authorizing The Debtors To Use Cash Collateral, (III) Granting Adequate Protection, (IV) Scheduling a Final Hearing, and (V) Granting Related Relief* [Docket No. 90].

“Inventory” has the meaning assigned to such term in the Security Agreement.

“IRS” means the United States Internal Revenue Service.

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

“LC Disbursement” means any payment made by the Lender or any of its Affiliates related to a Letter of Credit, including any cash collateralization pursuant to Section 2.04(h).

“LC Exposure” means, at any time, for the Borrower, the sum of (a) the aggregate undrawn amount of all outstanding Letters of Credit *plus* (b) the aggregate amount of all LC Disbursements relating to Letters of Credit that have not yet been reimbursed by or on behalf of the Borrower; *plus* (c) the Citi LC Facility Obligations.

“Lender” means American Entertainment Properties Corp.

“Lender Related Person” has the meaning assigned to it in Section 8.03(b).

“Letters of Credit” means the Prepetition Letters of Credit or the Allocated Amount thereof (as amended, extended or otherwise modified pursuant to this Agreement), and the term “Letter of Credit” means any one of them or each of them singularly, as the context may require.

“Liabilities” mean all claims (including intraparty claims), actions, suits, judgments, damages, losses, liability, obligations, responsibilities, fines, penalties, sanctions, costs, fees, Taxes, commissions, charges, disbursements and expenses (including those incurred upon any appeal or in connection with the preparation for and/or response to any subpoena or request for document production relating thereto), in each case of any kind or nature (including interest accrued thereon or as a result thereto and fees, charges and disbursements of financial, legal and other advisors and consultants), whether joint or several, whether or not indirect, contingent, consequential, actual, punitive, treble or otherwise.

“Lien” means, with respect to any asset, (a) any mortgage, deed of trust, lien, pledge, hypothecation, encumbrance, charge or security interest in, on or of such asset, (b) the interest of a vendor or a lessor under any conditional sale agreement, capital lease or title retention agreement (or any financing lease having substantially the same economic effect as any of the foregoing) relating to such asset and (c) in the case of securities, any purchase option, call or similar right of a third party with respect to such securities.

“Loan Documents” means, collectively, this Agreement, each promissory note issued pursuant to this Agreement, each Collateral Document, the Loan Guaranty, each compliance certificate or other certification delivered in connection with this Agreement, and each other

agreement, instrument, document and certificate identified in Section 4.01 executed and delivered to, or in favor of, the Lender and including each other pledge, power of attorney, consent, assignment, contract, notice, letter of credit agreement, letter of credit application and each other written matter whether heretofore, now or hereafter executed by or on behalf of any Loan Party, or any employee of any Loan Party, and delivered to the Lender in connection with this Agreement or the transactions contemplated hereby. Any reference in this Agreement or any other Loan Document to a Loan Document shall include all appendices, exhibits or schedules thereto, and all amendments, restatements, supplements or other modifications thereto, and shall refer to this Agreement or such Loan Document as the same may be in effect at any and all times such reference becomes operative.

“Loan Guarantor” means each Loan Party other than the Borrower.

“Loan Guaranty” means Article IX of this Agreement.

“Loan Parties” means, collectively, the Borrower, the Guarantors and any other Person who becomes a party to this Agreement pursuant to a Joinder Agreement and their respective successors and assigns, and the term “Loan Party” shall mean any one of them or all of them individually, as the context may require.

“Loans” means New Money Loans, LC Disbursements or Roll-Up Loans, as applicable.

“Material Adverse Effect” means a material adverse effect on (a) the business, assets, operations, prospects or condition, financial or otherwise, of the Company and its Subsidiaries taken as a whole, (b) the ability of any Loan Party to perform any of its Obligations, (c) the Collateral, or the Lender’s Liens (on behalf of itself and the other Secured Parties) on the Collateral or the priority of such Liens, or (d) the rights of or benefits available to the Lender under any of the Loan Documents.

“Material Indebtedness” means Indebtedness (other than the Loans and Letters of Credit), or obligations in respect of one or more Swap Agreements, of any one or more of the Company or its Subsidiaries in an aggregate principal amount exceeding \$25,000,000. For purposes of determining Material Indebtedness, the “principal amount” of the obligations of the Borrower or any Subsidiary in respect of any Swap Agreement at any time shall be the maximum aggregate amount (giving effect to any netting agreements) that the Company or such Subsidiary would be required to pay if such Swap Agreement were terminated at such time.

“Moody’s” means Moody’s Investors Service, Inc.

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

“Net Proceeds” means, with respect to any event, (a) the cash proceeds received in respect of such event including (i) any cash received in respect of any non-cash proceeds (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, but excluding any interest payments), but only as and when received, (ii) in the case of a casualty, insurance proceeds and (iii) in the case of a condemnation or similar event, condemnation awards and similar payments,

minus (b) the sum of (i) all reasonable fees and out-of-pocket expenses paid to third parties (other than Affiliates) in connection with such event, (ii) in the case of Disposition of an asset (including pursuant to a sale and leaseback transaction or a casualty or a condemnation or similar proceeding), the amount of all payments required to be made as a result of such event to repay Indebtedness (other than Loans) secured by such asset or otherwise subject to mandatory prepayment as a result of such event and (iii) the amount of all taxes paid (or reasonably estimated to be payable) and the amount of any reserves established to fund contingent liabilities reasonably estimated to be payable, in each case during the year that such event occurred or the next succeeding year and that are directly attributable to such event (as determined reasonably and in good faith by a Financial Officer).

“New Money Facility” has the meaning as defined in the preamble hereto.

“New Money Loan Commitment” means the commitment of the Lender to make or otherwise fund the New Money Loans on and after the Effective Date. The aggregate amount of the New Money Loan Commitment as of the date hereof is \$57,500,000.

“New Money Loans” means the Interim Advance and the Loans made pursuant to Section 2.01(a).

“Obligated Party” has the meaning assigned to such term in Section 9.02.

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

“Off-Balance Sheet Liability” of a Person means (a) any repurchase obligation or liability of such Person with respect to accounts or notes receivable sold by such Person, (b) any indebtedness, liability or obligation under any so-called “synthetic lease” transaction entered into by such Person, or (c) any indebtedness, liability or obligation arising with respect to any other transaction which is the functional equivalent of or takes the place of borrowing but which does not constitute a liability on the balance sheet of such Person (other than operating leases).

“Paid in Full” or “Payment in Full” means, (i) the indefeasible payment in full in cash of all outstanding Loans and LC Disbursements, together with accrued and unpaid interest thereon, (ii) the termination, expiration, or cancellation and return of all outstanding Letters of Credit (or alternatively, with respect to each such Letter of Credit, the furnishing to the Lender of a cash deposit, or at the discretion of the Lender a back up standby letter of credit satisfactory to the Lender, in an amount equal to 105% of the LC Exposure as of the date of such payment), (iii) the



indefeasible payment in full in cash of the accrued and unpaid fees, (iv) the indefeasible payment in full in cash of all reimbursable expenses and other Secured Obligations (other than Unliquidated Obligations for which no claim has been made and other obligations expressly stated to survive such payment and termination of this Agreement), together with accrued and unpaid interest thereon and (v) the termination of all commitments.

“Participant” has the meaning assigned to such term in Section 8.04(c).

“Participant Register” has the meaning assigned to such term in Section 8.04(c).

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

“Permitted Encumbrances” means:

(a) Liens imposed by law for Taxes that are not yet due or are being contested in compliance with Section 5.04;

(b) carriers’, warehousemen’s, mechanics’, materialmen’s, repairmen’s and other like Liens imposed by law, arising in the ordinary course of business and securing obligations that are not overdue by more than thirty (30) days or are being contested in compliance with Section 5.04;

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

(d) deposits to secure the performance of bids, trade contracts, leases, statutory obligations, surety and appeal bonds, performance bonds and other obligations of a like nature, in each case in the ordinary course of business;

(e) judgment Liens in respect of judgments that do not constitute an Event of Default under clause (k) of Article VII; and

(f) easements, zoning restrictions, rights-of-way and similar encumbrances on real property imposed by law or arising in the ordinary course of business that do not secure any monetary obligations and do not materially detract from the value of the affected property or interfere with the ordinary conduct of business of the Borrower or any Subsidiary;

provided that the term “Permitted Encumbrances” shall not include any Lien securing Indebtedness, except with respect to clause (e) above.

“Permitted Holders” means (a) Carl Icahn and his siblings, his and their respective spouses and descendants (including stepchildren and adopted children) and the spouses of such descendants (including stepchildren and adopted children) (collectively, the “Family Group”); (b) any trust, estate, partnership, corporation, company, limited liability company or unincorporated association or organization (each an “Entity” and collectively “Entities”) controlled by (as defined

in the definition of “Affiliate”) one or more members of the Family Group; (c) any Entity over which one or more members of the Family Group, directly or indirectly, have rights that, either legally or in practical effect, enable them to make or veto significant management decisions with respect to such Entity, whether pursuant to the constituent documents of such Entity, by contract, through representation on a board of directors or other governing body of such Entity, through a management position with such Entity or in any other manner (such rights hereinafter referred to as “Veto Power”); (d) the estate of any member of the Family Group; (e) any trust created (in whole or in part) by any one or more members of the Family Group; (f) any individual or Entity who receives an interest in any estate or trust listed in clauses (d) or (e), to the extent of such interest; (g) any trust or estate, substantially all the beneficiaries of which (other than charitable organizations or foundations) consist of one or more members of the Family Group; (h) any organization described in Section 501(c) of the Code, over which any one or more members of the Family Group and the trusts and estates listed in clauses (d), (e) and (g) have direct or indirect Veto Power, or to which they are substantial contributors (as such term is defined in Section 507 of the Code); (i) any organization described in Section 501(c) of the Code of which a member of the Family Group is an officer, director or trustee; or (j) any Entity, directly or indirectly (i) owned or controlled by (as defined in the definition of “Affiliate”) or (ii) a majority of the economic interests in which are owned by, or are for or accrue to the benefit of, in either case, any Person or Persons identified in clauses (a) through (i) above. For the purposes of this definition of “Related Party”, and for the avoidance of doubt, in addition to any other Person or Persons that may be considered to possess control, (x) a partnership shall be considered controlled by a general partner or managing general partner thereof, (y) a limited liability company shall be considered controlled by a managing member of such limited liability company and (z) a trust or estate shall be considered controlled by any trustee, executor, personal representative, administrator or any other Person or Persons having authority over the control, management or disposition of the income and assets therefrom.

“Permitted Investments” means:

- (a) direct obligations of, or obligations the principal of and interest on which are unconditionally guaranteed by, the U.S. (or by any agency thereof to the extent such obligations are backed by the full faith and credit of the U.S.), in each case maturing within one year from the date of acquisition thereof;
- (b) investments in commercial paper maturing within 270 days from the date of acquisition thereof and having, at such date of acquisition, the highest credit rating obtainable from S&P or from Moody’s;
- (c) investments in certificates of deposit, bankers’ acceptances and time deposits maturing within 180 days from the date of acquisition thereof issued or guaranteed by or placed with, and money market deposit accounts issued or offered by, any domestic office of any commercial bank organized under the laws of the U.S. or any state thereof which has a combined capital and surplus and undivided profits of not less than \$500,000,000;



(d) fully collateralized repurchase agreements with a term of not more than 30 days for securities described in clause (a) above and entered into with a financial institution satisfying the criteria described in clause (c) above; and

(e) money market funds that (i) comply with the criteria set forth in Securities and Exchange Commission Rule 2a-7 under the Investment Company Act of 1940, (ii) are rated AAA by S&P and Aaa by Moody's and (iii) have portfolio assets of at least \$5,000,000,000.

"Permitted Variances" shall have the meaning provided in Section 6.15.

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

"Petition Date" has the meaning as defined in the preamble hereto.

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

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

"Prepayment Event" means:

(a) any Disposition (including pursuant to a sale and leaseback transaction) of any property or asset of any Loan Party or any Subsidiary, other than Dispositions described in Section 6.05(a)(i);

(b) any casualty or other insured damage to, or any taking under power of eminent domain or by condemnation or similar proceeding of, any property or asset of any Loan Party or any Subsidiary; or

(c) the incurrence by any Loan Party or any Subsidiary of any Indebtedness, other than Indebtedness permitted under Section 6.01 or the issuance of Equity Interests by any Loan Party;

(d) the receipt of any proceeds or cash by or on behalf of any Loan Party or any Subsidiary not in the ordinary course of business (including but not limited to tax refunds, pension plan reversions, indemnity payments and any purchase price adjustments (other than casualty and condemnation event proceeds));

(e) the consummation of the Sale.

"Prepetition Credit Agreement" means the Credit and Guaranty Agreement, dated as of August 31, 2021, among the Borrower, certain Subsidiaries of the Borrower, and the Lender (as

assigned to the Lender by Icahn Enterprises Holdings, L.P. pursuant to that certain Assignment and Assumption dated as of January 30, 2023), as amended by electronic mail on November 12, 2021 pursuant to Section 8.02(b) thereto, the Second Amendment to Credit and Guaranty Agreement, dated as of December 30, 2021, the Third Amendment to Credit and Guaranty Agreement, dated as of January 1, 2022, the Fourth Amendment to Credit and Guaranty Agreement, dated as of September 1, 2022 and the Fifth Amendment to Credit and Guaranty Agreement and Release of Certain Borrowers and Guarantors, dated as of January 30, 2023, as further amended, supplemented, or otherwise modified prior to the Effective Date, and including all Loan Documents (as defined therein), exhibits, schedules and attachments thereto.

“Prepetition Lender” means any lender party to the Prepetition Credit Agreement on the Effective Date immediately prior to the effectiveness of this Agreement.

“Prepetition Letter of Credit” means each Letter of Credit (as defined in the Prepetition Credit Agreement) (or the Allocated Amounts thereof) issued prior to the Effective Date outstanding pursuant to the Prepetition Credit Agreement on the Effective Date immediately prior to the effectiveness of this Agreement and listed on Schedule 1.01 hereto.

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

“Prepetition Term Loans” means the Term Loans (as defined in the Prepetition Credit Agreement) held by the Prepetition Lender on the Effective Date immediately prior to the effectiveness of this Agreement.

“Prior Prepetition Lender” means Icahn Enterprises Holdings, L.P.

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

“Proposed Budget” has the meaning assigned to such term in Section 5.01(h).

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

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

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

“Responsible Officer” means the president or Financial Officer.

“Roll-Up Loan” shall have the meaning provided in Section 2.02.

“Roll-Up Loan Amount” means the amount set forth on Schedule 2.02 as the “Total Roll-Up Loan Amount.”

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

“Sale” shall have the meaning assigned to such term in the DIP Order.

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

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

“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, the U.S. Department of State, or by the United Nations Security Council, the European Union, any European Union member state, Her Majesty’s Treasury of the United Kingdom or other relevant sanctions authority, (b) any Person operating, organized or resident in a Sanctioned Country, (c) any Person owned or controlled by any such Person or Persons described in the foregoing clauses (a) or (b), or (d) any Person otherwise the subject of any Sanctions.

“Sanctions” means all 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) the United Nations Security Council, the European Union, any European Union member state or Her Majesty’s Treasury of the United Kingdom or other relevant sanctions authority.

“Scheduled Maturity Date” means the date that is the six (6) month anniversary of the Petition Date.

“SEC” means the Securities and Exchange Commission of the U.S.

“Secured Obligations” means all Obligations.

“Secured Parties” means the Lender, the beneficiaries of each indemnification obligation undertaken by any Loan Party under any Loan Document and the successors and assigns of each of the foregoing.

“Security Agreement” means that certain Pledge and Security Agreement (including any and all supplements thereto), dated as of the date hereof, among the Loan Parties and the Lender, for the benefit of the Secured Parties, and any other pledge or security agreement entered into,

after the date of this Agreement by any other Loan Party (as required by this Agreement or any other Loan Document) or any other Person for the benefit of the Lender, on behalf of the Secured Parties, as the same may be amended, restated, supplemented or otherwise modified from time to time.

“Subordinated Indebtedness” of a Person means any Indebtedness of such Person, the payment of which is subordinated to payment of the Obligations on the terms and conditions acceptable to the Lender.

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

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

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

“Swap Agreement Obligations” means any and all obligations of the Loan Parties or their Subsidiaries, whether absolute or contingent and howsoever and whensoever created, arising, evidenced or acquired (including all renewals, extensions and modifications thereof and substitutions therefor), under (a) any Swap Agreement permitted hereunder with the Lender or an Affiliate of the Lender, and (b) any cancellations, buy backs, reversals, terminations or assignments of any Swap Agreement transaction permitted hereunder with the Lender or an Affiliate of the Lender.

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

“Taxes” means any and all present or future taxes, levies, imposts, duties, deductions, withholdings (including backup withholding), value added taxes, or any other goods and services,

use or sales taxes, assessments, fees or other charges imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

“Termination Date” means, unless extended, with the prior written consent (which may be by e-mail) of the Lender, the earliest to occur of:

- (a) the Scheduled Maturity Date,
- (b) the effective date of a plan of reorganization or liquidation for the Debtors (or any of them) confirmed in the Bankruptcy Cases,
- (c) the date of the acceleration of all of the Obligations under this Agreement and the other Loan Documents following the occurrence and continuance of an Event of Default and upon the delivery of a Termination Notice to the Remedies Notice Parties;
- (d) the conversion of any of the Bankruptcy Cases to a case under Chapter 7 of the Bankruptcy Code unless otherwise consented to by the Lender;
- (e) the dismissal of any of the Bankruptcy Cases, unless otherwise consented to by the Lender (which may be by e-mail), and
- (g) the date of Payment in Full in cash of all Obligations (other than any contingent Obligations that survive the expiration or termination of this Agreement).

“Transactions” means the execution, delivery and performance by the Loan Parties of this Agreement and the other Loan Documents, the borrowing of Loans and other credit extensions and the use of the proceeds thereof and the issuance of the Letters of Credit hereunder.

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

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

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

“Variance Report” shall have the meaning provided in Section 5.01(h).

“Variance Reporting Date” shall have the meaning provided in Section 5.01(h).

“Variance Testing Date” means the last day of the applicable Variance Testing Period.

“Variance Testing Period” means the one week period ending on the Sunday immediately preceding the applicable Variance Reporting Date.

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

SECTION 1.02 Classification of Loans and Borrowings. For purposes of this Agreement, Loans may be classified and referred to by Class (e.g., a “New Money Loan”). Borrowings also may be classified and referred to by Class (e.g., a “New Money Borrowing”).

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

SECTION 1.04 Accounting Terms; GAAP. (a) Except as otherwise expressly provided herein, all terms of an accounting or financial nature shall be construed in accordance with GAAP, as in effect from time to time; provided that, if after the date hereof there occurs any change in GAAP or in the application thereof on the operation of any provision hereof and the Company notifies the Lender that the Company requests an amendment to any provision hereof to eliminate the effect of such change in GAAP or in the application thereof (or if the Lender notifies the Company that the Lender requests an amendment to any provision hereof for such purpose), regardless of whether any such notice is given before or after such change in GAAP or in the application thereof, then such provision shall be interpreted on the basis of GAAP as in effect and



applied immediately before such change shall have become effective until such notice shall have been withdrawn or such provision amended in accordance herewith. Notwithstanding any other provision contained herein, 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 (i) without giving effect to any election under Financial Accounting Standards Board Accounting Standards Codification 825-10-25 (or any other Accounting Standards Codification or Financial Accounting Standard having a similar result or effect) to value any Indebtedness or other liabilities of the Company or any Subsidiary at “fair value”, as defined therein and (ii) without giving effect to any treatment of Indebtedness under Financial Accounting Standards Board Accounting Standards Codification 470-20 or 2015-03 (or any other Accounting Standards Codification or Financial Accounting Standard having a similar result or effect) to value any such Indebtedness in a reduced or bifurcated manner as described therein, and such Indebtedness shall at all times be valued at the full stated principal amount thereof.

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

SECTION 1.05      [Reserved].

SECTION 1.06      Letters of Credit. Unless otherwise specified herein, the amount of a Letter of Credit at any time shall be deemed to be the amount of such Letter of Credit available to be drawn at such time; provided that with respect to any Letter of Credit that, by its terms or the terms of any agreement related thereto, provides for one or more automatic increases in the available amount thereof, the amount of such Letter of Credit shall be deemed to be the maximum amount of such Letter of Credit after giving effect to all such increases, whether or not such maximum amount is available to be drawn at such time. For all purposes of this Agreement, if on any date of determination a Letter of Credit has expired by its terms but any amount may still be drawn thereunder by reason of the operation of Article 29(a) of the Uniform Customs and Practice for Documentary Credits, International Chamber of Commerce Publication No. 600 (or such later version thereof as may be in effect at the applicable time) or Rule 3.13 or Rule 3.14 of the International Standby Practices, International Chamber of Commerce Publication No. 590 (or such later version thereof as may be in effect at the applicable time) or similar terms of the Letter of Credit itself, or if compliant documents have been presented but not yet honored, such Letter of Credit shall be deemed to be “outstanding” and “undrawn” in the amount so remaining available to be paid, and the obligations of the Borrower shall remain in full force and effect until the Lender shall have no further obligations to make any payments or disbursements under any circumstances with respect to any Letter of Credit.

SECTION 1.07      Divisions. For all purposes under the Loan Documents, in connection with any Division or plan of division under Delaware law (or any comparable event

under a different jurisdiction's laws): (a) if any asset, right, obligation or liability of any Person becomes the asset, right, obligation or liability of a different Person, then it shall be deemed to have been transferred from the original Person to the subsequent Person, and (b) if any new Person comes into existence, such new Person shall be deemed to have been organized and acquired on the first date of its existence by the holders of its Equity Interests at such time.

SECTION 1.08 Orders. This Agreement and the other Loan Documents are subject in all respects (including with respect to all obligations (including, without limitation, the Obligations) and agreements of the Loan Parties provided for hereunder and thereunder) to the terms of any Bankruptcy Orders, and such Bankruptcy Orders shall control for all purposes. In furtherance of the foregoing, and notwithstanding anything else to the contrary set forth herein or in the other Loan Documents, any action taken or omitted to be taken by any Loan Party pursuant to the Bankruptcy Orders shall not constitute a Default or Event of Default, and the Loan Parties shall not be required to undertake any obligation (including, without limitation, any Obligation), make any agreement or take any action that is prohibited by the terms of the Bankruptcy Orders.

## ARTICLE II

### Credit Facilities.

#### SECTION 2.01 New Money Loans.

(a) New Money Loan Commitments. Subject to the terms and conditions hereof, the Lender agrees to make term loans in dollars to the Company from time to time in an aggregate amount up to but not exceeding the Lender's New Money Loan Commitment. The aggregate amount of the New Money Loan Commitments shall be automatically and permanently reduced by the amounts of any draws thereof and shall be automatically and permanently reduced to zero on the Termination Date. Amounts borrowed pursuant to this Section 2.01(a) may be prepaid or repaid but may not be reborrowed.

(b) Interim Advance. Subject to the terms and conditions of the Interim Order, the Lender made New Money Loans in dollars to the Company prior to the Effective Date in the amount and as set forth in the definition of Interim Advance. On the Effective Date, without further action, such Loans shall be deemed New Money Loans issued hereunder. Amounts borrowed pursuant to this Section 2.01(b) may be prepaid or repaid but may not be reborrowed.

(c) Closing Fee. Subject to the terms and conditions of the Interim Order, the Borrower agreed to pay to the Lender a fee (the "Closing Fee") equal to \$1,125,000 pursuant to the Interim Order; provided, that the Closing Fee was added to the principal amount of the New Money Loans pursuant to the Interim Order. On the Effective Date, without further action, such Loans shall be deemed New Money Loans issued hereunder. Amounts borrowed pursuant to this Section 2.01(c) may be prepaid or repaid but may not be reborrowed.



SECTION 2.02      Roll-Up Loans. On the Effective Date, the Prepetition Term Loans and accrued and unpaid interest thereon and any other Prepetition Obligations (other than the Prepetition Letters of Credit or the Allocated Amounts thereof) in the Roll-Up Loan Amount shall be deemed Loans made under this Agreement (the “Roll-Up Loans”) and, subject to the terms and conditions set forth herein and without any further action by any party to this Agreement, shall be administered hereunder. Roll-Up Loans under this Section 2.02 may be prepaid or repaid but may not be reborrowed.

SECTION 2.03      Borrowing Procedures.

(a) To request a New Money Loan Borrowing, the Company shall notify the Lender of such request in writing not later than 10:00 a.m., New York City time, three (3) Business Days (or such shorter period in the Lender’s sole discretion) before the date of the proposed Borrowing. Each such notice shall be made in a writing substantially in the form of Exhibit C (a “Notice of Borrowing”) duly completed. Each such request shall specify the following information:

- (i) the aggregate amount of the requested New Money Loan Borrowing and a breakdown of the separate wires comprising such Borrowing;
- (ii) proposed use of the requested New Money Loan Borrowing within the next two weeks in accordance with an Approved Budget that was approved within the prior one week period from the date of such request; and
- (iii) the date of such Borrowing, which shall be a Business Day and (unless either (a) exigent circumstances are demonstrated by the Borrower or (b) otherwise agreed to by Lender in its sole discretion) shall occur no more frequently than every other calendar week.

SECTION 2.04      LC Facility.

(a) Prepetition Letters of Credit. The Prepetition Letters of Credit (or the Allocated Amount thereof) shall, from and after the Effective Date, be deemed to have been issued pursuant to this Agreement, and from and after the Effective Date shall be subject to and governed by the terms and conditions hereof.

(b) Notice of Amendment, Extension; Certain Conditions. To request the amendment or extension of an outstanding Letter of Credit, the Borrower shall deliver (via e-mail) to the Lender (reasonably in advance of the requested date of amendment, or extension, but in any event no less than five (5) Business Days (or such shorter time as the Lender may agree in its sole discretion)) a notice identifying the Letter of Credit to be amended or extended, and specifying the date of amendment, or extension (which shall be a Business Day), the date on which such Letter of Credit is to expire, the amount of such Letter of Credit, the name and address of the beneficiary thereof, and such other information as shall be necessary to amend, or extend such Letter of Credit. The Lender shall have no obligation or commitment to amend or extend any Letter of Credit and any such Letter of Credit shall be amended, or extended only if the Lender, in its sole discretion agrees to such amendment or extension.

(c) Reserved].

(d) Reimbursement; LC Disbursements. If the Lender or any of its Affiliates shall make any LC Disbursement in respect of a Letter of Credit, such LC Disbursement shall be deemed a Borrowing hereunder and the Borrower shall reimburse such LC Disbursement by paying to the Lender or any Affiliate thereof so designated by the Lender, an amount equal to such LC Disbursement not later than 11:00 a.m., New York City time, on (i) the Business Day that the Company receives notice of such LC Disbursement, if such notice is received prior to 9:00 a.m., New York City time, on the day of receipt, or (ii) the Business Day immediately following the day that the Company receives such notice, if such notice is received after 9:00 a.m., New York City time, on the day of receipt.

(e) Obligations Absolute. The Borrower's obligation to reimburse LC Disbursements as provided in paragraph (d) of this Section shall be absolute, unconditional and irrevocable, and shall be performed strictly in accordance with the terms of this Agreement under any and all circumstances whatsoever and irrespective of any (i) lack of validity or enforceability of any Letter of Credit or this Agreement, or any term or provision therein or herein, (ii) draft or other document presented under a Letter of Credit proving to be forged, fraudulent or invalid in any respect or any statement therein being untrue or inaccurate in any respect, (iii) payment by the Lender under a Letter of Credit against presentation of a draft or other document that does not comply with the terms of such Letter of Credit, or (iv) other event or circumstance whatsoever, whether or not similar to any of the foregoing, that might, but for the provisions of this Section, constitute a legal or equitable discharge of, or provide a right of setoff against, the Borrower's obligations hereunder. Neither the Lender nor any of its Related Parties, shall have any liability or responsibility by reason of or in connection with the issuance or transfer of any Letter of Credit, any payment or failure to make any payment thereunder (irrespective of any of the circumstances referred to in the preceding sentence), or any error, omission, interruption, loss or delay in transmission or delivery of any draft, notice or other communication under or relating to any Letter of Credit (including any document required to make a drawing thereunder), any error in interpretation of technical terms, any error in translation or any consequence arising from causes beyond the control of the Lender; provided that the foregoing shall not be construed to excuse the Lender from liability to the Borrower to the extent of any direct damages (as opposed to special, indirect, consequential or punitive damages, claims in respect of which are hereby waived by the Borrower to the extent permitted by applicable law) suffered by the Borrower that are caused by the Lender's failure to exercise care when determining whether drafts and other documents presented under a Letter of Credit comply with the terms thereof. The parties hereto expressly agree that, in the absence of gross negligence or willful misconduct on the part of the Lender (as finally determined by a court of competent jurisdiction), the Lender shall be deemed to have exercised care in each such determination. In furtherance of the foregoing and without limiting the generality thereof, the parties agree that, with respect to documents presented which appear on their face to be in substantial compliance with the terms of a Letter of Credit, the Lender may, in its sole discretion, either accept and make payment upon such documents without responsibility for further investigation, regardless of any notice or information to the contrary, or refuse to accept and make payment upon such documents if such documents are not in strict compliance with the terms of such Letter of Credit.

(f) LC Disbursement Interim Interest. If the Lender (or any of its Affiliates on its behalf) shall make any LC Disbursement, then, unless the Borrower shall reimburse such LC Disbursement in full on the date such LC Disbursement is made, the unpaid amount thereof shall bear interest, for each day from and including the date such LC Disbursement is made to but excluding the date that the Borrower reimburses such LC Disbursement, at the Applicable Rate applicable to New Money Loans and such interest shall be due and payable on the date when such reimbursement is due; provided that, if the Borrower fails to reimburse such LC Disbursement when due pursuant to paragraph (d) of this Section, then Section 2.09(c) shall apply. Interest accrued pursuant to this paragraph shall be for the account of the Lender.

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

(h) Cash Collateralization. At Lender’s option following an Event of Default, Lender may request that Borrower cash collateralize 105% of the LC Exposure. If the Borrower fails to cash collateralize the LC Exposure in accordance with such request within one Business Day of such request, the Lender shall be deemed to have made an LC Disbursement in the amount requested which shall be a Borrowing pursuant hereto, bear interest in accordance with Section 2.04(f) and be a Secured Obligation hereunder.

#### SECTION 2.05 Termination of New Money Loan Commitments.

(a) The New Money Loan Commitments shall terminate on the earlier of the date that it is fully drawn and the Termination Date.

(b) The Company may at any time terminate the New Money Loan Commitment upon the Payment in Full of the Secured Obligations.

(c) The Company shall notify the Lender of any election to terminate the New Money Loan Commitment under paragraph (b) of this Section at least three (3) Business Days prior to the effective date of such termination, specifying such election and the effective date thereof.

SECTION 2.06      Repayment of Loans; Evidence of Indebtedness. The Company hereby unconditionally promises to pay the Lender, all amounts owed hereunder with respect to the New Money Loans and the Roll-Up Loans (including, for the avoidance of doubt, any PIK Amounts) on the earlier of the Scheduled Maturity Date and the Termination Date. Each repayment of a New Money Loan and/or Roll-Up Loan shall be applied ratably to the Loans included in the repaid Class of Loan. Repayments of Loans shall be accompanied by accrued interest on the amounts repaid. Any reference in this Agreement or the Loan Documents to the Loans or the outstanding principal balance of the Loans shall include the PIK Amounts.

SECTION 2.07      Prepayment of Loans.

(a)      The Borrower shall have the right at any time and from time to time to prepay any Borrowing in whole or in part.

(b)      [Reserved].

(c)      In the event and on each occasion that any Net Proceeds are received by or on behalf of any Loan Party or any Subsidiary in respect of any Prepayment Event, the Borrower shall, promptly and in no event later than 3 Business Days after such event, prepay the Obligations in an aggregate amount equal to 100% of such Net Proceeds, as may be approved by the Lender or in accordance with the waterfall set forth in Section 2.10(b).

SECTION 2.08      Fees. The Borrower agrees to pay to the Lender, in each case, an amount equal to any fees, interest or other amounts which would be payable by Lender pursuant to the Citi LC Facility for the benefit of the Loan Parties or their respective Subsidiaries, including, but not limited to (i) a letter of credit fee with respect to each outstanding Letter of Credit and (ii) standard fees and commissions with respect to the issuance, amendment, or extension of any Letter of Credit and other processing fees, and other standard costs and charges, payable by AEPC pursuant to the Citi LC Facility. Any fees payable to the Lender pursuant to this paragraph shall be payable within ten (10) days after demand. All letter of credit fees shall be computed on the basis of a year of 360 days and shall be payable for the actual number of days elapsed (including the first day but excluding the last day). All amounts payable hereunder shall be paid on the dates due, in dollars in immediately available funds, to the Lender or any of its Affiliates so designated by the Lender. Fees paid shall not be refundable under any circumstances.

SECTION 2.09      Interest.

(a)      The New Money Loans and Roll-Up Loans (including any PIK Amounts) shall bear interest at the Applicable Rate.

(b)      Notwithstanding the foregoing, during the occurrence and continuance of an Event of Default, the Lender may, at its option, by notice to the Borrower, declare that (i) all Loans (including LC Disbursements) shall bear interest at 2% plus the rate otherwise applicable to such Loans as provided in the preceding paragraphs of this Section or (ii) in the case of any other amount outstanding hereunder, such amount shall accrue at 2% plus the rate applicable to such fee or other obligation as provided hereunder (the “Default Rate”).

(c) Accrued interest on each New Money Loan and Roll-Up Loan shall be payable in arrears on each Interest Payment Date for such Loan; provided that such interest shall be added (on each Interest Payment Date) to the outstanding principal amount of such Loans (and thereafter bear interest at the Applicable Rate or the Default Rate, as applicable) (the “PIK Interest Amounts” and together with the Closing Fee, collectively, the “PIK Amounts”).

(d) All interest hereunder shall be computed on the basis of a year of 360 days and shall be payable for the actual number of days elapsed (including the first day but excluding the last day).

#### SECTION 2.10 Payments Generally; Allocation of Proceeds.

(a) Subject to Section 2.06, the Borrower shall make each payment or prepayment required to be made by it hereunder (whether of principal, interest, fees or reimbursement of LC Disbursements) prior to 2:00 p.m., New York City time, on the date when due or the date fixed for any prepayment hereunder, in immediately available funds, without setoff, recoupment or counterclaim. Any amounts received after such time on any date may, in the discretion of the Lender, be deemed to have been received on the next succeeding Business Day for purposes of calculating interest thereon. All such payments shall be made to the Lender to an account designated by the Lender in writing. Unless otherwise provided for herein, if any payment hereunder shall be due on a day that is not a Business Day, the date for payment shall be extended to the next succeeding Business Day, and, in the case of any payment accruing interest, interest thereon shall be payable for the period of such extension. All payments hereunder shall be made in dollars.

(b) All payments and any proceeds of Collateral received by the Lender (i) not constituting either (A) a specific payment of principal, interest, fees or other sum payable under the Loan Documents (which shall be applied as specified by the Company), or (B) a mandatory prepayment (which shall be applied in accordance with Section 2.07) or (ii) after an Event of Default has occurred and is continuing and the Lender so elects, such funds shall be applied ratably first, to pay any fees, indemnities, or expense reimbursements then due to the Lender from the Borrower, second, to pay interest then due and payable on the Loans ratably, third, to prepay principal on the Loans (first to any outstanding LC Disbursements, then to any Roll-Up Loans and finally to any New Money Loans), fourth, to the payment of any other Secured Obligation due to the Lender from the Borrower or any other Loan Party. The Lender shall have the continuing and exclusive right to apply and reverse and reapply any and all such proceeds and payments to any portion of the Secured Obligations.

(c) At the election of the Lender, all payments of principal, interest, LC Disbursements, fees, premiums, reimbursable expenses (including, without limitation, all reimbursement for fees, costs and expenses pursuant to Section 8.03), and other sums payable under the Loan Documents, may be paid from the proceeds of Borrowings made hereunder, whether made following a request by the Company pursuant to Section 2.03 or a deemed request as provided in this Section. The Company hereby irrevocably authorizes the Lender to make a Borrowing for the purpose of paying each payment of principal,

interest and fees as it becomes due hereunder or any other amount due under the Loan Documents and agrees that all such amounts charged shall constitute Loans, and that all such Borrowings shall be deemed to have been requested pursuant to Section 2.03.

(d) If the Borrower is required to withhold or deduct Taxes, including backup withholding taxes, from any payment, then (i) the Borrower shall pay the full amount that it determines is to be withheld or deducted to the relevant Governmental Authority in accordance with applicable law, and (ii) the sum payable by the Borrower shall be increased as necessary so that the recipient receives an amount equal to the sum it would have received had no such withholding or deduction been made.

### ARTICLE III

#### Representations and Warranties

Each Loan Party represents and warrants to the Lender that (and where applicable, agrees):

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

SECTION 3.02 Authorization; Enforceability. Subject to any restrictions arising on account of any Loan Party's status as a "debtor" under the Bankruptcy Code and entry of the DIP Orders, the Transactions are within each Loan Party's corporate or other organizational powers and have been duly authorized by all necessary corporate or other organizational actions and, if required, actions by equity holders. Each Loan Document to which each Loan Party is a party has been duly executed and delivered by such Loan Party and constitutes a legal, valid and binding obligation of such Loan Party, enforceable in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors' rights generally and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law.

SECTION 3.03 Governmental Approvals; No Conflicts. Subject to the entry of the DIP Order, the Transactions (a) do not require any consent or approval of, registration or filing with, or any other action by, any Governmental Authority, except such as have been obtained or made and are in full force and effect and except for filings necessary to perfect Liens created and security interests granted, in each case, in favor of the Lender pursuant to the Loan Documents, (b) will not violate any Requirement of Law applicable to any Loan Party or any Subsidiary, (c) will not violate or result in a default under any indenture, agreement or other instrument binding upon any Loan Party or any Subsidiary or the assets of any Loan Party or any Subsidiary, or give rise to a right thereunder to require any payment to be made by any Loan Party or any Subsidiary, and (d) will not result in the creation or imposition of, or other requirement to create, any Lien on



any asset of any Loan Party or any Subsidiary, except Liens created and security interest granted, in each case, in favor of the Lender pursuant to the Loan Documents.

SECTION 3.04      No Material Adverse Change. Except as a result of or in connection with the filing of the Bankruptcy Cases, no event, change or condition has occurred that has had, or could reasonably be expected to have, a Material Adverse Effect, since December 31, 2020.

SECTION 3.05      Properties.

(a) Except as a result of the filing of the Bankruptcy Cases, each lease and sublease of any Loan Party is valid and enforceable in accordance with its terms and is in full force and effect, and no default by any party to any such lease or sublease exists, except which could not reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect. Except as a result of the filing of the Bankruptcy Cases, each of the Loan Parties and each Subsidiary has good and indefeasible title to, or valid leasehold interests in, all of its real and personal property, free of all Liens other than those permitted by Section 6.02.

(b) Each Loan Party and each Subsidiary owns, or is licensed to use, all trademarks, tradenames, copyrights, patents and other intellectual property necessary to its business as currently conducted, and the use thereof by each Loan Party and each Subsidiary does not infringe in any material respect upon the rights of any other Person.

SECTION 3.06      Litigation and Environmental Matters.

(a) Other than the Bankruptcy Cases, there are no actions, suits or proceedings by or before any arbitrator or Governmental Authority pending against or, to the knowledge of any Loan Party, threatened against or affecting any Loan Party or any Subsidiary, or any of their respective properties (i) as to which there is a reasonable possibility of an adverse determination and that, if adversely determined, could reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect or (ii) that involve any Loan Document or the Transactions.

(b) (i) No Loan Party or any Subsidiary has received notice of any claim with respect to any material Environmental Liability or knows of any basis for any material Environmental Liability and (ii) and except with respect to any other matters that, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect, no Loan Party or any Subsidiary (A) has failed to comply with any Environmental Law or to obtain, maintain or comply with any permit, license or other approval required under any Environmental Law (B) has become subject to any Environmental Liability, (C) has received notice of any claim with respect to any Environmental Liability or (D) knows of any basis for any Environmental Liability.

SECTION 3.07      Compliance with Laws and Agreements; No Default. Except where the failure to do so, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect, each Loan Party and each Subsidiary is in compliance with (i) each Requirement of Law applicable to it or its property and (ii) any requirements arising after the

Petition Date out of all indentures, agreements and other instruments binding upon it or its property. No Default has occurred and is continuing.

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

SECTION 3.09 Taxes. Each Loan Party and each Subsidiary has timely filed or caused to be filed all income and other material Tax returns and reports required to have been filed and has paid or caused to be paid all income and other material Taxes required to have been paid by it, except such Taxes that are being contested in good faith by appropriate proceedings and for which such Loan Party or such Subsidiary, as applicable, has set aside on its books adequate reserves or the nonpayment of which is excused, permitted, or required by the Bankruptcy Code. No material tax liens have been filed and no material claims are being asserted with respect to any such taxes.

SECTION 3.10 ERISA. Except as a result of the filing of the Bankruptcy Cases, no ERISA Event has occurred or is reasonably expected to occur that, when taken together with all other such ERISA Events for which liability is reasonably expected to occur, could reasonably be expected to result in a Material Adverse Effect. The present value of all accumulated benefit obligations under each Plan (based on the assumptions used for purposes of Statement of Financial Accounting Standards No. 87) did not, as of the date of the most recent financial statements reflecting such amounts, exceed the fair market value of the assets of such Plan, and the present value of all accumulated benefit obligations of all underfunded Plans (based on the assumptions used for purposes of Statement of Financial Accounting Standards No. 87 or subsequent recodification thereof, as applicable) did not, as of the date of the most recent financial statements reflecting such amounts, exceed by more than \$5,000,000 the fair market value of the assets of all such underfunded Plans.

SECTION 3.11 Disclosure. The Loan Parties have disclosed to the Lender all agreements, instruments and corporate or other restrictions to which any Loan Party or any Subsidiary is subject, and all other matters known to it, that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect. None of the reports, financial statements, certificates or other information furnished by or on behalf of any Loan Party or any Subsidiary to the Lender in connection with the negotiation of this Agreement or any other Loan Document (as modified or supplemented by other information so furnished) contains any material misstatement of fact or omits to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading; provided that, with respect to projected financial information, the Loan Parties represent only that such information was prepared in good faith based upon assumptions believed to be reasonable at the time delivered and, if such projected financial information was delivered prior to the Effective Date, as of the Effective Date.

SECTION 3.12 Material Agreements. No Loan Party or any Subsidiary is in default in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in (i) any material agreement to which it is a party or (ii) any agreement or instrument



evidencing or governing Indebtedness, except, in each case, for which exercise of remedies would not be stayed by section 362 of the Bankruptcy Code.

SECTION 3.13 [Reserved].

SECTION 3.14 Insurance. As of the Effective Date, all premiums in respect of such insurance have been paid. The Loan Parties believe that the insurance maintained by or on behalf of the Loan Parties and their Subsidiaries is adequate and is customary for companies engaged in the same or similar businesses operating in the same or similar locations.

SECTION 3.15 Security Interest in Collateral. The DIP Orders, the provisions of this Agreement and the other Loan Documents create legal and valid Liens on all the Collateral in favor of the Lender, for the benefit of the Secured Parties, and such Liens constitute perfected and continuing Liens on the Collateral, securing the Secured Obligations, enforceable against the applicable Loan Party and all third parties, and having priority with the priority set forth in the DIP Orders.

SECTION 3.16 Employment Matters. The hours worked by and payments made to employees of the Loan Parties and their Subsidiaries have not been in violation of the Fair Labor Standards Act or any other applicable federal, state, local or foreign law dealing with such matters. All payments due from any Loan Party or any Subsidiary, or for which any claim may be made against any Loan Party or any Subsidiary, on account of wages and employee health and welfare insurance and other benefits, have been paid or accrued as a liability on the books of such Loan Party or such Subsidiary.

SECTION 3.17 Use of Proceeds. The proceeds of the Loans have been used and will be used, whether directly or indirectly as set forth in Section 5.08.

SECTION 3.18 No Burdensome Restrictions. Other than pursuant to the DIP orders, no Loan Party is subject to any Burdensome Restrictions.

SECTION 3.19 DIP Orders. The Final Order is in full force and effect and has not been vacated, stayed, reversed, modified or amended without the prior written consent of the Lender.

SECTION 3.20 Budget. The Loan Parties have not failed to disclose any material assumptions with respect to the Initial Approved Budget in accordance with Section 3.11 and, as of the Effective Date, affirm the Initial Approved Budget in all material respects was prepared in good faith based upon assumptions believed to be reasonable at the time delivered and as of the Effective Date.

## ARTICLE IV

### Conditions

SECTION 4.01 Effectiveness of this Agreement. This Agreement shall not become effective until the date on which each of the following conditions are satisfied (or waived in accordance with Section 8.02):

(i) Credit Agreement and Loan Documents. The Lender (or its counsel) shall have received (i) from each Loan Party party hereto a counterpart of this Agreement signed on behalf of such party (which, subject to 8.06(b), may include any Electronic Signatures transmitted by telecopy, emailed pdf or any other electronic means that reproduces an image of an actual executed signature page) and (ii) duly executed copies of the Loan Documents and such other certificates, documents, instruments and agreements as the Lender shall reasonably request in connection with the transactions contemplated by this Agreement and the other Loan Documents, all in form and substance satisfactory to the Lender.

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

(iii) Fees. Subject to the applicable DIP Order, the Lender, the Prepetition Lender and the Prior Prepetition Lender shall have received all fees required to be paid, and all reasonable and documented out-of-pocket expenses required to be reimbursed for which invoices have been presented (including the reasonable and documented out-of-pocket fees and expenses of legal counsel), on or before the Effective Date. All such amounts may be paid with proceeds of Loans made on the Effective Date and will be reflected in the funding instructions given by the Company to the Lender on or before the Effective Date.

(iv) Bankruptcy Cases.

(A) the Loan Parties shall not have executed, entered into or otherwise committed to any plan or restructuring support agreement or any

other agreement or understanding concerning the terms of a Chapter 11 plan or other exit strategy without the consent of the Lender; and

(B) the Final Order shall have been entered in a form acceptable to the Lender in its sole and exclusive discretion and shall be in full force and effect, shall not have been vacated or reversed, and shall not be subject to any stay.

SECTION 4.02 Each Credit Extension. The obligation of the Lender to make a Loan on the occasion of any Borrowing, and to issue, amend, or extend any Letter of Credit (each such event, a “Credit Extension”), is subject to the satisfaction of the following conditions and shall be in the Lender’s sole and absolute discretion:

(i) Borrowing Request. other than with respect to an amendment or extension of a Letter of Credit, the Lender shall have received a Notice of Borrowing in accordance with Section 2.03, which shall include the proposed use of such proceeds within the next two weeks in accordance with an Approved Budget that has been approved within one week prior of such Credit Extension and a certification from the Borrower as to the satisfaction of the conditions set forth in clauses (v) and (vi) of this Section.

(ii) Frequency. With respect to any Borrowing of New Money Loans, no Credit Extension of New Money Loans shall have occurred less than two (2) weeks prior to the date of the requested Credit Extension.

(iii) Final and Interim Order. The Borrower shall be in compliance with the terms of the Final Order or Interim Order, as applicable, and the Final Order shall be in full force and effect and shall not have been vacated, stayed, reversed, or modified or amended without the written consent of the Lender in its sole and exclusive discretion.

(iv) Bankruptcy Cases. As of the date of such Credit Extension, all “second day orders” approving on a final basis any first day orders intended to be entered on or prior to the date of entry of the Final Order shall have been entered by the Bankruptcy Court, shall be acceptable to the Lender, in its sole and exclusive discretion, shall be in full force and effect, shall not have been vacated or reversed, shall not be subject to a stay and shall not have been modified or amended other than as acceptable to the Lender in its sole and exclusive discretion.

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

representation or warranty which is subject to any materiality qualifier shall be required to be true and correct in all respects).

(vi) No Default. At the time of and immediately after giving effect to such Borrowing or the amendment, or extension of such Letter of Credit, as applicable, no Default shall have occurred and be continuing.

## ARTICLE V

### Affirmative Covenants

Until all of the Secured Obligations shall have been Paid in Full, each Loan Party covenants and agrees, jointly and severally with all of the other Loan Parties, with the Lender that:

SECTION 5.01 Financial Statements and Other Information. The Loan Parties will furnish to the Lender:

(a) within 90 days after the end of each fiscal year of the Borrower, its audited (to the extent available) consolidating (as applicable) and consolidated balance sheet and related statements of operations, stockholders' equity and cash flows as of the end of and for such year, setting forth in each case in comparative form the figures for the previous fiscal year, all reported on by independent public accountants acceptable to the Lender (without a "going concern" or like qualification, commentary or exception, and without any qualification or exception as to the scope of such audit) to the effect that such consolidated financial statements present fairly in all material respects the financial condition and results of operations of the Borrower and its consolidated Subsidiaries on a consolidated basis in accordance with GAAP consistently applied;

(b) within 45 days after the end of each of the first three fiscal quarters of the Borrower, its consolidating (as applicable) and consolidated balance sheet and related statements of operations, stockholders' equity and cash flows as of the end of and for such fiscal quarter and the then elapsed portion of such fiscal year, setting forth in each case in comparative form the figures for the corresponding period or periods of (or, in the case of the balance sheet, as of the end of) the previous fiscal year, all certified by a Financial Officer as presenting fairly in all material respects the financial condition and results of operations of the Borrower and its consolidated Subsidiaries on a consolidated basis in accordance with GAAP consistently applied, subject to normal year-end audit adjustments and the absence of footnotes;

(c) within 45 days after the end of each fiscal month of the Borrower (other than the last fiscal month in a fiscal quarter or fiscal year), its consolidated balance sheet and related statements of operations, stockholders' equity and cash flows as of the end of and for such fiscal month and the then elapsed portion of the fiscal year, setting forth in each case in comparative form the figures for the corresponding period or periods of (or, in the case of the balance sheet, as of the end of) the previous fiscal year, all certified by a Financial Officer as presenting fairly in all material respects the financial condition and results of operations of the Borrower and its consolidated Subsidiaries on a consolidated

basis in accordance with GAAP consistently applied, subject to normal year-end audit adjustments and the absence of footnotes;

(d) concurrently with any delivery of financial statements under clause (a) or (b) or (c) above, a certificate of a Financial Officer in substantially the form of Exhibit A (i) certifying, in the case of the financial statements delivered under clause (b) or (c) above, as presenting fairly in all material respects the financial condition and results of operations of the Company and its consolidated Subsidiaries on a consolidated basis in accordance with GAAP consistently applied, subject to normal year-end audit adjustments and the absence of footnotes, (ii) certifying as to whether a Default has occurred and, if a Default has occurred, specifying the details thereof and any action taken or proposed to be taken with respect thereto, (iii) setting forth reasonably detailed amounts of accounts payable, together with any internally prepared cash flow statements, detailed accounts payable aging and other accounts payables reports used in determining such calculations and any additional information, each in form satisfactory to the Lender in its sole discretion and (iv) stating whether any change in GAAP or in the application thereof has occurred since the date of the audited financial statements referred to in Section 3.04 and, if any such change has occurred, specifying the effect of such change on the financial statements accompanying such certificate;

(e) concurrently with any delivery of financial statements under clause (a) above, a certificate of the accounting firm that reported on such financial statements stating whether they obtained knowledge during the course of their examination of such financial statements of any Default (which certificate may be limited to the extent required by accounting rules or guidelines);

(f) within thirty (30) days prior to the end of each fiscal year, projections of the Company's consolidated balance sheets, results of operations and cash flow for the next fiscal year, month by month;

(g) an updated Budget no less than once every two (2) weeks (each, a "Proposed Budget") for Lender's approval. Upon receipt of the Lender's approval (in its sole and exclusive discretion), such Proposed Budget shall become an Approved Budget and shall replace the then-operative Approved Budget for all purposes herein or in the Final Order; provided, that the Lender's failure to respond to any submitted Proposed Budget within three (3) Business Days following submission thereof shall be deemed to be an approval of such Budget, whereupon such Proposed Budget shall constitute the Approved Budget. The Loan Parties shall operate in accordance with the Approved Budget and all disbursements shall be consistent with the provisions of the Approved Budget (subject to the Permitted Variances);

(h) beginning on the Initial Reporting Date (as defined in the Interim Order), and on the Thursday of each calendar week thereafter (each such date, a "Variance Reporting Date"), a variance report, in a form consistent with the form of the Approved Budget, describing in reasonable detail, by line item, (i) the actual disbursements of the Loan Parties and actual receipts during the applicable Variance Testing Period and (ii) any variance (whether positive or negative, expressed as a percentage) between the actual

receipts or disbursements, as applicable, during such Variance Testing Period against the estimated receipts or disbursements, as applicable, for the applicable Variance Testing Period, as set forth in the applicable Approved Budget (such report, the “Variance Report”); and

(i) such other reports and information (financial or otherwise) as Lender may request from time to time promptly following such request, all in form and sufficient detail as the Lender shall request.

SECTION 5.02 Notices of Material Events. The Loan Parties will furnish to the Lender prompt (but in any event within any time period that may be specified below) written notice of the following:

- (a) the occurrence of any Default;
- (b) the occurrence of any ERISA Event that, alone or together with any other ERISA Events that have occurred, could reasonably be expected to result in a Material Adverse Effect;
- (c) within two (2) Business Days after the occurrence thereof, any Loan Party entering into a Swap Agreement or an amendment to a Swap Agreement, together with copies of all agreements evidencing such Swap Agreement or amendment; and
- (d) any other development that results in, or could reasonably be expected to result in, a Material Adverse Effect.

Each notice delivered under this Section, (i) shall be in writing, (ii) shall contain a heading or a reference line that reads “Notice under Section 5.02 of the Priming Senior Secured Super-Priority Debtor-In-Possession Credit Agreement dated May 2, 2023” and (iii) shall be accompanied by a statement of a Financial Officer or other executive officer of the Company setting forth the details of the event or development requiring such notice and any action taken or proposed to be taken with respect thereto.

SECTION 5.03 Existence; Conduct of Business. Except as contemplated by the Final Order in connection with a Sale, each Loan Party will, and will cause each Subsidiary to, (a) do or cause to be done all things necessary to preserve, renew and keep in full force and effect its legal existence and the rights, qualifications, licenses, permits, franchises, governmental authorizations, intellectual property rights, licenses and permits material to the conduct of its business, and maintain all requisite authority to conduct its business in each jurisdiction in which its business is conducted; provided that the foregoing shall not prohibit any merger, consolidation, liquidation or dissolution permitted under Section 6.03 and (b) carry on and conduct its business in substantially the same manner and in substantially the same fields of enterprise as it is presently conducted.

SECTION 5.04 Payment of Obligations. Each Loan Party will, and will cause each Subsidiary to, pay or discharge all Material Indebtedness and all other material liabilities and obligations, including Taxes, before the same shall become delinquent or in default, except where (a) the validity or amount thereof is being contested in good faith by appropriate proceedings, (b)



such Loan Party or Subsidiary has set aside on its books adequate reserves with respect thereto in accordance with GAAP, (c) the failure to make payment pending such contest could not reasonably be expected to result in a Material Adverse Effect and (d) such payments are subject to the Automatic Stay in the Bankruptcy Cases; provided, however, that each Loan Party will, and will cause each Subsidiary to, remit withholding taxes and other payroll taxes to appropriate Governmental Authorities as and when claimed to be due, notwithstanding the foregoing exceptions.

SECTION 5.05      Maintenance of Properties. Each Loan Party will, and will cause each Subsidiary to, keep and maintain all property material to the conduct of its business in good working order and condition, ordinary wear and tear excepted.

SECTION 5.06      Books and Records; Inspection Rights. Each Loan Party will, and will cause each Subsidiary to, (a) keep proper books of record and account in which full, true and correct entries are made of all dealings and transactions in relation to its business and activities, (b) permit any representatives designated by the Lender (including employees of the Lender or any consultants, accountants, lawyers, agents and appraisers retained by the Lender), to, during normal business hours (i) visit and inspect its properties, including examining and making extracts from its books and records, environmental assessment reports and Phase I or Phase II studies, and (ii) discuss its affairs, finances and condition with its officers and independent accountants (and hereby authorizes the Lender to contact its independent accountants directly), and (c) provide contact information for each bank where each Loan Party has a depository and/or securities account and each such Loan Party hereby authorizes the Lender to contact such bank(s) in order to request bank statements and/or balances, all at such reasonable times and as often as reasonably requested. The Loan Parties acknowledge that the Lender, after exercising its rights of inspection, may prepare certain reports pertaining to the Loan Parties' assets for internal use by the Lender.

SECTION 5.07      Compliance with Laws and Material Contractual Obligations. Each Loan Party will, and will cause each Subsidiary to, (i) comply with each Requirement of Law applicable to it or its property (including, without limitation, Environmental Laws) and (ii) perform in all material respects its obligations under material agreements to which it is a party, except, in each case, where the failure to do so, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect. Each Loan Party will maintain in effect and enforce policies and procedures designed to ensure compliance by such Loan Party, its Subsidiaries and their respective directors, officers, employees and agents with Anti-Corruption Laws and applicable Sanctions.

SECTION 5.08      Use of Proceeds.

(a) The proceeds of the New Money Loans hereunder shall be used solely (i) for post-petition working capital and maintenance capital expenditures, (ii) for the payment of current interest, expenses and fees with respect to the Loans and other Obligations hereunder, (iii) for the payment of adequate protection payments to the Prepetition Lender and/or the Prior Prepetition Lender, including interest and letter of credit and other fees payable under the Prepetition Credit Agreement, (iv) for payment of allowed administrative costs and expenses of the Bankruptcy Cases (including professional fees and expenses), (vi) for payment of prepetition claims authorized by the Bankruptcy Court,

(vii) for any other forecasted cash outlays included in the Approved Budget and (viii) as otherwise agreed by the Lender and the Borrower, in each case, solely in accordance with the Approved Budget (subject to the Permitted Variances) and the Final Order.

(b) The Borrower will not request any Borrowing or Letter of Credit, and the Loan Parties shall not use, and shall procure that its Subsidiaries and its or their respective directors, officers, employees and agents shall not use, the proceeds of any Borrowing or Letter of Credit(a) in furtherance of an offer, payment, promise to pay, or authorization of the payment or giving of money, or anything else of value, to any Person in violation of any Anti-Corruption Laws, (b) for the purpose of funding, financing or facilitating any activities, business or transaction of or with any Sanctioned Person, or in any Sanctioned Country, except to the extent permitted for a Person required to comply with Sanctions, or (c) in any manner that would result in the violation of any Sanctions applicable to any party hereto.

SECTION 5.09 Accuracy of Information. The Loan Parties will ensure that any information, including financial statements, Budgets, Proposed Budgets or other documents, furnished to the Lender in connection with this Agreement or any other Loan Document or any amendment or modification hereof or thereof or waiver hereunder or thereunder contains no material misstatement of fact or omits to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading, and the furnishing of such information shall be deemed to be a representation and warranty by the Borrower on the date thereof as to the matters specified in this Section 5.09.

SECTION 5.10 Insurance. Each Loan Party will, and will cause each Subsidiary to, maintain with financially sound and reputable carriers having a financial strength rating of at least A- by A.M. Best Company (a) insurance in such amounts (with no greater risk retention) and against such risks (including, without limitation, loss or damage by fire and loss in transit; theft, burglary, pilferage, larceny, embezzlement, and other criminal activities; business interruption; and general liability) and such other hazards, as is customarily maintained by companies of established repute engaged in the same or similar businesses operating in the same or similar locations and (b) all insurance required pursuant to the Collateral Documents. The Company will furnish to the Lender information in reasonable detail as to the insurance so maintained.

SECTION 5.11 Casualty and Condemnation. The Company (a) will furnish to the Lender prompt written notice of any casualty or other insured damage to any material portion of the Collateral or the commencement of any action or proceeding for the taking of any material portion of the Collateral or interest therein under power of eminent domain or by condemnation or similar proceeding and (b) will ensure that the Net Proceeds of any such event (whether in the form of insurance proceeds, condemnation awards or otherwise) are collected and applied in accordance with the applicable provisions of this Agreement and the Collateral Documents.

SECTION 5.12 Collateral. Subject to the Carve-Out and the Final Order, all Obligations of the Loan Parties hereunder shall be:

(a) entitled to superpriority claim status under section 364(c)(1) of the Bankruptcy Code with priority over all administrative expense claims and unsecured



claims existing as of the Petition Date or arising thereafter under the Bankruptcy Code, including, without limitation, the prepetition claims and adequate protection claims of the Prepetition Lender, subject only to the Carve-Out (the “DIP Superpriority Claims”). The DIP Superpriority Claims may be repaid from any cash of the Debtors, including without limitation, Cash Collateral (within the meaning of the DIP Order) and, following entry of the Final Order, the proceeds of Avoidance Actions and Avoidance Action Proceeds;

(b) secured, pursuant to section 364(c)(2) of the Bankruptcy Code, by valid, enforceable, first priority, fully perfected security interests in and liens on all of the Debtors’ rights in property of the Debtors’ estates as of the Petition Date that, as of the Petition Date, were unencumbered (and do not become perfected subsequent to the Petition Date as permitted by section 546(b) of the Bankruptcy Code) (including, following entry of the Final Order, Avoidance Action Proceeds) (such liens, subject only to the Carve-Out);

(c) secured, pursuant to section 364(c)(3) of the Bankruptcy Code, by valid, enforceable, fully perfected security interests in and liens on all of the Debtors’ rights in property of the Debtors’ estates as of the Petition Date that, as of the Petition Date, were subject to valid, perfected and non-avoidable liens and unavoidable liens in existence immediately prior to the Petition Date, if any, that are perfected subsequent to the Petition Date as permitted by section 546(b) of the Bankruptcy Code (the “Permitted Prior Liens”), which security interests and liens shall be junior and subordinate only to such Permitted Prior Liens and the Carve-Out; and

(d) secured, pursuant to section 364(d)(1) of the Bankruptcy Code, by valid, enforceable, priming first priority, fully perfected security interests in and liens upon all of the Debtors’ rights in property of the Debtors’ estates as of the Petition Date, and all of the Debtors’ rights in property acquired post-petition (and proceeds thereof), whether now existing or hereafter acquired or arising, that secure the Prepetition Obligations, which liens shall be subject to the Carve-Out.

The Collateral shall also include any and all rents, issues, products, offspring, proceeds and profits generated by any item of Collateral and, following entry of the Final Order, liens on proceeds of any Avoidance Actions.

The Liens shall not be subject or subordinate to (i) any lien or security interest that is avoided and preserved for the benefit of any Debtor and their estates under section 551 of the Bankruptcy Code, (ii) any liens arising after the Petition Date including, without limitation, any liens or security interests granted in favor of any federal, state, municipal or other governmental unit, commission, board or court for any liability of any Debtor, or (iii) any intercompany or affiliate liens of any Debtor.

The Collateral will be free and clear of other liens, claims and encumbrances, except valid, perfected, enforceable and unavoidable liens, rights of recoupment enforceable in bankruptcy, and rights of setoff permissible under section 553 of the Bankruptcy Code, in each case except as otherwise agreed by the applicable creditor or lienholder, as applicable, in existence as of the Petition Date and permitted pursuant to the Loan Documents (as defined in the Prepetition Credit Agreement), if any, and any other Permitted Prior Liens.

The Borrower acknowledges that the Liens automatically attached to the Collateral and became valid and perfected immediately upon entry of the Interim Order without the requirement of any further action by the Lender; provided that if the Lender determines to file any financing statements, notice of liens or similar instruments, the Debtors will cooperate and assist in any such filings.

SECTION 5.13 Post-Closing Obligations. The Company or applicable Borrower, or Loan Parties, as the case may be, shall execute and deliver the documents, and complete the tasks, in each case, as set forth on Schedule 5.13 within the applicable time limits specified on such schedule or, in each case, such later date as may be agreed by the Lender in its sole discretion.

SECTION 5.14 Bankruptcy Matters. The Debtors will deliver to the Lender (i) copies of any pleadings or motions to be filed by or on behalf of any Debtor in the Bankruptcy Cases at least three (3) days prior to such filing (or, if not practicable, as soon as reasonably practicable) and (ii) all notices required to be given to all parties specified in the Final Order.

SECTION 5.15 Chapter 11 Milestones. The Loan Parties will comply with and meet all of the Chapter 11 Milestones as the same may be extended, waived or otherwise modified with the prior written consent of Lender in its sole discretion (which may be by email) without further order by the Bankruptcy Court.

## ARTICLE VI

### Negative Covenants

Until all of the Secured Obligations shall have been Paid in Full, each Loan Party covenants and agrees, jointly and severally with all of the other Loan Parties, with the Lender that:

SECTION 6.01 Indebtedness. No Loan Party will, nor will it permit any Subsidiary to, create, incur, assume or suffer to exist any Indebtedness, except:

- (a) the Secured Obligations;
- (b) Indebtedness of the Borrower to any other Loan Party and of any Loan Party to the Borrower;
- (c) Guarantees by any of Indebtedness of any Loan Party and by any Loan Party of Indebtedness of the Borrower or any other Loan Party;
- (d) [reserved];
- (e) [reserved];
- (f) Indebtedness owed to any Person providing workers' compensation, health, disability or other employee benefits or property, casualty or liability insurance, pursuant to reimbursement or indemnification obligations to such Person, in each case incurred in the ordinary course of business;

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

(h) [reserved];

(i) [reserved];

(j) [reserved];

(k) Indebtedness in respect of Banking Services Obligations incurred in the ordinary course of business;

(l) [reserved];

(m) Indebtedness incurred by the Borrower or Subsidiary that may constitute or arise from unpaid insurance premiums owing to insurance companies and insurance brokers incurred in connection with the financing of insurance premiums consistent with past practice; and

(n) any other Indebtedness approved by the Lender in its sole discretion.

SECTION 6.02 Liens. No Loan Party will, nor will it permit any Subsidiary to, create, incur, assume or permit to exist any Lien on any property or asset now owned or hereafter acquired by it, or assign or sell any income or revenues (including Accounts) or rights in respect of any thereof, except:

(a) Liens created pursuant to any Loan Document;

(b) Permitted Encumbrances;

(c) any Lien on any property or asset of the Borrower or any Subsidiary existing on the date hereof set forth on Schedule 6.02; provided that (i) such Lien shall not apply to any other property or asset of the Borrower or any Subsidiary and (ii) such Lien shall secure only those obligations which it secures on the date hereof and extensions, renewals and replacements thereof that do not increase the outstanding principal amount thereof;

(d) Permitted Prior Liens set forth on Schedule 6.02;

(e) [reserved];

(f) Liens of a collecting bank arising in the ordinary course of business under Section 4-210 of the UCC in effect in the relevant jurisdiction covering only the items being collected upon;

(g) [reserved];

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

- (i) [reserved];
- (j) Liens to secure Banking Services Obligations and Swap Obligations;
- (k) Liens to secure Indebtedness permitted under Section 6.01(n) that are approved by the Lender in its sole discretion; and
- (l) any other Liens approved by the Lender in its sole discretion.

SECTION 6.03 Fundamental Changes.

(a) No Loan Party will, nor will it permit any Subsidiary to, merge into or consolidate with any other Person, or permit any other Person to merge into or consolidate with it, or otherwise Dispose of all or substantially all of its assets, or all or substantially all of the stock of any of its Subsidiaries (in each case, whether now owned or hereafter acquired), or liquidate, divide or dissolve, in each case, other than as contemplated by the Chapter 11 Milestones in connection with the Sale or as otherwise approved by the Lender in its sole discretion.

(b) No Loan Party will, nor will it permit any Subsidiary to, consummate a Division as the Dividing Person.

(c) No Loan Party will, nor will it permit any Subsidiary to, engage to any material extent in any business other than businesses of the type conducted by the Company and its Subsidiaries on the date hereof.

SECTION 6.04 Investments, Loans, Advances, Guarantees and Acquisitions. No Loan Party will, nor will it permit any Subsidiary to, form any subsidiary after the Effective Date, or purchase, hold or acquire (including pursuant to any merger with any Person that was not a Loan Party and a wholly owned Subsidiary prior to such merger) any Equity Interests, evidences of indebtedness or other securities (including any option, warrant or other right to acquire any of the foregoing) of, make or permit to exist any loans or advances to, Guarantee any obligations of, or make or permit to exist any investment or any other interest in, any other Person, or purchase or otherwise acquire (in one transaction or a series of transactions) any assets of any other Person constituting a business unit (whether through purchase of assets, merger or otherwise), except:

- (a) Permitted Investments, subject to control agreements in favor of the Lender or otherwise subject to a perfected security interest in favor of the Lender;
- (b) investments in existence on the date hereof;
- (c) investments by the Borrower and the Subsidiaries in Equity Interests in their respective Subsidiaries that are Loan Parties;
- (d) loans or advances made by any Loan Party to any other Loan Party;
- (e) Guarantees constituting Indebtedness permitted by Section 6.01;

(f) loans or advances made by a Loan Party to its employees on an arms-length basis in the ordinary course of business consistent with past practices for travel and entertainment expenses, relocation costs and similar purposes;

(g) notes payable, or stock or other securities issued by Account Debtors to a Loan Party pursuant to negotiated agreements with respect to settlement of such Account Debtor's Accounts in the ordinary course of business, consistent with past practices;

(h) investments in the form of Swap Agreements permitted by Section 6.07;

(i) [reserved];

(j) investments received in connection with the Disposition of assets permitted by Section 6.05;

(k) investments constituting deposits described in clauses (c) and (d) of the definition of the term "Permitted Encumbrances";

(l) [reserved];

(m) investments in accordance with the Approved Budget; and

(n) any other investments approved by the Lender in its sole discretion.

SECTION 6.05 Asset Sales. No Loan Party will, nor will it permit any Subsidiary to, Dispose of any asset, including any Equity Interest owned by it, nor will the Borrower permit any Subsidiary to issue any additional Equity Interest in such Subsidiary (other than to the Borrower or another Loan Party in compliance with Section 6.04), except:

(a) Dispositions of (i) Inventory in the ordinary course of business and (ii) used, obsolete, worn out or surplus Equipment or property in the ordinary course of business;

(b) Dispositions of assets to any other Loan Party;

(c) Dispositions of Accounts (excluding sales or dispositions in a factoring arrangement) in connection with the compromise, settlement or collection thereof;

(d) Dispositions of Permitted Investments and other investments permitted by clause (k) of Section 6.04;

(e) [reserved];

(f) Dispositions resulting from any casualty or other insured damage to, or any taking under power of eminent domain or by condemnation or similar proceeding of, any property or asset of any Loan Party;

(g) [reserved];

(h) Any other Dispositions approved by the Lender in its sole discretion;

- (i) the Sale or other Dispositions contemplated by the Chapter 11 Milestones;  
and
- (j) [reserved]; and
- (k) Dispositions in accordance with the Approved Budget

provided that all leases and Dispositions permitted under this Section 6.05 (other than those permitted by paragraphs (b), (f), (h) and (i) above) shall be made for fair value and for at least 75% cash consideration.

SECTION 6.06 Sale and Leaseback Transactions. No Loan Party will, nor will it permit any Subsidiary to, enter into any arrangement, directly or indirectly, whereby it shall sell or transfer any property, real or personal, used or useful in its business, whether now owned or hereafter acquired, and thereafter rent or lease such property or other property that it intends to use for substantially the same purpose or purposes as the property sold or transferred (a “Sale and Leaseback Transaction”).

SECTION 6.07 Swap Agreements. No Loan Party will, nor will it permit any Subsidiary to, enter into any Swap Agreement, except any existing Swap Agreement or as approved by the Lender in its sole discretion.

SECTION 6.08 Certain Payments of Indebtedness. No Loan Party will, nor will it permit any Subsidiary to, make or agree to pay or make, directly or indirectly, any payment or other distribution (whether in cash, securities or other property) of or in respect of principal of or interest on any Indebtedness, or any payment or other distribution (whether in cash, securities or other property), including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, acquisition, cancellation or termination of any Indebtedness, except as provided for in the Approved Budget or pursuant to orders entered into by the Bankruptcy Court upon pleadings that are in form and substance reasonably satisfactory to the Lender.

SECTION 6.09 Restrictive Agreements. No Loan Party will, nor will it permit any Subsidiary to, directly or indirectly enter into, incur or permit to exist any agreement or other arrangement that prohibits, restricts or imposes any condition upon (a) the ability of such Loan Party or any Subsidiary to create, incur or permit to exist any Lien upon any of its property or assets, or (b) the ability of any Subsidiary to pay dividends or other distributions with respect to any Equity Interests or to make or repay loans or advances to the Borrower or any other Subsidiary or to Guarantee Indebtedness of the Borrower or any other Subsidiary; provided that the foregoing shall not apply to restrictions and conditions imposed by any Requirement of Law or by any Loan Document and clause (a) of the foregoing shall not apply to customary provisions in leases restricting the assignment thereof.

SECTION 6.10 Amendment of Material Documents. No Loan Party will, nor will it permit any Subsidiary to, amend, modify or waive any of its rights under (a) any agreement relating to any Subordinated Indebtedness, or (b) its charter, articles or certificate of organization or incorporation and bylaws or operating, management or partnership agreement, or other organizational or governing documents to the extent any such amendment, modification or waiver would be adverse to the Lender.

SECTION 6.11 Super-Priority Claims. No Loan Party will create or permit to exist any “claim” that shall be granted in any of the Bankruptcy Cases that is *pari passu* with or senior to the Obligations, other than as provided herein.

SECTION 6.12 Bankruptcy Orders. No Loan Party will (a) obtain or seek to obtain any stay from the Bankruptcy Court on the exercise of the Lender’s remedies hereunder or under any other Loan Document, except as specifically provided in the DIP Orders, or (b) seek to change or otherwise modify any DIP Order or other order in the Bankruptcy Court with respect to the DIP Facility without the prior written approval of the Lender.

SECTION 6.13 New Accounts. No Loan Party will open or otherwise establish, or deposit, credit or otherwise transfer any cash, cash receipts, securities, financial assets or any other property into a deposit account or securities account other than any deposit account or securities account established with the prior consent of the Lender and in which the Lender has been granted a first-priority perfected lien pursuant to the applicable DIP Order. For the avoidance of doubt, Lender consents to any deposit accounts or securities accounts set forth in the schedules to the Security Agreement.

SECTION 6.14 Prepetition Claims. No Loan Party make any payments of any kind on account of any prepetition Indebtedness (except as expressly provided for in the Approved Budget or pursuant to orders entered by the Bankruptcy Court upon pleadings in form and substance reasonably satisfactory to the Lender) or (ii) assert any right of subrogation or contribution against any Loan Party until all borrowings under the DIP Facility are paid in full and the commitments thereunder are terminated.

SECTION 6.15 Variance Covenant. As of any Variance Testing Date, the Loan Parties shall not allow, for the applicable Variance Testing Period:

(a) (i) for any Variance Testing Date on or prior to March 5, 2023, cash receipts on a combined basis to be less than 80% of the estimated “Net Cash Receipts” in the Approved Budget, and (ii) for any Variance Testing Date thereafter, cash receipts on a combined basis to be less than 85% of the estimated “Net Cash Receipts” in the Approved Budget;

(b) cash disbursements for either the “Purchasing Cards” or “Other G&A” line items to be greater than 115% of the applicable estimated disbursement for such line items in the Approved Budget; and

(c) all other cash disbursements (on a combined basis but excluding (i) the line item for “Total Professional Fees” and (ii) the line items subject to line item variance testing in clause (b) above) to be greater than 110% of the estimated aggregate disbursement for all such items in the Approved Budget,

(the Budget variances permitted by clauses (a) through (c) above, collectively, the “Permitted Variances”);

provided, that the Loan Parties may carry forward favorable variances on a line-item basis from the immediately preceding Variance Testing Period when calculating the Permitted Variances for



(a) and (c) above, and from the immediately preceding two Variance Testing Periods when calculating the Permitted Variances for (b) above. Notwithstanding anything to the contrary set forth in this Agreement, the Loan Parties shall be deemed to be in compliance with the Approved Budget for all purposes under this Agreement or the Final Order unless, as of any Variance Testing Date, the Loan Parties' actual cash receipts or disbursements vary from the Approved Budget by more than the applicable Permitted Variance as measured on any Variance Testing Date.

## ARTICLE VII

### Events of Default

If any of the following events ("Events of Default") shall occur:

(a) the Borrower shall fail to pay any principal of any Loan or any reimbursement obligation in respect of any LC Disbursement when and as the same shall become due and payable, whether at the due date thereof or at a date fixed for prepayment thereof or otherwise;

(b) the Borrower shall fail to pay any interest on any Loan or any fee or any other amount (other than an amount referred to in clause (a) of this Article) payable under this Agreement or any other Loan Document, when and as the same shall become due and payable, and such failure shall continue unremedied for a period of three (3) Business Days;

(c) any representation or warranty made or deemed made by or on behalf of any Loan Party or any Subsidiary in or in connection with this Agreement or any other Loan Document or any amendment or modification hereof or thereof or waiver hereunder or thereunder, or in any report, Budget, certificate, financial statement or other document furnished pursuant to or in connection with this Agreement, the DIP Orders or any other Loan Document or any amendment or modification hereof or thereof or waiver hereunder or thereunder, shall prove to have been materially incorrect when made or deemed made;

(d) any Loan Party shall fail to observe or perform any covenant, condition or agreement contained in Sections 5.01(g), 5.01(h), 5.02(a), 5.03 or 5.08, Article VI or in the Final Order.

(e) any Loan Party shall fail to observe or perform any covenant, condition or agreement contained in this Agreement (other than those specified in clause (a), (b) or (d)), and such failure shall continue unremedied for a period of (i) 5 days after the earlier of any Loan Party's knowledge of such breach or notice thereof from the Lender;

(f) [reserved];

(g) any event or condition occurs that results in any Material Indebtedness becoming due prior to its scheduled maturity or that enables or permits (with or without the giving of notice, the lapse of time or both) the holder or holders of any Material Indebtedness or any trustee or agent on its or their behalf to cause any Material Indebtedness to become due, or to require the prepayment, repurchase, redemption or defeasance thereof, prior to its scheduled maturity, in each case, which is not stayed by the



filing of the voluntary petition to commence the Bankruptcy Cases or is otherwise permitted to be paid under this Agreement and by the Final Order;

(h) [reserved];

(i) [reserved];

(j) one or more judgments for the payment of money in an aggregate amount in excess of \$15,000,000 shall be rendered against any Loan Party, any Subsidiary or any combination thereof and the same shall remain undischarged for a period of thirty (30) consecutive days during which execution shall not be effectively stayed, or any action shall be legally taken by a judgment creditor to attach or levy upon any assets of any Loan Party or any Subsidiary to enforce any such judgment or any Loan Party or any Subsidiary shall fail within thirty (30) days to discharge one or more non-monetary judgments or orders which, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect, which judgments or orders, in any such case, are not stayed on appeal or otherwise being appropriately contested in good faith by proper proceedings diligently pursued;

(k) an ERISA Event shall have occurred that, in the opinion of the Lender, when taken together with all other ERISA Events that have occurred, could reasonably be expected to result in a Material Adverse Effect;

(l) a Change in Control shall occur;

(m) the occurrence of any “default”, as defined in any Loan Document (other than this Agreement), or the breach of any of the terms or provisions of any Loan Document (other than this Agreement), which default or breach continues beyond any period of grace therein provided;

(n) the Loan Guaranty shall fail to remain in full force or effect or any action shall be taken to discontinue or to assert the invalidity or unenforceability of the Loan Guaranty, or any individual Guarantor dies or a guardian or conservator is appointed for any individual Guarantor or all or any portion of their property, or any Guarantor shall fail to comply with any of the terms or provisions of the Loan Guaranty to which it is a party, or any Guarantor shall deny that it has any further liability under the Loan Guaranty to which it is a party, or shall give notice to such effect, including, but not limited to notice of termination delivered pursuant to Section 9.08;

(o) except as permitted by the terms of any Collateral Document, (i) any Collateral Document shall for any reason fail to create a valid security interest in any Collateral purported to be covered thereby, or (ii) any Lien securing any Secured Obligation shall cease to be a perfected, first priority Lien;

(p) any Collateral Document shall fail to remain in full force or effect or any action shall be taken to discontinue or to assert the invalidity or unenforceability of any Collateral Document; or

(q) any material provision of any Loan Document for any reason ceases to be valid, binding and enforceable in accordance with its terms (or any Loan Party shall challenge the enforceability of any Loan Document or shall assert in writing, or engage in any action or inaction that evidences its assertion, that any provision of any of the Loan Documents has ceased to be or otherwise is not valid, binding and enforceable in accordance with its terms);

(r) the Final Order (i) at any time ceases to be in full force and effect or (ii) shall be vacated, reversed, stayed, modified or amended without the prior written consent of the Lender;

(s) any Loan Party shall fail to observe or comply in any material respect with the terms of the Final Order;

(t) other than payments authorized by the Bankruptcy Court and which are set forth in the Approved Budget to the extent authorized by one or more “first day” or other orders reasonably satisfactory to the Lender, any Loan Party shall make any payment (whether by way of adequate protection or otherwise) of principal or interest or otherwise on account of any prepetition Indebtedness or payables;

(u) any of the Bankruptcy Cases shall be dismissed or converted to a case under Chapter 7 of the Bankruptcy Code; a Chapter 11 trustee or an examiner (other than a fee examiner) with enlarged powers relating to the operation of the business of any Loan Party (powers beyond those expressly set forth in section 1106(a)(3) and (4) of the Bankruptcy Code) shall be appointed, (b) any other superpriority claim or grant of any other lien (including any adequate protection lien) other than as provided for herein which *is pari passu* with or senior to the claims and liens of the Lender provided by the Loan Documents shall be granted in any of the Bankruptcy Cases, or (c) the filing of any pleading by any Loan Party seeking or otherwise consenting to or supporting any of the matters set forth in clause (a) or clause (b) of this clause (u);

(v) the Bankruptcy Court shall enter one or more orders during the pendency of the Bankruptcy Cases granting relief from the automatic stay to the holder or holders of any Lien evidencing Indebtedness in excess of \$200,000 to permit foreclosure (or the granting of a deed in lieu of foreclosure or the like) on assets of any Loan Party;

(w) the Loan Parties petition the Bankruptcy Court to obtain additional financing *pari passu* or senior to the DIP Facility;

(x) the Loan Parties’ “exclusive period” under section 1121 of the Bankruptcy Code for the filing of a plan of reorganization terminates;

(y) the consummation of a sale of any material portion of the Collateral (other than through the contemplated Sale or a sale in the ordinary course of business that is contemplated by the Approved Budget);

(z) the confirmation of a plan of reorganization or liquidation that does not provide for Payment in Full in cash of the Loans or such other treatment acceptable to

Lender, or any Loan Party proposes or supports, or fails to contest in good faith, the entry of such a plan of reorganization or liquidation;

(aa) any Loan Party (A) engages in or supports any challenge to the validity, perfection, priority, extent or enforceability of this Agreement, the DIP Facility or the Liens on or security interest in the assets of the Loan Parties securing the Obligations, including without limitation seeking to equitably subordinate or avoid the liens securing such Indebtedness or (B) engages in or supports any investigation or asserts any claims or causes of action (or directly or indirectly support assertion of the same) against the Lender;

(bb) the entry of an order by the Bankruptcy Court in favor of any statutory committee appointed in these Bankruptcy Cases by the U.S. Trustee (each, a “Committee”), any ad hoc committee, or any other party in interest, (i) sustaining an objection to claims of the Lender, or (ii) avoiding any Liens held by the Lender (provided, that the foregoing shall not be deemed to prohibit the investigation by any such committee of any such claims or Liens in respect of the Prepetition Obligations);

(cc) allowance of any claim or claims under section 506(c) of the Bankruptcy Code against any of the Collateral;

(dd) the failure to meet any Chapter 11 Milestone;

(ee) entry of an order by the Bankruptcy Court in favor of any Committee, any ad hoc committee, or any other party in interest, (i) granting such party standing to pursue any claims against the Lender, the Prepetition Lender, and/or the Prior Prepetition Lender, (ii) sustaining an objection to claims of the Lender and/or Prepetition Lender, (iii) avoiding any Liens held by the Lender, or (iv) avoiding any liens held by the Prepetition Lender except as otherwise agreed by the Prepetition Lender in writing (provided, that the foregoing shall not be deemed to prohibit the investigation by any such committee of any such claims or liens in respect of the Prepetition Obligations); or

(ff) the Termination Date shall have occurred;

then, and without further application to the Bankruptcy Court, pursuant to the DIP Order, the automatic stay provisions of Section 362 of the Bankruptcy Code shall be vacated and modified to the extent necessary to permit the Lender to take any of the following actions, at the same or different times:

(a) issue a written notice (the “Remedies Notice”) (which may be by email) to the Loan Parties and their counsel, counsel for any Committee, and the U.S. Trustee (collectively, the “Remedies Notice Parties”) declaring the occurrence of the Termination Date;

(b) issue a Carve-Out Notice (as defined in the DIP Order);

(c) declare all the Obligations to be immediately due and payable without presentment, demand or protest or other notice of any kind, all of which are expressly waived by the Loan Parties;

(d) declare the suspension or termination of any New Money Loan Commitment, liability or obligation of the Lender hereunder, but without affecting the Liens on the Collateral or Obligations (the “Termination Notice”); or

(e) declare that all the Loans and other Obligations shall bear interest at the Default Rate.

Prior to exercising any remedies against the Collateral other than those specified in (a) – (e) above, the Lender shall be required to file a motion with the Bankruptcy Court using a CM/ECF emergency code seeking emergency relief from the automatic stay (the “Stay Relief Motion”) on at least three (3) Business Days’ written notice to the Remedies Notice Parties of the Lender’s intent to exercise its rights and remedies (the “DIP Remedies Notice Period”). In the event the Bankruptcy Court determines during a hearing on the Stay Relief Motion that an Event of Default has occurred, the Bankruptcy Court may fashion an appropriate remedy, which may include the exercise of any and all rights available to the Lender under this Agreement and/or the Final Order, as applicable.

## ARTICLE VIII

### Miscellaneous

#### SECTION 8.01      Notices.

(a) Except in the case of notices and other communications expressly permitted to be given by telephone (and subject to paragraph (b) below), all notices and other communications provided for herein shall be in writing and shall be delivered by electronic mail with a hand delivery or overnight courier service, mailed by certified or registered mail or fax to follow, as follows:

(i) if to any Loan Party, to it in care of the Company at:

Auto Plus Auto Parts  
Attn: Wesley Fulbright  
VP Finance, Corporate Controller  
112 Townpark Drive NE Suite 300  
Kennesaw, GA 30144

if to the Lender at:

American Entertainment Properties Corp.  
Jesse A. Lynn  
General Counsel, Icahn Enterprises L.P.  
16690 Collins Ave., PH-1, Sunny Isles Beach, FL 33160

All such notices and other communications (i) sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received or (ii) sent by fax shall be deemed to have been given when sent, provided that if not given during normal

business hours for the recipient, such notice or communication shall be deemed to have been given at the opening of business on the next Business Day of the recipient.

(b) Any party hereto may change its address, facsimile number or e-mail address for notices and other communications hereunder by notice to the other parties hereto.

SECTION 8.02 Waivers; Amendments.

(a) No failure or delay by the Lender in exercising any right or power hereunder or under any other Loan Document shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such a right or power, preclude any other or further exercise thereof or the exercise of any other right or power. The rights and remedies of the Lender hereunder and under any other Loan Document are cumulative and are not exclusive of any rights or remedies that they would otherwise have. No waiver of any provision of any Loan Document or consent to any departure by any Loan Party therefrom shall in any event be effective unless the same shall be permitted by paragraph (b) of this Section, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. Without limiting the generality of the foregoing, the making of a Loan or amendment or extension of a Letter of Credit shall not be construed as a waiver of any Default, regardless of whether the Lender may have had notice or knowledge of such Default at the time.

(b) Subject to 2.10(c), neither this Agreement nor any other Loan Document nor any provision hereof or thereof may be waived, amended or modified except (i) in the case of this Agreement, pursuant to an agreement or agreements in writing entered into by the Company and the Lender or (ii) in the case of any other Loan Document, pursuant to an agreement or agreements in writing entered into by the Lender and the Loan Party or Loan Parties that are parties thereto; provided that, in each case, any such waiver, amendment or modification may be approved in writing by electronic mail by the Authorized Officers, in the Lender's sole discretion. Any such request from the Company for an approval, waiver, amendment or modification shall (I) be made by electronic mail to the Authorized Officers; (II) reference the relevant section of this Agreement and any other applicable Loan Document and (III) contain a detailed description of the reasons for such request, including any supporting documentation as requested by the Lender in its sole discretion.

SECTION 8.03 Expenses; Limitation of Liability; Indemnity; Etc.

(a) Expenses. The Loan Parties, jointly and severally, shall pay all (i) reasonable out-of-pocket expenses incurred by the Lender and its Affiliates, including the reasonable fees, charges and disbursements of counsel for the Lender (whether outside counsel or the allocated costs of its internal legal department), in connection with the credit facilities provided for herein, the preparation and administration of the Loan Documents, the DIP Orders or any matters pertaining to the Bankruptcy Cases and any amendments, modifications or waivers of the provisions of the Loan Documents, the DIP Orders or any

matters pertaining to the Bankruptcy Cases (whether or not the transactions contemplated hereby or thereby shall be consummated), (ii) reasonable out-of-pocket expenses incurred by the Lender in connection with the amendment, renewal or extension of any Letter of Credit or any demand for payment thereunder and (iii) out-of-pocket expenses incurred by the Lender, including the fees, charges and disbursements of any counsel for the Lender (whether outside counsel or the allocated costs of its internal legal department), in connection with the enforcement, collection or protection of its rights in connection with the Loan Documents, the DIP Orders or any matters pertaining to the Bankruptcy Cases, including its rights under this Section, or in connection with the Loans made or Letters of Credit issued hereunder, including all such out-of-pocket expenses incurred during any workout, restructuring or negotiations in respect of such Loans or Letters of Credit. Expenses being reimbursed by the Loan Parties under this Section include, without limiting the generality of the foregoing, fees, costs and expenses incurred in connection with:

(A) insurance reviews;

(B) Taxes, fees and other charges for (i) lien and title searches and title insurance and (ii) recording the filing financing statements and continuations, and other actions to perfect, protect, and continue the Lender's Liens;

(C) sums paid or incurred to take any action required of any Loan Party under the Loan Documents that such Loan Party fails to pay or take; and

(D) forwarding loan proceeds, collecting checks and other items of payment, and establishing and maintaining the accounts and lock boxes, and costs and expenses of preserving and protecting the Collateral.

(b) Limitation of Liability. To the extent permitted by applicable law (i) neither the Borrower nor any other Loan Party shall assert, and each Loan Party hereby waives, any claim against the Lender and any Related Party of the Lender (each such Person being called a "Lender Related Person") for any Liabilities arising from the use by others of information or other materials (including, without limitation, any personal data) obtained through telecommunications, electronic or other information transmission systems (including the Internet), and (ii) no party hereto shall assert, and each such party hereby waives, any Liabilities against any other party hereto, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any other Loan Document, or any agreement or instrument contemplated hereby or thereby, the Transactions, any Loan or Letter of Credit or the use of the proceeds thereof; provided that, nothing in this Section 8.03(b) shall relieve the Borrower or any other Loan Party of any obligation it may have to indemnify an Indemnitee, as provided in Section 8.03(c), against any special, indirect, consequential or punitive damages asserted against such Indemnitee by a third party.



(c) Indemnity. The Loan Parties, jointly and severally, shall indemnify the Lender, and each Related Party of the Lender (each such Person being called an “Indemnatee”) against, and hold each Indemnatee harmless from, any Liabilities and related expenses, including the reasonable and documented, out-of-pocket fees, charges and disbursements of any counsel for any Indemnatee, incurred by or asserted against any Indemnatee arising out of, in connection with, or as a result of (i) the execution or delivery of the Loan Documents, the DIP Orders or any matters pertaining to the Bankruptcy Cases or any agreement or instrument contemplated thereby, the performance by the parties hereto of their respective obligations thereunder or the consummation of the Transactions or any other transactions contemplated hereby, (ii) any Loan or Letter of Credit or the use of the proceeds therefrom (including any refusal by the Lender to honor a demand for payment under a Letter of Credit if the documents presented in connection with such demand do not strictly comply with the terms of such Letter of Credit), (iii) any actual or alleged presence or Release of Hazardous Materials on or from any property owned or operated by a Loan Party or a Subsidiary, or any Environmental Liability related in any way to a Loan Party or Subsidiary or (iv) any actual or prospective Proceeding relating to any of the foregoing, whether or not such Proceeding is brought by any Loan Party or their respective equity holders, Affiliates, creditors or any other third Person and whether based on contract, tort or any other theory and regardless of whether any Indemnatee is a party thereto; provided that such indemnity shall not, as to any Indemnatee, be available to the extent that such Liabilities or related expenses are determined by a court of competent jurisdiction by final and non-appealable judgment to have resulted primarily from the gross negligence or willful misconduct of such Indemnatee. This Section 8.03(b) shall not apply with respect to Taxes other than any Taxes that represent losses or damages arising from any non-Tax claim.

(d) Payments. All amounts due under this Section 8.03 shall be payable promptly after written demand therefor.

#### SECTION 8.04 Successors and Assigns.

(a) The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that the Borrower may not assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the Lender (and any attempted assignment or transfer by the Borrower without such consent shall be null and void). Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants (to the extent provided in paragraph (c) of this Section) and, to the extent expressly contemplated hereby, the Related Parties of the Lender) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) The Lender may assign to one or more of its Affiliates all or a portion of its rights and obligations under this Agreement (including all or a portion of its New Money Loan Commitment and any Loans at the time owing to it).

(c) The Lender may, without the consent of, or notice to, the Borrower, sell participations to one or more banks or other entities (a “Participant”) in all or a portion of the Lender’s rights and/or obligations under this Agreement (including all or a portion of its New Money Loan Commitment and/or Letters of Credit and/or the Loans owing to it); provided that (i) the Lender’s obligations under this Agreement shall remain unchanged; (ii) the Lender shall remain solely responsible to the other parties hereto for the performance of such obligations; and (iii) the Company shall continue to deal solely and directly with the Lender in connection with the Lender’s rights and obligations under this Agreement.

To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 8.08 as though it were the Lender. If the Lender shall sell a participation, it 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 stated interest) of each Participant’s interest in the Loans or other obligations under this Agreement or any other Loan Document (the “Participant Register”); provided that the Lender shall have no 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 commitment, Loans, Letters of Credit or its other obligations under this Agreement or any other Loan Document) to any Person except to the extent that such disclosure is necessary to establish that such commitment, Loan, Letter of Credit or other obligation is in registered form under Section 5f.103-1(c) of the U.S. Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and the 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.

(d) The Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement to secure obligations of the Lender, including without limitation any pledge or assignment to secure obligations to a Federal Reserve Bank, and this Section shall not apply to any such pledge or assignment of a security interest; provided that no such pledge or assignment of a security interest shall release the Lender from any of its obligations hereunder or substitute any such pledgee or assignee for the Lender as a party hereto.

**SECTION 8.05** Survival. All covenants, agreements, representations and warranties made by the Loan Parties in the Loan Documents and in the certificates or other instruments delivered in connection with or pursuant to this Agreement or any other Loan Document shall be considered to have been relied upon by the other parties hereto and shall survive the execution and delivery of the Loan Documents and the making of any Loans and amendment or extension of any Letters of Credit, regardless of any investigation made by any such other party or on its behalf and notwithstanding that the Lender may have had notice or knowledge of any Default or incorrect representation or warranty at the time any credit is extended hereunder, and shall continue in full force and effect as long as the principal of or any accrued interest on any Loan or any fee or any other amount payable under this Agreement is outstanding and unpaid or any Letter of Credit is outstanding and so long as the commitment has not expired or terminated. The provisions of Section 8.03 shall survive and remain in full force and effect regardless of the consummation of the transactions contemplated hereby, the repayment of the Loans, the expiration or termination of



the Letters of Credit and the commitment or the termination of this Agreement or any other Loan Document or any provision hereof or thereof.

SECTION 8.06      Counterparts; Integration; Effectiveness; Electronic Execution.

(a) This Agreement may be executed in counterparts (and by different parties hereto on different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement, the other Loan Documents and any separate letter agreements with respect to fees payable to the Lender constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Except as provided in Section 4.01, this Agreement shall become effective when it shall have been executed by the Lender and when the Lender shall have received counterparts hereof which, when taken together, bear the signatures of each of the other parties hereto, and thereafter shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

(b) Delivery of an executed counterpart of a signature page of (x) this Agreement, (y) any other Loan Document and/or (z) any document, amendment, approval, consent, information, notice (including, for the avoidance of doubt, any notice delivered pursuant to Section 8.01), certificate, request, statement, disclosure or authorization related to this Agreement, any other Loan Document and/or the transactions contemplated hereby and/or thereby (each an "Ancillary Document") that is an Electronic Signature transmitted by telecopy, emailed pdf. or any other electronic means that reproduces an image of an actual executed signature page shall be effective as delivery of a manually executed counterpart of this Agreement, such other Loan Document or such Ancillary Document, as applicable. The words "execution," "signed," "signature," "delivery," and words of like import in or relating to this Agreement, any other Loan Document and/or any Ancillary Document shall be deemed to include Electronic Signatures, deliveries or the keeping of records in any electronic form (including deliveries by telecopy, emailed pdf. or any other electronic means that reproduces an image of an actual executed signature page), each of which shall be of the same legal effect, validity or enforceability as a manually executed signature, physical delivery thereof or the use of a paper-based recordkeeping system, as the case may be; provided that nothing herein shall require the Lender to accept Electronic Signatures in any form or format without its prior written consent and pursuant to procedures approved by it; provided, further, without limiting the foregoing, (i) to the extent the Lender has agreed to accept any Electronic Signature, the Lender shall be entitled to rely on such Electronic Signature purportedly given by or on behalf of the Borrower or any other Loan Party without further verification thereof and without any obligation to review the appearance or form of any such Electronic Signature and (ii) upon the request of the Lender, any Electronic Signature shall be promptly followed by a manually executed counterpart. Without limiting the generality of the foregoing, the Borrower and each Loan Party hereby (A) agrees that, for all purposes, including without limitation, in connection with any workout, restructuring, enforcement of remedies, bankruptcy proceedings or litigation among the Lender, the Borrower and the Loan Parties, Electronic Signatures transmitted by telecopy, emailed pdf. or any other electronic means that reproduces an image of an actual executed signature page and/or any electronic images of this Agreement,

any other Loan Document and/or any Ancillary Document shall have the same legal effect, validity and enforceability as any paper original, (B) the Lender may, at its option, create one or more copies of this Agreement, any other Loan Document and/or any Ancillary Document in the form of an imaged electronic record in any format, which shall be deemed created in the ordinary course of such Person's business, and destroy the original paper document (and all such electronic records shall be considered an original for all purposes and shall have the same legal effect, validity and enforceability as a paper record), (C) waives any argument, defense or right to contest the legal effect, validity or enforceability of this Agreement, any other Loan Document and/or any Ancillary Document based solely on the lack of paper original copies of this Agreement, such other Loan Document and/or such Ancillary Document, respectively, including with respect to any signature pages thereto and (D) waives any claim against any Lender-Related Person for any Liabilities arising solely from the Lender's reliance on or use of Electronic Signatures and/or transmissions by telecopy, emailed pdf. or any other electronic means that reproduces an image of an actual executed signature page, including any Liabilities arising as a result of the failure of the Borrower and/or any Loan Party to use any available security measures in connection with the execution, delivery or transmission of any Electronic Signature.

**SECTION 8.07**      Severability. Any provision of any Loan Document held to be invalid, illegal or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity, illegality or unenforceability without affecting the validity, legality and enforceability of the remaining provisions thereof; and the invalidity of a particular provision in a particular jurisdiction shall not invalidate such provision in any other jurisdiction.

**SECTION 8.08**      Right of Setoff. If an Event of Default shall have occurred and be continuing, the Lender and each of its Affiliates is hereby authorized at any time and from time to time, to the fullest extent permitted by law, to set off and apply any and all deposits (general or special, time or demand, provisional or final) at any time held and other obligations at any time owing by the Lender or any Affiliate to or for the credit or the account of any Loan Party against any and all of the Secured Obligations, irrespective of whether or not the Lender shall have made any demand under this Agreement or any other Loan Document and although such obligations of the Loan Parties may be contingent or unmatured or are owed to a branch office or Affiliate of the Lender different from the branch office or Affiliate holding such deposit or obligated on such indebtedness. The rights of the Lender under this Section are in addition to other rights and remedies (including other rights of setoff) which the Lender may have.

**SECTION 8.09**      Governing Law; Jurisdiction; Consent to Service of Process.

(a)      The Loan Documents (other than those containing a contrary express choice of law provision) shall be governed by and construed in accordance with the internal laws of the State of New York and (to the extent applicable) the Bankruptcy Code.

(a)      EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY AND UNCONDITIONALLY AGREES THAT IT WILL NOT COMMENCE ANY ACTION, LITIGATION OR PROCEEDING OF ANY KIND OR DESCRIPTION, WHETHER IN LAW OR EQUITY, WHETHER IN CONTRACT OR IN TORT OR OTHERWISE, AGAINST THE LENDER, OR ANY RELATED PARTY OF THE LENDER ANY WAY

RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS RELATING HERETO OR THERETO, IN ANY FORUM OTHER THAN THE BANKRUPTCY COURT AND IF THE BANKRUPTCY COURT DOES NOT HAVE (OR ABSTAINS FROM) JURISDICTION, U.S. FEDERAL OR FLORIDA STATE COURT SITTING IN MIAMI-DADE COUNTY, FLORIDA AND ANY APPELLATE COURT FROM ANY THEREOF, AND EACH OF THE PARTIES HERETO IRREVOCABLY AND UNCONDITIONALLY SUBMITS TO THE JURISDICTION OF SUCH COURTS AND AGREES THAT ALL CLAIMS IN RESPECT OF ANY SUCH ACTION, LITIGATION OR PROCEEDING MAY BE HEARD AND DETERMINED IN SUCH COURTS. EACH OF THE PARTIES HERETO AGREES THAT A FINAL JUDGMENT IN ANY SUCH ACTION, LITIGATION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. NOTHING IN THIS AGREEMENT OR IN ANY OTHER LOAN DOCUMENT SHALL AFFECT ANY RIGHT THAT THE LENDER MAY OTHERWISE HAVE TO BRING ANY ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT AGAINST THE BORROWER OR ANY OTHER LOAN PARTY OR ITS PROPERTIES IN THE COURTS OF ANY JURISDICTION.

(b) Each Loan Party hereby irrevocably and unconditionally waives, to the fullest extent it may legally and effectively do so, any objection which it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this Agreement or any other Loan Document in any court referred to in paragraph (b) of this Section. Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

(c) Each party to this Agreement irrevocably consents to service of process in the manner provided for notices in Section 8.01. Nothing in this Agreement or any other Loan Document will affect the right of any party to this Agreement to serve process in any other manner permitted by law.

**SECTION 8.10 WAIVER OF JURY TRIAL.** EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT, ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE OR OTHER AGENT (INCLUDING ANY ATTORNEY) OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

SECTION 8.11 Headings. Article and Section headings and the Table of Contents used herein are for convenience of reference only, are not part of this Agreement and shall not affect the construction of, or be taken into consideration in interpreting, this Agreement.

## ARTICLE IX

### Loan Guaranty

SECTION 9.01 Guaranty. Each Loan Guarantor (other than those that have delivered a separate Guaranty) hereby agrees that it is jointly and severally liable for, and, as a primary obligor and not merely as surety, absolutely and unconditionally and irrevocably guarantees to the Secured Parties, the prompt payment when due, whether at stated maturity, upon acceleration or otherwise, and at all times thereafter, of the Secured Obligations and all costs and expenses including, without limitation, all court costs and reasonable attorneys' and paralegals' fees (including allocated costs of in-house counsel and paralegals) and expenses paid or incurred by the Lender in endeavoring to collect all or any part of the Secured Obligations from, or in prosecuting any action against, the Borrower, any Loan Guarantor or any other guarantor of all or any part of the Secured Obligations (such costs and expenses, together with the Secured Obligations, collectively the "Guaranteed Obligations"). Each Loan Guarantor further agrees that the Guaranteed Obligations may be extended or renewed in whole or in part without notice to or further assent from it, and that it remains bound upon its guarantee notwithstanding any such extension or renewal. All terms of this Loan Guaranty apply to and may be enforced by or on behalf of any domestic or foreign branch or Affiliate of the Lender that extended any portion of the Guaranteed Obligations.

SECTION 9.02 Guaranty of Payment. This Loan Guaranty is a guaranty of payment and not of collection. Each Loan Guarantor waives any right to require the Lender to sue the Borrower, any Loan Guarantor, any other guarantor of, or any other Person obligated for all or any part of the Guaranteed Obligations (each, an "Obligated Party"), or otherwise to enforce its payment against any collateral securing all or any part of the Guaranteed Obligations.

SECTION 9.03 No Discharge or Diminishment of Loan Guaranty.

(a) Except as otherwise provided for herein, the obligations of each Loan Guarantor hereunder are unconditional and absolute and not subject to any reduction, limitation, impairment or termination for any reason (other than the Payment in Full of the Guaranteed Obligations), including: (i) any claim of waiver, release, extension, renewal, settlement, surrender, alteration, or compromise of any of the Guaranteed Obligations, by operation of law or otherwise; (ii) any change in the corporate existence, structure or ownership of the Borrower or any other Obligated Party liable for any of the Guaranteed Obligations; (iii) any insolvency, bankruptcy, reorganization or other similar proceeding affecting any Obligated Party, or their assets or any resulting release or discharge of any obligation of any Obligated Party; or (iv) the existence of any claim, setoff or other rights which any Loan Guarantor may have at any time against any Obligated Party, the Lender or any other Person, whether in connection herewith or in any unrelated transactions.

(b) The obligations of each Loan Guarantor hereunder are not subject to any defense or setoff, counterclaim, recoupment, or termination whatsoever by reason of the invalidity, illegality, or unenforceability of any of the Guaranteed Obligations or otherwise, or any provision of applicable law or regulation purporting to prohibit payment by any Obligated Party, of the Guaranteed Obligations or any part thereof.

(c) Further, the obligations of any Loan Guarantor hereunder are not discharged or impaired or otherwise affected by: (i) the failure of the Lender to assert any claim or demand or to enforce any remedy with respect to all or any part of the Guaranteed Obligations; (ii) any waiver or modification of or supplement to any provision of any agreement relating to the Guaranteed Obligations; (iii) any release, non-perfection, or invalidity of any indirect or direct security for the obligations of the Borrower for all or any part of the Guaranteed Obligations or any obligations of any other Obligated Party liable for any of the Guaranteed Obligations; (iv) any action or failure to act by the Lender with respect to any collateral securing any part of the Guaranteed Obligations; or (v) any default, failure or delay, willful or otherwise, in the payment or performance of any of the Guaranteed Obligations, or any other circumstance, act, omission or delay that might in any manner or to any extent vary the risk of such Loan Guarantor or that would otherwise operate as a discharge of any Loan Guarantor as a matter of law or equity (other than the Payment in Full of the Guaranteed Obligations).

**SECTION 9.04**      Defenses Waived. To the fullest extent permitted by applicable law, each Loan Guarantor hereby waives any defense based on or arising out of any defense of the Borrower or any Loan Guarantor or the unenforceability of all or any part of the Guaranteed Obligations from any cause, or the cessation from any cause of the liability of the Borrower, any Loan Guarantor or any other Obligated Party, other than the Payment in Full of the Guaranteed Obligations. Without limiting the generality of the foregoing, each Loan Guarantor irrevocably waives acceptance hereof, presentment, demand, protest and, to the fullest extent permitted by law, any notice not provided for herein, as well as any requirement that at any time any action be taken by any Person against any Obligated Party, or any other Person. Each Loan Guarantor confirms that it is not a surety under any state law and shall not raise any such law as a defense to its obligations hereunder. The Lender may, at its election, foreclose on any Collateral held by it by one or more judicial or nonjudicial sales, accept an assignment of any such Collateral in lieu of foreclosure or otherwise act or fail to act with respect to any collateral securing all or a part of the Guaranteed Obligations, compromise or adjust any part of the Guaranteed Obligations, make any other accommodation with any Obligated Party or exercise any other right or remedy available to it against any Obligated Party, without affecting or impairing in any way the liability of such Loan Guarantor under this Loan Guaranty, except to the extent the Guaranteed Obligations have been Paid in Full. To the fullest extent permitted by applicable law, each Loan Guarantor waives any defense arising out of any such election even though that election may operate, pursuant to applicable law, to impair or extinguish any right of reimbursement or subrogation or other right or remedy of any Loan Guarantor against any Obligated Party or any security.

**SECTION 9.05**      Rights of Subrogation. No Loan Guarantor will assert any right, claim or cause of action, including, without limitation, a claim of subrogation, contribution or indemnification that it has against any Obligated Party, or any collateral, until the Loan Parties and the Loan Guarantors have fully performed all their obligations to the Lender.



SECTION 9.06 Reinstatement; Stay of Acceleration. If at any time any payment of any portion of the Guaranteed Obligations (including a payment effected through exercise of a right of setoff) is rescinded or must otherwise be restored or returned upon the insolvency, bankruptcy, or reorganization of the Borrower or otherwise (including pursuant to any settlement entered into by a Secured Party in its discretion), each Loan Guarantor's obligations under this Loan Guaranty with respect to that payment shall be reinstated at such time as though the payment had not been made and whether or not the Lender is in possession of this Loan Guaranty. If acceleration of the time for payment of any of the Guaranteed Obligations is stayed upon the insolvency, bankruptcy or reorganization of the Borrower, all such amounts otherwise subject to acceleration under the terms of any agreement relating to the Guaranteed Obligations shall nonetheless be payable by the Loan Guarantors forthwith on demand by the Lender.

SECTION 9.07 Information. Each Loan Guarantor assumes all responsibility for being and keeping itself informed of the Borrower's financial condition and assets, and of all other circumstances bearing upon the risk of nonpayment of the Guaranteed Obligations and the nature, scope and extent of the risks that each Loan Guarantor assumes and incurs under this Loan Guaranty, and agrees that the Lender shall not have any duty to advise any Loan Guarantor of information known to it regarding those circumstances or risks.

SECTION 9.08 Termination. The Lender may continue to make loans or extend credit to the Borrower based on this Loan Guaranty until five (5) days after it receives written notice of termination from any Loan Guarantor. Notwithstanding receipt of any such notice, each Loan Guarantor will continue to be liable to the Lender for any Guaranteed Obligations created, assumed or committed to prior to the fifth day after receipt of the notice, and all subsequent renewals, extensions, modifications and amendments with respect to, or substitutions for, all or any part of such Guaranteed Obligations. Nothing in this Section 9.08 shall be deemed to constitute a waiver of, or eliminate, limit, reduce or otherwise impair any rights or remedies the Lender may have in respect of, any Default or Event of Default that shall exist under Article VII hereof as a result of any such notice of termination.

SECTION 9.09 Taxes. Each payment of the Guaranteed Obligations will be made by each Loan Guarantor without withholding for any Taxes, unless such withholding is required by law. If any Loan Guarantor determines, in its sole discretion exercised in good faith, that it is so required to withhold Taxes, then such Loan Guarantor may so withhold and shall timely pay the full amount of withheld Taxes to the relevant Governmental Authority in accordance with applicable law. If a Loan Guarantor is required to withhold or deduct Taxes, including backup withholding taxes, from any payment, then (i) such Loan Guarantor shall pay the full amount that it determines is to be withheld or deducted to the relevant Governmental Authority in accordance with applicable law, and (ii) the sum payable by such Loan Guarantor shall be increased as necessary so that the recipient receives an amount equal to the sum it would have received had no such withholding or deduction been made.

SECTION 9.10 Maximum Liability. Notwithstanding any other provision of this Loan Guaranty, the amount guaranteed by each Loan Guarantor hereunder shall be limited to the extent, if any, required so that its obligations hereunder shall not be subject to avoidance under Section 548 of the Bankruptcy Code or under any applicable state Uniform Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act, Uniform Voidable Transactions Act or similar statute

or common law. In determining the limitations, if any, on the amount of any Loan Guarantor's obligations hereunder pursuant to the preceding sentence, it is the intention of the parties hereto that any rights of subrogation, indemnification or contribution which such Loan Guarantor may have under this Loan Guaranty, any other agreement or applicable law shall be taken into account.

SECTION 9.11      Contribution.

(a) To the extent that any Loan Guarantor shall make a payment under this Loan Guaranty (a "Guarantor Payment") which, taking into account all other Guarantor Payments then previously or concurrently made by any other Loan Guarantor, exceeds the amount which otherwise would have been paid by or attributable to such Loan Guarantor if each Loan Guarantor had paid the aggregate Guaranteed Obligations satisfied by such Guarantor Payment in the same proportion as such Loan Guarantor's "Allocable Amount" (as defined below) (as determined immediately prior to such Guarantor Payment) bore to the aggregate Allocable Amounts of each of the Loan Guarantors as determined immediately prior to the making of such Guarantor Payment, then, following indefeasible payment in full in cash of the Guarantor Payment, the Payment in Full of the Guaranteed Obligations and the termination of this Agreement, such Loan Guarantor shall be entitled to receive contribution and indemnification payments from, and be reimbursed by, each other Loan Guarantor for the amount of such excess, pro rata based upon their respective Allocable Amounts in effect immediately prior to such Guarantor Payment.

(b) As of any date of determination, the "Allocable Amount" of any Loan Guarantor shall be equal to the excess of the fair saleable value of the property of such Loan Guarantor over the total liabilities of such Loan Guarantor (including the maximum amount reasonably expected to become due in respect of contingent liabilities, calculated, without duplication, assuming each other Loan Guarantor that is also liable for such contingent liability pays its ratable share thereof), giving effect to all payments made by other Loan Guarantors as of such date in a manner to maximize the amount of such contributions.

(c) This Section 9.11 is intended only to define the relative rights of the Loan Guarantors, and nothing set forth in this Section 9.11 is intended to or shall impair the obligations of the Loan Guarantors, jointly and severally, to pay any amounts as and when the same shall become due and payable in accordance with the terms of this Loan Guaranty.

(d) The parties hereto acknowledge that the rights of contribution and indemnification hereunder shall constitute assets of the Loan Guarantor or Loan Guarantors to which such contribution and indemnification is owing.

(e) The rights of the indemnifying Loan Guarantors against other Loan Guarantors under this Section 9.11 shall be exercisable upon the Payment in Full of the Guaranteed Obligations and the termination of this Agreement.

SECTION 9.12      Liability Cumulative. The liability of each Loan Party as a Loan Guarantor under this Article IX is in addition to and shall be cumulative with all liabilities of each Loan Party to the Lender under this Agreement and the other Loan Documents to which such Loan



Party is a party or in respect of any obligations or liabilities of the other Loan Parties, without any limitation as to amount, unless the instrument or agreement evidencing or creating such other liability specifically provides to the contrary.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their respective authorized officers as of the day and year first above written.

IEH AUTO PARTS HOLDING LLC, as a Borrower and a  
Guarantor

By: \_\_\_\_\_  
Name: Michael Nevin  
Title: Executive Vice President, Finance and Administration

**GUARANTORS:**

IEH AUTO PARTS LLC  
AP ACQUISITION COMPANY CLARK LLC  
AP ACQUISITION COMPANY NEW YORK LLC  
AP ACQUISITION COMPANY MASSACHUSETTS LLC  
AP ACQUISITION COMPANY WASHINGTON LLC  
AP ACQUISITION COMPANY MISSOURI LLC  
AP ACQUISITION COMPANY GORDON LLC  
AP ACQUISITION COMPANY NORTH CAROLINA LLC  
AUTO PLUS AUTO SALES LLC  
IEH AUTO PARTS PUERTO RICO, INC.  
IEH BA LLC  
IEH AIM LLC

By: \_\_\_\_\_  
Name: Michael Neyrey  
Title: Executive Vice President of Finance and Administration

AMERICAN ENTERTAINMENT PROPERTIES CORP., as  
Lender

By: \_\_\_\_\_  
Name:  
Title:

**SCHEDULE 1.01****Prepetition Letters of Credit**

<b>Standby LCs</b>	<b>Company (Owner)</b>	<b>Issuing Bank</b>	<b>Beneficiary</b>	<b>Purpose</b>	<b>Allocated Amount</b>	<b>Current Balance</b>	<b>Opening Date</b>	<b>Expiry Date</b>	<b>Notes</b>
69623236	American Entertainment Properties Corp on behalf Icahn Automotive Group and its subsidiaries, including but not limited to The Pep Boys Manny, Moe & Jack, LLC and IEH Auto Parts LLC (an affiliates of American Entertainment Properties Corp.)	Citibank, N.A.	Citizens Bank N.A.	Collateral for Commercial Card Program	\$2,055,000	\$5,000,000	8/13/2021	8/13/2022	Auto 1yr Renew (30day)
69623117	American Entertainment Properties Corp on behalf of IEH Auto Parts LLC	Citibank, N.A.	Safety National Casualty Corporation	Worker's Compensation	\$3,700,000	\$3,700,000	7/30/2021	7/23/2022	Auto 1yr Renew (60day)
69623041	American Entertainment Properties Corp (PBY)	Citibank, N.A.	ACE American Insurance Company Fidelity and Deposit Company of Maryland	Worker's Compensation	\$15,559,563	\$35,007,152	7/27/2021	7/23/2022	Auto 1yr Renew (60day)
69622996	American Entertainment Properties Corp (PBY)	Citibank, N.A.	C/O Zurich American Insurance Company	Collateral for Cost of Risk Policy	\$896,389	\$2,636,440	7/23/2021	7/23/2022	Auto 1yr Renew (30day)
69623016	American Entertainment Properties Corp (PBY)	Citibank, N.A.	Liberty Mutual Insurance Company	Secure Entire Surety Program	\$1,301,030	\$16,500,000	7/23/2021	7/23/2022	Auto 1yr Renew (30day)
69623116	American Entertainment Properties Corp on behalf of The Pep Boys Manny, Moe & Jack	Citibank, N.A.	H.O. Financial - Credit						
			Penske Truck Leasing Co., L.P.	Vehicle Purchase	\$205,000	\$205,000	7/30/2021	7/22/2022	Auto 1yr Renew (30day)

**Schedule 2.02****Roll-Up Loan Amount**

Outstanding Principal, inclusive of PIK Interest added to Principal (as of Petition Date)	\$187,411,744.29
Accrued Interest (as of Petition Date)	\$583,058.77
Outstanding Principal, inclusive of PIK Interest added to Principal (as of March 31, 2023)	\$189,069,817.66
Accrued Interest (as of Effective Date)	\$606,599.00
Accrued LC Fees (as of Effective Date)	\$39,885.81
<b><u>Total Roll-Up Loan Amount</u></b>	<b><u>\$189,716,302.47</u></b>

**Schedule 5.13**

**Post-Closing Obligations**

None.

**Exhibit 2**

**Approved Budget**



## Third Approved Budget | March 23, 2023

## Cash Flow Forecast | February 1, 2023 – May 7, 2023

Week Ending <sup>1</sup>	Actuals Post-Petition 2/5/2023	Actuals Post-Petition 2/12/2023	Actuals Post-Petition 2/19/2023	Actuals Post-Petition 2/26/2023	Actuals Post-Petition 3/5/2023	Actuals Post-Petition 3/12/2023	Actuals Post-Petition 3/19/2023	Forecast Post-Petition 3/26/2023	Forecast Post-Petition 4/2/2023	Forecast Post-Petition 4/9/2023	Forecast Post-Petition 4/16/2023	Forecast Post-Petition 4/23/2023	Forecast Post-Petition 4/30/2023	Forecast Post-Petition 5/7/2023
<b>Total Revenue</b>	\$ 7,081,923	\$ 11,780,407	\$ 10,398,366	\$ 10,972,625	\$ 11,329,142	\$ 11,189,951	\$ 9,910,527	\$ 9,141,274	\$ 5,721,689	\$ 9,210,963	\$ 11,723,043	\$ 12,560,404	\$ 8,373,602	\$ 9,531,511
<b>Net Cash Receipts</b>	\$ 6,124,240	\$ 10,393,973	\$ 17,425,076	\$ 12,546,170	\$ 9,714,097	\$ 10,251,326	\$ 14,473,839	\$ 9,580,369	\$ 8,287,396	\$ 9,062,327	\$ 11,312,327	\$ 9,049,862	\$ 6,787,396	\$ 9,118,853
<b>Methodology Disbursements</b>														
Employee Wages & Benefits	\$ 20,502	\$ 6,095,310	\$ 406,274	\$ 5,561,986	\$ 582,112	\$ 5,607,810	\$ 583,390	\$ 5,500,589	\$ 588,004	\$ 6,292,855	\$ 618,311	\$ 4,317,081	\$ 495,973	\$ 4,409,112
Employee Bonus	-	-	-	103,804	-	141,084	-	-	-	172,544	-	-	-	172,544
Rent & Utilities	-	-	-	254,002	-	1,462,282	231,053	2,677,062	1,492,448	143,696	116,735	118,174	141,224	3,908,620
Insurance	-	-	-	1,805,123	-	88,380	-	328,764	88,910	-	-	-	-	328,764
IT & Communications	-	-	-	61,369	-	293,117	728,977	1,181,092	243,763	146,791	265,848	531,737	54,691	206,898
Taxes	-	278,003	-	31,790	-	95,555	198,993	53,824	5,000	-	1,819,810	236,000	36,727	5,000
<b>Total Methodology Disbursements</b>	\$ 20,502	\$ 6,373,314	\$ 2,526,767	\$ 5,871,207	\$ 2,957,718	\$ 8,176,127	\$ 1,758,801	\$ 9,741,330	\$ 2,408,126	\$ 6,755,885	\$ 2,820,704	\$ 5,202,992	\$ 728,615	\$ 9,030,938
<b>Non-Methodology Disbursements</b>														
Merchandise (CIA)	\$ -	\$ 1,905	\$ 3,548	\$ 100,000	\$ 284,049	\$ 99,616	\$ 2,090,225	\$ 5,704,814	\$ 7,324,718	\$ 7,350,215	\$ 7,001,602	\$ 6,429,771	\$ 6,423,148	\$ 6,950,549
Merchandise (Terms)	-	-	-	-	-	-	-	-	-	276,805	281,539	537,913	388,657	463,250
Transportation	-	84,950	309,085	258,382	702,608	535,012	1,696,102	1,028,606	1,228,763	709,024	671,297	630,284	671,219	831,514
Purchasing Cards	-	496,477	592,321	731,689	874,956	843,085	949,075	1,160,515	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000
Ocean Freight	-	-	-	-	-	872,474	24,846	38,462	585,913	38,462	38,462	38,462	38,462	431,672
Contractors	-	429,723	29,056	106,175	130,368	29,284	213,292	119,597	88,027	219,985	143,549	119,597	88,027	88,027
Ordinary Course Professionals	-	-	63,023	38,551	26,219	44,006	1,973	23,551	124,983	49,795	73,116	23,551	18,976	124,983
Other G&A	15,166	3,227	164,974	234,779	245,128	118,470	512,091	574,054	455,606	564,064	3,372,447	494,268	330,341	451,733
<b>Total Non-Methodology Disbursements</b>	\$ 15,166	\$ 1,016,282	\$ 1,162,008	\$ 1,469,577	\$ 2,263,328	\$ 2,541,947	\$ 5,487,604	\$ 8,649,598	\$ 10,808,009	\$ 10,208,349	\$ 12,582,012	\$ 9,273,845	\$ 8,958,829	\$ 10,341,729
<b>Operating Cash Flow</b>	\$ 6,088,573	\$ 3,004,377	\$ 13,736,301	\$ 5,205,386	\$ 4,493,052	\$ (466,748)	\$ 7,227,435	\$ (8,810,560)	\$ (4,928,739)	\$ (7,901,908)	\$ (4,090,389)	\$ (5,426,975)	\$ (2,900,047)	\$ (10,253,813)
<b>Cumulative Operating Cash Flow</b>	6,088,573	9,092,950	22,829,251	28,034,637	32,527,689	32,060,941	39,288,376	30,477,816	25,549,077	17,647,170	13,556,781	8,129,806	5,229,759	(5,024,054)
<b>Non-Operating Disbursements</b>														
D&O	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Store-Specific CapEx	-	-	-	-	109,213	-	-	226,218	226,218	226,218	226,218	226,218	226,218	226,218
Inventory Disposition	-	-	-	-	-	-	-	-	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000
TSA Reimbursement	-	-	-	-	-	-	-	-	70,000	-	-	-	-	70,000
Purchase Card Collateral	-	-	-	-	-	-	-	-	1,200,000	-	-	-	-	-
Customs Bond	-	-	-	-	-	-	-	-	900,000	-	-	-	-	-
<b>Total Non-Operating Disbursements</b>	\$ -	\$ -	\$ -	\$ -	\$ 109,213	\$ -	\$ -	\$ 226,218	\$ 3,396,218	\$ 1,226,218	\$ 1,226,218	\$ 1,226,218	\$ 1,226,218	\$ 1,296,218
<b>Restructuring Costs</b>														
<b>Total Professional Fees</b>	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 789,161	\$ 489,339	\$ 300,000	\$ 1,855,000	\$ -	\$ -	\$ 1,621,333	\$ 225,000
<b>Other Restructuring Costs</b>														
U.S. Trustee Fees	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 250,000	\$ -
Utilities Deposit	-	-	-	-	-	-	249,820	-	-	-	-	-	-	-
Critical Vendor	-	-	18,565	1,508,928	-	-	-	-	-	-	-	-	-	-
Foreign Vendor	-	2,548,046	-	-	2,014,611	2,014,611	1,096,097	57,663	66,614	-	-	-	-	-
Shippeman's	-	-	2,011,387	258,469	1,847,298	69,299	521,673	1,200,000	619,970	-	-	-	-	-
503(b)(9)	-	550,955	7,619	804,892	1,385,389	-	-	-	-	-	-	-	-	-
DIP Financing Fee	-	-	-	-	-	-	-	250,000	-	-	-	-	-	-
Independent Director	-	-	-	-	-	-	-	-	-	-	-	-	-	50,000
Other Restructuring Costs	\$ -	\$ 3,099,001	\$ 2,037,571	\$ 2,572,289	\$ 5,247,298	\$ 69,299	\$ 1,867,590	\$ 1,507,663	\$ 686,584	\$ -	\$ -	\$ -	\$ 250,000	\$ 50,000
<b>Total Restructuring Costs</b>	\$ -	\$ 3,099,001	\$ 2,037,571	\$ 2,572,289	\$ 5,247,298	\$ 69,299	\$ 2,656,751	\$ 1,997,002	\$ 986,584	\$ 1,855,000	\$ -	\$ -	\$ 1,871,333	\$ 275,000
<b>Total Disbursements</b>	\$ 35,667	\$ 10,488,597	\$ 5,726,346	\$ 9,913,073	\$ 10,577,556	\$ 10,787,373	\$ 9,903,155	\$ 20,614,148	\$ 17,598,937	\$ 20,045,453	\$ 16,628,934	\$ 15,703,054	\$ 12,784,994	\$ 20,943,884
<b>Beginning Cash (Book)</b>	\$ 3,756,022	\$ 9,844,595	\$ 27,249,971	\$ 38,948,701	\$ 41,581,798	\$ 40,718,339	\$ 40,182,292	\$ 44,752,976	\$ 33,719,197	\$ 24,407,656	\$ 13,424,531	\$ 8,107,925	\$ 18,954,732	\$ 12,957,134
<b>Net Cash Flow</b>	6,088,573	(94,624)	11,698,730	2,633,097	(863,459)	(536,047)	4,570,684	(11,033,779)	(9,311,541)	(10,983,125)	(5,316,606)	(6,653,193)	(5,997,598)	(11,825,031)
<b>DIP Draw (Repayment)</b>	-	17,500,000	-	-	-	-	-	-	-	-	-	17,500,000	-	5,000,000
<b>Ending Cash (Book)</b>	\$ 9,844,595	\$ 27,249,971	\$ 38,948,701	\$ 41,581,798	\$ 40,718,339	\$ 40,182,292	\$ 44,752,976	\$ 33,719,197	\$ 24,407,656	\$ 13,424,531	\$ 8,107,925	\$ 18,954,732	\$ 12,957,134	\$ 6,132,103
<b>Debt Rollforward</b>														
<b>Beginning DIP Balance</b>	\$ -	\$ -	\$ 17,500,000	\$ 17,500,000	\$ 17,500,000	\$ 17,616,667	\$ 17,616,667	\$ 17,616,667	\$ 17,616,667	\$ 17,734,111	\$ 17,734,111	\$ 17,734,111	\$ 35,234,111	\$ 35,234,111
Draw (Repayment)	-	17,500,000	-	-	-	-	-	-	-	-	-	-	17,500,000	5,000,000
Exit Fee	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Interest	-	-	-	-	116,667	-	-	-	117,444	-	-	-	-	234,894
<b>Ending DIP Balance</b>	\$ -	\$ 17,500,000	\$ 17,500,000	\$ 17,500,000	\$ 17,616,667	\$ 17,616,667	\$ 17,616,667	\$ 17,616,667	\$ 17,734,111	\$ 17,734,111	\$ 17,734,111	\$ 35,234,111	\$ 35,234,111	\$ 40,469,005
<b>DIP Availability</b>	75,000,000	57,500,000	57,500,000	57,500,000	57,500,000	57,500,000	57,500,000	57,500,000	57,500,000	57,500,000	57,500,000	40,000,000	40,000,000	35,000,000
<b>DIP Commitment</b>	\$ 75,000,000	\$ 75,000,000	\$ 75,000,000	\$ 75,000,000	\$ 75,000,000	\$ 75,000,000	\$ 75,000,000	\$ 75,000,000	\$ 75,000,000	\$ 75,000,000	\$ 75,000,000	\$ 75,000,000	\$ 75,000,000	\$ 75,000,000
<b>Pre-Petition Loan</b>	\$ 187,994,803	\$ 187,994,803	\$ 187,994,803	\$ 187,994,803	\$ 187,994,803	\$ 188,543,121	\$ 188,543,121	\$ 188,543,121	\$ 188,543,121	\$ 189,093,039	\$ 189,093,039	\$ 189,093,039	\$ 189,093,039	\$ 189,093,039
Interest	-	-	-	-	548,318	-	-	-	549,917	-	-	-	-	551,521
Repayment	-	-	-	-	-	-	-	-	-	-	-	-	-	-
<b>Ending Pre-Petition Loan Balance</b>	\$ 187,994,803	\$ 187,994,803	\$ 187,994,803	\$ 187,994,803	\$ 188,543,121	\$ 188,543,121	\$ 188,543,121	\$ 188,543,121	\$ 189,093,039	\$ 189,093,039	\$ 189,093,039	\$ 189,093,039	\$ 189,093,039	\$ 189,644,560

1. The week ended February 5, 2023 represents the period of February 1, 2023 through February 5, 2023



## Third Approved Budget | March 23, 2023 (continued)

## Cash Flow Forecast | May 8, 2023 – July 16, 2023

	Forecast Post-Petition 5/14/2023	Forecast Post-Petition 5/21/2023	Forecast Post-Petition 5/28/2023	Forecast Post-Petition 6/4/2023	Forecast Post-Sale 6/11/2023	Forecast Post-Sale 6/18/2023	Forecast Post-Sale 6/25/2023	Forecast Post-Sale 7/2/2023	Forecast Post-Sale 7/9/2023	Forecast Post-Sale 7/16/2023	24-week Total	Forecast Post-Sale Administrative Claims	Forecast Post-Sale Plan of Liquidation
<b>Total Revenue</b>	\$ 14,297,267	\$ 14,297,267	\$ 9,531,511	\$ 10,983,203	\$ 16,474,804	\$ 16,474,804	\$ 10,983,203	\$ 8,820,401	\$ 14,700,669	\$ 14,700,669	\$ 270,189,227	\$ -	\$ -
<b>Net Cash Receipts</b>	\$ 11,605,813	\$ 12,434,800	\$ 10,789,866	\$ 11,936,196	\$ 11,654,294	\$ 11,654,294	\$ 9,436,196	\$ 10,873,371	\$ 16,310,056	\$ 16,310,056	\$ 267,132,195	\$ -	\$ -
<b>Methodology Disbursements</b>													
Employee Wages & Benefits	\$ 567,755	\$ 4,439,419	\$ 495,973	\$ 4,409,112	\$ 567,755	\$ 4,439,419	\$ 495,973	\$ 4,409,112	\$ 567,755	\$ 4,439,419	\$ 65,910,999	\$ -	\$ -
Employee Bonus	-	-	-	172,544	-	188,400	-	-	-	172,544	1,123,472	-	-
Rent & Utilities	135,028	126,791	97,136	4,759,637	78,337	104,265	71,395	4,743,381	60,332	73,174	23,050,996	-	-
Insurance	-	-	-	328,764	-	328,764	-	328,764	-	-	3,770,301	-	-
IT & Communications	146,791	263,712	518,392	243,763	167,935	503,965	543,550	380,615	141,791	263,712	6,987,580	-	-
Taxes	125,369	1,151,114	-	258,980	-	-	950,000	-	-	-	5,461,547	-	-
<b>Total Methodology Disbursements</b>	\$ 974,943	\$ 5,981,036	\$ 1,111,501	\$ 10,172,799	\$ 814,026	\$ 5,236,048	\$ 2,060,917	\$ 9,861,872	\$ 769,877	\$ 4,948,848	\$ 106,304,894	\$ -	\$ -
<b>Non-Methodology Disbursements</b>													
Merchandise (CIA)	\$ 5,309,026	\$ 5,193,574	\$ 3,871,964	\$ 4,071,527	\$ 9,395,069	\$ 10,239,339	\$ 6,933,752	\$ 7,149,582	\$ 7,542,909	\$ 6,792,834	\$ 116,263,736	\$ -	\$ -
Merchandise (Terms)	682,962	482,735	522,610	841,678	599,936	653,798	705,255	794,955	1,011,110	9,236,381	9,236,381	-	-
Transportation	885,030	844,877	685,866	528,758	562,437	521,044	658,616	520,115	561,055	520,115	15,644,759	-	-
Purchasing Cards	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	21,648,118	-	-
Ocean Freight	38,462	38,462	38,462	169,791	38,462	38,462	38,462	218,918	38,462	38,462	2,803,614	-	-
Contractors	219,985	143,549	119,597	88,027	219,985	143,549	119,597	219,985	143,549	143,549	3,310,558	-	-
Ordinary Course Professionals	197,790	73,116	38,640	124,983	49,795	73,116	38,222	124,983	49,795	73,116	1,457,284	-	-
Other G&A	584,142	546,318	524,279	446,827	767,471	354,553	344,247	297,799	578,788	236,183	12,216,953	-	-
<b>Total Non-Methodology Disbursements</b>	\$ 8,917,397	\$ 8,322,630	\$ 6,801,416	\$ 7,271,592	\$ 12,633,155	\$ 13,023,861	\$ 10,127,073	\$ 10,104,680	\$ 10,785,948	\$ 9,815,370	\$ 182,581,403	\$ -	\$ -
<b>Operating Cash Flow</b>	\$ 1,713,474	\$ (1,868,867)	\$ 2,876,949	\$ (5,508,195)	\$ (1,792,887)	\$ (6,605,615)	\$ (2,751,794)	\$ (9,093,181)	\$ 4,754,230	\$ 1,545,838	\$ (21,754,103)	\$ -	\$ -
<b>Cumulative Operating Cash Flow</b>	(3,310,581)	(5,179,447)	(2,302,498)	(7,810,693)	(9,603,580)	(16,209,195)	(18,960,989)	(28,054,171)	(23,299,940)	(21,754,103)	(21,754,103)	\$ -	\$ -
<b>Non-Operating Disbursements</b>													
D&O	\$ -	\$ -	\$ -	\$ 112,415	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 112,415	\$ -	\$ -
CapEx	226,218	226,218	226,218	226,218	-	-	-	-	-	-	2,597,609	-	-
Relocation	1,000,000	1,000,000	1,000,000	1,000,000	-	-	-	-	-	-	10,000,000	-	-
Collateral	-	-	-	70,000	-	-	-	-	-	-	210,000	-	-
Customs Bond	-	-	-	-	-	-	-	-	-	-	1,200,000	-	-
	-	-	-	-	-	-	-	-	-	-	900,000	-	-
<b>Total Non-Operating Disbursements</b>	\$ 1,226,218	\$ 1,226,218	\$ 1,226,218	\$ 1,408,633	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 15,020,024	\$ -	\$ -
<b>Restructuring Costs</b>													
<b>Total Professional Fees</b>	\$ 975,000	\$ -	\$ 768,000	\$ 600,000	\$ -	\$ 1,110,000	\$ 1,154,667	\$ -	\$ -	\$ (469,000)	\$ 9,418,499	\$ -	\$ 1,000,000
<b>Other Restructuring Costs</b>													
U.S. Trustee Fees	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 250,000	\$ 250,000	\$ 100,000
Utilities Deposit	-	-	-	-	-	-	-	-	-	-	249,820	-	(634,000)
Critical Vendor	-	-	-	-	-	-	-	-	-	-	1,527,493	-	-
Foreign Vendor	-	-	-	-	-	-	-	-	-	-	5,783,031	-	-
Shipperman's	-	-	-	-	-	-	-	-	-	-	6,528,096	-	-
503(b)(9)	-	-	-	-	-	-	-	-	-	-	2,748,855	14,251,145	-
DIP Financing Fee	-	-	-	-	-	-	-	-	-	-	250,000	-	-
Independent Director	-	-	-	50,000	-	-	-	-	-	-	100,000	-	150,000
Other Restructuring Costs	\$ -	\$ -	\$ -	\$ 50,000	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 17,437,295	\$ 14,501,145	\$ (384,000)
<b>Total Restructuring Costs</b>	\$ 975,000	\$ -	\$ 768,000	\$ 650,000	\$ -	\$ 1,110,000	\$ 1,154,667	\$ -	\$ -	\$ (469,000)	\$ 26,855,794	\$ 14,501,145	\$ 616,000
<b>Total Disbursements</b>	\$ 12,093,557	\$ 15,529,884	\$ 9,907,135	\$ 19,503,024	\$ 13,447,182	\$ 19,369,909	\$ 13,342,658	\$ 19,966,552	\$ 11,555,826	\$ 14,295,218	\$ 330,762,116	\$ 14,501,145	\$ 616,000
Beginning Cash (Book)	\$ 6,132,103	\$ 5,644,358	\$ 2,549,274	\$ 3,432,005	\$ 30,865,177	\$ 29,072,290	\$ 21,356,675	\$ 17,450,214	\$ 8,357,033	\$ 13,111,263	\$ 3,756,022	\$ 15,126,101	\$ 624,956
Net Cash Flow	(487,744)	(3,095,084)	882,731	(7,566,828)	(1,792,887)	(7,715,615)	(3,906,461)	(9,093,181)	4,754,230	2,014,838	(63,629,921)	(14,501,145)	(616,000)
DIP Draw (Repayment)	-	-	-	35,000,000	-	-	-	-	-	-	75,000,000	-	-
<b>Ending Cash (Book)</b>	\$ 5,644,358	\$ 2,549,274	\$ 3,432,005	\$ 30,865,177	\$ 29,072,290	\$ 21,356,675	\$ 17,450,214	\$ 8,357,033	\$ 13,111,263	\$ 15,126,101	\$ 15,126,101	\$ 624,956	\$ 8,956
<b>Debt Rollforward</b>													
Beginning DIP Balance	\$ 40,469,005	\$ 40,469,005	\$ 40,469,005	\$ 40,469,005	\$ 76,863,799	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Draw (Repayment)	-	-	-	35,000,000	(76,863,799)	-	-	-	-	-	(1,863,799)	-	-
Exit Fee	-	-	-	1,125,000	-	-	-	-	-	-	1,125,000	-	-
Interest	-	-	-	269,793	-	-	-	-	-	-	738,799	-	-
<b>Ending DIP Balance</b>	\$ 40,469,005	\$ 40,469,005	\$ 40,469,005	\$ 76,863,799	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
DIP Availability	35,000,000	35,000,000	35,000,000	35,000,000	-	-	-	-	-	-	75,000,000	-	-
DIP Commitment	\$ 75,000,000	\$ 75,000,000	\$ 75,000,000	\$ 75,000,000	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 75,000,000	-	-
<b>Pre-Petition Loan</b>	\$ 189,644,560	\$ 189,644,560	\$ 189,644,560	\$ 189,644,560	\$ 190,197,690	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 187,994,803	-	-
Interest	-	-	-	553,130	-	-	-	-	-	-	2,202,887	-	-
Repayment	-	-	-	-	(190,197,690)	-	-	-	-	-	(190,197,690)	-	-
<b>Ending Pre-Petition Loan Balance</b>	\$ 189,644,560	\$ 189,644,560	\$ 189,644,560	\$ 190,197,690	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	-	-

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

In re:	)	Chapter 11
	)	
IEH AUTO PARTS HOLDING LLC, <i>et al.</i> , <sup>1</sup>	)	Case No. 23-90054 (CML)
	)	
Debtors.	)	(Jointly Administered)
	)	
	)	<b>Re: Docket Nos. 16, 40, 90</b>

---

**FINAL ORDER (I) AUTHORIZING POST-PETITION  
FINANCING SECURED BY SENIOR LIENS, (II) AUTHORIZING  
THE DEBTORS TO USE CASH COLLATERAL; (III) GRANTING  
ADEQUATE PROTECTION, AND (IV) GRANTING RELATED RELIEF**

---

The above-captioned debtors and debtors in possession (collectively, the “Debtors”) moved this Court on an emergency basis for entry of an interim order (Dkt. No. 90, the “Interim Order”) and a final order (this “Final Order” and, together with the Interim Order, the “Financing Orders”), (a) authorizing the Debtors to incur priming senior secured post-petition financing on a superpriority basis; (b) authorizing the Debtors to use cash collateral; (c) granting adequate protection, and (d) scheduling a final hearing to consider approval of the motion on a final basis (the “Motion”). The Court conducted an interim hearing on the Motion for February 1, 2023, at 4:00 p.m. and a final hearing on the Motion on May 2, 2023, ~~at 10:00 a.m.~~, at which counsel for the parties appeared and presented evidence and oral argument. The Motion was presented to the Court as a “first day” motion and complies with the requirements of Bankruptcy Rule

<sup>1</sup> The Debtor entities in these chapter 11 cases, along with the last four digits of each Debtor entity’s federal tax identification number, are: IEH Auto Parts Holding LLC (6529); AP Acquisition Company Clark LLC (4531); AP Acquisition Company Gordon LLC (5666); AP Acquisition Company Massachusetts LLC (7581); AP Acquisition Company Missouri LLC (7840); AP Acquisition Company New York LLC (7361); AP Acquisition Company North Carolina LLC (N/A); AP Acquisition Company Washington LLC (2773); Auto Plus Auto Sales LLC (6921); IEH AIM LLC (2233); IEH Auto Parts LLC (2066); IEH Auto Parts Puerto Rico, Inc. (4539); and IEH BA LLC (1428). The Debtors’ service address is: 112 Townpark Drive NW, Suite 300, Kennesaw, GA 30144.

senior to any liens and/or security interests granted pursuant to this Final Order; (ii) this Final Order does not grant the Debtors any right to use any property (or the proceeds thereof) held by Chubb as collateral to secure obligations under any insurance policies and related agreements; and (iii) nothing, including the DIP Loan Documents and/or this Final Order, alters or modifies the terms and conditions of any insurance policies issued by Chubb and/or any agreements related thereto.

19. **Element Fleet.** Notwithstanding anything to the contrary in the Financing Motion, any interim order entered with respect to the Financing Motion, or this Final Order, the liens granted to the DIP Lender shall be applicable to, and the collateral securing the Debtors' obligations to the DIP Lender shall only include, the Debtors' interest (including any reversionary interest), and shall not include Element's interest, in: (i) the Letter of Intent for Lease dated July 16, 2015 and the attached Motor Vehicle Fleet Open-End Lease Agreement Lease No(s). 3585, a true copy of which is attached as Exhibit 1 to the Element Objection at Docket No. 146 (the "Vehicle Lease"), (ii) the Master Services Agreement dated as of October 28, 2020, a true copy of which is attached as Exhibit 2 to the Element Objection at Docket No. 146 (together with related documents and amendments, the "MSA"), (iii) any vehicles leased by IEH under the Vehicle Lease (the "Leased Vehicles"), and (iv) any proceeds of or from any or all of the Vehicle Lease, the MSA, the Leased Vehicles or the disposition of the Leased Vehicles.

20. **Milestones.** It is a condition to the DIP Facility that the Debtors comply with the following deadlines (each of which may be extended or waived with the prior written consent of the DIP Lender, which may be by e-mail, without further order of the Bankruptcy Court, and which consent shall be at the DIP Lender's sole discretion) (collectively, the "Milestones"). The failure to satisfy the following Milestones shall constitute an Event of Default in accordance with

**Exhibit 1**

**DIP Credit Agreement**

|

[Forthcoming]