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PROPOSED ATTORNEYS FOR DEBTORS

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

In re:	§	Chapter 11
	§	
Vista Proppants and Logistics, LLC, et al., ¹	§	Case No. 20-42002-elm11
	§	
Debtors.	§	Joint Administration Requested

**DEBTORS' EMERGENCY MOTION FOR ENTRY OF INTERIM AND
FINAL ORDERS (I) AUTHORIZING THE DEBTORS TO (A) OBTAIN
POSTPETITION FINANCING PURSUANT TO 11 U.S.C. §§ 105, 361, 362,
363(c), 363(e), 364(c), 364(d)(1) AND 364(e) AND (B) UTILIZE CASH
COLLATERAL OF PREPETITION SECURED ENTITIES, (II)
GRANTING ADEQUATE PROTECTION TO PREPETITION SECURED
ENTITIES, (III) SCHEDULING A FINAL HEARING PURSUANT TO
BANKRUPTCY RULES 4001(b) AND 4001(c), AND (IV) GRANTING
RELATED RELIEF**

Vista Proppants and Logistics, LLC and its debtor affiliates, as debtors and debtors-in-possession in the above-referenced chapter 11 cases (collectively, the "Debtors") hereby file this *Debtors' Emergency Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to*

¹ The Debtors in these Chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, include: Vista Proppants and Logistics, LLC (7817) ("Vista OpCo"); VPROP Operating, LLC (0269) ("VPROP"); Lonestar Prospects Management, L.L.C. (8451) ("Lonestar Management"); MAALT Specialized Bulk, LLC (2001) ("Bulk"); Denetz Logistics, LLC (8177) ("Denetz"); Lonestar Prospects, Ltd. (4483) ("Lonestar Ltd."); and MAALT, LP (5198) ("MAALT"). The location of the Debtors' service address is 4413 Carey Street, Fort Worth, TX 76119-4219.



(A) Obtain Postpetition Financing Pursuant to 11 U.S.C. §§ 105, 361, 362, 363(c), 363(e), 364(c), 364(d)(1) and 364(e) and (B) Utilize Cash Collateral of Prepetition Secured Entities, (II) Granting Adequate Protection to Prepetition Secured Entities, (III) Scheduling a Final Hearing Pursuant to Bankruptcy Rules 4001(b) and 4001(c), and (IV) Granting Related Relief (the “Motion”). In support of the Motion, the Debtors respectfully state as follows:

Preliminary Statement²

1. As a result of the Debtors’ near cessation of operations due to the COVID-19 pandemic, the Debtors urgently need a significant amount of financing in order to continue operations and avoid immediate and irreparable harm. The DIP Facility is the result of extensive and intense negotiations between and among the Debtors and the DIP Agent. The DIP Facility provides the best opportunity for the Debtors to preserve and enhance value and avoid immediate and irreparable harm.

2. The agreement with the DIP Agent reflects the only terms under which the Debtors have been able to obtain the financing necessary to preserve value and pursue reorganization of their estates. The DIP Facility is necessary to fund critical expenses and to provide the Debtors with an orderly transition into the Chapter 11 Cases.

3. The DIP Facility provides the Debtors with the necessary liquidity to continue operating their business and fund the expenses of these Chapter 11 Cases through a revolving credit facility of up to **\$11 million**.

4. The Debtors are at a critical juncture, and the DIP Facility provides the necessary financing to allow the Debtors to preserve value for all stakeholders and pursue a reorganization or other transaction that will benefit the Debtors’ estates.

² Terms not defined in this Preliminary Statement are defined elsewhere in this Motion.

Jurisdiction and Venue

5. The United States District Court for the Northern District of Texas (the “District Court”) has jurisdiction over the subject matter of this Motion pursuant to 28 U.S.C. § 1334. The District Court’s jurisdiction has been referred to this Court pursuant to 28 U.S.C. § 157 and the District Court’s Miscellaneous Order No. 33, *Order of Reference of Bankruptcy Cases and Proceedings Nunc Pro Tunc* dated August 3, 1984. This is a core matter pursuant to 28 U.S.C. § 157(b), which may be heard and finally determined by this Court. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

6. The statutory bases for the relief requested herein include sections 105, 361, 362, 363(c), 363(e), 364(c), 364(d)(1) and 364(e) of title 11 of the United States Code (the “Bankruptcy Code”), Rules 2002, 4001(b) and (c), 6004 and 9014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Rules 4001-1 and 9013-1 of the Local Rules of the United States Bankruptcy Court for the Northern District of Texas (together, the “Local Rules”).

Background

7. On June 9, 2020 (the “Petition Date”), the Debtors each filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code commencing the above captioned cases (the “Chapter 11 Cases”). The Debtors continue to manage and operate their businesses as debtors-in-possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

8. An official committee of unsecured creditors has yet to be appointed in these Chapter 11 Cases. Further, no trustee or examiner has been requested or appointed in these Chapter 11 Cases.

9. A detailed description of the Debtors and their businesses, and the facts and circumstances supporting the Motion and the Debtors’ Chapter 11 Cases are set forth in greater

detail in the *Declaration of Kristin Whitley in Support of the Debtors' Chapter 11 Petitions and First Day Motions* and the *Declaration of Gary Barton in Support of the Debtors' Chapter 11 Petitions and First Day Motions* (collectively, the “First Day Declarations”), which were filed on the Petition Date and are incorporated by reference in this Motion.

Relief Requested

10. The Debtors request the entry of an order, substantially in the form attached to the motion as **Exhibit 1**, (i) authorizing the Debtors to obtain postpetition financing pursuant to sections 363 and 364 of the Bankruptcy Code by entering into the credit agreement (the “DIP Credit Agreement”) attached to the Interim Order as **Exhibit A** providing the terms and conditions for a senior secured, superpriority debtor-in-possession credit facility (the “DIP Facility”); (ii) authorizing the Debtors’ use of cash collateral, as such term is defined in section 363(a) of the Bankruptcy Code, of the Term Loan Lenders (defined below) (“Cash Collateral”)³ and other collateral on an interim basis in accordance with the budget attached to the Interim Order as **Exhibit B** (the “DIP Budget”); (iii) granting liens and providing superpriority administrative expense status described herein; (iv) granting adequate protection described herein for the use of the Term Loan Collateral (defined below), including Cash Collateral; (v) modifying the automatic stay imposed by section 362 of the Bankruptcy Code to the extent necessary to implement and effectuate the terms and provisions of the Interim Order and the Final Order; (vi) scheduling a final hearing (the “Final Hearing”) on the Motion no later than 30 days after the Petition Date; and (vii) granting related relief.

³ Pursuant to this Motion, the Debtors are not seeking authorization to use any Cash Collateral that constitutes ABL Priority Collateral (defined below). As such, any use of the term “Cash Collateral” does not include cash collateral that constitutes ABL Priority Collateral. The Debtors, DIP Lenders (defined below), and ABL Lender (defined below) each reserve all of their respective rights with respect to the extent to which any Cash Collateral constitutes ABL Priority Collateral.

Concise Statement of the Material Terms of the Interim Order

11. In accordance with Bankruptcy Rule 4001, below is a summary of the material proposed terms of the DIP Facility and the Debtors' use of Cash Collateral.⁴

Summary of Material Terms		Location
DIP Facility	<p>Borrower: VPROP Operating, LLC (the "<u>DIP Borrower</u>")</p> <p>DIP Guarantors: Vista Proppants and Logistics, LLC; MAALT Specialized Bulk LLC; Denetz Logistics, L.L.C.; MAALT LP; Lonestar Prospects, Ltd.; and Lonestar Prospects Management, L.L.C. (the "<u>DIP Guarantors</u>")</p> <p>Agent to the DIP Facility: Ares Capital Corporation (the "<u>DIP Agent</u>")</p> <p>DIP Facility Lenders: The lenders listed on Annex I of the DIP Credit Agreement (collectively, the "<u>DIP Lenders</u>" and together with the DIP Agent, the "<u>DIP Secured Parties</u>")</p> <p>Purposes for the use of the DIP Facility: The proceeds of the DIP Facility shall be used to fund (a) with respect to the Initial Borrowing, payments pursuant to any interim or final order entered by the Bankruptcy Court pursuant to any "first day" motions permitting the payment by the Debtors of any prepetition amounts then due and owing (the "<u>First Day Orders</u>"), provided that the form and substance of such First Day Orders shall be reasonably acceptable to the DIP Lenders; (b) postpetition working capital purposes of the Debtors; (c) current interest and fees under the DIP Facility; (d) the payment of adequate protection payments to the Term Loan Agent and the Term Loan Lenders; and (e) the allowed administrative costs and expenses of the Chapter 11 Cases, in each case, solely in accordance with the Approved Budget (subject to the Budget Variance).</p> <p>Amount and Type of Facility: The DIP Facility will consist of a non-amortizing senior secured multi-draw term loans (the "<u>DIP Loans</u>") in the aggregate principal amount of \$11 million ("<u>DIP Commitment</u>"), in accordance with a debtor-in-possession credit agreement by and among the DIP Borrower, the DIP Guarantors, the DIP Agent, and the DIP Lenders (the "<u>DIP Credit Agreement</u>"), with up to \$3.5 million available for borrowing not later</p>	<p>Interim Order, preamble; DIP Credit Agreement pg. 1</p> <p>Interim Order ¶ 10; DIP Credit Agreement §§ 7.21, 9.09.</p> <p>Interim Order, preamble, ¶ J; DIP Credit Agreement, Recitals, DIP Credit Agreement § 2.01.</p>

⁴ To the extent the terms and conditions listed herein conflict or are inconsistent with those in the Interim Order (defined below), the terms and conditions of the Interim Order shall control. All terms not otherwise defined below shall have the meanings ascribed to them in the Interim Order.

Summary of Material Terms		Location
	than one business day following the entry of the Interim DIP Order (as defined below) (the “ <u>Initial Borrowing</u> ”).	
Interest Rate	Interest on all outstanding advances under the DIP Facility shall accrue from and after the Petition Date at a per annum rate equal to LIBOR plus 9.5% per annum, payable monthly in arrears. All interest shall be calculated using a 360-day year and actual days elapsed and payable in cash. DIP Facility shall bear interest, to the fullest extent permitted by law, at the interest rate applicable to base rate loans plus 2.00% per annum (the “ <u>DIP Default Rate</u> ”) and shall be payable on demand. Interest on overdue amounts under the DIP Facility shall also accrue at the Default Rate.	Interim Order ¶7; DIP Credit Agreement § 2.04.
Maturity	The DIP Facility and the Debtors’ authorization to use the proceeds of the DIP Loans and the Cash Collateral will terminate upon the earliest to occur of (such earliest date, the “ <u>Termination Date</u> ”): (a) the date that is 180 days after the Petition Date (the “ <u>Scheduled Maturity Date</u> ”); (b) thirty (30) days after entry by the Bankruptcy Court of the Interim Order approving the DIP Facility (the “ <u>Interim DIP Period</u> ”), if the Final DIP Order (as defined below) has not been entered by the Bankruptcy Court prior to the expiration of such 30-day period; (c) the effective date of a plan of reorganization or liquidation in the Chapter 11 Cases; (d) the consummation of a sale of all or substantially all of the assets of the Debtors pursuant to section 363 of the Bankruptcy Code or otherwise; (e) dismissal of the Chapter 11 Cases or conversion of the Chapter 11 Cases into cases under chapter 7 of the Bankruptcy Code; (f) the appointment of a trustee or receiver in one or more of the Chapter 11 Cases; (g) without the DIP Lenders’ prior written consent, the date of filing of or express written support by the DIP Borrower for a plan of reorganization that is not an Acceptable Plan; or (h) the date of termination of the DIP Lenders’ commitments; and (i) the acceleration of any outstanding DIP Loans in accordance with the terms of the DIP Credit Agreement and the DIP Loan Documents, unless such Termination Date is extended, as to the DIP Facility, with the prior written consent of the DIP Agent and, as to the use of Cash Collateral, with the prior written consent of the Term Loan Agent and the Required Lenders (as defined in the Term Loan Agreement).	Interim Order ¶ 3.
Events of Default	<p>The following constitute Events of Default under the Interim Order and the DIP Loan Documents, unless waived in writing by the DIP Agent in its sole discretion (each an “<u>Event of Default</u>”).</p> <p><u>Payment Default.</u> The Debtors shall fail to pay, in each case as and when due and required to be paid under the DIP Loan Documents, any principal amount under the DIP Loan Documents immediately after such payment becomes due or payable.</p> <p><u>Non-Payment Default.</u> Except for a payment default (as described above), the Debtors shall default in any material respect with the performance of or compliance with any other covenant, condition, or provision of this Interim Order or, the DIP Loan Documents; or the</p>	Interim Order ¶ 19.

	Summary of Material Terms	Location
	<p>impairment of the DIP Loan Documents or the security interests provided for therein.</p> <p><u>Bankruptcy</u>. Any of the following occurs in any of these Chapter 11 Cases: (i) dismissal of the Chapter 11 Cases or conversion of the Chapter 11 Cases into cases under chapter 7 of the Bankruptcy Code; (ii) a trustee or receiver shall have been appointed in one or more of the Chapter 11 Cases; (iii) appointment of a responsible officer or examiner with enlarged powers relating to the operation of the business of any Debtor, other than the Debtors' chief restructuring officer; (iv) entry of an order granting of relief from any stay of proceeding (including the automatic stay) so as to allow a third party to proceed with foreclosure (or granting of a deed in lieu of foreclosure) against any asset of the Debtors with a value in excess of \$500,000 in the aggregate; (v) entry of an order granting any superpriority claim which is senior to or <i>pari passu</i> with the DIP Lenders' claims under the DIP Facility without the prior consent of the DIP Lenders; (vi) entry of an order confirming (or the filing by the Debtors of any motion or pleading requesting confirmation of or otherwise in support of) a plan of reorganization with respect to any Debtor other than an Acceptable Plan; (vii) entry of an order staying, reversing, vacating, or otherwise modifying, without the prior written consent of the DIP Lenders, the DIP Facility, the Interim Order or the Final Order, and such order is not stayed or reversed within two (2) business days after entry thereof; (viii) payment of, or granting adequate protection with respect to, prepetition debt (other than as contemplated by the DIP Loan Documents, this Interim Order, or other order of this Court authorizing and approving the grant of adequate protection to the ABL Lender or MAALT Lender) unless otherwise agreed by the DIP Lenders; (ix) cessation of liens or superpriority claims granted with respect to the DIP Collateral securing the Debtors' obligations in respect of the DIP Facility (such obligations, the "<u>DIP Obligations</u>") to be valid, perfected and enforceable in all respects with the priority described herein; and (xi) any shareholder (or shareholder affiliate) shall challenge or contest in any respect the provisions of the DIP Credit Agreement.</p>	
Payment of DIP Fees and Expenses; Indemnity Obligations	<p>The Debtors shall pay all fees when due under the DIP Credit Agreement in the amounts set forth in the DIP Credit Agreement. Additionally, the Debtors shall pay the reasonable, documented fees, costs, and expenses incurred or accrued by the DIP Agent (the foregoing to include all unpaid prepetition fees, costs, and expenses incurred by the DIP Agent in connection with the DIP Facility) in connection with any and all aspects of the Chapter 11 Cases, including, without limitation, the reasonable fees and expenses of the DIP Agent's legal counsel, Sidley Austin LLP ("<u>Sidley</u>") and financial advisor, FTI Consulting, Inc. ("<u>FTI</u>") and other professionals, hired by or on behalf of the DIP Agent (the "<u>DIP Agent Professionals</u>"). In addition, the Interim Order provides that the Debtors are authorized and directed to indemnify the DIP Agent and</p>	<p>Interim Order ¶ 8; DIP Credit Agreement §§ 3.04, 12.03.</p>

Summary of Material Terms		Location
	the other DIP Secured Parties (and each of their respective directors, officers, employees, agents, representatives, attorneys, consultants, advisors and controlling persons) against any liability arising in connection with the DIP Loan Documents, to the extent set forth in the DIP Loan Documents.	
DIP Superpriority Claims	In accordance with Bankruptcy Code section 364(c)(1), the DIP Obligations shall constitute superpriority administrative expense claims (the “ <u>DIP Superpriority Claims</u> ”) 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 Term Loan Lenders, the ABL Lender and the MAALT Lender, respectively, 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) (subject to, and upon entry of, the Final Order), 507(a), 507(b), 546, 726, 1113, and 1114 or otherwise, including those resulting from the conversion of any of the 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; <u>provided, however</u> , that the DIP Superpriority Claims shall be subject to (i) the Carve-Out; and (ii) the ABL Lender’s and MAALT Lender’s respective credit bid, lien rights and repayment rights in the sale or other disposition of any ABL Priority Collateral or MAALT Collateral.	Interim Order ¶ 11; DIP Credit Agreement § 2.10.
DIP Priming Liens	As security for the DIP Loans, the DIP Agent, on behalf and for the benefit of the DIP Lenders, is granted (effective upon the date of the Interim Order) valid, enforceable, binding, and fully perfected security interests in and liens (the “ <u>DIP Liens</u> ”) upon all of the assets of the Debtors (whether tangible, intangible, real, personal or mixed), now existing or hereafter acquired, and any proceeds and products thereof in whatever form received, including, subject to entry of a Final Order, all Avoidance Actions and Avoidance Action Proceeds (collectively with all rents, issues, products, offspring, proceeds and profits of any or all of the foregoing, the “ <u>DIP Collateral</u> ”), subject only to the payment of the Carve-Out, which DIP Liens shall consist of: <ul style="list-style-type: none"> • <u>First Priority Lien on Unencumbered Property</u>. Pursuant to section 364(c)(2) of the Bankruptcy Code, a continuing, enforceable, first priority, fully perfected lien and security interest upon all of the Debtors’ right, title and interest in, to, and under all DIP Collateral that was not encumbered by a validly perfected, enforceable, and nonavoidable security interest or lien as of the Petition Date or a valid security 	Interim Order ¶ 12.

	<p>interest perfected subsequent to the Petition Date to the extent permitted by section 546(b) of the Bankruptcy Code (collectively, the “<u>Unencumbered Property</u>”). Subject only to and effective upon entry of the Final Order, Unencumbered Property shall also include the Debtors’ claims and causes of action under sections 502(d), 544, 545, 547, 548, 549, 550, and 553 of the Bankruptcy Code and any other avoidance actions under the Bankruptcy Code, whether now existing or hereafter acquired or arising and whether pursuant to federal law or applicable state law (collectively, the “<u>Avoidance Actions</u>”), and all proceeds thereof, recoveries related thereto, and property received or recovered thereby, whether by judgment, settlement, or otherwise (the “<u>Avoidance Action Proceeds</u>”).</p> <ul style="list-style-type: none"> • <u>Liens Junior to Certain Other Liens.</u> Pursuant to section 364(c)(3) of the Bankruptcy Code, a junior, perfected lien and security interest upon all of the Debtors’ right, title and interest in, to and under all DIP Collateral, whether now existing or hereafter acquired, that is subject to and subordinated to (i) the first priority, senior liens in favor of the ABL Lender on the ABL Priority Collateral (including, without limitation, Cash Collateral constituting ABL Priority Collateral), (ii) the first priority, senior liens of the MAALT Lender in the MAALT Collateral; and (iii) any liens that (x) are valid, perfected, enforceable and nonavoidable as of the Petition Date or validly perfected subsequent to the Petition Date to the extent permitted by section 546(b) of the Bankruptcy Code, (y) under applicable law, are senior to, and have not been subordinated to, the Term Loan Liens, and (z) are not subject to avoidance, reduction, disgorgement, counterclaim, surcharge, or subordination pursuant to the Bankruptcy Code or applicable non-bankruptcy law (each, a “<u>Permitted Lien</u>” and collectively, the “<u>Permitted Liens</u>”), including the Permitted Liens scheduled on Schedule 9.04 to the DIP Credit Agreement, and in each case is not subject to section 552(a) of the Bankruptcy Code. • <u>Liens Priming Prepetition Secured Parties’ Liens.</u> Pursuant to section 364(d)(1) of the Bankruptcy Code, valid, enforceable, binding, continuing, fully perfected, first priority senior priming liens upon and security interests in all of the Debtors’ right, title and interest in, to, and under all DIP Collateral not covered by the clauses above and, with respect to the ABL Priority Collateral and the MAALT Collateral: (i) valid, binding, enforceable,, fully perfected, junior liens that re subordinate to the ABL Lender’s continuing first priority, senior liens in all DIP Collateral constituting ABL Priority Collateral, and (ii) valid, binding, continuing, enforceable, fully perfected, junior liens that are subordinate to the MAALT Lender’s continuing first priority, senior liens in all 	
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	Summary of Material Terms	Location
	<p>DIP Collateral constituting MAALT Collateral; and (iii) valid, binding, continuing, enforceable, fully perfected, priming liens that are immediately senior to the Term Loans Lenders' liens on such ABL Priority Collateral.</p> <ul style="list-style-type: none"> • <u>Continuing Priority of ABL Lender's and MAALT Lender's Liens.</u> Notwithstanding any other provisions contained herein or deemed, interpreted and/or construed, as applicable, to the contrary, and for the sake of clarity and for the avoidance of doubt, nothing contained herein will be deemed, intended, interpreted, construed and/or enforced to prime the preexisting first priority, senior liens as of the Petition Date of (i) the ABL Lender in the ABL Priority Collateral (including, without limitation, any and all Cash Collateral constituting ABL Priority Collateral); or (ii) the MAALT Lender in the MAALT Collateral (including, without limitation, any and all Cash Collateral constituting MAALT Collateral). 	
Term Loan Lenders' Adequate Protection	<p>The Term Loan Agent, on behalf and for the benefit of the Term Loan Lenders, is granted the following adequate protection (collectively, the "<u>Term Loan Adequate Protection Obligations</u>"): </p> <p>The Term Loan Agent, on behalf and for the benefit of the Term Loan Lenders, is granted superpriority administrative expense claims (the "<u>Term Adequate Protection Superpriority Claims</u>") under sections 503 and 507 of the Bankruptcy Code against the Debtors' estates, including, subject to and upon entry of the Final Order, Avoidance Actions, to the extent of any Diminution in Term Loan Collateral Value, which Term Adequate Protection Superpriority Claims shall have priority in payment over any and all administrative expenses 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), 726, 1113 and 1114, or otherwise and including those resulting from the conversion of any of the Chapter 11 Cases pursuant to section 1112 of the Bankruptcy Code; <i>provided, however</i>, that at all times while such claim is in full force and effect pursuant to the Interim Order, the Term Adequate Protection Superpriority Claims shall be junior in all respects to the DIP Superpriority Claims and subject to (i) the Carve-Out, and (ii) the ABL Lender's and MAALT Lender's respective credit bid rights, lien rights, and repayment rights in the sale or other disposition of any ABL Priority Collateral or MAALT Collateral in accordance with the Interim and Final Orders.</p> <p><u>Term Adequate Protection Liens.</u> The Term Loan Agent, on behalf and for the benefit of the Term Loan Lenders, is hereby granted valid, enforceable, unavoidable and fully perfected replacement liens and security interests in all DIP Collateral, (the "<u>Adequate Protection Liens</u>"), to the extent of any Diminution in Term Loan Collateral Value,</p>	Interim Order ¶ 13.

	Summary of Material Terms	Location
	<p>which replacement liens and security interests shall have a priority immediately junior to the DIP Liens, subject to, junior and subordinate to the priority of the ABL Lender's liens in the ABL Priority Collateral, the MAALT Lender's liens in the MAALT Collateral, and subject to the Carve-Out. The Term Adequate Protection Liens shall be deemed to be legal, valid, binding, enforceable, perfected liens, not subject to subordination or avoidance. Except as provided herein and in accordance with the priority set forth in the immediately preceding sentence, or as otherwise provided in the Interim Order or in accordance with the Prepetition Intercreditor Agreement, the Term Adequate Protection Liens shall not be subordinated to or be made <i>pari passu</i> with any other lien under section 364(d) of the Bankruptcy Code or otherwise.</p> <p><u>Adequate Protection Payments.</u> As further adequate protection, and in consideration, and as a requirement, for obtaining the consent of the Term Loan Lenders to the entry of this Interim Order and the Debtors' consensual use of Cash Collateral (other than Cash Collateral constituting ABL Priority Collateral or MAALT Collateral) as provided herein: the Debtors shall pay the reasonable, documented fees, costs, and expenses incurred or accrued by the Term Loan Agent (the foregoing to include all unpaid prepetition fees, costs and expenses) in connection with any and all aspects of the Chapter 11 Cases, and including the reasonable fees and expenses of the legal and financial advisors to the Term Loan Agent (the "<u>Adequate Protection Payments</u>").</p> <p><u>Financial Reporting.</u> The Debtors shall provide the DIP Lenders, the ABL Lender, and the MAALT Lender with the financial and other reporting provided to the DIP Agent pursuant to the DIP Credit Agreement.</p>	
506(c) Surcharge Waiver	<p>Upon the entry of the Final Order, and except to the extent of the Carve-Out, 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, shall be charged against or recovered from (i) the Term Loan Priority Collateral or (ii) the DIP Collateral that is not ABL Priority Collateral or MAALT Collateral pursuant to section 506(c) of the Bankruptcy Code or any similar principle of law, without the prior written consent of the DIP Agent and the Prepetition Agent, and no such consent shall be implied from any other action, inaction, or acquiescence by the DIP Agent, the DIP Lenders, the Term Loan Agent or the Term Loan Lenders. The Debtors shall irrevocably waive and shall be prohibited from asserting any claim described in this Paragraph 32, 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 Term Loan Secured Parties or the DIP Secured Parties upon the (i) the Term Loan Priority Collateral or (ii) the DIP Collateral that is not ABL Priority Collateral (as applicable) or MAALT Collateral (as</p>	Interim Order ¶ 32.

Summary of Material Terms		Location
	applicable); <u>provided, that</u> nothing in this Order shall prohibit the Debtors from asserting any claim described in this Paragraph 32, 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 ABL Lender upon the ABL Priority Collateral or the MAALT Lender upon the MAALT Collateral.	
Release of Claims	The Debtors shall be deemed to have released, waived, and discharged each of the Term Loan Lenders (whether in their prepetition or postpetition capacity), together with their respective officers, directors, employees, agents, attorneys, professionals, affiliates, subsidiaries, assigns and/or successors, from any and all claims and causes of action arising out of, based upon, or related to, in whole or in part, the Term Loan Obligations or their prepetition relationship with such Debtor or any affiliate thereof relating to any of the Term Loan Documents or any transaction contemplated thereby, including, without limitation, any claims or defenses as to the extent, validity, priority, or enforceability of the Existing Term Loan Liens or the Term Loan Obligations, any claims or defenses under chapter 5 of the Bankruptcy Code, or any other causes of action.	Interim Order ¶ 21.
Remedies	Upon the occurrence and during the continuance of an Event of Default, the DIP Lenders may direct the DIP Agent, in their sole and absolute discretion, to immediately take any or all of the following actions: (a) declare the principal of and accrued interest on the outstanding borrowings to be immediately due and payable and terminate, reduce or restrict, as applicable, any further commitments under the DIP Facility to the extent any such commitment remains, and/or terminate, as applicable, the right of the Debtors to use Cash Collateral; and (b) charge the default rate of interest under the DIP Facility and take any other action or exercise any other right or remedy (including without limitation, with respect to the liens in favor of the DIP Agent on behalf of the DIP Lenders) permitted under the DIP Loan Documents or applicable law; <u>provided, however</u> , that in the case of the enforcement of liens or other remedies with respect to DIP Collateral pursuant to clause b above, the DIP Agent shall provide the Debtors (with a copy to counsel for any Committee and the U.S. Trustee) with seven (7) calendar days' prior written notice (the " <u>Enforcement Notice Period</u> ") and file such notice on the docket in the Chapter 11 Cases, during which Enforcement Notice Period any such party may file a pleading in opposition to the DIP Agent's exercise of its rights and remedies and seek an emergency hearing prior to the conclusion of the Enforcement Notice Period, and <u>provided further</u> , that in any hearing following such notice, the only issue that may be raised by any party in opposition to the actions proposed or available to be taken by the DIP Agent shall be whether, in fact, an Event of Default has occurred and is continuing. Unless, during the Enforcement Notice Period or, in the event a party requests an emergency hearing prior to the expiration of the Enforcement	Interim Order ¶ 20; DIP Credit Agreement § 10.02.

Summary of Material Terms		Location
	Notice Period but, solely due to the Court's availability, the Court is unable to schedule a hearing within such Enforcement Notice Period, the earliest available date on which the Court can hold such emergency hearing, the Court determines that an Event of Default has not occurred (or that no Event of Default is continuing), the DIP Agent shall have relief from the automatic stay without further notice or order and may foreclose on all or any portion of the DIP Collateral or otherwise exercise remedies against the DIP Collateral.	
Credit Bid Rights	<p>The DIP Agent, at the direction of the DIP Lenders, shall have the unqualified right to credit bid up to the full amount of the DIP Obligations in any sale of the DIP Collateral under or pursuant to (i) section 363 of the Bankruptcy Code, (ii) a plan of reorganization or a plan of liquidation under section 1129 of the Bankruptcy Code, or (iii) a sale or disposition by a chapter 7 trustee for any Debtor under section 725 of the Bankruptcy Code.</p> <p>Subject to the terms of the Prepetition Intercreditor Agreement, the Term Loan Agent, at the direction of the Term Loan Lenders, shall have the unqualified right to credit bid up to the full amount of any remaining Term Loan Obligations in any sale of DIP Collateral or Term Loan Collateral, as applicable, subject to the satisfaction of all DIP Obligations and all obligations secured by Permitted Liens, or as otherwise consented to by the DIP Lenders or such other holder of a Permitted Lien, as applicable, under or pursuant to (i) section 363 of the Bankruptcy Code, (ii) a plan of reorganization or a plan of liquidation under section 1129 of the Bankruptcy Code, or (iii) a sale or disposition by a chapter 7 trustee for any Debtor under section 725 of the Bankruptcy Code.</p> <p>Subject to the terms of the Prepetition Intercreditor Agreement, the ABL Lender shall have the unqualified right to credit bid up to the full amount of any remaining obligations existing under the ABL Facility in any sale of any ABL Collateral. The ABL Lender shall be satisfied first from any existing ABL Priority Collateral or the proceeds thereof and, with respect to the ABL Priority Collateral, shall not be subordinated to any outstanding DIP Obligations, DIP Superpriority Claim or Term Adequate Protection Superpriority Claims concerning the ABL Lender's credit bid in any sale of any ABL Priority Collateral. Notwithstanding any other provisions contained herein, with respect to any sale of any ABL Priority Collateral, whether through third party cash proceeds, the ABL Lender's credit bid or otherwise, any remaining obligations existing under the ABL Facility shall be satisfied first and shall not be subordinated to any priority or superpriority administrative expense claims of any party in this case, including, without limitation, the DIP Obligations, DIP Superpriority Claim or Term Adequate Protection Superpriority Claims, from the proceeds of the sale of any such ABL Priority Collateral. No portion of any outstanding DIP Obligations, DIP Superpriority Claim or Term Adequate Protection</p>	Interim Order ¶ 18; DIP Credit Agreement § 11.08.

Summary of Material Terms	Location
<p>Superpriority Claims shall be senior to or prime the ABL Lender's credit bid rights in any sale of any ABL Priority Collateral. The ABL Lender's credit bid rights are expressly reserved and preserved by this Interim Order, as applicable, under or pursuant to the applicable terms of the Prepetition Intercreditor Agreement and (i) section 363 of the Bankruptcy Code, (ii) a plan of reorganization or a plan of liquidation under section 1129 of the Bankruptcy Code, or (iii) a sale or disposition by a chapter 7 trustee for any Debtor under section 725 of the Bankruptcy Code.</p> <p>The MAALT Lender shall have the unqualified right to credit bid up to the full amount of any remaining obligations existing under the MAALT Facility in any sale of any MAALT Collateral. The MAALT Lender shall be satisfied first from any existing MAALT Collateral or the proceeds thereof and, with respect to the MAALT Collateral, shall not be subordinated to any outstanding DIP Obligations, DIP Superpriority Claim or Term Adequate Protection Superpriority Claims concerning the MAALT Lender's credit bid in any sale of any MAALT Collateral. Notwithstanding any other provisions contained herein, in regards to any sale of any MAALT Collateral, whether through third party cash proceeds, the MAALT Lender's credit bid or otherwise, any remaining obligations existing under the MAALT Facility shall be satisfied first and shall not be subordinated to any priority or superpriority administrative expense claims of any party in this case, including, without limitation, the DIP Obligations, DIP Superpriority Claim or Term Adequate Protection Superpriority Claims. No portion of any outstanding DIP Obligations, DIP Superpriority Claim or Term Adequate Protection Superpriority Claims shall be senior to or prime the MAALT Lender's credit bid rights in any sale of any MAALT Collateral. The MAALT Lender's credit bid rights are expressly reserved and preserved by this Interim Order, as applicable, under or pursuant to (i) section 363 of the Bankruptcy Code, (ii) a plan of reorganization or a plan of liquidation under section 1129 of the Bankruptcy Code, or (iii) a sale or disposition by a chapter 7 trustee for any Debtor under section 725 of the Bankruptcy Code.</p>	
Milestones	<p>In addition to the Events of Default set forth in the DIP Credit Agreement, it shall be an Event of Default under the DIP Credit Agreement and the Interim Order entitling the DIP Agent to exercise the remedies under the DIP Credit Agreement and the Interim Order if the Debtors shall fail to meet any of the following deadlines (collectively, the "<u>Milestones</u>"), unless such Milestones are extended by agreement of the Debtors and DIP Agent:</p> <p>(a) On or before the date that is thirty (30) calendar days following the entry of this Interim Order, a Final Order approving the DIP Facility on a final basis in form and substance satisfactory to</p> <p>Interim Order ¶ 17.</p>

Summary of Material Terms		Location
	<p>the DIP Lenders as confirmed by the DIP Agent in writing shall have been entered by the Bankruptcy Court;</p> <p>(b) On or before the date that is twenty-one (21) calendar days following the Petition Date (the “<u>Plan Agreement Date</u>”), the Debtors shall have filed a plan of reorganization and related disclosure statement acceptable to the DIP Lenders in their sole and absolute discretion as confirmed in writing by the DIP Agent (an “<u>Acceptable Plan</u>”)</p> <p>(c) On or before the date that is fifty (50) calendar days following the Petition Date, and subject to the Court’s availability the Bankruptcy Court shall have entered an order approving the disclosure statement and plan solicitation procedures acceptable to the DIP Lenders, as confirmed by the DIP Agent in writing;</p> <p>(d) On or before the date that is eight (80) calendar days following the Petition Date, the Bankruptcy Court shall have entered an order acceptable to the DIP Lenders, as confirmed by DIP Lenders in writing, confirming an Acceptable Plan; and</p> <p>(e) on or before the date that is ninety-two (92) calendar days following the Petition Date, an Acceptable Plan shall become effective.</p>	
Parties with Interest in Cash Collateral	Term Loan Lenders, Term Loan Agent, and DIP Secured Parties	Interim Order ¶ D.

Basis for Relief Requested

I. The Debtors’ Prepetition Secured Indebtedness

A. Term Loans

12. Vista OpCo, VPROP, Ares Capital Corporation, as administrative agent (“Ares” or the “Term Loan Agent”), and certain lenders (the “Term Loan Lenders”) are parties to an Amended and Restated Senior Secured Credit Agreement dated as of November 9, 2017 (as amended, the “Term Loan Agreement”). The Term Loan Agreement provides for a senior secured term loan facility (the “Term Loan Credit Facility”). As of the Petition Date, approximately **\$369,300,998** in principal and prepetition interest is outstanding under the Term Loan Credit Facility (the “Term Loans”).

13. As more specifically described in the various loan documents entered into in connection with the Term Loan Credit Facility, the Term Loans are secured by liens (the “Term Loan Liens”) on substantially all of the assets of VPROP, Lonestar Management, Lonestar Ltd, and Vista OpCo, including Vista OpCo’s equity interests in each of its subsidiaries (collectively, the “Term Loan Collateral”).

B. ABL Facility

14. Lonestar Ltd., as borrower, Lonestar Prospects Holding Company, L.L.C., Gary B. Humphreys, Martin W. Robertson, and the other guarantors party thereto, as guarantors, and PlainsCapital Bank (“PlainsCapital” or the “ABL Lender”), as lender, are parties to an Amended and Restated Loan Agreement dated as of January 12, 2018 (as amended, restated, supplemented, or otherwise modified from time to time, the “ABL Agreement”).⁵ The ABL Agreement provides for a senior secured credit facility (the “ABL Facility”) in an amount of up to \$21,959,690.13, subject to certain terms and conditions. As of the Petition Date, approximately **\$15,984,430** in principal and interest is outstanding under the ABL Facility (the “ABL Credit Facility Obligations”).

15. The ABL Credit Facility Obligations are secured by first priority liens (the “ABL Liens”) on accounts receivable and finished sand inventory (“ABL Priority Collateral”), and second priority security interests in substantially all personal property of Lonestar Ltd., as more

⁵ The ABL Agreement was amended by the First Amendment dated February 20, 2018; the Second Amendment dated June 14, 2018; the Third Amendment dated September 24, 2018; the Fourth Amendment dated November 19, 2019; the Fifth Amendment dated December 31, 2019; and the Sixth Amendment dated May 18, 2020.

specifically described in the various loan documents entered into in connection with the ABL Agreement (collectively with the ABL Priority Collateral, the “ABL Collateral”).

C. MAALT Facility Obligations

16. MAALT, and non-debtor GHMR Operations, L.L.C., as borrowers, Denetz, Gary B. Humphreys, Martin W. Robertson, and certain trust guarantors, as guarantors, and PlainsCapital, as lender, are parties to a Loan Agreement dated as of June 15, 2014 (as amended, restated, supplemented, or otherwise modified from time to time, the “MAALT Credit Agreement,” and the facility thereunder, the “MAALT Facility”). The MAALT Credit Agreement provided for three term loans: the first term loan in the amount of \$13,826,834, the second term loan in the amount of \$3,850,497, and the third term loan in the amount of \$1,797,500, as well as a senior secured revolving credit facility in the amount of up to \$2 million, subject to certain terms and conditions (collectively, the “MAALT Facility”). As of the Petition Date, approximately \$3,923,450 in principal and prepetition interest is outstanding under the MAALT Facility (the “MAALT Facility Obligations”).

17. The MAALT Facility Obligations are secured by a security interest in certain assets of MAALT, including certain accounts, inventory, equipment, and fixtures, as more specifically described in the various loan documents entered into in connection with the MAALT Facility. The MAALT Facility Obligations are also secured by a security interest of certain assets of non-debtor GHMR Operations, L.L.C. (collectively, the “MAALT Collateral”).

D. Intercreditor Agreement

18. The relative priority of the Term Loan Liens and the ABL Liens is governed by the Amended and Restated Intercreditor Agreement dated November 9, 2017, by and among PlainsCapital, Ares, and the Debtors (the “Intercreditor Agreement”). As more specifically set forth in the Intercreditor Agreement, the Term Loan Liens have first priority with respect to all of

the Debtors' assets other than certain accounts receivable, finished sand inventory, general intangibles, and the proceeds of the foregoing.

II. The Debtors' Prepetition Restructuring Initiatives and Financing Alternatives

19. The Debtors' business and financial performance heavily depends on sales generated by a limited customer base—*i.e.* exploration and production companies and oilfield service providers engaged in drilling and well services. The Debtors' financial performance has been negatively affected by an ongoing slump in natural gas and oil commodity prices, which adversely affected the fluctuating demand for frac sand. The Debtors' financial performance has also been adversely impacted by an industry shift towards construction of multiple in-basin sand mines and the use of in-basin sand, which did not materially exist prior to 2017.

20. The Debtors' financial difficulties are compounded by the COVID-19 pandemic. The effects of this pandemic have taken a significant toll on energy markets and the nation's financial system. The COVID-19 pandemic continues to spread, further affecting exploration and production activity and creating operations challenges due to travel restrictions, social distancing guidelines, business restrictions, local "shelter in place" orders, and other logistical hurdles.

21. The Debtors have also faced internal obstacles and company-specific business challenges. Internal logistics obstacles, geographic shifts in demand, and the Debtors' overall capital structure have resulted in decreased productivity and revenues. The Debtors continue to experience sales declines, resulting in further liquidity pressures. The Debtors' revenue and profitability remain insufficient to support its debt service, working capital, and capital expenditures requirements.

22. As a result of the near-cessation of business revenue, the Debtors have engaged in a number of cost savings initiatives, including furloughing employees and shutting down all

operations to the minimal extent necessary to preserve the Debtors' ability to recommence business operations in the future. Such minimal operations include activities such as intermittently using, maintaining equipment and infrastructure to ensure that such equipment and infrastructure will remain in good working condition for future use.

23. By furloughing the majority of their employees and moving towards minimal operations, the Debtors were able to significantly reduce operating costs. Despite this reduction, the Debtors have still incurred, and continue to incur, significant costs without the benefit of offsetting sales revenue. The largest costs necessary to preserve the Debtors' assets are the minimum royalty payments required under various leases. Additionally, the Debtors' employees are necessary to preserve the Debtors' ability to recommence business operations in the future. Furthermore, goods and services from certain vendors will be required throughout the Chapter 11 Cases to ensure the preservation of the Debtors' assets.

III. The Proposed DIP Facility

A. Summary of the Proposed DIP Facility

24. After extended good faith, arm's-length negotiations, the DIP Lenders agreed to provide the DIP Facility on the terms provided in the DIP Credit Agreement and the Interim Order, which are summarized above. The proceeds of the DIP Facility, which the Debtors estimate will be sufficient to finance these Chapter 11 Cases, will be used for (a) working capital and general corporate purposes of the Debtors and (b) to pay fees and expenses related to the DIP Facility and the Chapter 11 Cases.

25. The Debtors lack sufficient resources and financial liquidity to continue to operate their businesses while in Chapter 11. The Debtors therefore urgently need the relief requested in this Motion, including access to the DIP Facility and use of Cash Collateral, in order to: (a) continue their ordinary course, day-to-day operations, including satisfying payroll obligations; (b)

meet their ongoing obligations under their major trade agreements; and (c) satisfy the administrative expenses of these Chapter 11 Cases.

26. The DIP Facility is the only viable option available for postpetition financing, and the new capital cannot be obtained from another source on more favorable terms, particularly given the exigent circumstances leading up to this bankruptcy. The Debtors are unable to obtain financing on an unsecured basis pursuant to sections 346(b) and 503(b)(1) of the Bankruptcy Code, or even a superpriority basis under section 364(c)(1) of the Bankruptcy Code, on terms more favorable than those of the DIP Facility. In addition, financing secured liens on the Debtors' unencumbered assets (which are virtually nonexistent) pursuant to section 364(c)(2) of the Bankruptcy Code, or junior liens on their encumbered assets pursuant to section 364(c)(3) of the Bankruptcy Code, is similarly unattainable.

27. Importantly, the financial terms and covenants of the DIP Facility are standard and reasonable for financing of this kind. Based on the extensive negotiations that took place, the Debtors believe that these are the only terms on which the DIP Lenders will provide the financing. As the DIP Facility proceeds are necessary and the only financing available at this time and funds the process by which creditors and equity stakeholders might have some basis for recovery, the Debtors believe that sufficient justification exists for agreeing to these provisions. Moreover, the Debtors and their advisors understand that the DIP Lenders were not amenable to providing financing without these protections.

B. Use of Cash Collateral

28. In addition to the DIP Facility, the Debtors require the continued use of their existing Cash Collateral. The Term Loan Lenders have agreed to the terms of the proposed use of Cash Collateral reflected in the Interim Order and the DIP Credit Agreement. Therefore, the Debtors have the requisite consent to use Cash Collateral.

29. As noted above, the Debtors are not requesting authority pursuant to this Motion to use Cash Collateral that constitutes ABL Priority Collateral of PlainsCapital or MAALT Collateral of MAALT.

30. Continued access to Cash Collateral, combined with the Debtors' access to the DIP Facility, will (a) ensure that the Debtors have access to sufficient working capital to, among other things, pay their employees and contract counterparties, (b) enable the Debtors to continue honoring their prepetition obligations under and in accordance with other "first-day" orders entered by the Court, and (c) satisfy administrative expenses incurred in connection with the commencement of these Chapter 11 Cases.

Supporting Authority

I. The Debtors Should be Authorized to Obtain Postpetition Financing

A. Entering into the DIP Credit Agreement is an Exercise of the Debtors' Sound Business Judgment.

31. This Court should authorize the Debtors to enter into the DIP Credit Agreement and obtain access to the DIP Facility and use Cash Collateral as an exercise of the Debtors' sound business judgment.

32. Section 364 of the Bankruptcy Code authorizes a debtor to obtain secured or superpriority financing under certain circumstances as described in greater detail below. Provided that an agreement to obtain secured credit does not run afoul of the provisions of, and policies underlying, the Bankruptcy Code, courts grant debtors considerable deference in acting in accordance with their sound business judgment in obtaining such credit. *See, e.g., In re ERG Intermediate Holdings, L.L.C.*, Case No. 15-31858 (HDH) (Bankr. N.D. Tex. June 15, 2015) (order approving postpetition financing as an exercise of the debtors' business judgment); *In re Barbara K. Enters., Inc.*, Case No. 08-11474, 2008 WL 2439649, at *14 (Bankr. S.D.N.Y. June 16, 2008)

(explaining that courts defer to a debtor's business judgment "so long as a request for financing does not 'leverage the bankruptcy process' and unfairly cede control of the reorganization to one party in interest."); *In re Ames Dep't Stores, Inc.*, 115 B.R. 34, 40 (Bankr. S.D.N.Y. 1990) ("Cases consistently reflect that the court's discretion under section 364 [of the Bankruptcy Code] is to be utilized on grounds that permit [a debtor's] reasonable business judgment to be exercised so long as the financing agreement does not contain terms that leverage the bankruptcy process and powers or its purpose is not so much to benefit the estate as it is to benefit a party-in-interest."); *In re Farmland Indus., Inc.*, 294 B.R. 855, 881 (Bankr. W.D. Mo. 2003) ("the applicable factors can be synthesized as follows: (1) That the proposed financing is an exercise of sound and reasonable business judgment . . .").

33. The Debtors' entry into the DIP Credit Agreement is an exercise of their sound business judgment that warrants approval by the Court. Prior to the Petition Date, the Debtors and their advisors undertook a detailed investigation as to the Debtors' projected financing needs during the pendency of any Chapter 11 case and determined that the Debtors would require substantial postpetition financing to support their operational and restructuring activities. The Debtors lacked the cash collateral to otherwise continue operations or to finance any value maximization process. Accordingly, after significant negotiations by the Debtors and their advisors, the Debtors negotiated the DIP Facility with the DIP Lenders in good faith, at arm's-length, and with the assistance of outside counsel, to obtain the required postpetition financing on terms favorable to the Debtors.

34. Absent the DIP Lenders' willingness and ability to fund the DIP Facility, the Debtors will not have access to any cash. Moreover, it is unlikely any third-party lenders would be in a position to provide as certain a financing arrangement as currently available under the DIP

Facility. Accordingly, the Debtors determined in their sound business judgment, and with consultation of their advisors, that the DIP Facility provides a greater amount of financing on more favorable terms than any other reasonably available alternative.

35. As noted above, the DIP Facility will provide the Debtors with access to the necessary liquidity, which the Debtors and their advisors have independently determined should be sufficient to support the Debtors' limited operations and reorganization activities through the pendency of the Chapter 11 Cases. Additionally, the DIP Facility provides the Debtors with access to existing Cash Collateral, which preserves the status quo and relieves the Debtors of the cost of borrowing additional amounts to replace that cash. Thus, the Debtors submit that entering into the DIP Credit Agreement constitutes an exercise of the Debtors' sound business judgment that should be approved by the Court.

B. The Debtors Should be Authorized to Obtain Postpetition Financing on a Senior Secured, Priming, and Superpriority Basis.

36. The Debtors should be authorized to obtain postpetition financing on a senior secured, priming, and superpriority basis. Section 364 of the Bankruptcy Code authorizes a debtor to obtain, in certain circumstances, postpetition financing on a secured or superpriority basis, or both. Specifically, section 364(c) of the Bankruptcy Code provides, in pertinent part, that the Court, after notice and a hearing, may authorize a debtor that is unable to obtain credit allowable as an administrative expense under section 503(b)(1) of the Bankruptcy Code to obtain credit or incur debt:

- (1) with priority over any or all administrative expenses of the kind specified in section 503(b) or 507(b);
- (2) secured by a lien on property of the estate that is not otherwise subject to a lien; or
- (3) secured by a junior lien on property of the estate that is subject to a lien.

11 U.S.C. § 364(c).

37. Pursuant to the terms of the DIP Credit Agreement and in accordance with Bankruptcy Code section 364(c)(1), the Debtors request that the DIP Obligations be allowed as DIP Superpriority Claims 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 Term Loan Lenders, the ABL Lender and the MAALT Lender, respectively, 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) (subject to, and upon entry of, the Final Order), 507(a), 507(b), 546, 726, 1113, and 1114 or otherwise, including those resulting from the conversion of any of the 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 shall be subject to (i) the Carve-Out; and (ii) the ABL Lender's and MAALT Lender's respective credit bid, lien rights, and repayment rights in the sale or other disposition of any ABL Priority Collateral or MAALT Collateral (as set forth in the Interim and Final Orders).

38. The Debtors were unable to obtain sufficient, or any, postpetition financing in the form of unsecured credit, solely as an administrative expense, or secured by a junior lien. The Debtors' significant secured debt precludes them from obtaining postpetition financing in the amount they require on terms other than on a secured and superpriority basis as provided under the DIP Facility.

39. In addition to authorizing financing under section 364(c) of the Bankruptcy Code, courts may authorize a debtor to obtain postpetition credit secured by a lien that is senior or equal in priority to existing liens on property already subject to a lien if the debtor cannot otherwise obtain such credit and the interests of existing lienholders are adequately protected. *See* 11 U.S.C. § 364(d)(1). When determining whether to authorize a debtor to obtain credit secured by a “priming” lien as authorized by section 364(d) of the Bankruptcy Code, courts focus on whether the transaction will enhance the value of the debtors’ assets. Courts consider a number of factors, including, without limitation:

- whether alternative financing is available on any other basis (*i.e.*, whether any better offers, bids or timely proposals are before the court);
- whether the proposed financing is necessary to preserve estate assets and is necessary, essential and appropriate for continued operation of the debtors’ business;
- whether the terms of the proposed financing are reasonable and adequate given the circumstances of both the debtors and proposed lender(s);
- whether the proposed financing agreement was negotiated in good faith and at arm’s length and entry therein is an exercise of sound and reasonable business judgment and in the best interest of the debtor’s estate and its creditors; and whether the proposed financing agreement adequately protects prepetition secured creditors.

See, e.g., Ames Dep’t Stores, 115 B.R. at 37–39; *Bland v. Farmworker Creditors*, 308 B.R. 109, 113–14 (S.D. Ga. 2003); *see also* 3 Collier on Bankruptcy ¶ 364.04[1] (16th ed. rev. 2020).

40. Here, the Debtors seek authority to enter into the DIP Credit Agreement, which will grant the DIP Lenders the DIP Liens in the DIP Collateral, as described above. The Debtors believe the DIP Liens should be authorized for the following reasons.

41. First, the Debtors conducted arm’s-length negotiations with the DIP Agent regarding the terms of the DIP Facility, and those agreements reflect the most favorable terms on which the DIP Lenders were willing to offer financing. No alternative financing at the favorable

terms offered in the DIP Facility is available to the Debtors, and the Debtors are not able to obtain financing from the DIP Lenders other than financing secured by first priority priming liens. In light of the unavailability of other financing with which to fund their ongoing operations and preserve the value of their assets, the Debtors determined that entering into the DIP Credit Agreement would best maximize value of their estates.

42. Second, the Debtors need the funds to be provided under the DIP Facility to preserve the value of their estates for the benefit of all creditors and other parties in interest. Absent the DIP Facility and use of the Cash Collateral, the Debtors will be unable to prosecute these Chapter 11 Cases and preserve the Debtors' significant going concern value. Providing the Debtors with the liquidity necessary to preserve their going concern value through the pendency of these Chapter 11 Cases is in the best interest of all stakeholders.

43. Third, the terms of the DIP Credit Agreement are reasonable and adequate to ensure the Debtors' ongoing ability to satisfy obligations in connection with the Chapter 11 Cases. Indeed, the DIP Facility will provide the Debtors with access to up to \$11 million in postpetition financing, which the Debtors and their advisors have independently determined is sufficient and necessary to allow the Debtors to administer these Chapter 11 Cases.

44. Fourth, the Debtors and the DIP Agent negotiated the DIP Facility in good faith and at arm's-length, and the Debtors' entry into the DIP Credit Agreement is an exercise of their sound business judgment and is in the best interests of their estates, creditors and other parties in interest.

45. Fifth, as described below, the Debtors will provide adequate protection for the Term Loan Lenders' liens on and security interests in the Term Loan Collateral as well as any decline in, or diminution of, the value of the Term Loan Collateral.

46. Finally, the Term Loan Lenders have consented to the terms of the DIP Credit Agreement.

47. The Court should therefore (a) approve the DIP Superpriority Claims as provided for in section 364(c)(1) of the Bankruptcy Code, and (b) authorize the Debtors to provide the DIP Lenders with DIP Liens on the DIP Collateral as provided in section 364(d)(1) of the Bankruptcy Code.

C. The Interests of Term Loan Lenders are Adequately Protected

48. A debtor may obtain postpetition credit “secured by a senior or equal lien on property of the estate that is subject to a lien only if” the debtor, among other things, provides “adequate protection” to those parties whose liens are primed. *See* 11 U.S.C. § 364(d)(1)(B). By requiring debtors to provide adequate protection to those creditors whose liens are being primed, the Bankruptcy Code seeks to protect a secured creditor from diminution in the value of its interest in the particular collateral. *See Suntrust Bank v. Den-Mark Const., Inc.*, 406 B.R. 683, 702 (E.D.N.C. 2009) (“Adequate protection is designed to preserve the pre-petition position of the existing lender.”); *In re Cont’l Airlines, Inc.*, 146 B.R. 536, 539–40 (Bankr. D. Del. 1992) (secured creditor only entitled to adequate protection to the extent the collateral declined in value); *In re Pursuit Athletic Footwear, Inc.*, 193 B.R. 713, 716 (Bankr. D. Del. 1996) (if there is no diminution in the value of the secured creditor’s collateral and the debtor can operate profitably postpetition, the secured creditor is adequately protected against the use of cash collateral).

49. What constitutes sufficient adequate protection is decided on a case-by-case basis. *See In re Snowshoe Co., Inc.*, 789 F.2d 1085, 1088 (4th Cir. 1986) (“[W]e conclude that a judicial determination of...adequate protection is a question of fact rooted in measurements of value and the credibility of the witnesses.”); *see also Resolution Trust Corp. v. Swedeland Dev. Group, Inc. (In re Swedeland Dev. Grp., Inc.)*, 16 F.3d 552, 564 (3d Cir. 1994); *In re Martin*, 761 F.2d 472

(8th Cir. 1985); *In re Mosello*, 195 B.R. 277, 289 (Bankr. S.D.N.Y. 1996); *In re Realty S.W. Assocs.*, 140 B.R. 360 (Bankr. S.D.N.Y. 1992).

50. Here, the Term Loan Lenders are adequately protected. As adequate protection and in consideration for being primed by the DIP Lenders' claims and liens, the Term Loan Lenders shall receive, to the extent of diminution in value of the interests of the Term Loan Lenders in the Term Loan Collateral following the Petition Date, the Term Loan Adequate Protection Obligations described above. The Term Loan Lenders have also consented to the terms of the DIP Facility.

51. Accordingly, the Debtors submit that the adequate protection provided under the DIP Credit Agreement is sufficient adequate protection.

II. The Debtors Should be Authorized to Use the Cash Collateral of the Term Loan Lenders

52. The Term Loan Lenders have consented to the Debtors' use of Cash Collateral under the terms of the DIP Credit Agreement. The Debtors submit that their request to use Cash Collateral complies with applicable Bankruptcy Code requirements.

53. The Debtors' use of property of their estates is governed by section 363 of the Bankruptcy Code, which provides in pertinent part, as follows:

If the business of the debtor is authorized to be operated under section... 1108... of this title and unless the court orders otherwise, the [debtor] may enter into transactions, including the sale or lease of property of the estate, in the ordinary course of business, without notice or a hearing, and may use property of the estate in the ordinary course of business without notice or a hearing.

11 U.S.C. § 363(c)(1).

54. Section 363(c)(2)(A) of the Bankruptcy Code permits a debtor in possession to use cash collateral with the consent of the secured party. Alternatively, section 363(c)(2)(B) of the Bankruptcy Code permits the Bankruptcy Court, after notice and a hearing, to authorize a debtor

in possession's use of cash collateral without the consent of the secured party so long as the use is consistent with the provisions of section 363 of the Bankruptcy Code.

55. The Debtors have the Term Loan Lenders' consent to use Cash Collateral subject to the terms and conditions set forth in the Interim Order. Accordingly, the Debtors' use of Cash Collateral should be approved under section 363(c)(2)(A) of the Bankruptcy Code.

56. Second, the Debtors' proposed adequate protection is consistent with the requirements of section 363 of the Bankruptcy Code and, therefore, the Debtors' use of Cash Collateral — in addition to the requisite Term Loan Lenders having consented to it — meets the standard for approval under section 363(c)(2)(B) of the Bankruptcy Code. As described above, the Adequate Protection Obligations adequately protect the Term Loan Lenders' interests in the Term Loan Collateral from diminution during the Chapter 11 Cases, including by the Debtors' use of the Cash Collateral.

57. In addition to the adequate protection relief itself, the Debtors' preservation of estate assets through the use of Cash Collateral serves as its own form of "adequate protection." Indeed, the Debtors' secured creditors will inherently benefit from the Debtors' proposed use of the Cash Collateral, which will prevent avoidable diminution of the value of the Collateral and enhance the likelihood of increasing or preserving the Debtors' overall going concern value. *In re 495 Cent. Park Ave. Corp.*, 136 B.R. 626, 631 (Bankr. S.D.N.Y. 1992) (noting that, in determining whether protection is "adequate," courts consider "whether the value of the debtor's property will increase as a result of the" use of collateral or provision of financing); *In re Sky Valley, Inc.*, 100 B.R. 107, 114 (Bankr. N.D. Ga. 1988), *aff'd sub nom., Anchor Savs. Bank FSB v. Sky Valley, Inc.*, 99 B.R. 117, 120 n.4 (N.D. Ga. 1989) ("an increase in the value of the collateral . . . resulting from

superpriority financing could result in adequate protection.”). Accordingly, the Court should authorize the Debtors to use the Cash Collateral under section 363(c)(2) of the Bankruptcy Code.

III. The Debtors Should be Authorized to Pay the Fees, Costs, and Expenses of the DIP Lenders Associated with the DIP Facility

58. As described above, the Debtors have agreed to pay the reasonable and documented fees, costs and expenses of counsel and financial advisors of the DIP Agent pursuant to the terms of the DIP Credit Agreement.

59. Paying the fees, costs and expenses of counsel and financial advisors to the DIP Agent, taken together with the other provisions of the DIP Credit Agreement, represent the most favorable terms to the Debtors on which the DIP Secured Parties would agree to make the DIP Facility available. The Debtors considered the fees, costs and expenses described above when determining in their sound business judgment that the DIP Facility constituted the best terms on which the Debtors could obtain the postpetition financing necessary to continue their operations and prosecute their Chapter 11 Cases. The Debtors believe that paying these amounts in connection with the DIP Facility is in the best interests of the Debtors’ estates, creditors and other parties in interest. Accordingly, the Court should authorize the Debtors to pay the fees, costs, and expenses provided under the DIP Credit Agreement.

IV. The DIP Lenders Should be Deemed a Good Faith Lender Under Section 364(e) of the Bankruptcy Code

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

The reversal or modification on appeal of an authorization under this section [364 of the Bankruptcy Code] to obtain credit or incur debt, or of a grant

under this section of a priority or a lien, does not affect the validity of any debt so incurred, or any priority or lien so granted, to an entity that extended such credit in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and the incurring of such debt, or the granting of such priority or lien, were stayed pending appeal.

11 U.S.C. § 364(e).

61. The DIP Facility is the result of the Debtors' reasonable and informed determination that the DIP Lenders offered the most favorable terms on which to obtain needed postpetition financing, and of extended arm's-length, good faith negotiations between the Debtors and the DIP Lenders. The terms and conditions of the DIP Facility are fair and reasonable, and the proceeds under the DIP Facility will be used only for purposes that are permissible under the Bankruptcy Code. Further, no consideration is being provided to any party to the DIP Facility other than as described herein and in the DIP Credit Agreement. Accordingly, the Court should find that the DIP Lenders are "good faith" lenders within the meaning of section 364(e) of the Bankruptcy Code and the DIP Lenders are entitled to all of the protections afforded by that section.

V. The Debtors Require Immediate Access to the Cash Collateral and DIP Facility

62. The Court may grant interim relief in respect of a motion filed pursuant to sections 363(c) or 364 of the Bankruptcy Code where, as here, interim relief is "necessary to avoid immediate and irreparable harm to the estate pending a final hearing." FED. R. BANKR. P. 4001(b)(2) and (c)(2).

63. The Debtors and their estates will suffer immediate and irreparable harm if the interim relief requested herein, including authorizing the Debtors to use the Cash Collateral and to borrow under the DIP Facility, is not granted promptly. The Debtors believe that the commencement of the Chapter 11 Cases has already and will continue to significantly increase the demands on their cash as a result of, among other things, the costs of administering the Chapter 11

Cases. Indeed, as explained in the First Day Declarations, unless the Court approves the Debtors' interim access to the DIP Facility funds, it is likely that the Debtors will run out of cash in the near term. The Debtors have an immediate need for access to liquidity to, among other things, to make payroll, and to satisfy other working capital and operation needs, all of which are required to preserve and maintain the Debtors' going concern value for the benefit of all parties in interest.

64. Accordingly, for all of the reasons set forth above, prompt entry of the Interim Order is necessary to avert immediate and irreparable harm to the Debtors' estates and is consistent with, and warranted under, Bankruptcy Rules 4001(b)(2) and (c)(2). In addition, to implement the terms of the DIP Facility, the Debtors request a waiver of the notice requirements under Bankruptcy Rule 6004(a) and any stay of an order granting the relief requested herein pursuant to Bankruptcy Rule 6004(h), or otherwise.

Request for Final Hearing

65. Pursuant to Bankruptcy Rules 4001(b)(2) and 4001(c)(2), the Debtors request that the Court set a date for the Final Hearing that is as soon as practicable and fix the time and date prior to the Final Hearing for parties to file objections to this Motion.

Notice

66. Notice of this Motion will be provided to: (i) the twenty (20) largest unsecured creditors for each of the Debtors; (ii) the Office of the United States Trustee for the Northern District of Texas (the "U.S. Trustee"); (iii) counsel to the proposed DIP Agent; (iv) counsel to the Term Loan Agent; (v) counsel to the ABL Lender ; (vi) counsel to the MAALT Lender; (vii) all known parties asserting a lien against the DIP Collateral; (viii) counsel for any official committees appointed by this Court; (ix) all governmental agencies having a regulatory or statutory interest in these cases; and (x) any other party that has filed a request for notice pursuant to Bankruptcy Rule

2002 or are required to receive notice under the Bankruptcy Rules and the Local Rules.. Based on the urgency of the circumstances surrounding this Motion and the nature of the relief requested herein, the Debtors respectfully submit that no further notice is required.

Conclusion

WHEREFORE, based on the foregoing, the Debtors respectfully request that the Court (i) enter the Interim Order attached hereto as **Exhibit 1** and (ii) grant such other and further relief as is just and proper.

RESPECTFULLY SUBMITTED this 10th day of June, 2020.

HAYNES AND BOONE, LLP

By: /s/ Matthew T. Ferris

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PROPOSED ATTORNEYS FOR DEBTORS

EXHIBIT 1

PROPOSED INTERIM ORDER

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

In re:

Vista Proppants and Logistics, LLC, et al.,

Debtors.¹

Chapter 11

Case No. 20-42002-elm11

(Jointly Administered)

**INTERIM ORDER (I) AUTHORIZING THE DEBTORS TO
(A) OBTAIN POST-PETITION FINANCING PURSUANT TO 11 U.S.C. §§ 105,
361, 362, 363(c), 363(e), 364(c), 364(d)(1) AND 364(e) AND (B) UTILIZE CASH
COLLATERAL OF PREPETITION SECURED ENTITIES, (II) GRANTING
ADEQUATE PROTECTION TO PREPETITION SECURED ENTITIES,
(III) SCHEDULING A FINAL HEARING PURSUANT TO BANKRUPTCY
RULES 4001(b) AND 4001(c), AND (IV) GRANTING RELATED RELIEF**

This matter is before the Court on the motion dated June 10, 2020 (the “Motion”)² of Vista Proppants and Logistics, LLC and its affiliated debtors, as debtors-in-possession

¹ The Debtors in these Chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, include: Vista Proppants and Logistics, LLC (7817) (“Vista OpCo”); VPROP Operating, LLC (0269) (“VPROP”); Lonestar Prospects Management, L.L.C. (8451) (“Lonestar Management”); MAALT Specialized Bulk, LLC (2001) (“Bulk”); Denetz Logistics, LLC (8177) (“Denetz”); Lonestar Prospects, Ltd. (4483) (“Lonestar Ltd.”); and MAALT, LP (5198) (“MAALT”). The location of the Debtors’ service address is 4413 Carey Street, Fort Worth, TX 76119-4219.

(collectively, the “Debtors”) in the above-captioned chapter 11 cases (collectively, the “Chapter 11 Cases”), for entry of an interim order (this “Interim Order”) and a final order (the “Final Order”), pursuant to sections 105, 361, 362, 363(c), 363(e), 364(c), 364(d)(1) and 364(e) of title 11 of the United States Code (the “Bankruptcy Code”), Rules 2002, 4001(b) and (c), 6004 and 9014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Rules 4001-1 and 9013-1 of the Local Rules of the United States Bankruptcy Court for the Northern District of Texas (together, the “Local Rules”), seeking, among other things:

(i) authorization for VPROP, as a debtor and debtor-in-possession (the “DIP Borrower”), to obtain priming, senior secured, superpriority, debtor-in-possession post-petition financing and for the remaining Debtors (each, a “DIP Guarantor,” and collectively, the “DIP Guarantors”), as debtors and debtors-in-possession, to guarantee unconditionally the DIP Borrower’s obligations under a senior secured term loan credit facility (the “DIP Facility”) consisting of non-amortizing senior secured delayed draw term loans (the “DIP Loans”) in an aggregate principal amount of up to \$11 million (the “DIP Commitment”), in accordance with a debtor-in-possession credit agreement by and among the DIP Borrower, the DIP Guarantors, Ares Capital Corporation (“Ares”), as administrative agent (in such capacity, the “DIP Agent”), and the lenders party thereto (collectively, the “DIP Lenders” and together with the DIP Agent, the “DIP Secured Parties”), substantially similar to the form attached hereto as **Exhibit A** (as the same may be amended, restated, supplemented or otherwise modified from time to time pursuant to the terms thereof, the “DIP Credit Agreement”), and the other definitive documentation with respect to the DIP Facility (collectively with the DIP Credit Agreement and the related security documents, the “DIP Loan Documents”);

(ii) authorization for the Debtors to (a) execute and enter into the DIP Loan Documents, (b) pay fees and reimburse expenses under the DIP Loan Documents, as and in the amounts described in the DIP Loan Documents from the proceeds of the DIP Facility, and (c) perform such other and further acts as may be required in connection with the DIP Loan Documents;

(iii) authorization for the Debtors to grant (a) valid, enforceable, nonavoidable and fully perfected security interests and liens to the DIP Agent, for the benefit of the DIP Secured Parties, on all DIP Collateral (as defined below) to secure all obligations of the Debtors under and with respect to the DIP Facility (such

² All defined terms shall have the meaning ascribed to them in the Motion or DIP Credit Agreement (as defined below) unless otherwise defined herein.

obligations, the “DIP Obligations”) and (b) subject only to the Carve-Out and the ABL Lender’s and the MAALT Lender’s credit bid and lien rights (as set forth herein), superpriority claims (including a superpriority administrative expense claim pursuant to section 364(c)(1) of the Bankruptcy Code) to the DIP Agent, for the benefit of the DIP Lenders, having recourse to all prepetition and postpetition property of the Debtors’ estates, now owned or hereafter acquired;

(iv) authorization for the proceeds of the DIP Facility to be funded on each applicable funding date into the DIP Cash Collateral Account (as defined below); and for the Debtors’ use of Cash Collateral (as defined below) solely in accordance with the Approved Budget (as defined below) then in effect (the initial version of which is attached hereto as **Exhibit B**), subject to the Budget Variance (as defined below), and the collection and application of Cash Collateral, in each case pursuant to the terms and conditions set forth in this Interim Order and the DIP Credit Agreement;

(v) subject to the Carve-Out and the ABL Lender’s and the MAALT Lender’s credit bid and lien rights (as set forth herein), solely to the extent of the diminution in value of their collateral, authorization for the Term Loan Secured Obligors (as defined below) under the Term Loan Facility (as defined below) to provide the Term Loan Secured Parties (as defined below) adequate protection in the form of (a) a superpriority administrative expense claim as contemplated by section 507(b) of the Bankruptcy Code and validly perfected liens on and security interests in the DIP Collateral, all in accordance with the relative priorities set forth herein, and (b) the Adequate Protection Payments (as defined below);

(viii) subject to entry of a Final Order, the waiver by the Debtors of any right to surcharge any of the Term Loan Secured Parties’ collateral pursuant to section 506(c) of the Bankruptcy Code;

(ix) modification of the automatic stay imposed under section 362 of the Bankruptcy Code to the extent necessary to permit the (i) Debtors, (ii) DIP Secured Parties, and (iii) Term Loan Secured Parties to implement the terms of this Interim Order;

(x) waiver of any applicable stay (including under Bankruptcy Rule 6004) and provision for immediate effectiveness of this Interim Order; and

(xi) the scheduling of a final hearing (the “Final Hearing”) on the Motion no later than 30 days after the Petition Date, to consider entry of a Final Order granting the relief requested in the Motion on a final basis.

The initial hearing on the Motion having been held by this Court on June 9, 2020; and this Court having found that, under the circumstances, due and sufficient notice of the Motion and Interim Hearing was provided by the Debtors as set forth in Paragraph C of this Interim

Order, and this Court having considered all the pleadings filed with this Court; and having overruled all unresolved objections to the relief granted in this Interim Order; and upon the record made by the Debtors at the Interim Hearing, and after due deliberation and consideration and good and sufficient cause appearing therefore:

THIS COURT MAKES THE FOLLOWING FINDINGS OF FACT AND CONCLUSIONS OF LAW:³

A. **Petition Date.** On June 9, 2020 (the “Petition Date”), each of the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code with the United States Bankruptcy Court for the Northern District of Texas, Fort Worth Division (this “Court”). The Debtors continue to operate their business and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No party has requested the appointment of a trustee or examiner in these Chapter 11 Cases, and no statutory committee of unsecured creditors (to the extent such committee is appointed, the “Committee”) has been appointed.

B. **Jurisdiction and Venue.** This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334 and the *Order of Reference of Bankruptcy Cases and Proceedings Nunc Pro Tunc* entered by the United States District Court for the Northern District of Texas, dated August 3, 1984. This is a core proceeding pursuant to 28 U.S.C. § 157(b), and the Debtors confirmed their consent to the entry of a final order by the Court in connection with the Motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection with the Motion consistent with Article III of the United States Constitution. Venue of the Debtors’ Chapter 11 Cases and the Motion in this District is

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

proper pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory predicates for the relief sought herein are sections 105, 361, 362, 363, and 364 of the Bankruptcy Code, Rule 4001(b) and (c) and 6004 of the Bankruptcy Rules, and Local Rules 4001-1 and 9013-1.

C. **Notice.** Notice of the Interim Hearing and the emergency relief requested in the Motion has been provided by the Debtors to: (i) the twenty (20) largest unsecured creditors for each of the Debtors; (ii) the Office of the United States Trustee for the Northern District of Texas (the “U.S. Trustee”); (iii) counsel to the proposed DIP Agent; (iv) counsel to the Term Loan Agent (as defined below); (v) counsel to the ABL Lender (as defined below); (vi) counsel to the MAALT Lender (as defined below); (vii) all known parties asserting a lien against the DIP Collateral (as defined below); (viii) counsel for any official committees appointed by this Court; (ix) all governmental agencies having a regulatory or statutory interest in these cases; and (x) any other party that has filed a request for notice pursuant to Bankruptcy Rule 2002 or are required to receive notice under the Bankruptcy Rules and the Local Rules. Under the circumstances, such notice of the Motion, the relief requested therein, and the Interim Hearing complies with Bankruptcy Rule 4001(b), (c), and (d) and the Local Rules, and no other notice need be provided for entry of the Interim Order.

D. **Debtors’ Stipulations.** Subject to the rights specifically set forth in Paragraph 21 below, the Debtors, on their behalf and on behalf of their estates, admit, stipulate, acknowledge, and agree (the “Debtors’ Stipulations”) as follows:

i. **Term Loan Documents.** Prior to the Petition Date, the Term Loan Agent and the Term Loan Lenders made loans, advances and provided other financial accommodations under a term loan facility (the “Term Loan Facility”) to VPROP (in its capacity as borrower under the Term Loan Agreement, “Term Loan Borrower”) pursuant to the terms and

conditions set forth in (1) that certain *Amended and Restated Senior Secured Credit Agreement* dated as November 9, 2017 (as amended, supplemented or otherwise modified prior to the Petition Date, the “Term Loan Agreement”) by and among Vista Proppants and Logistics, LLC, the Term Loan Borrower, the lenders from time to time party thereto (the “Term Loan Lenders”) and Ares, as administrative agent (in such capacity, the “Term Loan Agent” and together with the Term Loan Lenders, the “Term Loan Secured Parties”); and (2) all other agreements, documents and instruments executed and/or delivered with, to, or in favor of the Term Loan Agent or any Term Loan Lender in connection with the Term Loan Agreement, including, without limitation, certain security agreements, mortgages, financing statements, collateral agreements, collateral trust agreements, deposit account control agreements, blocked account control agreements, securities account control agreements, and other collateral documents and agreements (as amended, restated, supplemented or otherwise modified from time to time and in effect on the date hereof, collectively, the “Term Loan Documents”).

ii. Term Loan Obligations. As of the Petition Date, the DIP Borrower and the DIP Guarantors were truly and justly indebted to the Term Loan Agent and the Term Loan Lenders without defense, counterclaim or offset of any kind, pursuant to the Term Loan Documents, in the aggregate principal amount of \$369,300,998.02 in respect of the loans made under the Term Loan Agreement, plus accrued and unpaid interest with respect thereto and any additional fees, costs and expenses (including any fees and expenses of attorneys, financial advisors, and other professionals that are chargeable or reimbursable under the Term Loan Documents) now or hereafter due under the Term Loan Agreement and the other Loan Documents (as defined in the Term Loan Agreement) (collectively, together with all other obligations arising under the Term Loan Documents (including, without limitation, the

“Obligations” (as defined in the Term Loan Agreement), the “Term Loan Obligations”). The Term Loan Obligations constitute allowed, legal, valid, binding, enforceable and non-avoidable obligations of the DIP Borrower and DIP Guarantors, and are not subject to any offset, defense, counterclaim, avoidance, recharacterization or subordination pursuant to the Bankruptcy Code or any other applicable law, and Debtors do not possess, shall not assert, hereby forever release, and are forever barred from bringing any claim, counterclaim, setoff or defense of any kind, nature or description which would in any way affect the validity of the Term Loan Obligations.

iii. Term Loan Collateral. As of the Petition Date, the Term Loan Obligations were secured pursuant to the Term Loan Documents by valid, perfected, enforceable and non-avoidable liens upon and security interests in all the “Collateral” (as defined in the Term Loan Agreement and hereinafter referred to as the “Term Loan Collateral”), consisting of all or substantially all of the assets of VPROP, Lonestar Management and Lonestar Prospects (the “Term Loan Secured Obligors”), including without limitation, (x) first-priority liens on and security interests in all of the “Term Priority Collateral” (as defined in that certain Prepetition Intercreditor Agreement (as defined below)) owned by each Term Loan Secured Obligor (all such Term Loan Collateral in existence on the Petition Date, or the identifiable proceeds thereof, the “Term Loan Priority Collateral”) and (y) second-priority liens on and security interests in all accounts receivable and Finished Sand Inventory of Lonestar Prospects, any proceeds thereof, including bank accounts containing such proceeds, and general intangibles relating thereto in existence as of the Petition Date (the “ABL Priority Collateral” and (x) and (y) together, the “Term Loan Collateral”) subject only to (A) the liens specifically permitted under Section 9.04 of the Term Loan Agreement to the extent that such security interests, liens or encumbrances are (1) valid, perfected and non-avoidable security interests, liens or encumbrances existing as of the

Petition Date, and (2) senior to and have not been or are not subject to being subordinated to the Term Loan Agent's and Term Loan Lenders' liens on and security interests in the Term Loan Collateral under the Term Loan Documents or otherwise avoided, and, in each instance, only for so long as and to the extent that such encumbrances are and remain senior and outstanding (hereinafter referred to as the "Permitted Term Loan Liens"), and (B) the terms and conditions of the Prepetition Intercreditor Agreement (as defined below). The Debtors do not possess and will not assert any claim, counterclaim, setoff or defense of any kind, nature or description which would in any way affect the validity, enforceability and non-avoidability of the Term Loan Agent's and Term Loan Lenders' liens, claims or security interests in the Term Loan Collateral.

iv. Validity of Term Loan Liens. The Term Loan Obligations constitute legal, valid, and binding Obligations (as defined in the Term Loan Agreement) of the Debtors; no offsets, defenses or counterclaims to the Term Loan Obligations exist; no portion of the Term Loan Obligations is subject to avoidance, disallowance, reduction or subordination pursuant to the Bankruptcy Code or applicable non-bankruptcy law; the Term Loan Documents are valid and enforceable by the Term Loan Agent for the benefit of the Term Loan Lenders against each of the Debtors; the liens and security interests of the Term Loan Lenders constitute valid, binding, enforceable and perfected liens in and to the Term Loan Collateral, having the priority set forth in the Term Loan Documents and subject and subordinate only to (after giving effect to any applicable intercreditor or subordination agreement) Permitted Liens (as defined below) and the ABL Lender's (as defined below) liens with respect to the ABL Priority Collateral; the Term Loan Obligations constitute allowed secured claims against the applicable Debtors' estates; and no claim or cause of action held by the Debtors exists against the Term Loan Agent, the Term Loan Lenders, or any of their respective agents, whether arising under

applicable state or federal law (including, without limitation, any recharacterization, subordination, avoidance or other claims arising under or pursuant to sections 105, 510 or 542 through 553 of the Bankruptcy Code), or whether arising under or in connection with any of the Term Loan Documents (or the transactions contemplated thereunder), the Term Loan Obligations, or the Term Loan Lenders' liens, including without limitation, any right to assert any disgorgement or recovery;

v. Cash Collateral. All of the Debtors' cash, including any cash in all deposit accounts and collection accounts, wherever located, comprising proceeds of or otherwise arising from or relating to the Term Loan Collateral, constitutes "cash collateral" as such term is defined in section 363(a) of the Bankruptcy Code, of the Term Loan Lenders (collectively, the "Cash Collateral"); provided, however, that the ABL Lender has a senior lien on Cash Collateral that constitutes ABL Priority Collateral and the MAALT Lender has a senior lien on Cash Collateral that constitutes the MAALT Collateral. For the avoidance of doubt, and except as may be set forth in a separate order entered by the Court, nothing herein shall be deemed to authorize the Debtors' use of any Cash Collateral that constitutes ABL Priority Collateral or MAALT Collateral.⁴

E. Cash Collateral Account. Proceeds of the DIP Facility shall be funded on each applicable funding date into a cash collateral account at a bank to be mutually agreed upon by the DIP Agent and the DIP Borrower, over which the DIP Agent shall have a perfected security interest and into which account the Loans will be funded on the date of each Borrowing (the "DIP Cash Collateral Account").

⁴ The Debtors are not seeking authorization to use any Cash Collateral that constitutes ABL Priority Collateral or MAALT Collateral. As such, any use of the term "Cash Collateral" does not include cash collateral that constitutes ABL Priority Collateral or MAALT Collateral.

F. **Intercreditor Agreement.** That certain *Amended and Restated Intercreditor Agreement*, dated as of November 9, 2017 (as amended, supplemented or otherwise modified prior to the Petition Date, the “Prepetition Intercreditor Agreement”) by and among PlainsCapital Bank (the “ABL Lender”), the Term Loan Agent, and the Debtors party thereto sets forth subordination and other provisions governing the relative priorities and rights of the Term Loan Secured Parties and the ABL Lender.

G. **ABL Facility.** The ABL Lender and certain of the Debtors are a party to that certain prepetition *Amended and Restated Loan Agreement*, dated as of January 12, 2018 (as amended, supplemented or otherwise modified prior to the Petition Date, the “ABL Credit Agreement,” and the facility thereunder, the “ABL Facility”), by and among Lonestar Prospects, Ltd., Lonestar Prospects Holding Company, L.L.C., Gary B. Humphreys, Martin W. Robertson and the ABL Lender; and all other agreements, documents and instruments executed and/or delivered with, to, or in favor of the ABL Lender in connection with the ABL Credit Agreement, including, without limitation, certain security agreements, mortgages, financing statements, collateral agreements, collateral trust agreements, deposit account control agreements, blocked account control agreements, securities account control agreements, and other collateral documents and agreements (as amended, restated, supplemented or otherwise modified from time to time and in effect on the date hereof, collectively, the “ABL Documents”). Pursuant to the ABL Documents, the ABL Loan Obligors granted the ABL Lender (i) first priority liens in the ABL Priority Collateral and (ii) second priority liens in the Common Collateral (as defined in the Intercreditor Agreement) that is not ABL Priority Collateral (the “Second Priority ABL Collateral” and (i) and (ii) together, the “ABL Liens” in the “ABL Collateral”). The ABL Lender reserves all rights concerning the actual collateral pledged to secure the debts owed to the ABL

Lender by any one or more of the Debtors. The defined terms in this Interim Order concerning the extent of the ABL Lender's collateral shall not be construed, deemed or interpreted to be definitive legal or factual conclusions concerning the actual collateral pledged to secured the debts owed to the ABL Lender by any one or more of the Debtors. Accordingly, the term "ABL Priority Collateral", as used herein, means and shall be construed and interpreted to mean and include any property of any one or more of the Debtors that is pledged in favor of the ABL Lender in a first priority, senior position to secure the repayment of certain debts owed to the ABL Lender by one or more of the Debtors. Likewise, the term "Second Priority ABL Collateral," as used herein, means and shall be construed and interpreted to mean and include any property of any one or more of the Debtors that is pledged in favor of the ABL Lender in a second priority, junior position to secure the repayment of certain debts owed to the ABL Lender by one or more of the Debtors. Collectively, the term "ABL Collateral", as used herein, means and shall be construed and interpreted to mean and include all property of any one or more of the Debtors that is pledged in favor of the ABL Lender to secure the repayment of certain debts owed to the ABL Lender by one or more of the Debtors, without distinction as to the priority of such liens and security interests held by and conveyed to the ABL Lender in such pledged property.

H. **MAALT Facility**. The MAALT Lender and certain Debtors are parties to that certain prepetition *Loan Agreement*, dated as of June 15, 2014 (as amended, supplemented, or otherwise modified prior to the Petition Date, the "MAALT Credit Agreement," and the facility thereunder, the "**MAALT Facility**"), by and among MAALT, L.P., Denetz Logistics, L.L.C., GHMR Operations, L.L.C., Gary B. Humphreys, Martin W. Robertson, the Trust Guarantors (as defined therein) and PlainsCapital Bank (the "**MAALT Lender**"); and all other

agreements, documents and instruments executed and/or delivered with, to or in favor of the MAALT Lender in connection with the MAALT Credit Agreement, including, without limitation, certain security agreements, mortgages, financing statements, collateral agreements, collateral trust agreements, deposit account control agreements, and other collateral documents and agreements (as amended, restated, supplemented or otherwise modified from time to time and in effect on the date hereof, collectively, the “MAALT Documents”). Pursuant to the MAALT Documents, the MAALT Loan Obligors granted the MAALT Lender first priority liens in certain collateral (the “MAALT Collateral”).

I. **Findings Regarding the DIP Facility.**

i. **Need for Postpetition Financing.** Based upon the pleadings and proceedings of record in the Chapter 11 Cases, the Debtors do not have sufficient available sources of working capital and financing to carry on the operation of their businesses without the DIP Facility and authorized use of Cash Collateral as provided herein. As a result of the Debtors’ financial condition, the use of Cash Collateral alone will be insufficient to meet the Debtors’ immediate post-petition liquidity needs. The Debtors’ ability to maintain business relationships with their vendors, suppliers, and distributors, pay their employees, and otherwise finance their operations during the Chapter 11 Cases is essential to the Debtors’ continued viability and to their ability to continue operations while seeking confirmation of a plan of reorganization in order to maximize the value of their estates. In the absence of the DIP Facility and the authorization by this Court to use Cash Collateral as set forth herein, the Debtors’ businesses and estates would suffer immediate and irreparable harm, including, without limitation, a cessation of substantially all of their operations. The preservation, maintenance, and enhancement of the going concern value of the Debtors are of the utmost significance and

importance to a successful restructuring of the Debtors under chapter 11 of the Bankruptcy Code. Use of Cash Collateral and the DIP Facility will also permit the Debtors to preserve the enterprise value of their businesses pending the confirmation and consummation of a plan of reorganization.

ii. No Credit on More Favorable Terms. Based upon the pleadings and proceedings of record in the Chapter 11 Cases, the Debtors are unable to obtain sufficient interim and long-term financing from sources other than the DIP Lenders on terms more favorable than under the DIP Facility and the DIP Loan Documents, and are not able to obtain unsecured credit allowable as an administrative expense under section 503(b)(1) of the Bankruptcy Code. The Debtors are also unable to obtain secured credit allowable under sections 364(c)(1), 364(c)(2) and 364(c)(3) of the Bankruptcy Code for the purposes set forth in the DIP Credit Agreement without the Debtors (i) granting to the DIP Agent and the DIP Lenders, subject to the Carve-Out, (a) the DIP Superpriority Claims (as defined below) and (b) the DIP Liens (as defined below) in the DIP Collateral (as defined below), in each case under the terms and conditions set forth in this Interim Order and the DIP Loan Documents, and (ii) providing the DIP Lenders the adequate protection as provided herein.

iii. Appropriateness of DIP Facility Terms. The terms of the DIP Facility, as described in this Interim Order and the DIP Loan Documents, and the use of the Term Loan Collateral, DIP Collateral (as defined below), and Cash Collateral (other than ABL Priority Collateral) pursuant to this Interim Order are fair and reasonable, reflect the Debtors' exercise of sound business judgment consistent with their fiduciary duties, and constitute reasonably equivalent value and fair consideration.

J. **Interim Financing.** During the Interim Period, the DIP Lenders are willing to provide up to \$3.5 million for borrowing by the DIP Borrower not later than one (1) business day following the entry of this Interim Order and the satisfaction of all other conditions to borrowing under the DIP Credit Agreement (the “**Initial Borrowing**”), and to consent to the use of Cash Collateral by the Debtors, subject to (i) execution of the DIP Credit Agreement by the DIP Borrower and each of the DIP Guarantors and delivery of such executed DIP Credit Agreement to the DIP Agent; (ii) entry of this Interim Order; and (iii) the other terms and conditions of the DIP Credit Agreement.

K. **Adequate Protection.** The adequate protection provided to (i) the Term Loan Secured Parties on account of any diminution in the value of such parties’ interests in the Term Loan Collateral from and after the Petition Date, including, without limitation, resulting from the DIP Facility, is consistent with and authorized by the Bankruptcy Code and is offered by the Debtors to protect such parties’ interests in the Term Loan Collateral in accordance with sections 361, 362 and 363 of the Bankruptcy Code. The consent of the Term Loan Secured Parties to the priming of their liens by the DIP Liens (1) does not constitute, and shall not be construed as constituting, an acknowledgment or stipulation by the Term Loan Secured Parties that their interests in the Term Loan Collateral are adequately protected pursuant to this Interim Order or otherwise; and (2) is conditioned upon entry of this Interim Order and does not and shall not be deemed to constitute consent to the priming of the Term Loan Liens other than pursuant to this Interim Order and the terms set forth herein. The adequate protection provided herein and other benefits and privileges contained herein are necessary in order to (i) protect the Term Loan Secured Parties from the diminution in value of their Term Loan Collateral; and (ii) obtain the foregoing consents and agreements. Nothing herein shall prevent the Term Loan

Secured Parties from seeking additional adequate protection (i) to the extent permitted by law or (ii) to the extent permitted in the Prepetition Intercreditor Agreement.

L. **Section 552.** In light of the subordination of their liens and superpriority administrative claims (i) in the case of the DIP Secured Parties to the Carve-Out and the Permitted Liens (as defined below), and (ii) in the case of the Term Loan Secured Parties (collectively, the “Prepetition Secured Parties”) to the Carve-Out and the DIP Liens, each of the DIP Secured Parties and the Prepetition Secured Parties are entitled to all of the rights and benefits of section 552(b) of the Bankruptcy Code, and, subject to the entry of the Final Order, the “equities of the case” exception shall not apply to any of the DIP Secured Parties or the Prepetition Secured Parties with respect to the proceeds, products, rents, issues or profits of any of the DIP Collateral or the Prepetition Secured Parties’ 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 Secured Parties’ Collateral under section 552(b) of the Bankruptcy Code. Subject to and immediately upon entry of the Final Order, the Debtors shall be deemed to have irrevocably waived, and to have agreed not to assert, any claim or right under sections 552 or 726 of the Bankruptcy Code seeking to avoid the imposition of the DIP Liens, Prepetition Secured Parties’ liens (“Prepetition Secured Party Liens”) or the Adequate Protection Liens (as defined below) on any property acquired by any of the Debtors or any of their estates or seeking to surcharge any costs or expenses incurred in connection with the preservation, protection or enhancement of, or realization by, the DIP Agent, the DIP Lenders, or the Prepetition Secured Parties upon the DIP Collateral or the Prepetition Secured Parties’ collateral, as applicable.

M. **Business Judgment and Good Faith Pursuant to Section 364(e).**

iv. Debtors' Sound Business Judgment. The DIP Lenders have indicated a willingness to provide postpetition secured financing via the DIP Facility to the Debtors in accordance with the terms of the DIP Loan Documents and this Interim Order. The terms and conditions of the DIP Facility as set forth in the DIP Loan Documents and this Interim Order, and the fees, expenses, and other charges paid and to be paid thereunder or in connection therewith, are fair, reasonable, and the best available under the circumstances, and the Debtors' agreement to the terms and conditions of the DIP Loan Documents and to the payment of such fees reflect the Debtors' exercise of sound business judgment consistent with their fiduciary duties. Such terms and conditions are supported by reasonably equivalent value and fair consideration.

v. DIP Lenders' Good Faith. The DIP Lenders, the Prepetition Secured Parties and the Debtors, with the assistance of counsel and of their respective advisors, have acted in good faith and at arm's-length in, as applicable, negotiating, consenting to, and/or agreeing to, the DIP Facility, the Debtors' use of the Prepetition Secured Parties' collateral, the DIP Collateral (as defined below) and the Cash Collateral, the DIP Loan Documents and the protections set forth herein. The DIP Facility (including all advances that are made at any time to the Debtors under the DIP Loan Documents) and the Debtors' use of the Collateral and Cash Collateral shall be deemed to have been extended and/or consented to by the DIP Lenders for valid business purposes and uses and in good faith, as that term is used in section 364(e) of the Bankruptcy Code, and in express and good faith reliance upon the protections offered by section 364(e) of the Bankruptcy Code and this Interim Order. Accordingly, the DIP Facility, adequate protection, and other protections identified herein shall be entitled to the full protection

of section 364(e) of the Bankruptcy Code in the event this Interim Order or any provision hereof or thereof is vacated, reversed, amended, or modified on appeal or otherwise.

N. **Relief Essential; Best Interest.** The Debtors have requested immediate entry of this Interim Order pursuant to Bankruptcy Rules 4001(b)(2) and 4001(c)(2) and Local Rules 2002-1 and 4001-1. Absent granting the relief set forth in this Interim Order, the Debtors' estates, their business, and their ability to successfully reorganize or otherwise preserve the enterprise value of their operations will be immediately and irreparably harmed. Consummation of the DIP Facility and authorization of the use of Cash Collateral as set forth herein, in accordance with the DIP Facility and this Interim Order, is therefore in the best interests of the Debtors' estates and consistent with their fiduciary duties. Based on all of the foregoing, sufficient cause exists for immediate entry of the Interim Order pursuant to Bankruptcy Rules 4001(b)(2) and 4001(c)(2) and the applicable Local Rules.

Based on the foregoing, and upon the record made before this Court at the Interim Hearing, and good and sufficient cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

1. **Motion Granted.** The Motion is granted on the terms and conditions set forth in this Interim Order and the DIP Loan Documents. Any objections to the relief granted in this Interim Order that have not previously been withdrawn are hereby overruled. This Interim Order shall become effective immediately upon its entry.

2. **Approval of DIP Loan Documents; Authority Thereunder.** The Debtors are hereby authorized to enter into the DIP Loan Documents, including the DIP Credit Agreement, and such additional documents, instruments and agreements as may be reasonably required or requested by the DIP Agent and the DIP Lenders to implement the terms or

effectuate the purposes of this Interim Order. The Debtors are authorized to comply with and perform all of the terms and conditions contained in the DIP Loan Documents, and directed to repay amounts borrowed, together with interest and fees thereon (including, without limitation, the fees in section 3.04 of the DIP Credit Agreement), as well as any other outstanding obligations to the DIP Lenders in accordance with and subject to the terms and conditions set forth in the DIP Loan Documents and this Interim Order.

3. **Authorization to Borrow DIP Facility Loans and Use Cash Collateral.**

Upon finalizing and executing the DIP Credit Agreement and the other DIP Loan Documents, the DIP Borrower is immediately authorized to borrow from the DIP Lenders, and the Guarantors are immediately authorized to guaranty, initial borrowings under the DIP Facility of up to an aggregate principal amount of \$3.5 million of DIP Loans under the DIP Credit Agreement, subject to and in accordance with the terms of this Interim Order and the DIP Credit Agreement. The Debtors are authorized to use the proceeds of the DIP Loans and the Cash Collateral only for the purposes described in Paragraph 15 of this Interim Order. The DIP Facility and the Debtors' authorization to use the proceeds of the DIP Loans and the Cash Collateral will terminate upon the earliest to occur of (such earliest date, the "Termination Date"): (a) the date that is 180 days after the Petition Date (the "Scheduled Maturity Date"); (b) thirty (30) days after entry by this Court of this Interim Order approving the DIP Facility (the "Interim DIP Period"), if the Final DIP Order (as defined below) has not been entered by this Court prior to the expiration of such 30-day period; (c) the effective date of a plan of reorganization or liquidation in the Chapter 11 Cases; (d) the consummation of a sale of all or substantially all of the assets of the Debtors pursuant to section 363 of the Bankruptcy Code or otherwise; (e) dismissal of the Chapter 11 Cases or conversion of the Chapter 11 Cases into cases

under chapter 7 of the Bankruptcy Code; (f) the appointment of a trustee or receiver in one or more of the Chapter 11 Cases; (g) without the DIP Lenders' prior written consent, the date of filing of or express written support by the DIP Borrower for a plan of reorganization that is not an Acceptable Plan (as defined below); (h) the date of termination of the DIP Lenders' commitments following the occurrence of an Event of Default under the DIP Credit Agreement; or (i) the acceleration of any outstanding DIP Loans in accordance with the terms of the DIP Credit Agreement and the DIP Loan Documents, unless such Termination Date is extended, as to the DIP Facility, with the prior written consent of the DIP Agent and the requisite lenders under the DIP Facility and, as to the use of Cash Collateral, with the prior written consent of the Term Loan Agent and the Required Lenders (as defined in the Term Loan Agreement).

4. **No Obligation to Fund.** The DIP Lenders and Term Loan Lenders each have no obligation to extend credit under the DIP Credit Agreement or permit the use of any DIP Collateral or Term Loan Collateral or any proceeds thereof, including Cash Collateral, as applicable, during the Interim Period unless and until all conditions precedent to the extension of credit and/or use of DIP Collateral, Term Loan Collateral, or proceeds thereof under the DIP Loan Documents and this Interim Order have been satisfied in full or waived in writing by DIP Secured Parties and/or the Term Loan Agent, as applicable.

5. **Collections and Disbursements.** Except as otherwise set forth herein, from the Petition Date until the DIP Loans have been paid in full in cash, all cash receipts, Cash Collateral, and all proceeds from the sale or other disposition of, or other revenue of any kind attributable to, any DIP Collateral that is now in, or shall hereafter come into, the possession or control of any of the Debtors, or to which any of the Debtors is now or shall hereafter become entitled (i) shall be subject to the DIP Liens and the Adequate Protection Liens (and shall be

treated in accordance with this Interim Order and the DIP Credit Agreement) and (ii) shall be, to the extent related to or arising from or in connection with the DIP Facility, promptly deposited only into the DIP Cash Collateral Account and may be accessed by the DIP Borrower only for payment of expenses specified in the Approved Budget (subject to the Budget Variance). All such amounts arising from or in connection with the Term Loan Priority Collateral (other than any amounts arising from or in connection with any ABL Priority Collateral or MAALT Collateral) shall be applied to the payment of outstanding DIP Loans in accordance with the DIP Credit Agreement. For the avoidance of doubt, and for the sake of clarity, (i) the DIP Liens and Adequate Protection Liens on the ABL Priority Collateral shall be junior to the ABL Liens on such ABL Priority Collateral, and (ii) any Cash Collateral that constitutes ABL Priority Collateral shall be segregated in a separate debtor-in-possession depository account (“ABL Priority Collateral Account”) and shall not be used for any purpose unless authorized by a separate order of this Court. For the avoidance of doubt, and for the sake of clarity, (i) the DIP Liens and Adequate Protection Liens on the MAALT Collateral shall be junior to the MAALT Liens on such MAALT Collateral, and (ii) any Cash Collateral that constitutes MAALT Collateral shall be segregated in a separate debtor-in-possession depository account (“MAALT Collateral Account”) and shall not be used for any purpose unless authorized by a separate order of this Court.

6. **Perfection in Cash.** Subject to the Carve Out and the rights of the ABL Lender with respect to the ABL Priority Collateral and the rights of the MAALT Lender with respect to the MAALT Collateral, all financial institutions with which the Debtors maintain accounts containing Cash Collateral are authorized and directed to comply with any request of the DIP Agent to turn over to the DIP Agent all Cash Collateral (other than Cash Collateral

constituting ABL Priority Collateral or MAALT Collateral) therein without offset or deduction of any kind; provided that any such request by the DIP Agent for turn over of Cash Collateral is made in accordance with the terms of this Interim Order and the DIP Loan Documents. The DIP Agent shall enjoy the benefit of (i) all deposit account control agreements, blocked account control agreements, securities account control agreements, and similar agreements to which the Term Loan Agent is a party, and (ii) all other deposit account control agreements, blocked account control agreements, securities account control agreements, and similar agreements to which any Debtor is a party. Notwithstanding and without minimizing the force of the foregoing, the Debtors are authorized and directed to enter into, and cause the financial institutions servicing the Debtors' deposit accounts to enter into, such deposit account control agreements and other collateral agreements with the DIP Agent and such financial institutions as the DIP Agent may require, or alternatively, the DIP Agent shall be entitled to enjoy the benefit of all control agreements to which the Debtor is a party, as set forth above, without the need to enter into any such new agreements.

7. **Interest on DIP Facility Loans.** The DIP Loans shall bear interest at the rates, which interest shall be due and payable (and paid), as set forth in, and in accordance with the terms and conditions of, this Interim Order and the DIP Loan Documents, and in each case shall be non-refundable and not subject to challenge in any respect and shall be payable without further notice, motion, or application to, order of, or hearing before, this Court. The DIP Loans will bear interest at a rate, at Borrower's option, equal to LIBOR plus 9.50% per annum, payable monthly in arrears. All interest shall be calculated using a 360-day year and actual days elapsed and shall be payable in cash. At any time when an Event of Default under the DIP Facility has occurred and is continuing, all outstanding amounts under the DIP Facility shall bear interest, to

the fullest extent permitted by law, at the interest rate applicable to base rate loans plus 2.00% per annum (the “DIP Default Rate”) and shall be payable on demand. Interest on overdue amounts under the DIP Facility shall also accrue at the DIP Default Rate.

8. **Payment of DIP Fees and Expenses.**

(a) Professional Fees. The Debtors are authorized and directed to pay (i) all fees when due under the DIP Credit Agreement (including, without limitation, any fees provided for under section 3.04 of the DIP Credit Agreement) in the amounts set forth in the DIP Credit Agreement and (ii) reasonable, documented fees, costs, and expenses incurred or accrued by the DIP Agent (the foregoing to include all unpaid prepetition fees, costs, and expenses incurred by the DIP Agent in connection with the DIP Facility) in connection with any and all aspects of the Chapter 11 Cases from the proceeds of the DIP Facility, including, without limitation, the reasonable fees and expenses of the DIP Agent’s legal counsel, Sidley Austin LLP (“Sidley”), and financial advisor, FTI Consulting, Inc. (“FTI”), and other professionals hired by or on behalf of the DIP Agent (the “DIP Agent Professionals”). None of such fees, costs and expenses shall be subject to Court approval or U.S. Trustee guidelines, and no DIP Agent Professional shall be required to file with respect thereto any interim or final fee application with this Court. Copies of summary invoices submitted to the Debtors by such DIP Agent Professionals shall be forwarded to the U.S. Trustee, any statutory committee appointed in these Chapter 11 Cases, and such other parties as this Court may direct. The summary invoices shall be sufficiently detailed to enable a determination as to the reasonableness of such fees and expenses; provided, however, that such summary invoices may be redacted to the extent necessary to delete any information subject to the attorney-client privilege, any

information constituting attorney work product, or any other confidential information, and the provision of such summary invoices shall not constitute any waiver of the attorney-client privilege or any benefits of the attorney work product doctrine or other applicable privilege. If the Debtors or U.S. Trustee object to the reasonableness of the fees and expenses of any of the DIP Agent Professionals and cannot resolve such objection within fourteen (14) days of receipt of such invoices, then such party shall file with this Court and serve such objection (the “Fee Objection”) within seven (7) days thereafter, limited to the issue of the reasonableness of such fees and expenses, and any failure by any such Party to file a Fee Objection within such twenty-one (21) day period shall constitute a waiver of any right of such party to object to the applicable invoice. Notwithstanding any provision herein to the contrary, any objection to, and any hearing on an objection to, payment of any fees and expenses set forth in a professional fee invoice in respect of a DIP Agent Professional shall be limited to the reasonableness of the particular items or categories of the fees and expenses that are the subject of such objection. The Debtors shall timely pay in accordance with the terms and conditions of this Interim Order (a) the undisputed fees, costs, and expenses reflected on any invoice to which a Fee Objection has been timely filed and (b) all fees, costs, and expenses on any invoice to which no Fee Objection has been timely filed. In addition, the Debtors are hereby authorized and directed to indemnify the DIP Agent and the other DIP Secured Parties (and each of their respective directors, officers, employees, agents, representatives, attorneys, consultants, advisors and controlling persons) against any liability arising in connection with the DIP Loan Documents, to the extent set forth in the DIP Loan Documents. All such unpaid fees, costs, expenses and indemnities of the DIP

Secured Parties shall (i) constitute DIP Obligations, (ii) be secured by the DIP Collateral, and (iii) be afforded all of the priorities and protections afforded to other the DIP Obligations under this Interim Order and the Operative Documents.

(b) DIP Fees. The Debtors shall pay all fees when due under the DIP Credit Agreement in the amounts set forth in the DIP Credit Agreement from the proceeds of the DIP Facility.

9. Conditions Precedent. The DIP Lenders shall have no obligation to extend credit under the DIP Facility during the Interim Period unless and until all conditions precedent to the extension of credit under this Interim Order and the DIP Loan Documents have been satisfied in full or waived in writing by the DIP Agent at the direction of the DIP Lenders.

10. Validity of DIP Loan Documents. Upon execution and delivery of the DIP Loan Documents, the DIP Loan Documents shall constitute, and are hereby deemed to be, legal, valid and binding obligations of the Debtors, enforceable against each Debtor in accordance with the terms thereof for all purposes during the Chapter 11 Cases, in any subsequently converted case of any Debtor under chapter 7 of the Bankruptcy Code, or after dismissal of any of the Chapter 11 Cases. Any DIP Loans advanced under the DIP Credit Agreement pursuant to this Interim Order will be made only to fund: (a) with respect to the Initial Borrowing, payments pursuant to any interim or final order entered by the Bankruptcy Court pursuant to any “first day” motions permitting the payment by the Debtors of any prepetition amounts then due and owing (the “First Day Orders”), provided that the form and substance of such First Day Orders shall be reasonably acceptable to the DIP Lenders; (b) postpetition working capital purposes of the Debtors; (c) current interest and fees under the DIP Facility; (d) the payment of adequate protection payments to the Term Loan Agent and the Term

Loan Lenders; and (e) the allowed administrative costs and expenses of the Chapter 11 Cases, in each case, solely in accordance with the Approved Budget (subject to the Budget Variance) and this Interim Order. No obligation, payment, transfer, or grant of security under the DIP Loan Documents or this Interim Order shall be stayed, restrained, voided, voidable or recoverable under the Bankruptcy Code or under any applicable non-bankruptcy law, or subject to any defense, reduction, setoff, recoupment or counterclaim.

11. **DIP Superpriority Claims**. In accordance with Bankruptcy Code section 364(c)(1), the DIP Obligations shall constitute superpriority administrative expense claims (the “DIP Superpriority Claims”) 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 Term Loan Lenders, the ABL Lender and the MAALT Lender, respectively, 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) (subject to, and upon entry of, the Final Order), 507(a), 507(b), 546, 726, 1113, and 1114 or otherwise, including those resulting from the conversion of any of the 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 shall be subject to (i) the Carve-Out, and (ii) the ABL Lender’s and MAALT Lender’s respective credit bid, lien rights and repayment rights in the sale or other disposition of any ABL Priority Collateral or MAALT Collateral (as set forth in this Interim

Order). The DIP Superpriority Claims shall for purposes of section 1129(a)(9)(A) of the Bankruptcy Code be considered administrative expenses allowed under section 503(b) of the Bankruptcy Code, shall be against each Debtor on a joint and several basis, and shall be payable from and have recourse to all prepetition and post-petition property of the Debtors, including, subject to and upon entry of the Final Order, the Avoidance Actions and Avoidance Action Proceeds, and all proceeds thereof. Except as set forth in this Interim Order, the Final Order, or other order of this Court authorizing and approving the grant of a superpriority claim as adequate protection to the ABL Lender or the MAALT Lender (provided that such claim(s), if any, shall be subordinate to the DIP Superpriority Claims), no other superpriority claims shall be granted or allowed in these Chapter 11 Cases.

12. **DIP Priming Liens.** As security for the DIP Loans, the DIP Agent, on behalf and for the benefit of the DIP Lenders, is hereby granted (effective upon the date of this Interim Order, without any further action by the DIP Lenders, including the execution by the Debtors or the filing or recordation of security agreements, lockbox or control agreements, financing statements, or any other instruments or otherwise) valid, enforceable, binding, and fully perfected security interests in and liens (the “DIP Liens”) upon all of the assets of the Debtors (whether tangible, intangible, real, personal or mixed), now existing or hereafter acquired, and any proceeds and products thereof in whatever form received, including, subject to entry of a Final Order, all Avoidance Actions and Avoidance Action Proceeds (collectively with all rents, issues, products, offspring, proceeds and profits of any or all of the foregoing, the “DIP Collateral”), subject only to the payment of the Carve-Out, which DIP Liens shall consist of:

- (a) First Priority Lien on Unencumbered Property. Pursuant to section 364(c)(2) of the Bankruptcy Code, a continuing, enforceable, first priority,

fully-perfected lien and security interest upon all of the Debtors' right, title and interest in, to, and under all DIP Collateral that was not encumbered by a validly perfected, enforceable, and nonavoidable security interest or lien as of the Petition Date or a valid security interest perfected subsequent to the Petition Date to the extent permitted by section 546(b) of the Bankruptcy Code (collectively, the "Unencumbered Property"). Subject only to and effective upon entry of the Final Order, Unencumbered Property shall also include the Debtors' claims and causes of action under sections 502(d), 544, 545, 547, 548, 549, 550, and 553 of the Bankruptcy Code and any other avoidance actions under the Bankruptcy Code, whether now existing or hereafter acquired or arising and whether pursuant to federal law or applicable state law (collectively, the "Avoidance Actions"), and all proceeds thereof, recoveries related thereto, and property received or recovered thereby, whether by judgment, settlement, or otherwise (the "Avoidance Action Proceeds").

(b) Liens Junior to Certain Other Liens. Pursuant to section 364(c)(3) of the Bankruptcy Code, a junior, perfected lien and security interest upon all of the Debtors' right, title and interest in, to and under all DIP Collateral, whether now existing or hereafter acquired, that is subject to and subordinated to (i) the first priority, senior liens in favor of the ABL Lender on the ABL Priority Collateral, (including, without limitation, Cash Collateral constituting ABL Priority Collateral); (ii) the first priority, senior liens of the MAALT Lender in the MAALT Collateral; and (iii) any liens that (x) are valid, perfected, enforceable and nonavoidable as of the Petition Date or validly perfected subsequent to the Petition Date to the extent permitted by section 546(b) of the Bankruptcy Code, (y) under applicable law, are senior to, and have not been subordinated

to, the Term Loan Liens, and (z) are not subject to avoidance, reduction, disgorgement, counterclaim, surcharge, or subordination pursuant to the Bankruptcy Code or applicable non-bankruptcy law (each, a “Permitted Lien” and collectively, the “Permitted Liens”), including the Permitted Liens scheduled on Schedule 9.04 to the DIP Credit Agreement, and in each case is not subject to section 552(a) of the Bankruptcy Code.

(c) Liens Priming Prepetition Secured Parties’ Liens. Pursuant to section 364(d)(1) of the Bankruptcy Code, valid, enforceable, binding, continuing, fully perfected, first priority senior priming liens upon and security interests in all of the Debtors’ right, title and interest in, to, and under all DIP Collateral not covered by clauses (a) and (b) above and, with respect to the ABL Priority Collateral and the MAALT Collateral: (i) valid, binding, continuing, enforceable, fully perfected, junior liens that are subordinate to the ABL Lender’s continuing first priority, senior liens in all DIP Collateral constituting ABL Priority Collateral, (ii) valid, binding, continuing, enforceable, fully perfected, junior liens that are subordinate to the MAALT Lender’s continuing first priority, senior liens in all DIP Collateral constituting MAALT Collateral; and (iii) valid, binding, continuing, enforceable, fully perfected, priming liens that are immediately senior to the Term Loan Lenders’ liens on such ABL Priority Collateral;

(d) Continuing Priority of ABL Lender’s and MAALT Lender’s Liens. Notwithstanding any other provisions contained herein or deemed, interpreted and/or construed, as applicable, to the contrary, and for the sake of clarity and for the avoidance of doubt, nothing contained herein will be deemed, intended, interpreted, construed and/or enforced to prime the preexisting first priority, senior liens as of the Petition Date

of (i) the ABL Lender in the ABL Priority Collateral (including, without limitation, any and all Cash Collateral constituting ABL Priority Collateral); or (ii) the MAALT Lender in the MAALT Collateral (including, without limitation, any and all Cash Collateral constituting MAALT Collateral). The validity, priority and extent of the ABL Lender's ABL Liens in the ABL Priority Collateral and the MAALT Lender's liens in the MAALT Collateral, respectively, as such validity, priority and extent existed as of the Petition Date, shall not be altered, modified, subordinated, primed or otherwise affected in any way by the terms of this Interim Order.

13. **Term Loan Lenders' Adequate Protection.** Until the indefeasible repayment in full in cash of the Term Loan Obligations, the Term Loan Lenders are entitled to adequate protection of their interests in the Term Loan Collateral on account of the diminution in the value thereof as a result of (i) the provisions of this Interim Order granting priming liens on such Term Loan Collateral (to the extent such Term Loan Collateral does not constitute ABL Priority Collateral or MAALT Collateral) to the DIP Agent for the benefit of the DIP Lenders; (ii) the authorization of the use of Cash Collateral (other than Cash Collateral constituting ABL Priority Collateral or MAALT Collateral) and other Term Loan Collateral; (iii) the imposition of the automatic stay pursuant to section 362 of the Bankruptcy Code; and/or (iv) otherwise (the "Diminution in Term Loan Collateral Value"), pursuant to sections 361(a), 363(c) and 364(d)(1) of the Bankruptcy Code. The Term Loan Agent, on behalf and for the benefit of the Term Loan Lenders, is hereby granted the following (collectively, the "Term Loan Adequate Protection Obligations"):

(a) **Term Adequate Protection Superpriority Claims.** The Term Loan Agent, on behalf and for the benefit of the Term Loan Lenders, is hereby granted

superpriority administrative expense claims (the “Term Adequate Protection Superpriority Claims”) under sections 503 and 507 of the Bankruptcy Code against the Debtors’ estates, including, subject to and upon entry of the Final Order, Avoidance Actions, to the extent of any Diminution in Term Loan Collateral Value, which Term Adequate Protection Superpriority Claims shall have priority in payment over any and all administrative expenses 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), 726, 1113 and 1114, or otherwise and including those resulting from the conversion of any of the Chapter 11 Cases pursuant to section 1112 of the Bankruptcy Code; provided, however, that at all times while such claim is in full force and effect pursuant to this Interim Order, the Term Adequate Protection Superpriority Claims shall be junior in all respects to the DIP Superpriority Claims and subject to (i) the Carve-Out, and (ii) the ABL Lender’s and MAALT Lender’s respective credit bid rights, lien rights and repayment rights in the sale or other disposition of any ABL Priority Collateral or MAALT Collateral (as set forth in this Interim Order).

(b) Term Adequate Protection Liens. The Term Loan Agent, on behalf and for the benefit of the Term Loan Lenders, is hereby granted valid, enforceable, unavoidable and fully perfected replacement liens and security interests in all DIP Collateral (the “Adequate Protection Liens”), to the extent of any Diminution in Term Loan Collateral Value, which replacement liens and security interests shall have a priority immediately junior to the DIP Liens, subject to, junior and subordinate to the priority of the ABL Lender’s liens in the ABL Priority Collateral, the MAALT Lender’s liens in the MAALT Collateral, and subject to the Carve-Out. The Term Adequate

Protection Liens shall be deemed to be legal, valid, binding, enforceable, perfected liens, not subject to subordination or avoidance. Except as otherwise set forth herein and in accordance with the priority set forth in the immediately preceding sentence, or as otherwise provided in this Interim Order, or in accordance with the Prepetition Intercreditor Agreement, the Term Adequate Protection Liens shall not be subordinated to or be made *pari passu* with any other lien under section 364(d) of the Bankruptcy Code or otherwise.

(c) Adequate Protection Payments. As further adequate protection, and in consideration, and as a requirement, for obtaining the consent of the Term Loan Lenders to the entry of this Interim Order and the Debtors' consensual use of Cash Collateral (other than Cash Collateral constituting ABL Priority Collateral or MAALT Collateral) as provided herein: the Debtors shall pay the reasonable, documented fees, costs, and expenses incurred or accrued by the Term Loan Agent (the foregoing to include all unpaid prepetition fees, costs and expenses) in connection with any and all aspects of the Chapter 11 Cases, and including the reasonable fees and expenses of the legal and financial advisors to the Term Loan Agent (the "Adequate Protection Payments") from the proceeds of the DIP Facility. Copies of any summary invoices of such professionals, including Sidley and FTI, with respect to such fees, expenses and costs shall be provided to the Debtor and forwarded to the U.S. Trustee consistent with the notice and objection procedures set forth in Paragraph 8(a) of this Interim Order. To the extent the DIP Agent and the Term Loan Agent are the same and have a single set of advisors, such advisors may submit a single combined invoice for their aggregated services.

(d) Financial Reporting. The Debtors shall provide the Term Loan Agent with the financial and other reporting provided to the DIP Agent pursuant to the DIP Credit Agreement.

(e) Right to Seek Additional Adequate Protection. This Interim Order is without prejudice to, and does not constitute a waiver of, expressly or implicitly, the rights of the Term Loan Agent or the other Term Loan Lenders to seek additional forms of adequate protection at any time.

(f) Noninterference with DIP Obligations. For the avoidance of doubt, nothing in this Paragraph 13 shall affect or limit the obligation of the Debtors to pay the fees, costs, and expenses incurred by the DIP Lenders as provided in the DIP Loan Documents from the proceeds of the DIP Facility.

(g) Continuing Priority of ABL Lender's and MAALT Lender's Liens. Notwithstanding any other provisions contained herein or deemed, interpreted and/or construed, as applicable, to the contrary, and for the sake of clarity and for the avoidance of doubt, nothing contained herein will be deemed, intended, interpreted, construed and/or enforced to prime the preexisting first priority, senior liens of the ABL Lender in the ABL Priority Collateral (including, without limitation, any and all Cash Collateral constituting ABL Priority Collateral) or the liens of the MAALT Lender in the MAALT Collateral (including, without limitation, any and all Cash Collateral constituting MAALT Collateral). The validity, priority and extent of the ABL Lender's ABL Liens in the ABL Priority Collateral and the MAALT Lender's Liens in the MAALT Collateral, as such validity, priority and extent existed as of the Petition Date, shall not be altered,

modified, subordinated, primed or otherwise affected in any way by the terms of this Interim Order.

14. **Carve-Out.**

(a) Carve-Out. to be paid to the Clerk of the Court and the U.S. Trustee pursuant to 28 U.S.C. § 1930; (b) to the extent allowed at any time, whether by interim order, procedural order, or otherwise, all unpaid fees and expenses accrued or incurred, as of the date of the delivery by the DIP Agent of a Carve-Out Trigger Notice (as defined below), by persons or firms retained by the Debtors and the Committee (if any) pursuant to an order of the Court under sections 327, 328, 363, or 1103(a) of the Bankruptcy Code (the “Professionals”), to the extent such fees and expenses are (i) within the amounts set forth in the Approved Budget (subject to the Budget Variance), and (ii) allowed by the Court under Sections 330, 331, or 363 of the Bankruptcy Code; (c) all unpaid fees and expenses of the Professionals incurred after the date of the delivery by the DIP Agent of a Carve-Out Trigger Notice, in an aggregate amount not to exceed \$500,000 for Professionals retained by the Debtors and an aggregate amount not to exceed \$100,000 for Professional retained by the Committee (if any) to the extent such fees and expenses are subsequently allowed by the Court under Sections 330, 331 or 363 of the Bankruptcy Code; and (d) all reasonable and documented fees and expenses incurred by any trustee under section 726(b) of the Bankruptcy Code in an aggregate amount not to exceed \$25,000. As used herein, the term “Carve-Out Trigger Notice” shall mean a written notice delivered by the DIP Agent to the Debtors and their counsel, the U.S. Trustee, and counsel to the Committee (if any), which notice may be delivered following the occurrence and during the continuation of an Event of Default (as defined below).

(b) Funding. Any funding of the Carve-Out shall be secured by the DIP Collateral and shall be otherwise entitled to the protections granted under the Interim DIP Order, the Final DIP Order, the DIP Loan Documents, the Bankruptcy Code and applicable law; provided, however, that no part of the Carve-Out shall include fees, costs, or expenses incurred by any party related in any way to the investigation or challenge of any claim or lien of, or obligation to, the DIP Agent, the DIP Lenders, or the Term Loan Lenders or any attempts to prevent, hinder, or otherwise delay any enforcement or realization upon any DIP Collateral.

(c) Payment of Professional Fees Prior to an Event of Default. Any payment or reimbursement made to Professionals prior to the delivery of a Carve-Out Trigger Notice shall not reduce the Carve-Out. Prior to the delivery of a Carve-Out Trigger Notice, the Debtors shall be permitted to pay the allowed fees and expenses of Professionals subject to this Interim Order, the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, and any interim compensation procedures entered by this Court.

(d) No Direct Obligation to Pay Professional Fees; No Waiver of Right to Object. The DIP Lenders shall not be responsible for the payment or reimbursement of any fees or disbursements of any Professional incurred in connection with these Chapter 11 Cases or any successor cases under any chapter of the Bankruptcy Code. Nothing in this Interim Order or otherwise shall be construed to obligate the DIP Lenders in any way, to pay compensation to, or to reimburse expenses of, any Professional or to guarantee that the Debtors have sufficient funds to pay such compensation or reimbursement. Nothing herein shall be construed as consent to the allowance of any professional fees or expenses of any of the Debtors, the Committee, if any, any other

official or unofficial committee in these Chapter 11 Cases or any successor cases, or of any person or entity, or shall affect the right of any party to object to the allowance and payment of any such fees and expenses.

15. **Budget for DIP Facility.** Attached hereto as **Exhibit B** is a thirteen-week cash flow budget setting forth all projected cash receipts and cash disbursements (by line item) on a weekly basis (the “Initial Approved Budget”). Following the entry of this Interim Order, and no later than the date that is the four-week anniversary of the Closing Date of the DIP Facility, the Debtors shall, in a manner consistent with the DIP Credit Agreement, propose an updated thirteen-week (13-week) detailed rolling cash projection, which shall be thereafter updated, as necessary, but not less than once every four weeks (each, a “Proposed Budget”); provided that the DIP Agent and the Required Lenders shall have five (5) Business Days to approve any revised Proposed Budget; provided, further, that if the DIP Agent and the Required Lenders do not approve any updated Proposed Budget by the sixth (6th) Business Day following receipt thereof, the previously delivered Budget shall remain in effect (or be deemed to be rolled forward in the discretion of the DIP Agent and in effect, as applicable) for purposes of the variance testing covenant and reporting. The Initial Approved Budget shall be the “Approved Budget” until such time as the DIP Agent and Term Loan Agent consent to a Proposed Budget in writing, which consent the DIP Agent and Term Loan Agent may grant or withhold in their sole and exclusive discretion, at which time such consented-to Proposed Budget shall become the Approved Budget and replace the then-operative Approved Budget for all purposes. The Initial Approved Budget is an integral part of this Interim Order and has been relied upon by the DIP Lenders to provide the DIP Facility and consent to this Interim Order and by the Term Loan Secured Parties to permit the use of the Cash Collateral and consent to this Interim Order. The

Debtors represent and warrant to the DIP Agent, the DIP Lenders, the Term Loan Secured Parties and this Court that the Initial Approved Budget includes and contains the Debtors' best estimate of all operational receipts and all operational disbursements, fees, costs and other expenses that will be payable, incurred and/or accrued by any of the Debtors during the period covered by the Initial Approved Budget and that such operational disbursements, fees, costs and other expenses will be timely paid in the ordinary course of business solely pursuant to and in accordance with the Initial Approved Budget unless such operational disbursements, fees, costs and other expenses are not incurred or otherwise payable. The Debtors further represent that the Initial Approved Budget is achievable and will allow the Debtors to operate in the Chapter 11 Cases and pay post-petition obligations as they come due. Pursuant to the terms of the DIP Credit Agreement, the Debtors shall provide on a weekly basis to the DIP Agent and the Term Loan Agent a report detailing the actual disbursements and receipts for the preceding week versus the disbursements and receipts contained in the Approved Budget for such period. The Debtors shall be permitted a variance between the Approved Budget and the actual amount of expenditures by the Debtors without triggering the occurrence of an Event of Default (as defined in the DIP Credit Agreement) for any four-week rolling period as follows: the Debtors' expenditures shall not exceed projected expenditures as set forth in the Approved Budget by more than fifteen percent (15%) from the projected expenditures (including professional fees) for such period as set forth in the Approved Budget (the "Budget Variance"). Additional variances, if any, from the Approved Budget, and any proposed changes to the Approved Budget, shall be subject to the reasonable approval of the DIP Agent and Required Lenders (as defined in the Term Loan Agreement). The Debtors shall operate solely in accordance with the Approved

Budget (including professional fees) and all disbursements of the Debtors shall be consistent with the provisions of the Approved Budget, subject to the Budget Variance.

16. **Automatic Effectiveness of Liens.** Automatically upon entry of this Interim Order, the DIP Liens and the Adequate Protection Liens granted herein shall be 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 shall be free and clear of other liens, claims and encumbrances, except the Permitted Liens, Adequate Protection Liens, the Term Loan Liens, ABL Liens, MAALT Liens, and any other liens expressly permitted under the DIP Credit Agreement. If the DIP Agent or the Term Loan Agent hereafter requests that the Debtors execute and deliver to the DIP Agent or the Term Loan Agent 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 and directed to execute and deliver such financing statements, security agreements, collateral assignments, instruments, and documents, and the DIP Agent or the Term Loan Agent 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 this Interim Order.

17. **Milestones**. In addition to the Events of Default set forth in the DIP Credit Agreement, it shall be an Event of Default under the DIP Credit Agreement and this Interim Order entitling the DIP Agent to exercise the remedies under the DIP Credit Agreement and this Interim Order if the Debtors shall fail to meet any of the following deadlines (collectively, the “Milestones”), unless such Milestones are extended by agreement of the Debtors and DIP Agent:

(a) On or before the date that is thirty (30) calendar days following the entry of this Interim Order, a Final Order approving the DIP Facility on a final basis in form and substance satisfactory to the DIP Lenders as confirmed by the DIP Agent in writing shall have been entered by the Bankruptcy Court;

(b) On or before the date that is twenty-one (21) calendar days following the Petition Date (the “Plan Agreement Date”), the Debtors shall have filed a plan of reorganization and related disclosure statement acceptable to the DIP Lenders in their sole and absolute discretion as confirmed in writing by the DIP Agent (an “Acceptable Plan”);

(c) On or before the date that is fifty (50) calendar days following the Petition Date, and subject to the Court’s availability, the Bankruptcy Court shall have entered an order approving the disclosure statement and plan solicitation procedures acceptable to the DIP Lenders, as confirmed by the DIP Agent in writing.

(d) On or before the date that is eighty (80) calendar days following the Petition Date, the Bankruptcy Court shall have entered an order acceptable to the DIP Lenders, as confirmed by DIP Lenders in writing, confirming an Acceptable Plan; and

(e) On or before the date that is ninety-two (92) calendar days following the Petition Date, an Acceptable Plan shall become effective.

18. **Credit Bid.**

(a) The DIP Agent, at the direction of the DIP Lenders, shall have the unqualified right to credit bid up to the full amount of the DIP Obligations in any sale of the DIP Collateral under or pursuant to (i) section 363 of the Bankruptcy Code, (ii) a plan of reorganization or a plan of liquidation under section 1129 of the Bankruptcy Code, or (iii) a sale or disposition by a chapter 7 trustee for any Debtor under section 725 of the Bankruptcy Code.

(b) Subject to the terms of the Prepetition Intercreditor Agreement, the Term Loan Agent, at the direction of the Term Loan Lenders, shall have the unqualified right to credit bid up to the full amount of any remaining Term Loan Obligations in any sale of DIP Collateral or Term Loan Collateral, as applicable, subject to the satisfaction of all DIP Obligations and all obligations secured by Permitted Liens, or as otherwise consented to by the DIP Lenders or such other holder of a Permitted Lien, as applicable, under or pursuant to (i) section 363 of the Bankruptcy Code, (ii) a plan of reorganization or a plan of liquidation under section 1129 of the Bankruptcy Code, or (iii) a sale or disposition by a chapter 7 trustee for any Debtor under section 725 of the Bankruptcy Code.

(c) Subject to the terms of the Prepetition Intercreditor Agreement, the ABL Lender shall have the unqualified right to credit bid up to the full amount of any remaining obligations existing under the ABL Facility in any sale of any ABL Collateral. The ABL Lender shall be satisfied first from any existing ABL Priority Collateral or the proceeds thereof and, with respect to the ABL Priority Collateral, shall not be subordinated to any outstanding DIP Obligations, DIP Superpriority Claim or Term Adequate Protection Superpriority Claims concerning the ABL Lender's credit bid in any sale of any ABL Priority Collateral. Notwithstanding any other provisions contained herein, with respect to any sale of any ABL Priority Collateral, whether through third party cash proceeds, the ABL Lender's credit bid or otherwise, any remaining obligations existing under the ABL Facility shall be satisfied first and shall not be subordinated to any priority or superpriority administrative expense claims of any party in this case, including, without limitation, the DIP Obligations, DIP Superpriority Claim or Term Adequate Protection Superpriority Claims, from the proceeds of the sale of any such ABL Priority Collateral. No portion of any outstanding DIP Obligations, DIP Superpriority Claim or Term Adequate Protection Superpriority Claims shall be senior to or prime the ABL Lender's credit bid rights in any sale of any ABL Priority Collateral. The ABL Lender's credit bid rights are expressly reserved and preserved by this Interim Order, as applicable, under or pursuant to the applicable terms of the Prepetition Intercreditor Agreement and (i) section 363 of the Bankruptcy Code, (ii) a plan of reorganization or a plan of liquidation under section 1129 of the Bankruptcy Code, or (iii) a sale or disposition by a chapter 7 trustee for any Debtor under section 725 of the Bankruptcy Code.

(d) The MAALT Lender shall have the unqualified right to credit bid up to the full amount of any remaining obligations existing under the MAALT Facility in any sale of any MAALT Collateral. The MAALT Lender shall be satisfied first from any existing MAALT Collateral or the proceeds thereof and, with respect to the MAALT Collateral, shall not be subordinated to any outstanding DIP Obligations, DIP Superpriority Claim or Term Adequate Protection Superpriority Claims concerning the MAALT Lender's credit bid in any sale of any MAALT Collateral. Notwithstanding any other provisions contained herein, in regards to any sale of any MAALT Collateral, whether through third party cash proceeds, the MAALT Lender's credit bid or otherwise, any remaining obligations existing under the MAALT Facility shall be satisfied first and shall not be subordinated to any priority or superpriority administrative expense claims of any party in this case, including, without limitation, the DIP Obligations, DIP Superpriority Claim or Term Adequate Protection Superpriority Claims. No portion of any outstanding DIP Obligations, DIP Superpriority Claim or Term Adequate Protection Superpriority Claims shall be senior to or prime the MAALT Lender's credit bid rights in any sale of any MAALT Collateral. The MAALT Lender's credit bid rights are expressly reserved and preserved by this Interim Order, as applicable, under or pursuant to (i) section 363 of the Bankruptcy Code, (ii) a plan of reorganization or a plan of liquidation under section 1129 of the Bankruptcy Code, or (iii) a sale or disposition by a chapter 7 trustee for any Debtor under section 725 of the Bankruptcy Code.

19. **Events of Default.** The following shall constitute Events of Default under this Interim Order and the DIP Loan Documents, unless waived in writing by the DIP Agent in its sole discretion (each an "Event of Default").

(a) Payment Default. The Debtors shall fail to pay, in each case as and when due and required to be paid under the DIP Loan Documents, any principal amount under the DIP Loan Documents immediately after such payment becomes due or payable.

(b) Non-Payment Default. Except for an Event of Default arising under Paragraph (a) above, the Debtors shall default in any material respect with the performance of or compliance with any other covenant, condition, or provision of this Interim Order or, the DIP Loan Documents or the impairment of the DIP Loan Documents or the security interests provided for therein.

(c) Bankruptcy. Any of the following occurs in any of the Chapter 11 Cases:

(i) dismissal of the Chapter 11 Cases or conversion of the Chapter 11 Cases into cases under chapter 7 of the Bankruptcy Code; (ii) a trustee or receiver shall have been appointed in one or more of the Chapter 11 Cases; (iii) appointment of a responsible officer or examiner with enlarged powers relating to the operation of the business of any Debtor, other than the Debtors' chief restructuring officer; (iv) entry of an order granting of relief from any stay of proceeding (including the automatic stay) so as to allow a third party to proceed with foreclosure (or granting of a deed in lieu of foreclosure) against any asset of the Debtors with a value in excess of \$500,000 in the aggregate; (v) entry of an order granting any superpriority claim which is senior to or *pari passu* with the DIP Lenders' claims under the DIP Facility without the prior consent of the DIP Lenders; (vi) entry of an order confirming (or the filing by the Debtors of any motion or pleading requesting confirmation of or otherwise in support of) a plan of reorganization with respect to any Debtor other than an Acceptable Plan; (vii) entry of an order staying, reversing, vacating, or otherwise modifying, without the prior written consent of the DIP

Lenders, the DIP Facility, the Interim Order or the Final Order, and such order is not stayed or reversed within two (2) business days after entry thereof; (viii) payment of, or granting adequate protection with respect to, prepetition debt (other than as contemplated by the DIP Loan Documents, this Interim Order, or other order of this Court authorizing and approving the grant of adequate protection to the ABL Lender or MAALT Lender) unless otherwise agreed by the DIP Lenders; (ix) cessation of liens or superpriority claims granted with respect to the DIP Collateral securing the Debtors' obligations in respect of the DIP Facility to be valid, perfected and enforceable in all respects with the priority described herein; and (xi) any shareholder (or shareholder affiliate) shall challenge or contest in any respect the provisions of the DIP Credit Agreement.

20. **Automatic Stay.** As provided herein, subject only to the provisions of the DIP Credit Agreement and without further order from this Court, the automatic stay provisions of section 362 of the Bankruptcy Code are vacated and modified to the extent necessary to permit the DIP Agent to exercise, upon the occurrence and during the continuance of any Event of Default and upon the direction of the DIP Lenders, all rights and remedies provided for in the DIP Loan Documents and otherwise consistent with the terms of this Interim Order, and to take any or all of the following actions without further order of or application to the Court: (a) declare the principal of and accrued interest on the outstanding borrowings to be immediately due and payable and terminate, reduce or restrict, as applicable, any further commitments under the DIP Facility to the extent any such commitment remains, and/or terminate, as applicable, the right of the Debtors to use Cash Collateral; and (b) charge the default rate of interest under the DIP Facility and take any other action or exercise any other right or remedy (including without limitation, with respect to the liens in favor of the DIP Agent

on behalf of the DIP Lenders) permitted under the DIP Loan Documents or applicable law; provided, however, that in the case of the enforcement of liens or other remedies with respect to DIP Collateral pursuant to clause (b) above, the DIP Agent shall provide the Debtors (with a copy to counsel for any Committee and the U.S. Trustee) with seven (7) calendar days' prior written notice (the "Enforcement Notice Period") and file such notice on the docket in the Chapter 11 Cases, during which Enforcement Notice Period any such party may file a pleading in opposition to the DIP Agent's exercise of its rights and remedies and seek an emergency hearing prior to the conclusion of the Enforcement Notice Period, and provided further, that in any hearing following such notice, the only issue that may be raised by any party in opposition to the actions proposed or available to be taken by the DIP Agent shall be whether, in fact, an Event of Default has occurred and is continuing. Unless, during the Enforcement Notice Period or, in the event a party requests an emergency hearing prior to the expiration of the Enforcement Notice Period but, solely due to the Court's availability, the Court is unable to schedule a hearing within such Enforcement Notice Period, the earliest available date on which the Court can hold such emergency hearing, the Court determines that an Event of Default has not occurred (or that no Event of Default is continuing), the DIP Agent shall have relief from the automatic stay without further notice or order and may foreclose on all or any portion of the DIP Collateral or otherwise exercise remedies against the DIP Collateral. Upon entry of this Interim Order, no party-in-interest shall have the right to contest the enforcement of the remedies set forth in this Interim Order and the DIP Loan Documents on any basis other than an assertion that no Event of Default has occurred, and, except with respect to such an assertion, no party-in-interest shall have the right to enjoin any such enforcement under section 105 of the Bankruptcy Code or otherwise, or to seek any injunctive relief inconsistent with the provisions of this Interim Order

or the DIP Loan Documents. Without limiting the foregoing, but subject to and only upon expiration of the Enforcement Notice Period, upon the occurrence and during the continuation of an Event of Default, each DIP Lender (and its respective affiliates, including its various branches and offices) shall have the authority, subject to obtaining the prior written consent of the DIP Agent and to the fullest extent permitted by applicable law, to set off and apply any and all deposits (of whatever type and in whatever currency) at any time held and other obligations (in whatever currency) at any time owing by such DIP Lender (or its affiliate) to or for the credit or account of any Borrower against any and all of the DIP Obligations of such Borrower to such Lender, subject to the terms of the DIP Credit Agreement. The foregoing right of setoff shall apply irrespective of whether such DIP Lender has made any demand under the DIP Loan Documents and even if the DIP Obligations of the Borrower are contingent or unmatured. The rights and remedies of the DIP Agent and DIP Secured Parties specified herein are cumulative and not exclusive of any rights or remedies that the DIP Agent and the DIP Secured Parties may have under the DIP Loan Documents or otherwise. Subject to the provisions of the DIP Loan Documents and this Interim Order, the Debtors shall cooperate fully with the DIP Agent and the DIP Secured Parties in their exercise of rights and remedies, whether against the DIP Collateral or otherwise. This Court shall retain exclusive jurisdiction to hear and resolve any disputes and enter any orders required by the provisions of this Paragraph 20 and relating to the application, re-imposition or continuance of the automatic stay as provided hereunder.

21. **Investigation Rights.** The (i) Committee shall have thirty (30) days after the appointment of such committee, and (ii) all other non-debtor parties-in-interest (including a trustee, if appointed or elected prior to the Investigation Termination Date, as defined herein) shall have forty-five (45) days after the Petition Date (each, as applicable, the “Investigation

Termination Date”) to investigate the validity, extent, priority, perfection, and enforceability of the Term Loan Facility, ABL Facility and MAALT Facility and the respective liens of the lenders thereunder, and to assert any other claims or causes of action against the Prepetition Secured Parties. If any Committee, or any non-debtor party-in-interest hereafter granted authority and standing by this Court, determines that there may be a challenge to any of the Prepetition Secured Parties’ liens or Prepetition Secured Parties’ obligations by the Investigation Termination Date, then upon five (5) days’ written notice to the Debtors and the Prepetition Secured Parties, such Committee or other non-debtor party-in-interest hereafter granted authority and standing by this Court shall be permitted to file and prosecute an objection or claim related thereto (each, a “Challenge”), and shall have only until the applicable Investigation Termination Date to file such objection or claim (or otherwise initiate an appropriate action on behalf of the Debtors’ estates) setting forth the basis of any such challenge, claim or cause of action; provided, however, that nothing contained in the DIP Loan Documents or this Interim Order shall be deemed to confer standing on any Committee or any other party-in-interest to commence a Challenge. If a Challenge is not filed on or before the Investigation Termination Date, then, without further action by any party or any further order of this Court: (i) the agreements, acknowledgements and stipulations contained in Paragraph D of this Interim Order, shall be deemed to be immediately and irrevocably binding on the Debtors, and the Debtors’ estates, the Committee, and all parties-in-interest and any and all successors-in-interest thereto shall thereafter be forever barred from bringing any Challenge; (ii) the liens and security interests of the Prepetition Secured Parties shall be deemed to constitute valid, binding, enforceable, and perfected liens and security interests not subject to avoidance or disallowance pursuant to the Bankruptcy Code or applicable non-bankruptcy law; (iii) the Prepetition Secured Parties’

obligations shall be deemed to be finally allowed claims for all purposes in the Chapter 11 Cases and any subsequent chapter 7 cases, in the amounts set forth in Paragraph D of this Interim Order and its subparagraphs and shall not be subject to challenge by any party-in-interest as to validity, priority or otherwise; and (iv) the Debtors shall be deemed to have released, waived, and discharged each of the Term Loan Lenders (whether in their prepetition or postpetition capacity), together with their respective officers, directors, employees, agents, attorneys, professionals, affiliates, subsidiaries, assigns and/or successors, from any and all claims and causes of action arising out of, based upon, or related to, in whole or in part, the Term Loan Obligations or their prepetition relationship with such Debtor or any affiliate thereof relating to any of the Term Loan Documents or any transaction contemplated thereby, including, without limitation, any claims or defenses as to the extent, validity, priority, or enforceability of the Existing Term Loan Liens or the Term Loan Obligations, any claims or defenses under chapter 5 of the Bankruptcy Code, or any other causes of action. Notwithstanding anything to the contrary herein, the Committee may use up to \$25,000 (the “Committee Investigation Budget”) in the aggregate prior to the Investigation Termination Date for investigation costs in respect of the Debtors’ stipulations set forth in paragraph D above; provided, however, that the proceeds of the DIP Facility shall not be used (i) to permit the DIP Borrower, any Guarantor or any other party-in-interest or their representatives to challenge or otherwise contest or institute any proceeding to determine (x) the validity, perfection or priority of security interests in favor of the DIP Agent, any of the DIP Lenders, or the Prepetition Secured Parties, or (y) the enforceability of the obligations of the DIP Borrower or any Guarantor under the DIP Facility, the Term Loan Facility, the ABL Facility or the MAALT Facility, or (ii) to commence, prosecute or defend any claim, motion, proceeding or cause of action against the DIP Agent, any of the DIP Lenders, the Term Loan Agent, any of the

Term Loan Lenders or any of the other Prepetition Secured Parties, each in such capacity, and their respective agents, attorneys, advisors or representatives, including, without limitation, any lender liability claims, any subordination claims, or any claims under any non-disclosure or confidentiality agreement.

22. **Protection of DIP Lenders' and Prepetition Secured Parties' Rights.**

The DIP Lenders' and Prepetition Secured Parties' rights shall be protected as follows:

(a) So long as there are any DIP Loans or DIP Obligations outstanding or the DIP Lenders have any outstanding commitments under the DIP Credit Agreement, the Prepetition Secured Parties: (i) shall not take any action to foreclose upon or recover in connection with their respective liens and security interests, other agreements, or operation of law of this Interim Order, or otherwise exercise remedies against any DIP Collateral, except to the extent authorized herein or by any other order of this Court, (ii) shall be deemed to have consented to any release of DIP Collateral authorized under the DIP Loan Documents, (iii) shall not file any further financing statements, trademark filings, copyright filings, patent filings, mortgages, notices of lien or similar instruments, enter into any control agreement, or otherwise take any action to perfect their security interests in the DIP Collateral unless, solely as to this clause (iii), the DIP Agent files financing statements or other documents to perfect the liens granted pursuant to this Interim Order, or as may be required by applicable state law to continue the perfection of valid and unavoidable liens or security interests as of the Petition Date and (iv) not seek to terminate or modify the use of Cash Collateral as provided herein.

(b) The terms of the Prepetition Intercreditor Agreement remain unmodified by the terms of this Interim Order, and each parties' respective rights and remedies thereunder are expressly reserved and preserved in all aspects.

23. **Asset Dispositions.** Subject to authorization from the Court (and, as applicable, the Carve-Out) and the terms of the Intercreditor Agreement, the Debtors shall immediately pay, or cause to be paid, to the DIP Agent for application to the DIP Obligations, all of the proceeds of any sale, lease or other disposition of any DIP Collateral (an "Asset Disposition") to the extent required by and in the order set forth in the DIP Credit Agreement, and as a condition to approval of such Asset Disposition, and shall comply with all other provisions in the DIP Loan Documents and this Interim Order in connection with any such Asset Disposition. All proceeds of any Asset Disposition shall be applied in accordance with the terms and conditions of the DIP Credit Agreement and the Intercreditor Agreement. Nothing in this Interim Order shall be deemed to constitute the consent of the DIP Secured Parties, Term Loan Secured Parties, ABL Lender, or MAALT Lender and each of the foregoing expressly reserves the right to object to entry of any order of the Court that provides any for an Asset Disposition to any party unless, in connection and concurrently with any such event, the proceeds of such sale are or will be sufficient to pay in full the DIP Obligations, the Term Loan Obligations, the ABL Obligations or the MAALT Obligations (as applicable) and the Prepetition Term Loan Adequate Protection Obligations, Prepetition ABL Adequate Protection Obligations, Prepetition MAALT Adequate Protection Obligations and all of the foregoing are paid in full on the closing date of such Asset Disposition.

24. **DIP Lenders' Financial Reporting.** The Debtors shall provide the DIP Lenders, the ABL Lender and the MAALT Lender: (i) the Proposed Budget for such periods in

form and substance reasonably satisfactory to the DIP Agent and the Required Lenders; (ii) a variance report tested as of the immediately preceding Friday for (1) the weekly period ending on such Friday and (2) the prior weekly cumulative period ending on such Friday and commencing with the first week of the most recent Approved Budget (each such period, a “Variance Testing Period”) setting forth: (A) the aggregate disbursements of the Debtors during the applicable Variance Testing Period and (B) any variance (whether positive or negative, expressed as a percentage) between (1) the aggregate disbursements, on a line-item by line-item basis, made during such Variance Testing Period by the Debtors against the aggregate disbursements for each such line-item for the Variance Testing Period set forth in the applicable Approved Budget and (2) the cumulative disbursements made during such Variance Testing Period to the cumulative disbursements for such Variance Testing Period set forth in the applicable Approved Budget, which variance report shall include a report from a Financial Officer of the Borrower identifying and addressing any variance of actual performance to projected performance for the prior week; and (iii) a rolling 13-week cash flow forecast, together with a reconciliation for the prior week, the prior 4-week cumulative period and the cumulative period from the Petition Date of actual expenses and disbursements (including professional fees) and sales receipts as to the amounts set forth in the then applicable Approved Budget for such periods in form and substance satisfactory to the DIP Agent.

25. **Further Assurances.** The Debtors shall execute and deliver to the DIP Agent, the DIP Lenders, the Term Loan Agent, and the Term Loan Lenders all such agreements, financing statements, instruments and other documents as the DIP Agent, DIP Lenders, Term Loan Agent, and Term Loan Lenders may reasonably request to evidence, confirm, validate or perfect the DIP Liens or the Adequate Protection Liens granted pursuant hereto. Further, the

Debtors are authorized and directed to do and perform all acts, to make, execute and deliver all instruments and documents (including, without limitation, the execution of additional security agreements, mortgages, financing statements collateral agreements, collateral trust agreements, deposit account control agreements, blocked account control agreements, securities account control agreements, and other collateral documents and agreements), and to pay all fees and expenses that may be required or necessary for the Debtors' performance under the DIP Loan Documents, including, without limitation, (i) the execution of the DIP Loan Documents and (ii) the payment of the fees, costs, and other expenses described in the DIP Loan Documents as and when such fees, costs, and expenses become due from the proceeds of the DIP Facility.

26. **Proofs of Claim.** Each of the Term Loan Agent and Term Loan Lenders, the ABL Lender, and the MAALT Lender will not be required to file proofs of claim in any of the Chapter 11 Cases or any successor cases for any claim allowed herein. The Debtors' Stipulations shall be deemed to constitute a timely filed proof of claim with respect to the Term Loan Documents and the Term Loan Obligations, the ABL Loan Documents and the ABL Obligations, and the MAALT Loan Documents and the MAALT Obligations. Notwithstanding the foregoing, each of (i) the DIP Agent, for the benefit of the DIP Secured Parties; (ii) the Term Loan Agent, for the benefit of the Term Loan Secured Parties; (iii) the ABL Lender; and (iv) the MAALT Lender, is authorized and entitled, but not required, in its sole discretion, to file (and amend and/or supplement) in each of the Chapter 11 Cases or successor cases proofs of claim with respect to the DIP Loans, the Term Loans, the ABL Obligations and the MAALT Obligations.

27. **Preservation of Rights.**

(a) Non-Consensual Modification or Extension of Interim Order. The Debtors irrevocably waive any right to seek any amendment, modification, or extension of this Interim Order (including through any chapter 11 plan of reorganization) without the prior written consent of the DIP Lenders, and no such consent shall be implied by any other action, inaction, or acquiescence of the DIP Lenders. In the event any or all of the provisions of this Interim Order are hereafter modified, amended, or vacated by a subsequent order of this Court or any other court, such modification, amendment, or vacatur shall not affect the validity, perfection, priority, allowability, enforceability, or non-avoidability of any advances, payments, or use of cash authorized or made hereby or pursuant to the DIP Facility, or lien, claim, priority, or other DIP Protections (as defined below) authorized or created hereby or pursuant to the DIP Facility. Based on the findings set forth in this Interim Order and in accordance with section 364(e) of the Bankruptcy Code in the event any or all of the provisions of this Interim Order are hereafter reversed, modified, vacated, or stayed by a subsequent order of this Court or any other court, the DIP Lenders shall be entitled to the protections provided in section 364(e) of the Bankruptcy Code and, notwithstanding any such reversal, modification, vacatur, or stay, any use of Cash Collateral, DIP Loans, or any protections granted under this Interim Order, the DIP Loan Documents, the Bankruptcy Code and applicable law (the “DIP Protections”) incurred or granted by the Debtors prior to the actual receipt of written notice by the DIP Agent of the effective date of such reversal, modification, vacatur, or stay shall remain in full force and effect and be binding on all parties in

interest and be governed in all respects by the original provisions of this Interim Order (and shall maintain their respective priorities as provided by this Interim Order).

(b) Modifications of DIP Loan Documents. The Debtors, DIP Agent, and DIP Lenders are hereby authorized to implement, in accordance with the terms of the DIP Loan Documents, any non-material modifications (including without limitation, any change in the number or composition of the DIP Lenders) of the DIP Loan Documents without further Order of this Court.

(c) Dismissal. If any order dismissing any of these Chapter 11 Cases under section 1112 of the Bankruptcy Code or otherwise is at any time entered, then notwithstanding any such dismissal (i) the DIP Protections and all other rights, remedies, liens, priorities, privileges, protections, and benefits granted to the DIP Lenders, shall remain in full force and effect and be binding on all parties in interest and be governed in all respects by the provisions of this Interim Order (and shall maintain their respective priorities as provided by this Interim Order) until all DIP Loans have been paid in full, and such order of dismissal shall so provide; and (ii) this Court shall retain jurisdiction, notwithstanding such dismissal, for the purposes of enforcing such DIP Protections and all other rights, remedies, liens, priorities, privileges, protections, and benefits granted to the DIP Lenders.

(d) Survival of the Interim Order. The provisions of this Interim Order, the DIP Loan Documents, any actions taken pursuant hereto or thereto, all of the DIP Protections, and all other rights, remedies, liens, priorities, privileges, protections, and benefits granted to the DIP Lenders shall survive, and shall not be modified, impaired, or discharged by, the entry of any order (i) confirming any plan of reorganization in any of

these Chapter 11 Cases or successor cases; (ii) converting any of these Chapter 11 Cases to a case under chapter 7; (iii) dismissing any of these Chapter 11 Cases; (iv) withdrawing of the reference of any of these Chapter 11 Cases or any successor cases; (v) providing for abstention from handling or retaining of jurisdiction in any of these Chapter 11 Cases or any successor case in this Court; (vi) terminating the joint administration of these Chapter 11 Cases or any successor cases, or (vii) by any other act or omission. The terms and provisions of this Interim Order, including all of the DIP Protections and all other rights, remedies, liens, priorities, privileges, protections, and benefits granted to the DIP Secured Parties shall continue in full force and effect and be binding on all parties in interest notwithstanding the entry of any such order referenced above, shall continue in full force and effect in these proceedings and in any successor cases, and shall maintain their respective priorities as provided by this Interim Order.

28. **Insurance Policies.** Upon entry of this Interim Order, the DIP Agent shall be deemed to be, without any further action or notice, named as additional insureds and loss payees, as applicable, on each insurance policy maintained by the Debtors that in any way covers the DIP Collateral, subject to the rights of the ABL Lender with respect to the ABL Priority Collateral, and the Debtors shall take such actions as are reasonably requested by the DIP Agent from time to time to evidence or effectuate the foregoing.

29. **Authorized Signatories.** The signature of the Authorized Officer (as defined in the Debtors' corporate resolutions filed with the Petition) or any officer of the Debtors or Debtors' attorneys, appearing on any one or more of the DIP Loan Documents, shall be sufficient to bind the Debtors. No board of directors or other approval shall be necessary.

30. **No Requirement to Accept Title to Collateral.** The DIP Lenders and Term Loan Lenders shall not be obligated to accept title to any portion of the DIP Collateral or Term Loan Collateral in payment of the indebtedness owed to such parties by the Debtors, in lieu of payment in cash or cash equivalents, nor shall any of the DIP Lenders or Term Loan Lenders be obligated to accept payment in cash or cash equivalents that is encumbered by any interest of any person or entity other than the DIP Lenders or Term Loan Lenders.

31. **Binding Effect.** Subject only to Paragraph 21 above, the provisions of this Interim Order, including all findings herein, and the DIP Loan Documents shall be binding upon all parties in interest in these Chapter 11 Cases, including the DIP Secured Parties, the Prepetition Secured Parties, any other secured or unsecured creditor, the Committee, if any, and the Debtors and their respective estates, successors, and assigns (including any chapter 7 or chapter 11 trustee hereinafter appointed or elected for the estate of any of the Debtors, an examiner appointed pursuant to section 1104 of the Bankruptcy Code, or any other fiduciary or responsible person appointed as a legal representative of any of the Debtors or with respect to the property of the estate of any of the Debtors), whether in any of these Chapter 11 Cases, in any successor cases, or upon dismissal; provided however, that the DIP Secured Parties shall have no obligation to permit the use of Cash Collateral or to extend any financing to any chapter 7 or chapter 11 trustee or other responsible person appointed for the estates of the Debtors in these Chapter 11 Cases or any successor cases.

32. **506(c) Waiver.** Upon the entry of the Final Order, and except to the extent of the Carve-Out, 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, shall be charged against or recovered from (i) the Term Loan

Priority Collateral or (ii) the DIP Collateral that is not ABL Priority Collateral or MAALT Collateral pursuant to section 506(c) of the Bankruptcy Code or any similar principle of law, without the prior written consent of the DIP Agent and the Prepetition Agent, and no such consent shall be implied from any other action, inaction, or acquiescence by the DIP Agent, the DIP Lenders, the Term Loan Agent or the Term Loan Lenders. The Debtors shall irrevocably waive and shall be prohibited from asserting any claim described in this Paragraph 32, 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 Term Loan Secured Parties or the DIP Secured Parties upon the (i) the Term Loan Priority Collateral or (ii) the DIP Collateral that is not ABL Priority Collateral (as applicable) or MAALT Collateral (as applicable); provided, that nothing in this Order shall prohibit the Debtors from asserting any claim described in this Paragraph 32, 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 ABL Lender upon the ABL Priority Collateral or the MAALT Lender upon the MAALT Collateral.

33. **No Waiver.** The failure of the DIP Secured Parties or the Prepetition Secured Parties to seek relief or otherwise exercise their rights and remedies under this Interim Order, the Term Loan Agreement, the DIP Loan Documents, or otherwise (or any delay in seeking or exercising same) shall not constitute a waiver of any of such parties' rights hereunder, thereunder, or otherwise. Nothing contained in this Interim Order (including the authorization of the use of any Cash Collateral) shall impair or modify any rights, claims, or defenses available in law or equity to the DIP Lenders to assert rights of setoff or other rights with respect thereto as permitted by law (or the right of a Debtors to contest such assertion). Except as prohibited by

this Interim Order, the entry of this Interim Order is without prejudice to, does not constitute a waiver of, expressly or implicitly, and does not otherwise impair, any right or ability of the DIP Secured Parties, Term Loan Secured Parties, ABL Lender, and MAALT Lender under the Bankruptcy Code or under non-bankruptcy law to (i) request conversion of these Chapter 11 Cases to cases under chapter 7, dismissal of these Chapter 11 Cases, or the appointment of a trustee or examiner in these Chapter 11 Cases, or to oppose the use of Cash Collateral in any successor case or on terms other than those set forth in this Interim Order; (ii) propose, subject to the provisions of section 1121 of the Bankruptcy Code, any chapter 11 plan or plans with respect to any of the Debtors or seek early termination of the Debtors' exclusive rights to propose a plan under the Bankruptcy Code; or (iii) except as expressly provided herein, exercise any of the rights, claims, or privileges (whether legal, equitable, or otherwise) of the DIP Lenders under the DIP Loan Documents, the Bankruptcy Code, or other non-bankruptcy law. Except to the extent otherwise provided in this Interim Order or by law, neither the commencement of these Chapter 11 Cases nor the entry of this Interim Order shall limit or otherwise modify the rights and remedies of the DIP Secured Parties, Term Loan Secured Parties, ABL Lender, and MAALT Lender with respect to any non-Debtor entities or their respective assets, whether such rights and remedies arise under the Term Credit Agreement, applicable law, or equity.

34. **No Waiver of Prepetition Secured Parties' Agreement Provisions; Reservation of Rights.** Except as otherwise specifically provided in this Interim Order, nothing contained in this Interim Order shall be deemed a waiver or constitute a consent to the modification of any provision contained in the Term Loan Agreement by the Term Loan Lenders, the ABL Agreement by the ABL Lender, or the MAALT Facility by the MAALT Lender including, but not limited to, the incurrence or issuance of any indebtedness by the

Debtors, the incurrence of any lien in connection therewith or the making of any payment by the Debtors.

(a) No Third Party Rights. Except as explicitly provided for herein or in the DIP Loan Documents, the ABL Loan Documents, or the MAALT Loan Documents, this Interim Order does not create any rights for the benefit of any third party, creditor, equity holder, or direct, indirect, or incidental beneficiary. In determining to make any loan (whether under the DIP Loan Documents or otherwise) or to permit the use of Cash Collateral or in exercising any rights or remedies as and when permitted pursuant to this Interim Order or the DIP Loan Documents, the DIP Lenders, the ABL Lender and the MAALT Lender shall not (i) be deemed to be in control of the operations of the Debtors or to be acting as a “responsible person” or “owner or operator” with respect to the operation or management of the Debtors; or (ii) owe any fiduciary duty to the Debtors, their respective creditors, shareholders, or estates.

(b) No Marshaling. Upon to the entry of the Final Order, in no event shall the Term Loan Secured Parties, the DIP Agent or the DIP Lenders, the ABL Lender or the MAALT Lender be subject to the equitable doctrine of “marshaling” or any similar doctrine with respect to the Collateral.

(c) Inconsistency. In the event of any inconsistency between the terms and conditions of the DIP Loan Documents and of this Interim Order, the provisions of this Interim Order shall govern and control.

(d) Enforceability. This Interim Order shall constitute findings of fact and conclusions of law pursuant to the Bankruptcy Rule 7052 and shall take effect and be fully enforceable *nunc pro tunc* to the Petition Date immediately upon execution hereof.

Notwithstanding Bankruptcy Rules 4001(a)(3), 6003, or 6004, or any other Bankruptcy Rule or Bankruptcy Local Rule, this Interim Order shall be immediately effective and enforceable upon its entry, and there shall be no stay of execution or effectiveness of this Interim Order.

(e) Reservation of Rights. The DIP Lenders, the Term Loan Lenders, the ABL Lender and the MAALT Lender each expressly reserve the right to object to entry of any order of the Court that provides for the sale or other disposition of all or substantially all of the assets of the Debtors (or any other sale or other disposition of assets of any of the Debtors outside the ordinary course of business) to any party unless, in connection and concurrently with any such event, the proceeds of such sale are or will be sufficient to pay in full the respective priority balances due to each of (i) the ABL Lender for the ABL Facility in connection with any disposition of any ABL Priority Collateral, (ii) the MAALT Lender for the MAALT Facility in connection with any disposition of any MAALT Collateral, and (iii) the DIP Lenders in connection with the DIP Loans.

35. Final Hearing. A final hearing to consider the relief requested in the Motion on a final basis shall be held on [_____] at [_____] (Prevailing Central Time) and any objections or responses to the Motion shall be filed and served so as to be actually received on or prior to, [_____] at [_____] (Prevailing Central Time).

36. Retention of Jurisdiction. This Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation, or enforcement of this Interim Order.

END OF ORDER

Submitted by:

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PROPOSED ATTORNEYS FOR DEBTORS

Exhibit A

DIP Credit Agreement

SENIOR SECURED DEBTOR-IN-POSSESSION CREDIT AGREEMENT

dated as of [●], 2020,

among

Vista Proppants and Logistics, LLC,

as a debtor and debtor-in-possession

as Parent,

VPROP Operating, LLC, a Delaware limited liability company,

as a debtor and debtor-in-possession,

as the Borrower,

the other Loan Parties party hereto, as debtors and debtors-in-possession,

as Guarantors

Ares Capital Corporation,

as DIP Agent

and

the Lenders party hereto

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THIS SENIOR SECURED DEBTOR-IN-POSSESSION CREDIT AGREEMENT dated as of [●], 2020, is among: Vista Proppants and Logistics, LLC, a Delaware limited liability company (“**Parent**”), VPROP Operating, LLC, a Delaware limited liability company (the “**Borrower**”), the other Loan Parties party hereto, each of which is a debtor-in-possession in a Chapter 11 Case (as defined below); each of the Lenders from time to time party hereto; and Ares Capital Corporation, as administrative agent and collateral agent for the Lenders (in such capacities, together with its successors in such capacities, the “**DIP Agent**”).

R E C I T A L S

A. Reference is made to that certain Amended and Restated Senior Secured Credit Agreement, dated as of November 9, 2017 (as amended, supplemented, restated or otherwise modified prior to the date hereof, the “**Existing Credit Agreement**”), among the Borrower, the lenders and other parties from time to time party thereto and Ares Capital Corporation, as administrative agent (in such capacity, the “**Existing Administrative Agent**”).

B. On [●], 2020 (the “**Petition Date**”), the Parent, the Borrower and its Subsidiaries (collectively, the “**Debtors**”) filed voluntary petitions to commence cases (the “**Chapter 11 Cases**”) under title 11 of the United States Code (the “**Bankruptcy Code**”) in the United States Bankruptcy Court for the Northern District of Texas, Fort Worth Division (the “**Bankruptcy Court**”) and continued in the possession of their assets and in the management of their businesses pursuant to Sections 1107 and 1108 of the Bankruptcy Code.

D. In connection with the Chapter 11 Cases, the Borrower has requested that the Lenders provide the Borrower with a senior secured, super-priority debtor-in-possession term loan credit facility (the “**DIP Facility**”) which shall consist of a DIP Loan facility in the aggregate principal amount of up to \$11,000,000, and which DIP Facility shall be available for borrowings and other extensions of credit as of the Closing Date, subject in all respects to the terms set out herein and in the other Loan Documents.

E. 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 DIP Agent, for the benefit of the Secured Parties, a lien on and security interest in substantially all of each Debtor’s respective assets, on and subject to the terms and priorities set forth in the DIP Orders and the other Loan Documents.

F. In consideration of the mutual covenants and agreements herein contained and of the loans and commitments hereinafter referred to, the parties hereto agree as follows:

ARTICLE I DEFINITIONS AND ACCOUNTING MATTERS

Section 1.01. Terms Defined Above. As used in this Agreement, each term defined above has the meaning indicated above.

Section 1.02. Certain Defined Terms. As used in this Agreement, the following terms have the meanings specified below:

“**Acceptable Plan**” has the meaning set forth in the definition of “Milestones” (as defined in the DIP Order), as such plan may be modified, amended or supplemented; *provided* that the consent of the DIP Agent and the Required Lenders shall be required in respect of any such modification, amendment or supplement.

“**Act**” has the meaning assigned such term in Section 12.15.

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

“**Affected Financial Institution**” means (a) any EEA Financial Institution or (b) any UK Financial Institution.

“**Affected Loans**” has the meaning assigned such term in Section 5.04.

“**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 Person specified. For the avoidance of doubt, Lonestar Prospects Holding, Future, M&J Partnership, GHMR Operations, L.L.C., FR Sand and any other direct or indirect holders of Equity Interests in the Borrower shall be considered Affiliates of the Borrower.

“**Affiliated**” shall have a correlative meaning to the term “Affiliate”.

“**Agreement**” means this Senior Secured Debtor-in-Possession Credit Agreement (including all exhibits and schedules), as the same may from time to time be amended, modified, supplemented or restated.

“**Applicable Margin**” means for any Interest Period, a rate per annum equal to 9.5%.

“**Approved Budget**” has the meaning assigned such term in Section 8.01(p)(i).

“**Approved CRO**” has the meaning assigned such term in Section 6.01(aa).

“**Approved Independent Director**” has the meaning assigned such term in Section 6.01(z).

“**ARCC**” means Ares Capital Corporation.

“**Asset Sale**” means any disposition or series of related dispositions of Property (excluding any disposition permitted by Section 9.13(a)); provided that, for the purposes of Section 3.02, Asset Sales shall not include sales or dispositions of Property to the extent that the aggregate value of such Property sold in any single transaction or related series of transactions is equal to \$250,000 or less. With respect to the gross proceeds received by any Loan Party or its Subsidiaries in connection with any Asset Sale, such proceeds shall be valued at the initial principal amount thereof in the case of non-cash proceeds consisting of notes or other debt securities and valued at fair market value in the case of other non-cash proceeds.

“**Assignment and Assumption**” means an assignment and assumption entered into by a Lender and an assignee (with the consent of any party whose consent is required by Section 12.04(b)), and accepted by the DIP Agent, in the form of Exhibit E or any other form (including electronic documentation generated by use of an electronic platform) approved by the DIP Agent.

“**Avoidance Action Proceeds**” means any and all proceeds of any Avoidance Action.

“**Avoidance Actions**” means all claims and causes of action under sections 502(d), 544, 545, 547, 548, 549 and 550 of the Bankruptcy Code.

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

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

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

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

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

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

“Board” means the Board of Governors of the Federal Reserve System of the United States of America or any successor Governmental Authority.

“Borrower” has the meaning assigned to such term in the Preamble.

“Borrowing” means Loans made on the same date.

“Borrowing Request Notice” means a notice of request by the Borrower for a Borrowing in accordance with Section 2.02, which shall be substantially in the form of Exhibit B (or such other form as may be approved by the DIP Agent including any form on an electronic platform or electronic transmission system as shall be approved by the DIP Agent), appropriately completed and signed by a Responsible Officer of the Borrower.

“Budget” means a thirteen-week detailed rolling cash projection, in form and substance acceptable to the DIP Agent and the Lenders.

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

“Capital Expenditures” means, for any period, with respect to any Person, the aggregate of all expenditures by such Person and its Subsidiaries for the direct or indirect acquisition or leasing (pursuant to a Capital Lease) of Sand Interests or other fixed or capital assets or additions to equipment (including replacements, capitalized repairs and improvements) during such period which are required to be capitalized under GAAP on a balance sheet of such Person. The amount of Capital Expenditures in respect of fixed assets purchased or constructed by Borrower or any of its Subsidiaries in any fiscal period shall be net of (a) royalty fees received in connection with such purchase or construction, (b) any insurance proceeds received by Borrower or such Subsidiary and applied to the repair, restoration or replacement of fixed assets that are permitted to be reinvested by the terms of this Agreement, (c) proceeds as a result of any condemnation received during such fiscal period by Borrower or such Subsidiary for Casualty Events with respect to fixed assets and applied to the repair, restoration or replacement thereof that are permitted to be reinvested by the terms of this Agreement and (d) expenditures constituting reinvestment of Net Cash Proceeds from Asset Sales permitted hereunder.

“Capital Leases” means, in respect of any Person, all leases which have been, or should have been, in accordance with GAAP, recorded as capital leases on the balance sheet of the Person liable for the payment of rent thereunder. Notwithstanding anything in this Agreement to the contrary, any obligation of a Person under a lease (whether existing as of the Petition Date or entered into in the future) that is not (or would not be) required to be classified and accounted for as a capital lease (or similar) on the balance sheet of such Person under GAAP as in effect on March 31, 2019 shall not be treated as a capital lease obligation solely as a result of (x) the adoption of any changes in, or (y) changes in the application of, GAAP after such date; provided that all payments under any such lease continue to be treated as an expense for calculating Consolidated Net Income.

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

“Cash Equivalents” means Investments described in Section 9.06(c), Section 9.06(d), Section 9.06(e) and Section 9.06(f).

“Cash Pay Plan” has the meaning assigned to such term in Section 10.01(s).

“Casualty Event” means any loss, casualty or other insured damage to, or any nationalization, taking under power of eminent domain or by condemnation or similar proceeding of, any Property of the Borrower or any Subsidiary having a fair market value in excess of \$250,000.

“CERCLA” has the meaning assigned such term in the definition of Environmental Laws.

“Certificate of Inclusion” means that certain Certificate of Inclusion under the Candidate Conservation Agreement with Assurances Component of the Texas Conservation Plan for the Dunes Sagebrush Lizard (*Sceloporus arenicolus*), effective as of August 14, 2017, by Parent.

“Change in Control” means the occurrence of any of the following:

(a) the Permitted Holders collectively shall cease to directly or indirectly own, or cease to have the power to vote or direct the voting of, Equity Interests of Parent representing more than 50% of

the aggregate ordinary voting power represented by the issued and outstanding Equity Interests of Parent on a fully-diluted basis;

(b) Parent ceases to directly own 100% of the outstanding Equity Interests (including all voting and economics attributable thereto) in the Borrower; or

(c) the Borrower ceases to own, directly or indirectly, 100% of the outstanding Equity Interests (including all voting and economics attributable thereto) in any of the Subsidiaries.

“Change in Law” means (a) the adoption or taking effect of any law, rule or regulation after the date of this Agreement, (b) any change in any law, rule or regulation or in the interpretation or application thereof by any Governmental Authority after the date of this Agreement or (c) compliance by any Lender (or, for purposes of Section 5.01(b)), by any Lending Office of such Lender or by such Lender’s holding company, if any) with any request, guideline or directive (whether or not having the force of law) of any Governmental Authority made or issued after the date of this Agreement; *provided* that notwithstanding anything herein to the contrary, (i) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (ii) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a “Change in Law,” regardless of the date enacted, adopted or issued.

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

“Closing Date” has the meaning assigned to such term in Section 6.01.

“Code” means the Internal Revenue Code of 1986, and any successor statute.

“Collateral” means all assets and property of any kind (including all “Collateral” as defined in the Existing Credit Agreement) that is subject to a Lien in favor of the DIP Agent to secure the Obligations or which under the terms of any Loan Document is purported to be subject to such Lien, which includes, for the avoidance of doubt, all existing (whether pre- or post-petition) and after-acquired, tangible and intangible, personal and real property and assets of each of the Debtors and any proceeds thereof and, subject to approval by the Bankruptcy Court pursuant to the Final Order, any Avoidance Action Proceeds; *provided that* the Collateral shall in no event include Excluded Property; *provided, further* that notwithstanding anything in this Agreement or any other Loan Document to the contrary, other than with respect to the Sand Hill Lease, the Lonestar Prop 50 Lease, the Tolar Lease and the Winkler Lease, no Building (as defined in the applicable Flood Insurance Regulations) or Manufactured (Mobile) Home (as defined in the applicable Flood Insurance Regulations) owned by the Borrower or any other Loan Party, shall be included in the Collateral and no Building or Manufactured (Mobile) Home shall be encumbered by any Security Instrument unless and until the Lenders are given 30 days’ prior written notice thereof and each Lender confirms within such 30 day period to the DIP Agent that its flood due diligence has been completed and flood insurance compliances has been confirmed (including the receipt of evidence of any required flood insurance).

“Commitment Fee Rate” means 1.00% per annum.

“Committee” means the statutory official committee of unsecured creditors appointed in the Chapter 11 Cases.

“Commodity Exchange Act” means the Commodity Exchange Act (7 U.S.C. §1 et seq.).

“Confirmation Order” means an order, in form and substance satisfactory to the DIP Agent and the Required Lenders, confirming the Acceptable Plan.

“Consolidated Subsidiaries” means each subsidiary of Parent (whether now existing or hereafter created or acquired) the financial statements of which are (or should be) consolidated with the financial statements of Parent in accordance with GAAP.

“Contractual Obligations” means, with respect to any Person, any term, condition or provision of any security issued by such Person or of any agreement, instrument or other undertaking to which such Person is a party or by which it or any of its Property is bound, and with respect to any Loan Party, shall include such Loan Party’s obligations under any Material Contract.

“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. For the purposes of this definition, and without limiting the generality of the foregoing, any Person that owns directly or indirectly 10% or more of the Equity Interests having ordinary voting power for the election of the directors or other governing body of a Person (other than as a limited partner of such other Person) will be deemed to “control” such other Person. **“Controlling”** and **“Controlled”** have meanings correlative thereto.

“Covered Entity” means any of the following:

- (a) a “covered entity” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 252.82(b);
- (b) a “covered bank” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 47.3(b); or
- (c) a “covered FSI” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 382.2(b).

“Covered Party” has the meaning assigned such term in Section 12.22.

“Debt” means, for any Person, the sum of the following (without duplication): (a) all obligations of such Person for borrowed money or evidenced by bonds, bankers’ acceptances, debentures, notes or other similar instruments; (b) all obligations of such Person (whether contingent or otherwise) in respect of letters of credit, surety or other bonds and similar instruments; (c) all accrued expenses, liabilities or other obligations of such Person to pay the deferred purchase price of Property or services (excluding accounts payable incurred in the ordinary course of business consistent with past practices and which are not past due by more than sixty (60) days); (d) all obligations under Capital Leases; (e) all Debt (as defined in the other clauses of this definition) of others secured by (or for which the holder of such Debt has an existing right, contingent or otherwise, to be secured by) a Lien on any Property of such Person, whether or not such Debt is assumed by such Person; (f) all Debt (as defined in the other clauses of this definition) of others guaranteed by such Person or in which such Person otherwise assures a creditor against loss of the Debt

(howsoever such assurance shall be made) to the extent of the lesser of the amount of such Debt and the maximum stated amount of such guarantee or assurance against loss; (g) all obligations or undertakings of such Person to maintain or cause to be maintained the financial position or covenants of others and, to the extent entered into as a means of providing credit support for the obligations of others and not primarily to enable such Person to acquire any such Property; (h) obligations to deliver commodities, goods or services, including, without limitation, Finished Sand Inventory or other minerals, in consideration of one or more advance payments; (i) obligations to pay for goods or services even if such goods or services are not actually received or utilized by such Person; (j) any Debt (as defined in the other clauses of this definition) of a partnership for which such Person is liable either by agreement, by operation of law or by a Governmental Requirement but only to the extent of such liability; and (k) Disqualified Capital Stock. The Debt of any Person shall include all obligations of such Person of the character described above to the extent such Person remains legally liable in respect thereof notwithstanding that any such obligation is not included as a liability of such Person under GAAP.

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

“Debtors” has the meaning assigned to such term in the recitals hereto.

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

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

“Defaulting Lender” means any Lender that (a) has failed, within two Business Days of the date required to be funded or paid, to (i) fund any portion of its Loans or (ii) pay over to the DIP Agent any other amount required to be paid by it hereunder, unless, in the case of clause (i) above, such Lender notifies the DIP Agent in writing that such failure is the result of such Lender’s good faith determination that a condition precedent to funding (specifically identified and including the particular default, if any) has not been satisfied, (b) has notified the Borrower or any Loan Party in writing, or has made a public statement to the effect, that it does not intend or expect to comply with any of its funding obligations under this Agreement (unless such writing or public statement indicates that such position is based on such Lender’s good faith determination that a condition precedent (specifically identified and including the particular default, if any) to funding a DIP Loan under this Agreement cannot be satisfied), (c) has become the subject of a Bankruptcy Event, or (d) has become the subject of a Bail-in Action.

“Denetz Logistics” means Denetz Logistics, L.L.C., a Texas limited liability company.

“Deposit Account” has the meaning specified in the UCC.

“Designated Jurisdiction” means any country or territory to the extent that such country or territory itself is the subject of any Sanction.

“DIP Agent” has the meaning assigned such term in the Preamble.

“DIP Cash Collateral Account” has the meaning assigned such term in Section 6.01(cc).

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

“DIP Commitment” with respect to each Lender, the commitment of such Lender to make DIP Loans during the DIP Loan Availability Period in the aggregate amount set forth for such Lender on Annex I or in the most recent Assignment and Assumption or other documentation contemplated hereby executed by such Lender, as such commitment may be reduced or increased from time to time pursuant to assignments by or to such Lender pursuant to Section 12.04. The aggregate amount of the DIP Commitments of the Lenders as of the Closing Date is \$11,000,000.

“DIP Commitment Expiration Date” means the earlier to occur of (a) the date on which the DIP Commitments have been reduced to zero and (b) the Maturity Date.

“DIP Facility” has the meaning assigned such term in the Preamble.

“DIP Loan” has the meaning assigned such term in Section 2.01(a).

“DIP Loan Availability Period” means the period from and including the Closing Date to and including the DIP Commitment Expiration Date.

“DIP Order” means the Interim Order and the Final Order, as applicable.

“Disqualified Capital Stock” means any Equity Interest that, by its terms (or by the terms of any security into which it is convertible or for which it is exchangeable) or upon the happening of any event, (a) matures or is mandatorily redeemable for any consideration other than other Equity Interests (which would not constitute Disqualified Capital Stock), pursuant to a sinking fund obligation or otherwise, or (b) is convertible or exchangeable for Debt or redeemable for any consideration other than other Equity Interests (which would not constitute Disqualified Capital Stock) at the option of the holder thereof, in whole or in part, on or prior to the date that is one year after the Maturity Date or (c) requires any payment in cash to be made to the holder of such Equity Interest, other than payments permitted pursuant to Section 9.05.

“dollars” or **“\$”** refers to lawful money of the United States of America.

“Domestic Subsidiary” means any Subsidiary that is organized under the laws of the United States of America or any State thereof or the District of Columbia.

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

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

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

“Eligible Assignee” means (a) a Lender, (b) an Affiliate of a Lender, and (c) a Related Party of a Lender.

“Environmental Laws” means any and all applicable Governmental Requirements pertaining to pollution or protection of the environment, the protection of health as it relates to exposure to Hazardous Materials in the environment or the preservation or reclamation of natural resources or the management, Release or threatened Release of any Hazardous Materials, in effect in any and all jurisdictions in which the Borrower or any of the other Loan Parties is conducting or at any time has conducted business, or where any Property of the Borrower or any of the other Loan Parties is located, including, without limitation, the Oil Pollution Act of 1990, the Clean Air Act, the Comprehensive Environmental, Response, Compensation, and Liability Act of 1980 (**“CERCLA”**), the Federal Water Pollution Control Act, the Occupational Safety and Health Act of 1970, the Resource Conservation and Recovery Act of 1976, (**“RCRA”**), the Safe Drinking Water Act, the Toxic Substances Control Act, the Superfund Amendments and Reauthorization Act of 1986, and the Hazardous Materials Transportation Act.

“Environmental Permit” means any permit, registration, license, approval, consent, exemption, variance, or other authorization required under or issued pursuant to applicable Environmental Laws.

“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 such Equity Interest.

“ERISA” means the Employee Retirement Income Security Act of 1974.

“ERISA Affiliate” means each Person which together with the Borrower or any other Loan Party would be treated as a “single employer” under Section 4001(b)(1) of ERISA or subsection (b), (c), (m) or (o) of Section 414 of the Code.

“ERISA Event” means any one of the following: (a) a “reportable event” described in Section 4043 of ERISA or the regulations issued thereunder (other than events for which the thirty (30) day notice period has been waived) with respect to a Pension Plan; (b) a failure by the Borrower, any other Loan Party or any ERISA Affiliate to meet any applicable requirement under the Pension Funding Rules or the filing of an application for the waiver of the minimum funding standards under the Pension Funding Rules; (c) a determination that any Pension Plan is, or is expected to be, in “at-risk” status (as defined in Section 303(i)(4) of ERISA or Section 430(i)(4) of the Code); (d) the withdrawal of the Borrower, any other Loan Party or any ERISA Affiliate from a Pension Plan during a plan year in which it was a “substantial employer” as defined in Section 4001(a)(2) of ERISA; (e) the filing of a notice of intent to terminate a Pension Plan or the treatment of a Pension Plan amendment as a termination under Section 4041 of ERISA; (f) receipt by the Borrower, any other Loan Party or any ERISA Affiliate from the PBGC or a plan administrator of any notice relating to an intention to terminate any Pension Plan or to appoint a trustee to administer any Pension Plan; (g) any event or condition which constitutes grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Pension Plan; (h) the imposition or incurrence of any liability under Title IV of ERISA, other than for contributions due but not delinquent under the Pension Funding Rules or PBGC premiums due but not delinquent under Section 4007 of ERISA, upon the Borrower, any other Loan Party or any ERISA Affiliate; (i) the receipt by the Borrower, any other Loan Party or any ERISA Affiliate of any notice, or the receipt by any Multiemployer Plan from the Borrower, any other Loan Party or any ERISA Affiliate of any notice, concerning the imposition of

“withdrawal liability” pursuant to Section 4202 of ERISA or a determination that a Multiemployer Plan is, or is expected to be, insolvent within the meaning of Title IV of ERISA, or is in endangered or critical status with the meaning of Section 305 of ERISA; (j) the engagement by the Borrower, any other Loan Party or any ERISA Affiliate in a transaction that could be subject to Section 4069 or Section 4212(c) of ERISA; (k) the imposition of a lien upon property or rights to property of the Borrower, any other Loan Party or any ERISA Affiliate pursuant to Section 430(k) of the Code or Section 303(k) of ERISA; (l) the making of an amendment to a Pension Plan that could result in the posting of bond or security under Section 436(f)(1) of the Code; or (m) the disqualification by the IRS of any Plan intended to be qualified under Section 401(a) of the Code, or the determination by the IRS that any trust forming part of any Pension Plan intended to qualify under Section 401(a) of the Code fails to qualify for exemption from taxation under Section 501(a) of the Code, or, in each case, the receipt from the IRS of notice of failure to qualify as such.

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

“Event of Default” has the meaning assigned such term in Section 10.01.

“Excepted Liens” means: (a) Liens for Taxes, assessments or other governmental charges or levies (i) which are not delinquent (ii) the nonpayment of which is permitted or required by the Bankruptcy Code; or (iii) which are being contested in good faith by appropriate action and for which adequate reserves have been maintained in accordance with GAAP; (b) Liens in connection with workers’ compensation, unemployment insurance or other social security, old age pension or public liability obligations which are not delinquent or which are being contested in good faith by appropriate action and for which adequate reserves have been maintained in accordance with GAAP; (c) statutory landlord’s liens, operators’, vendors’, carriers’, warehousemen’s, repairmen’s, mechanics’, suppliers’, workers’, materialmen’s, construction or other like Liens arising by operation of law in the ordinary course of business or incident to the development, operation and maintenance of Sand Properties, each of which is in respect of obligations that are not delinquent, or which are being contested in good faith by appropriate action and for which adequate reserves have been maintained in accordance with GAAP, or the payment of which is excused or prohibited by the Bankruptcy Code or is otherwise not authorized to be paid by the Bankruptcy Court; (d) Liens arising solely by virtue of any statutory or common law provision relating to banker’s liens, rights of set-off or similar rights and remedies and burdening only deposit accounts or other funds maintained with a creditor depository institution; *provided* that no such deposit account is a dedicated cash collateral account or is subject to restrictions against access by the depositor in excess of those set forth by regulations promulgated by the Board and no such deposit account is intended by any Debtor to provide collateral to the depository institution; (e) easements, restrictions, servitudes, permits, conditions, covenants, exceptions or reservations in any Property of the Borrower or any of the other Loan Parties for the purpose of roads, pipelines, transmission lines, transportation lines, distribution lines and other means of ingress and egress for the removal of gas, oil, coal or other minerals or timber, and other like purposes, or for the joint or common use of real estate, rights of way, facilities and equipment, and leases or subleases of real property and any interest or title of a lessee or sublessee under any such lease or sublease, in each case, that do not secure any monetary obligations and which in the aggregate do not materially impair the use of such Property for the purposes of which such Property is held by any Debtor or materially impair the value of such Property subject thereto and which do not impair or diminish the DIP Agent’s or Secured Parties’ Liens on the Collateral; (f) Liens on cash or securities pledged to secure performance of tenders, surety and appeal bonds, government contracts, performance and return of money bonds, bids, trade contracts, leases, statutory obligations, regulatory obligations and other obligations of a like nature incurred in the ordinary course of business and to the extent the Debt in respect thereof is permitted by Section 9.03(k); (g) Liens

in favor of the depository bank arising under documentation governing deposit accounts or in any Control Agreement (as defined in the Existing Security Agreement) or Liens of a collecting bank arising in the ordinary course of business under Section 4-208 of the UCC, which Liens secure the payment of returned items, settlement item amounts, bank fees, or similar items or fees; (h) judgment and attachment Liens not giving rise to an Event of Default; *provided* that any appropriate legal proceedings which may have been duly initiated for the review of such judgment shall not have been finally terminated or the period within which such proceeding may be initiated shall not have expired and no action to enforce such Lien has been commenced; (i) licenses of intellectual property rights granted in the ordinary course of business, which in the aggregate do not materially impair the use of any Property owned by any Debtor for the purposes of which such Property is held by any Debtor or materially impair the value of such Property subject thereto and which do not impair or diminish the DIP Agent's or Secured Parties' Liens on such Property; and (j) to the extent existing on the Petition Date, liens arising under Section 11 of the Prop 50 Lease in favor of Lonestar Prop 50, LLC, each of which is in respect of obligations that are not delinquent; *provided, further* that (x) all such Liens described in clauses (a) through (e) and (j) shall remain "Excepted Liens" only for so long as no action to enforce such Lien has been commenced (except any such action that is subject to the automatic stay of Section 362 of the Bankruptcy Code or as otherwise permitted by a final order of the Bankruptcy Court) and no intention to subordinate the Lien granted in favor of the DIP Agent and the Lenders is to be hereby implied or expressed by the permitted existence of such Excepted Liens and (y) the term "Excepted Liens" shall not include any Lien securing Debt for borrowed money other than the Obligations.

"Excluded Deposit Accounts" means any Deposit Account that is specifically and exclusively used (a) for payroll, payroll taxes, and other employee wage and benefit payments to or for the benefit of the Loan Party's salaried employees, to the extent the amounts in such Deposit Account as of any date of determination do not exceed the greater of (i) the checks outstanding against such Deposit Account as of that date and (ii) amounts necessary to meet customary minimum balance requirements and (b) as an escrow account for the benefit of the Lessor under the Winkler Lease with aggregate cash amounts on deposit (excluding any accrued interest on the balance thereof after the Petition Date) not to exceed an amount equal to (i) the cash on deposit in such escrow account as of the Petition Date less (ii) all amounts withdrawn from such account after the Petition Date.

"Excluded Property" means (a) any property to the extent the grant or maintenance of a Lien on such property (i) is prohibited by any Requirement of Law or (ii) would result in material adverse tax consequences to any Loan Party (as determined by the DIP Agent); (b) Avoidance Actions; (c) the Excluded Deposit Accounts; and (d) subject to entry of the Final Order, any amounts surcharged pursuant to section 506(c) of the Bankruptcy Code; *provided, however*, that "Excluded Property" shall not include any Avoidance Action Proceeds.

"Excluded Taxes" means, with respect to the DIP Agent, any Lender or any other recipient of any payment to be made by or on account of any obligation of the Borrower or any Guarantor hereunder or under any other Loan Document, (a) Taxes imposed on (or measured by) its net income and franchise Taxes (including the Texas franchise Tax) imposed on it (in lieu of income Taxes), in each case, by the jurisdiction under the laws of which such recipient is organized or in which its principal office is located or, in the case of any Lender, in which its applicable Lending Office is located, (b) in the case of a Foreign Lender, any United States federal withholding Tax that is imposed on amounts payable to such Foreign Lender pursuant to a Law in effect at the time (i) such Foreign Lender becomes a party to this Agreement (other than pursuant to an assignment request by the Borrower) or (ii) such Lender changes its lending office, except in each case to the extent that, pursuant to Section 5.02, amounts with respect to such Taxes were payable either to

such Lender's assignor immediately before such Lender became a party hereto or to such Lender immediately before it changed its lending office, (c) is attributable to such Foreign Lender's failure to comply with Section 5.02(f) or (d) any United States federal withholding Taxes under FATCA.

"Existing ABL Credit Agreement" means that certain Amended and Restated Loan Agreement dated January, 12, 2018, among Lonestar Prospects, Ltd., a Texas limited partnership, as borrower; Lonestar Prospects Holding Company, L.L.C., a Texas limited liability company, Gary B. Humphreys and Martin W. Robertson, each as guarantors, and the other guarantors party thereto; and PlainsCapital Bank, as lender (as amended or otherwise modified prior to the Petition Date).

"Existing ABL Loan Documents" means the "Revolving Documents" as defined in the Existing Intercreditor Agreement.

"Existing ABL Obligations" means the "Revolving Obligations" as defined in the Existing Intercreditor Agreement.

"Existing Credit Agreement" has the meaning assigned such term in the Recitals.

"Existing Guarantors" means the "Guarantors" as defined in the Existing Guaranty Agreement.

"Existing Guaranty Agreement" means the "Guaranty Agreement" as defined in the Existing Credit Agreement.

"Existing Intercreditor Agreement" means that certain Amended and Restated Intercreditor Agreement entered into as of November 9, 2017 among (a) PlainsCapital Bank, (b) ARCC, (c) the Loan Parties and (d) each of the other persons party thereto.

"Existing Lenders" means the lenders under the Existing Credit Agreement as of the date hereof, immediately prior to giving effect to the effectiveness of this Agreement.

"Existing Loan Documents" means the "Loan Documents" as defined in the Existing Credit Agreement.

"Existing Obligations" means the "Indebtedness" as defined in the Existing Credit Agreement.

"Existing Security Agreement" means the "Security Agreement" as defined in the Existing Credit Agreement.

"FATCA" means Sections 1471 through 1474 of the Code as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), any current and future regulations or official interpretations thereof, any agreements entered into pursuant to Section 1471(b)(1) of the Code and any intergovernmental agreement implementing any of the foregoing.

"FCPA" means the Foreign Corrupt Practices Act of 1977.

"Fee Letter" means that certain Fee letter, dated as of the June [], 2020, by and among the Borrower, Parent and the DIP Agent.

“Final Order” shall have the meaning assigned to such term in the Interim Order.

“Financial Officer” means, for any Person, the chief financial officer, principal accounting officer, treasurer or controller of such Person. Unless otherwise specified, all references herein to a Financial Officer means a Financial Officer of the Borrower.

“Financial Statements” means the financial statement or statements referred to in Section 7.04(a).

“Finished Sand Inventory” means Inventory constituting a fracturing proppant for completing oil and gas wells that has been processed through a Loan Party’s wet plant and dry plant and otherwise meets the quality standards prescribed by the International Organization for Standardization, the American Petroleum Institute or the standards for purchase under a Material Contract, in each case, as from time to time in effect. Unless otherwise indicated herein, each reference to the term **“Finished Sand Inventory”** shall mean Finished Sand Inventory of the Loan Parties.

“First Day Orders” has the meaning assigned to such term in Section 9.29.

“Fiscal Quarter” means a fiscal quarter ending on March 31, June 30, September 30 or December 31 of each year.

“Flood Insurance Regulations” means (a) the National Flood Insurance Act of 1968 as now or hereafter in effect or any successor statute thereto, (b) the Flood Disaster Protection Act of 1973 as now or hereafter in effect or any successor statute thereto, (c) the National Flood Insurance Reform Act of 1994 (amending 42 USC 4001, et seq.), as the same may be amended or recodified from time to time, and (d) the Flood Insurance Reform Act of 2004 and any regulations promulgated thereunder.

“Foreign Lender” means any Lender that is organized under the laws of a jurisdiction other than that in which the Borrower is located. For purposes of this definition, the United States of America, each State thereof and the District of Columbia shall be deemed to constitute a single jurisdiction.

“Foreign Subsidiary” means any Subsidiary that is not a Domestic Subsidiary.

“FR Sand” means FR Sand, LLC, a Delaware limited liability company.

“Future” means Future New Deal, Ltd., a Texas limited partnership.

“GAAP” means generally accepted accounting principles in the United States of America as in effect from time to time subject to the terms and conditions set forth in Section 1.04.

“Governmental Authority” means the government of the United States of America, 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.

“Governmental Requirement” means any law, statute, code, ordinance, order, legally binding determination, rule, regulation, judgment, decree, injunction, franchise, permit, certificate, license, rules of common law, authorization or other legally binding directive or requirement, whether now or hereinafter in effect, of any Governmental Authority.

“Guarantors” means Parent and each Subsidiary Guarantor.

“Guaranty Agreement” means the Amended and Restated Guaranty Agreement, dated as of the Closing Date, executed by the Guarantors in favor of the DIP Agent pursuant to which the Guarantors unconditionally guarantee, on a joint and several basis, payment of the Obligations.

“Hazardous Material” means any substance regulated or as to which liability might arise under any Environmental Law, or any other Governmental Requirements related to pollution or protection of the environment or human health through exposure to the environment, including: (a) any chemical, compound, material, product, byproduct, substance or waste defined as or included in the definition or meaning of “hazardous substance,” “hazardous material,” “hazardous waste,” “solid waste,” “toxic waste,” “extremely hazardous substance,” “toxic substance,” “contaminant,” “pollutant,” or words of similar meaning or import found in any applicable Environmental Law; (b) hydrocarbons, petroleum products, petroleum substances, natural gas, oil, oil and gas waste, crude oil, and any components, fractions, or derivatives thereof; and (c) radioactive materials, explosives, asbestos or asbestos containing materials, polychlorinated biphenyls, radon, infectious or medical wastes.

“Highest Lawful Rate” means, with respect to each Lender, the maximum nonusurious interest rate, if any, that at any time or from time to time may be contracted for, taken, reserved, charged or received on the DIP Loans or on other Obligations under laws applicable to such Lender which are presently in effect or, to the extent allowed by law, under such applicable laws which may hereafter be in effect and which allow a higher maximum nonusurious interest rate than applicable laws allow as of the date hereof.

“Indemnified Parties” means the DIP Agent, each other Secured Party and their respective officers, directors, employees, representatives, agents, attorneys, accountants and experts.

“Indemnified Taxes” means Taxes other than Excluded Taxes.

“Indemnitee” has the meaning assigned such term in Section 12.03(b).

“Information” has the meaning assigned such term in Section 12.11.

“Initial Budget” has the meaning assigned such term in Section 6.01(m).

“Initial DIP Loan Borrowing Amount” means \$3,500,000.

“Interest Period” means the period from and including a Monthly Payment Date to but excluding the next succeeding Monthly Payment Date.

“Interim Order” means the interim order of the Bankruptcy Court approving the DIP Facility on an interim basis and entered by the Bankruptcy Court, as the same may be amended, modified or supplemented from time to time.

“Inventory” has the meaning specified in the UCC.

“Investment” means, for any Person: (a) the acquisition (whether for cash, Property, services or securities or otherwise) of Equity Interests in any other Person or any agreement to make any such acquisition (including, without limitation, any “short sale” or any sale of any securities at a time when such securities are not owned by the Person entering into such short sale); (b) the making of any deposit with, or

advance, loan or capital contribution to, assumption of Debt of, purchase or other acquisition of any other Debt or equity participation or interest in, or other extension of credit to, any other Person (including the purchase of Property from another Person subject to an understanding or agreement, contingent or otherwise, to resell such Property to such Person, but excluding any such advance, loan or extension of credit having a term not exceeding ninety (90) days representing the purchase price of inventory or supplies sold by such Person in the ordinary course of business); (c) the purchase or acquisition (in one or a series of transactions) of the Property of another Person that constitutes a business unit; or (d) the entering into of any guarantee of, or other contingent obligation (including the deposit of any Equity Interests to be sold) with respect to, Debt or other liability of any other Person and (without duplication) any amount committed to be advanced, lent or extended to such Person. The amount of any Investment shall be the original cost or amount of such Investment plus the cost or amount of all additions thereto, without any adjustment for increases or decreases in value, or write-ups, write-downs, or write-offs with respect to such Investment, minus any actual returns received in cash or Cash Equivalents on such Investment.

“IRS” means the United States Internal Revenue Service (including any successor agency).

“Joinder Agreement” has the meaning assigned such term in Section 8.14(a).

“Lenders” means the Persons listed on Annex I and any Person that becomes a party hereto pursuant to an Assignment and Assumption (other than any such Person that ceases to be a party hereto pursuant to an Assignment and Assumption) and includes their respective successors and permitted assigns.

“Lending Office” means, as to any Lender, the office or offices of such Lender described as such in such Lender’s Administrative Questionnaire, or such other office or offices as a Lender may from time to time notify the Borrower and the DIP Agent, which office may include any Affiliate of such Lender or any domestic or foreign branch of such Lender or such Affiliate. Unless the context otherwise requires each reference to a Lender shall include its applicable Lending Office.

“Lessor” means Sand Hill Land and Cattle, LLC, a Texas limited liability company, Lonestar Prop 50, LLC, a Texas limited liability company, GHMR Operations, LLC, a Texas limited liability company, and Hogg Ranch, LLC, a Texas limited liability company, as applicable.

“LIBO Rate” means the greater of: (a) 1.50% and (b) the LIBO Screen Rate at approximately 11:00 a.m., London time, two Business Days prior to (x) in the case of determinations of interest to the first Monthly Payment Date after the date of a Borrowing, the date of such Borrowing and (y) in the case of determinations of interest to subsequent Monthly Payment Dates and the Maturity Date, the preceding Monthly Payment Date, in each for an amount of deposits of US dollars equal to the principal amount with respect to which interest is being determined and a maturity of one month. In the event that the LIBO Screen Rate is not available at such time for any reason, then the “LIBO Screen Rate” shall be the rate determined by reference to any other recognized source for such a rate selected by the DIP Agent in good faith, or if the DIP Agent determines (which determination shall be conclusive absent manifest error) that (i) the LIBO Screen Rate is no longer available from any source or is otherwise not ascertainable or (ii) the supervisor for the administrator of the LIBO Screen Rate or a Governmental Authority having jurisdiction over the DIP Agent has made a public statement identifying a specific date after which the LIBO Screen Rate shall no longer be used for determining interest rates for loans, then the DIP Agent and the Borrower shall endeavor to establish an alternate rate of interest to the LIBO Rate that gives due consideration to the then prevailing market convention for determining a rate of interest for syndicated loans in the United States at such time, and shall enter into an amendment to this Agreement to reflect such alternate rate of interest

and such other related changes to this Agreement as may be applicable. Notwithstanding anything to the contrary in Section 9.02, such amendment shall become effective without any further action or consent of any other party to this Agreement so long as the DIP Agent shall not have received, within five Business Days of the date notice of such alternate rate of interest is provided to the Lenders, a written notice from the Required Lenders stating that such Required Lenders object to such amendment.

“LIBO Screen Rate” means the London interbank offered rate as administered by ICE Benchmark Administration (or any other Person that takes on the administration of such rate) as displayed on pages LIBOR01 or LIBOR02 of the Reuters screen that displays such rate (or on any successor or substitute page of such service, or any successor to or substitute for such service, providing rate quotations comparable to those currently provided on such page of such service, as determined by the DIP Agent from time to time for purposes of providing quotations of interest rates applicable to dollar deposits in the London interbank market).

“Lien” means any interest in Property securing an obligation owed to, or a claim by, a Person other than the owner of the Property, whether such interest is based on the common law, statute or contract, and whether such obligation or claim is fixed or contingent, and including but not limited to (a) the lien or security interest arising from a deed of trust, mortgage, encumbrance, pledge, security agreement, conditional sale or trust receipt or a lease, consignment or bailment for security purposes or (b) production payments and the like payable out of Sand Properties. The term **“Lien”** shall include easements, restrictions, servitudes, permits, conditions, covenants, exceptions or reservations, in each case, where the effect is to secure an obligation owed to, or a claim by, a Person other than the owner of the Property. For the purposes of this Agreement, the Borrower or any other Loan Party shall be deemed to be the owner of any Property which it has acquired or holds subject to a conditional sale agreement, or leases under a financing lease or other arrangement pursuant to which title to the Property has been retained by or vested in some other Person in a transaction intended to create a financing.

“Loan Documents” means this Agreement, the Notes, the Guaranty Agreement, the Security Instruments, the Fee Letter, and each other document, instrument, certificate and agreement heretofore and hereafter executed and delivered by the Borrower, any other Loan Party and any of their respective Affiliates in connection with this Agreement. 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 Parties” means, collectively, the Borrower and each Guarantor.

“Logistics Subsidiary Guarantors” means, collectively, MAALT Specialized Bulk, Denetz Logistics and MAALT LP.

“Lonestar Prop 50 Lease” means that certain Lease Agreement, effective August 27, 2015, by and between Vista Sand and Lonestar Prop 50, LLC.

“Lonestar Prospects Holding” means Lonestar Prospects Holding Company, L.L.C., a Texas limited liability company.

“M&J Partnership” means M&J Partnership, Ltd., a Texas limited partnership.

“MAALT Credit Agreement” means that certain Loan Agreement dated as of June 15, 2014 (as amended, supplemented, or otherwise modified prior to the Petition Date) by and among MAALT, Denetz, GHMR Operations, LLC, Gary Humphreys, Marty Robertson, the Trust Guarantors (as defined therein) and PlainsCapital Bank (the **“MAALT Lender”**).

“MAALT Loan Documents” means the “Loan Documents” as defined in the MAALT Credit Agreement.

“MAALT LP” means MAALT, L.P., a Texas limited partnership.

“MAALT Obligations” means the “Secured Obligations” as defined in the MAALT Credit Agreement and the “Obligations” as defined in the Guaranties (as defined in the MAALT Credit Agreement) related to the MAALT Credit Agreement, in each case, in existence as of the Petition Date.

“MAALT Specialized Bulk” means MAALT Specialized Bulk, LLC, a Texas limited liability company.

“Marketable Title” means good and marketable title, free and clear of all mortgages liens and encumbrances, except for Excepted Liens.

“Material Adverse Effect” means a material adverse change in, or material adverse effect on (a) the business, operations, Property or financial condition of the Borrower and the other Loan Parties taken as a whole, other than any change, event or occurrence, arising individually or in the aggregate, from events that could reasonably be expected to result from the filing or commencement of the Chapter 11 Cases or the announcement of the filing or commencement of the Chapter 11 Cases, (b) the ability of the Borrower individually, or the Loan Parties, taken as a whole, to perform any of its or their obligations under any Loan Document, (c) the validity or enforceability of any Loan Document or (d) the material rights and remedies of or benefits available to the DIP Agent or any Lender under any Loan Document; provided that a Material Adverse Effect shall not be deemed to have occurred, if such occurrence is the result of the action or inaction of the DIP Agent or any Lender.

“Material Contract” means each contract or agreement (written or oral) pursuant to which any Debtor pays, receives or incurs liabilities (or could reasonably be expected to pay, receive or incur liabilities during the term thereof) in excess of \$500,000 over the life of such contract or agreement, and any other contract or agreement that, if breached, could reasonably be expected to cause a Material Adverse Effect.

“Material Indebtedness” means Debt (other than the DIP Loans), or obligations in respect of one or more Swap Agreements, of any one or more of the Debtors in an aggregate principal amount exceeding \$500,000. For purposes of determining Material Indebtedness, the “principal amount” of the obligations of the Borrower or any of its Subsidiaries in respect of any Swap Agreement at any time shall be the Swap Termination Value.

“Maturity Date” means earliest date upon which any of the following events occur: (a) the Scheduled Maturity Date; (b) 30 days after entry by the Bankruptcy Court of the Interim Order approving the DIP Facility, if the Final Order has not been entered by the Bankruptcy Court prior to the expiration of such 30-day period; (c) the effective date of a plan of reorganization or liquidation in the Chapter 11 Cases; (d) the consummation of a sale of substantially all of the assets of the Debtors pursuant to section 363 of the Bankruptcy Code or otherwise; (e) [reserved]; (f) dismissal of the Chapter 11 Cases or conversion of

the Chapter 11 Cases into cases under chapter 7 of the Bankruptcy Code; (g) a trustee or receiver shall have been appointed in one or more of the Chapter 11 Cases; (h) without the prior written consent of the Required Lenders, the date of filing or express written support by the Borrower of a plan of reorganization (other than the Acceptable Plan); (i) the termination of the DIP Commitments following an Event of Default under this Agreement or otherwise under the applicable DIP Order; and (j) such earlier date, if any, at which the maturity of the DIP Loans shall be accelerated pursuant to Section 10.02.

“McKie” has the meaning assigned such term in Section 8.22.

“Monthly Payment Date” means the first day of each calendar month.

“Moody’s” means Moody’s Investors Service, Inc. and any successor thereto that is a nationally recognized rating agency.

“Multiemployer Plan” means a “multiemployer plan” as defined in Section 3(37) or 4001(a)(3) of ERISA to which the Borrower, any Subsidiary or any ERISA Affiliate contributes or is required to contribute or with respect to which the Borrower or any Subsidiary has or may have any direct or indirect liability (whether actual or contingent).

“Net Cash Proceeds” means (a) in connection with any Asset Sale or any Recovery Event, the proceeds thereof in the form of cash and cash equivalents (including any such proceeds 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) of such Asset Sale or Recovery Event, net of (i) amounts required to be applied to the repayment of Debt secured by a Lien expressly permitted hereunder on any asset that is the subject of such Asset Sale or Recovery Event (other than any Lien pursuant to a Security Instrument), (ii) in the case of an Asset Sale, attorneys’ fees, accountants’ fees, investment bank fees and other reasonable and customary fees and expenses actually incurred in connection therewith and (iii) [reserved]; *provided* that the evidence of each of (i), (ii) and (iii) is provided to the DIP Agent in form and substance reasonably satisfactory to it, and (b) in connection with the incurrence of Debt for borrowed money (excluding any Debt permitted pursuant to Section 9.03), the cash proceeds received from such incurrence, net of attorneys’ fees, accountants’ fees, investment bank fees, underwriting discounts and commissions and other reasonable and customary fees and expenses actually incurred in connection therewith; *provided, however*, that in the case of this clause (b), evidence of such costs is provided to the DIP Agent in form and substance reasonably satisfactory to it. For the avoidance of doubt, the proceeds from or payment in respect of any business interruption claim shall not be deemed “Net Cash Proceeds”.

“Notes” means any promissory notes of the Borrower in favor of a Lender which has requested promissory notes pursuant to Section 2.03 evidencing the DIP Loans of such Lender, substantially in the form of Exhibit A, together with all amendments, modifications, replacements, extensions and rearrangements thereof.

“Obligations” means (a) any and all amounts owing or to be owing by any Debtor (whether direct or indirect (including those acquired by assumption), absolute or contingent, due or to become due, now existing or hereafter arising) to the DIP Agent, any Lender or any Indemnified Party under this Agreement or any of the other Loan Documents or in respect of the DIP Loans, including, without limitation, all unpaid principal of the DIP Loans, all accrued and unpaid interest on the DIP Loans (including any interest that accrues after the commencement of any case, proceeding or other action relating to the bankruptcy,

insolvency or reorganization of any Debtor (or could accrue but for the operation of applicable Debtor Relief Laws), whether or not such interest is allowed or allowable as a claim in any such case, proceeding or other action), all accrued and unpaid fees, and all expenses, reimbursements, indemnities and other obligations, indebtedness and liabilities of the Borrower or any other Loan Party to the DIP Agent, any Lender or any Indemnified Party under this Agreement or any of the other Loan Documents or in respect of the DIP Loans, and (b) all renewals, extensions and/or rearrangements of any of the above.

“OFAC” means the Office of Foreign Assets Control of the United States Department of Treasury.

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

“Other Taxes” means any and all present or future stamp, court or documentary, intangible, recording, filing or similar Taxes or any other excise or property taxes, charges or similar levies arising from any payment made hereunder or from the execution, delivery, performance, registration of or enforcement of, from the receipt or perfection of a security interest under, or otherwise with respect to, this Agreement and any other Loan Document.

“Parent” has the meaning assigned to such term in the Preamble.

“Participant” has the meaning assigned to such term in Section 12.04(c)(i).

“Participant Register” has the meaning assigned to such term in Section 12.04(c)(i).

“PBGC” means the Pension Benefit Guaranty Corporation or any entity succeeding to any or all of its functions under Title IV of ERISA.

“Pension Funding Rules” means the rules of the Code and ERISA regarding minimum funding standards (including any installment payment thereof) to Multiemployer Plans and Pension Plans and set forth in Sections 412, 430, 431, 432 and 436 of the Code and Sections 302, 303, 304 and 305 of ERISA.

“Pension Plan” means any “employee pension benefit plan” (as defined in Section 3(2) of ERISA, other than a Multiemployer Plan) that is maintained or is contributed to, or is required to be maintained or contributed to, by the Borrower, any other Loan Party or any ERISA Affiliate and is either covered by Title IV of ERISA or is subject to the minimum funding standards under Section 412 or 430 of the Code or Section 302 or 303 of ERISA, or in the case of a multiple employer plan described in Section 4064(a) of ERISA, has made contributions at any time during the preceding five plan years.

“Permitted Holders” means, collectively, (i) FR XIII Charlie AIV, L.P.; (ii) any Affiliate of FR XIII Charlie AIV, L.P. (other than any portfolio company of FR XIII Charlie AIV, L.P. or any of its Affiliates); (iii) M&J Partnership (so long as M&J Partnership is Controlled by Martin Robertson); (iv) Future (so long as Future is Controlled by Gary Humphreys); (v) GHMR (so long as GHMR is

Controlled by either or both of Gary Humphreys and Martin Robertson); (vi) any of Gary Humphreys or Martin Robertson and their respective spouses, lineal descendants and spouses of their lineal descendants; (vii) the estates of Persons described in clause (vi); (viii) trusts established for the benefit of any Person or Persons described in clause (vi); (ix) ARCC; and (x) any Affiliate of ARCC.

“Permitted Variance” has the meaning assigned to such term in Section 9.01(a).

“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 assigned to such term in the recitals hereto.

“Plan” means any “employee benefit plan” as defined in Section 3(3) of ERISA (other than a Multiemployer Plan) maintained or established for employees of the Borrower or a Subsidiary, or any such plan to which the Borrower or a Subsidiary contributes on behalf of any of its employees or with respect to which the Borrower has or may have any direct or indirect liability (whether actual or contingent).

“Property” means any interest in any kind of property or asset, whether real, personal or mixed, or tangible or intangible, including, without limitation, cash, securities, accounts and contract rights.

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

“QFC Credit Support” has the meaning assigned such term in Section 12.22.

“RCRA” has the meaning assigned such term in the definition of Environmental Laws.

“Recovery Event” means any settlement of or payment in respect of any property, casualty or claim or any condemnation proceeding (or proceeding in lieu thereof) (including any Casualty Event) relating to any asset of any Loan Party.

“Redemption” means with respect to any Debt, the repurchase, redemption, prepayment, repayment, satisfaction and discharge or defeasance or any other acquisition or retirement for value (or the segregation of funds with respect to any of the foregoing) of any such Debt. **“Redeem”** has the correlative meaning thereto.

“Register” has the meaning assigned such term in Section 12.04(b)(iii).

“Related Parties” means, with respect to any specified Person, such Person’s Affiliates and the respective partners, directors, officers, employees, agents, trustees, advisors and sub-advisors (including attorneys, accountants and experts) of such Person and such Person’s Affiliates.

“Release” means any depositing, spilling, leaking, pumping, pouring, placing, emitting, discarding, abandoning, emptying, discharging, migrating, injecting, escaping, leaching, dumping, or disposing.

“Remedial Work” has the meaning assigned such term in Section 8.10(a).

“Reporting Date” has the meaning assigned such term in Section 8.01(p)(i).

“Required Lenders” means (a) at any time when there is only one Lender, such Lender and (b) at any time when there are two (2) or more Lenders, at least two (2) Lenders holding Loans and unused DIP Commitments (if any) representing more than fifty percent (50%) of the sum of (x) the aggregate principal amount of DIP Loans (without regard to any sale by a Lender of a participation in any DIP Loan under Section 12.04(c)) outstanding at such time plus (y) the total unused DIP Commitments at such time. For purposes of this definition, any Lenders that are Affiliated shall be deemed to be a single Lender.

“Requirement of Law” means, as to any Person, any law, treaty, rule, regulation statute, order, ordinance, decree, judgment, consent decree, writ, injunction, settlement agreement or governmental requirement enacted, promulgated or imposed or entered into or agreed by any Governmental Authority, in each case applicable to or binding upon such Person or any of its property or assets or to which such Person or any of its property or assets is subject.

“Resignation Effective Date” has the meaning assigned such term in Section 11.06(a).

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

“Responsible Officer” means, as to any Person, the chief executive officer, the president, any Financial Officer or any vice president of such Person and, solely for purposes of requests and notices given pursuant to Article II, any other officer of such Person so designated by any of the foregoing officers of such Person in a notice to the DIP Agent. Unless otherwise specified, all references to a Responsible Officer herein shall mean a Responsible Officer of the Borrower. Any document delivered hereunder that is signed by a Responsible Officer of a Loan Party shall be conclusively presumed to have been authorized by all necessary corporate, limited liability company, partnership and/or other action on the part of such Loan Party and such Responsible Officer shall be conclusively presumed to have acted on behalf of such Loan Party.

“Restricted Payment” means any dividend or other distribution (whether in cash, securities or other Property) with respect to any Equity Interests in the Borrower or any Subsidiary, or any payment (whether in cash or other Property), including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, acquisition, cancellation or termination of any such Equity Interests in the Borrower or any Subsidiary.

“Revolving Lender” has the meaning assigned to such term in the Existing Intercreditor Agreement.

“Revolving Priority Collateral” has the meaning assigned such term in the Existing Intercreditor Agreement.

“S&P” means Standard & Poor’s Ratings Group, a division of The McGraw-Hill Companies, Inc., and any successor thereto that is a nationally recognized rating agency.

“Sanction(s)” means any sanction administered or enforced by the Government of the United States of America (including without limitation, OFAC).

“Sand Hill Lease” means that certain Lease Agreement, dated April 14, 2011, by and between Vista Sand and Sand Hill Land and Cattle, LLC, as amended by that certain First Amendment to Lease Agreement, dated effective as of April 1, 2012, as further amended by that certain Second Amendment to

Lease Agreement, dated as of January 1, 2014, as further amended by that certain Third Amendment to Lease Agreement, dated as of September 18, 2014, as further amended by that certain Fourth Amendment to Lease Agreement, dated as of November 4, 2015, as further amended by that certain Fifth Amendment to Lease Agreement, dated as of February 1, 2019, and as further amended by that certain Sixth Amendment to Lease Agreement, dated as of March 1, 2020.

“Sand Interests” means all rights, titles, interests and estates now or hereafter acquired in and to real property which contains or may contain minerals appropriate for extraction and processing into Finished Sand Inventory, and rights to excavate, produce or recover such minerals, including any lease, mineral leases, fee interests, overriding royalty and royalty interests, net profit interests and production payment interests, including any reserved or residual interests of whatever nature, in each case with respect to such minerals. Unless otherwise indicated herein, each reference to the term “Sand Interests” shall mean Sand Interests of the Loan Parties.

“Sand Properties” means (a) Sand Interests; (b) all operating agreements, contracts and other agreements, including production sharing contracts and agreements, which relate to any of the Sand Interests or the production, sale, purchase, exchange or processing of minerals from or attributable to such Sand Interests; (c) all minerals in and under and which may be produced and saved or attributable to the Sand Interests, including all work in process and Finished Sand Inventory extracted from and/or processed from the Sand Interests and in storage, and all rents, issues, profits, proceeds, products, revenues and other incomes from or attributable to the Sand Interests; (d) all tenements, hereditaments, appurtenances and Properties in any manner appertaining, belonging, affixed or incidental to the Sand Interests and (e) all Properties, rights, titles, interests and estates described or referred to above, including any and all Property, real or personal, now owned or hereinafter acquired and situated upon, used, held for use or useful in connection with the operating, working or development of any of such Sand Interests or Property and including any and all buildings, structures, plants, compressors, pumps, conveyors, dryers, silos and other storage facilities, transloading equipment, rail equipment, infrastructure, tanks and tank batteries, fixtures, valves, fittings, machinery and parts, engines, boilers, meters, apparatus, equipment, appliances, tools, implements, cables, wires, mobile excavation equipment, automobiles, trucks, rental equipment or other personal Property which may be on such premises for the purpose of excavation, processing, transport, storage or for other similar uses, surface leases, rights-of-way, easements and servitudes together with all additions, substitutions, replacements, accessions and attachments to any and all of the foregoing. Unless otherwise indicated herein, each reference to the term “Sand Properties” shall mean Sand Properties of the Loan Parties.

“Scheduled Maturity Date” means the date that is 180 days after the Petition Date.

“SEC” means the Securities and Exchange Commission or any successor Governmental Authority.

“Secured Parties” means the DIP Agent, each Lender, each Indemnified Party and any legal owner, holder, assignee or pledgee of any of the Obligations.

“Security Instruments” means, collectively, each security agreement, the DIP Orders, the Guaranty Agreement and all other agreements, instruments, consents, certificates, mortgages, deeds of trust, control agreements and other documents now or hereafter executed and delivered by the Borrower or any Guarantor (other than Swap Agreements or participation or similar agreements between any Lender and any other lender or creditor with respect to any Debt pursuant to this Agreement) in connection with this Agreement that are intended to create, perfect or evidence Liens to secure the Obligations.

“Subsidiary” means, with respect to any Person (the **“parent”**) at any date, (a) any other Person 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 (b) any other Person of which (i) Equity Interests representing more than 50% of the equity or more than 50% of the ordinary voting power (irrespective of whether or not at the time Equity Interests of any other class or classes in such Person shall have or might have voting power by reason of the happening of any contingency) are or, (ii) in the case of a partnership, any general partnership interests are, or (iii) in the case of a limited liability company, the sole or managing member interests are, in each case, as of such date, owned, controlled or held by the parent or one or more subsidiaries of the parent or by the parent and one or more subsidiaries of the parent. Unless the context otherwise requires, any reference hereunder to **“Subsidiary”** shall mean a Subsidiary of the Borrower.

“Subsidiary Guarantor” means each Debtor that is a Subsidiary of the Borrower. The Subsidiary Guarantors as of the Closing Date are identified as such on Schedule 1.02.

“Superpriority Claim” means a super-priority administrative expense claim pursuant to section 364(c)(1) of the Bankruptcy Code against a Loan Party in any of the Chapter 11 Cases having priority over any or all administrative expense claims, adequate protection and other diminution claims, priority and other unsecured claims, and all other claims against a Debtor or its estate, including claims of the kind specified in, or otherwise arising or ordered under, any sections of the Bankruptcy Code (including, without limitation, sections 105(a), 326, 328, 330, 331, 503(a), 503(b), 506(c), 507, 546, 552(b), 726, 1113 and/or 1114 thereof), whether or not such claim or expenses may become secured by a judgment Lien or other non-consensual Lien, levy or attachment, subject only to the Carve-Out.

“Supported QFC” has the meaning assigned such term in Section 12.22.

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

“Swap Termination Value” means, in respect of any Swap Agreement, after taking into account the effect of any legally enforceable netting agreement relating to such Swap Agreement, (a) for any date on or after the date such Swap Agreement has been closed out and the termination value determined in accordance therewith, such termination value and (b) for any date prior to the date referenced in clause (a), the amount determined as the mark-to-market value for such Swap Agreement, as determined by (i) the Borrower in good faith, if no Event of Default has occurred and is continuing or (ii) the DIP Agent in good faith, if otherwise.

“Taxes” means any and all present or future taxes, levies, imposts, duties, deductions, withholdings (including backup withholding) or other charges imposed by any Governmental Authority.

“Termination Date” means the earliest to occur of: (a) the Maturity Date and (b) the date of the payment in full, in cash, of all Obligations.

“Termination Declaration” has the meaning assigned such term in Section 10.02(a).

“Termination Declaration Date” has the meaning assigned such term in Section 10.02(a).

“Tolar Lease” means that certain Lease Agreement, dated December 1, 2014, by and between Vista Sand and GHMR Operations, LLC. as amended by the First Amendment to Lease Agreement dated March 1, 2017.

“Transactions” means, with respect to (a) the Borrower, the execution, delivery and performance by the Borrower of this Agreement, and each other Loan Document to which it is a party, the borrowing of DIP Loans, the use of the proceeds thereof, and the grant of Liens by the Borrower on its Properties pursuant to the Security Instruments and (b) any Guarantor, the execution, delivery and performance by such Guarantor of each Loan Document to which it is a party, the guaranteeing of the Obligations and the other obligations under the Guaranty Agreement by such Guarantor and the grant of Liens by such Guarantor on its Properties pursuant to the Security Instruments.

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

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

“Unfunded Pension Liabilities” has the meaning assigned to such term in Section 7.10(f).

“U.S. Special Resolution Regimes” has the meaning assigned such term in Section 12.22.

“U.S. Tax Compliance Certificate” has the meaning assigned such term in Section 5.02(f).

“Variance Testing Date” has the meaning assigned such term in Section 8.01(p)(ii).

“Variance Testing Period” has the meaning assigned such term in Section 8.01(p)(ii).

“Vista Sand” means Lonestar Prospects, Ltd., a Texas limited partnership doing business as “Vista Sand”.

“Wholly-Owned Subsidiary” means any Subsidiary of which all of the outstanding Equity Interests (other than any directors’ qualifying shares mandated by applicable law), on a fully-diluted basis, are owned by the Borrower or one or more of the Wholly-Owned Subsidiaries or are owned by the Borrower and one or more of the Wholly-Owned Subsidiaries.

“Winkler Lease” means that certain Lease Agreement, dated and effective as of April 28, 2017, by and between Vista Sand and Hogg Ranch, LLC., as amended by the First Amendment to Lease Agreement, effective as of April 28, 2017, as amended by the Second Amendment to Lease Agreement dated as of December 7, 2017, and as amended by the Third Amendment to Lease Agreement dated as of January 31, 2018.

“Withholding Agent” means any Loan Party or the DIP Agent.

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

Section 1.03. **Terms Generally; Rules of Construction.** 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” as used in this Credit Agreement shall be deemed to be followed by the phrase “without limitation.” 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, supplemented, restated or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth in the Loan Documents), (b) any reference herein to any law shall be construed as referring to such law as amended, modified, codified or reenacted, in whole or in part, and in effect from time to time, (c) any reference herein to any Person shall be construed to include such Person’s successors and assigns (subject to the restrictions contained in the Loan Documents), (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) with respect to the determination of any time period, the word “from” means “from and including” and the word “to” means “to and including” and (f) any reference herein to Articles, Sections, Annexes, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Annexes, Exhibits and Schedules to, this Agreement. No provision of this Agreement or any other Loan Document shall be interpreted or construed against any Person solely because such Person or its legal representative drafted such provision.

Section 1.04. **Accounting Terms and Determinations; GAAP.** Unless otherwise specified herein, all accounting terms used herein shall be interpreted, all determinations with respect to accounting matters hereunder shall be made, and all financial statements and certificates and reports as to financial matters required to be furnished to the DIP Agent or the Lenders hereunder shall be prepared, in accordance with GAAP, applied on a basis consistent with the Financial Statements except for changes in which the Borrower’s independent certified public accountants concur and which are disclosed to the DIP Agent on the next date on which financial statements are required to be delivered to the Lenders pursuant to Section 8.01(a); *provided* that, unless the Borrower and the Required Lenders shall otherwise agree in writing, no such change shall modify or affect the manner in which compliance with the covenants contained herein is computed such that all such computations shall be conducted utilizing financial information presented consistently with prior periods. Such parties agree to negotiate in good faith to amend such computation or determination to preserve the original intent in light of the change in GAAP.

Section 1.05. **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 on the first date of its existence by the holders of its Equity Interests at such time.

ARTICLE II CREDIT FACILITIES

Section 2.01. DIP Commitments.

(a) Subject to the terms and conditions set forth in this Agreement, each Lender agrees to make one or more DIP Loans to the Borrower from time to time during the DIP Loan Availability Period (each a “**DIP Loan**”); *provided* that (i) the principal amount of any DIP Loan made by any Lender on the occasion of any Borrowing of DIP Loans shall not exceed the then-available DIP Commitment of such Lender (immediately prior to giving effect to the making of such DIP Loan), (ii) the initial Borrowing of DIP Loans hereunder (the “**Initial Borrowing**”), shall not exceed the Initial DIP Loan Borrowing Amount, (iii) no Borrowing of DIP Loans made after the Initial Borrowing shall exceed the amount of projected expenditures in the applicable Approved Budget (subject to the Permitted Variance) for such month and (iv) after the Initial Borrowing, no more than one Borrowing of DIP Loans will be permitted during any calendar month.

(b) [Reserved.]

(c) Amounts repaid or prepaid in respect of the DIP Loans may not be reborrowed.

Section 2.02. Method of Borrowing.

(a) To request a Borrowing of DIP Loans, the Borrower shall deliver to the DIP Agent a duly completed Borrowing Request Notice prior to 11:00 a.m. (Eastern Time) five (5) Business Days before the date of the proposed Borrowing; *provided* that the notice referred to in this clause (a) with respect to the Initial Borrowing may be delivered no later than three (3) Business Days prior to the Borrowing of DIP Loans on the Closing Date; *provided further*, that (i) each Borrowing of DIP Loans shall be in an aggregate amount that is an integral multiple of \$500,000 and not less than \$1,000,000 and (ii) each Borrowing Request Notice shall set forth the intended uses of proceeds thereof and shall be in accordance with the Approved Budget (subject to the Permitted Variance) for such month.

(b) Upon receipt of a Borrowing Request Notice, the DIP Agent shall promptly notify each Lender of the receipt thereof, and such Borrowing Request Notice shall not thereafter be revocable by the Borrower.

(c) Not later than 1:00 p.m. (Eastern time) on the date of each Borrowing of DIP Loans, each Lender shall make available the amount of its requested DIP Loan in funds immediately available to the DIP Agent at its address set forth herein. Unless the DIP Agent determines that any applicable condition specified in Section 6.02 has not been satisfied, the DIP Agent will make the funds so received from the applicable Lenders available to the Borrower at the DIP Agent’s aforesaid address for deposit into the DIP Cash Collateral Account.

Section 2.03. Notes. Any Lender may request that DIP Loans owing to such Lender be evidenced by a Note or Notes. In such event, the Borrower shall prepare, execute and deliver to such Lender

a Note or Notes payable to such Lender or its registered assigns and substantially in the form of Exhibit A. Thereafter, the DIP Loans evidenced by such Note and interest thereon shall at all times (including after assignment pursuant to Section 12.04) be represented by one or more Notes in such form payable to the payee or its registered assigns.

Section 2.04. Interest Rates; Payments.

(a) The principal amount of the DIP Loans outstanding from day to day shall bear interest (computed on the basis of a 360 day year for the actual days elapsed) at a rate per annum equal to the lesser of (x) the sum of the LIBO Rate plus the Applicable Margin and (y) the Highest Lawful Rate, payable in arrears on each Monthly Payment Date and on the Maturity Date. On each Monthly Payment Date, all accrued interest shall be paid in cash.

(b) Notwithstanding anything to the contrary set forth in Section 2.04(a), upon the occurrence and during the continuance of an Event of Default, the Obligations (whether or not accelerated) shall automatically bear interest (including post-petition interest in any proceeding under Debtor Relief Laws, whether or not allowed in such a proceeding), at a rate per annum equal to the lesser of (i) the sum of (A) the rate provided for in Section 2.04(a) plus (B) 2.0% per annum and (ii) the Highest Lawful Rate. Interest payable as provided in this Section shall be payable in cash from time to time on demand. Payment or acceptance of the increased rates of interest provided for in this Section is not a permitted alternative to timely payment and shall not constitute a waiver of any Event of Default or otherwise prejudice or limit any rights or remedies of the DIP Agent or any Lender.

(c) Notwithstanding the foregoing, if at any time the rate of interest calculated hereunder (as used in this sub-section, the "contract rate") is limited to the Highest Lawful Rate, any subsequent reductions in the contract rate shall not reduce the rate of interest on the DIP Loans below the Highest Lawful Rate until the total amount of interest accrued equals the amount of interest which would have accrued if the contract rate had at all times been in effect. In the event that at maturity (stated or by acceleration), or at final payment of any DIP Loan, the total amount of interest paid or accrued on such DIP Loan is less than the amount of interest which would have accrued if the contract rate had at all times been in effect with respect thereto, then at such time, to the extent permitted by Law, the Borrower shall pay to the holder of such DIP Loan an amount equal to the difference between (i) the lesser of the amount of interest which would have accrued if the contract rate had at all times been in effect and the amount of interest which would have accrued if the Highest Lawful Rate had at all times been in effect, and (ii) the amount of interest actually paid on such DIP Loan.

Section 2.05. Termination of Commitments; Maturity.

(a) The DIP Commitment of each Lender shall terminate on the DIP Commitment Expiration Date; *provided* that, on the date of each Borrowing of DIP Loans, the portion of the DIP Commitments being funded pursuant to such Borrowing shall terminate immediately after the funding of such DIP Loans.

(b) The Borrower may, subject the other provisions of this Agreement, upon not less than fifteen (15) Business Days' advance notice (or such shorter period as may be approved by the DIP Agent in its sole discretion) to the DIP Agent (who shall promptly notify each Lender), terminate the unused DIP Commitments in full or in part. Any partial termination of the DIP Commitments shall be in a minimum amount of \$1,000,000 and shall be in an integral multiple of \$500,000.

(c) The outstanding principal balance of the DIP Loans, all accrued but unpaid interest thereon, and all other Obligations shall be due and payable in full on the Maturity Date.

Section 2.06. Application of Payments.

(a) The Borrower shall make each payment of principal of, and interest on, the DIP Loans and all fees payable by the Borrower hereunder not later than 12:00 p.m. (Eastern time) on the date when due, in funds immediately available to the DIP Agent at its address set forth herein. The DIP Agent will promptly (and if such payment is received by the DIP Agent by 12:00 p.m. (Eastern time), and otherwise if reasonably possible, on the same Business Day) distribute to each Lender its proportionate share or, in the case of any fee, other appropriate share of each such payment received by DIP Agent for the account of Lenders. Whenever any payment of principal of, or interest on, any DIP Loans shall be due on a day which is not a Business Day, the date for payment thereof shall be extended to the next succeeding Business Day. If the date for any payment of principal is extended by operation of Law or otherwise, interest thereon shall be payable for such extended time. All amounts payable by the Borrower under the Loan Documents (whether principal, interest, fees, expenses, or otherwise) shall be paid in full, without set-off or counterclaim. Amounts repaid on account of the DIP Loans may not be reborrowed.

(b) Prior to the occurrence of an Event of Default, all principal payments received by Lenders with respect to the DIP Loans shall be applied to the DIP Loans of each Lender ratably in accordance with the amounts thereof until such DIP Loans have been repaid in full.

(c) After the occurrence of an Event of Default and subject to the Existing Intercreditor Agreement, all amounts collected or received by DIP Agent or any Lender from any Loan Party or in respect of any of the assets of any Loan Party shall be applied in the following order:

(i) *first*, to the payment of all fees, indemnities, expenses and other amounts payable to the DIP Agent (including fees, expenses, and disbursements of counsel to the DIP Agent) and all amounts due the DIP Agent under Section 12.03;

(ii) *second*, to the payment of all fees, indemnities, expenses and other amounts (other than principal and interest) payable to Lenders (including fees, expenses, and disbursements of counsel to Lenders) ratably among them in proportion to the respective amounts described in this clause second payable to them;

(iii) *third*, to accrued and unpaid interest on the DIP Loans, ratably among the Lenders in proportion to the respective amounts described in this clause third payable to them;

(iv) *fourth*, to unpaid principal of the DIP Loans, ratably among the Lenders in proportion to the respective amounts described in this clause fourth payable to them; and

(v) *last*, the balance, if any, after all of the Obligations have been indefeasibly paid in full, to the Borrower or as otherwise required by Law.

Section 2.07. [Reserved.]

Section 2.08. Original Issue Discount. On the date of each Borrowing, each Lender will fund its Loan net of an amount equal to a percentage, set forth in the Fee Letter, of the principal amount of Loans requested to be funded by such Lender as of such date. Such discount shall be treated as original issue

discount for U.S. federal and applicable state income tax purposes. Notwithstanding any other provision in this Agreement, the Borrower shall comply with the requirements of Treasury Regulation Section 1.1275-3 and shall provide any information reasonably requested by the DIP Agent or any Lender regarding the amount or accrual of original issue discount for U.S. federal income tax purposes with respect to any amounts borrowed hereunder.

Section 2.09. Defaulting Lenders. Notwithstanding any provision of this Agreement to the contrary, if any Lender becomes a Defaulting Lender, then the following provisions shall apply for so long as such Lender is a Defaulting Lender:

(a) the DIP Commitment of such Defaulting Lender shall not be included in determining whether the Required Lenders have taken or may take any action hereunder (including any consent to any amendment, waiver or other modification pursuant to Section 12.02); provided that, except as otherwise provided in Section 12.02, this Section 2.09 shall not apply to the vote of a Defaulting Lender in the case of an amendment, waiver or other modification requiring the consent of all Lenders or each Lender directly affected thereby;

(b) the unused commitment fees pursuant to Section 3.04(a) shall cease to accrue on the unused DIP Commitments of such Defaulting Lender; and

(c) any payment of principal, interest, fees or other amounts received by the DIP Agent for the account of that Defaulting Lender (whether voluntary or mandatory, at maturity, pursuant to Article X or otherwise, and including any amounts made available to the DIP Agent by that Defaulting Lender pursuant to Section 4.01(c)), shall be applied at such time or times as may be determined by the DIP Agent as follows: first, to the payment of any amounts owing by that Defaulting Lender to the DIP Agent hereunder; second, as the Borrower may request (so long as no Default or Event of Default exists), to the funding of any DIP Loan in respect of which that Defaulting Lender has failed to fund its portion thereof as required by this Agreement, as determined by the DIP Agent; third, if so determined by the DIP Agent and the Borrower, to be held in a non-interest bearing deposit account and released in order to satisfy obligations of that Defaulting Lender (if such Defaulting Lender is a Lender) to fund DIP Loans under this Agreement; fourth, to the payment of any amounts owing to the Lenders as a result of any judgment of a court of competent jurisdiction obtained by any Lender against that Defaulting Lender as a result of that Defaulting Lender's breach of its obligations under this Agreement; fifth, so long as no Default or Event of Default exists, to the payment of any amounts owing to the Borrower as a result of any judgment of a court of competent jurisdiction obtained by the Borrower against that Defaulting Lender as a result of that Defaulting Lender's breach of its obligations under this Agreement; and sixth, to that Defaulting Lender or as otherwise directed by a court of competent jurisdiction; but if such payment is a payment of the principal amount of any DIP Loans, such payment shall be applied solely to pay the relevant DIP Loans of the relevant non-Defaulting Lenders on a *pro rata* basis before being applied in the manner set forth in this Section 2.10(c). Any payments, prepayments or other amounts paid or payable to a Defaulting Lender that are applied (or held) to pay amounts owed by a Defaulting Lender shall be deemed paid to and redirected by that Defaulting Lender, and each Lender irrevocably consents hereto.

Section 2.10. Collateral; Guarantees.

(a) Priority and Liens. The parties hereto acknowledge and agree that, upon entry of the DIP Orders and the delivery and execution of this Agreement, the Obligations shall at all times be

secured and perfected pursuant to, and have the priority (including superpriority, as applicable) and Liens as set forth in, the DIP Orders and herein.

(b) Payment of Obligations. On the Maturity Date, the Lenders shall be entitled to immediate payment of all Obligations without further application to, or order of, the Bankruptcy Court.

(c) No Discharge; Survival of Claims. Each Debtor agrees that (a) any Confirmation Order entered in the Chapter 11 Cases shall not discharge or otherwise affect in any way any of the Obligations, other than after the payment in full in cash to the Secured Parties of all Obligations and termination of the DIP Commitments on or before the effective date of an Acceptable Plan and (b) to the extent the Obligations are not satisfied in full, (i) the Obligations shall not be discharged by the entry of a Confirmation Order (and each Debtor, pursuant to Section 1141(d)(4) of the Bankruptcy Code, hereby waives any such discharge) and (ii) the Superpriority Claim granted to the Secured Parties pursuant to the DIP Order and the Liens granted to the DIP Agent pursuant to the DIP Order shall not be affected in any manner by the entry of a Confirmation Order.

(d) Perfection and Protection of Security Interests and Liens. The Debtors will from time to time deliver to the DIP Agent all financing statements, amendments, assignments and continuation statements, extension agreements and other documents, properly completed and executed (and acknowledged when required) by each Debtor, as applicable, in form and substance satisfactory to the DIP Agent, in each case, which the DIP Agent requests for the purpose of perfecting, confirming, or protecting its lien and security interest in Collateral for the purpose of securing the Obligations. Each Loan Party hereby confirms and acknowledges that, pursuant to the Interim Order (and, when entered, the Final Order), the Liens in favor of the DIP Agent on behalf of and for the benefit of the Secured Parties in all of the Collateral shall be created and perfected, to the maximum extent permitted by law, without the execution or the recordation or filing in any land records or filing offices of, any assignment, security agreements, mortgages, control agreements, pledge agreements, financing statements or other similar documents, or the possession or control by the DIP Agent of, or over, any Collateral, as set forth in the Interim Order (and, when entered, the Final Order).

(e) Offset. Subject to the terms and conditions set forth in the applicable DIP Order, to secure the payment and performance of the Obligations, each Debtor hereby grants the DIP Agent and each Lender a security interest, lien, and right of offset, each of which shall be in addition to all other interests, liens, and rights of the DIP Agent at common law, under this Agreement and the other Loan Documents, or otherwise, and each of which shall be upon and against (i) any and all monies, securities or other property (and the proceeds therefrom) of the Debtors now or hereafter held or received by or in transit to the DIP Agent or any Lender from or for the account of any Debtor, whether for safekeeping, custody, pledge, transmission, collection or otherwise, any and all deposits (general or special, time or demand, provisional or final) of any Debtor with the DIP Agent or any Lender, and (ii) any other credits and claims of any Debtor at any time existing against the DIP Agent or any Lender, including claims under certificates of deposit. Subject to the terms and conditions set forth in the applicable DIP Order, during the existence and continuation of any Event of Default, the DIP Agent and each Lender is hereby authorized to foreclose upon, offset, appropriate, and apply, at any time and from time to time, without notice to any Debtor, any and all items hereinabove referred to against the Obligations then due and payable.

(f) Guaranty. The direct or indirect value of the consideration received and to be received by such Guarantor in connection herewith is reasonably worth at least as much as the liability and obligations of each Guarantor hereunder and under the other Loan Documents, and the incurrence of such

liability and obligations in return for such consideration may reasonably be expected to benefit each Guarantor, directly or indirectly.

(g) Chapter 11 Cases. The Chapter 11 Cases were commenced on the Petition Date in accordance with applicable law and proper notice thereof and the proper notice for (i) the motions seeking approval of the Loan Documents and the DIP Facility and (ii) the hearings for the approval of the Interim Order and the Final Order were given in each case. The Borrower has given, on a timely basis as specified in the Interim Order, all notices required to be given on or prior to the date of this representation to all parties specified in the Interim Order.

(h) Collateral, etc. All Obligations of the Debtors under the Loan Documents, including all DIP Loans made under the DIP Facility, shall, subject to the Carve-Out, at all times:

(i) pursuant to Bankruptcy Code section 364(c)(1), be entitled to joint and several Superpriority Claim status in the Chapter 11 Cases, which claims in respect of the DIP Loans shall be *pari passu* and shall be senior in priority and payment to the obligations under the Existing Credit Agreement;

(ii) pursuant to Bankruptcy Code section 364(c)(2), be secured by a perfected first priority Lien on the Collateral to the extent that such Collateral is not subject to valid, perfected and non-avoidable Liens as of the Petition Date or Liens that were in existence immediately prior to the Petition Date that become perfected subsequent to the Petition Date as permitted by Section 546(b) of the Bankruptcy Code;

(iii) pursuant to Bankruptcy Code section 364(c)(3), be secured by a perfected junior lien on all assets of the Debtors, to the extent that such assets are (1) subject to liens in favor of the Revolving Lender on the Revolving Priority Collateral, (2) subject to liens in favor of the MAALT Lender under the MAALT Loan Documents securing the MAALT Obligations or (3) subject to valid, perfected and non-avoidable Liens as of the Petition Date or liens that were in existence immediately prior to the Petition Date that are perfected as permitted by Section 546(b) of the Bankruptcy Code;

(iv) pursuant to Bankruptcy Code section 364(d)(1), and subject to the immediately preceding clause (iii), be secured by a perfected super-priority priming Lien on all Collateral to the extent that such Collateral is subject to valid, perfected and non-avoidable liens in favor of third parties as of the commencement of the Chapter 11 Case, including, all accounts receivable, inventory, real and personal property, plant and equipment of the Debtors that secure the obligations of any of the Debtors under the Existing Credit Agreement, the MAALT Loan Documents (solely to the extent such Liens securing MAALT Obligations are junior to the Liens securing the Existing Obligations) and the Existing ABL Loan Documents (solely to the extent such obligations under the Existing ABL Loan Documents are secured by Common Collateral (as defined in the Existing Intercreditor Agreement) that is not Revolving Priority Collateral).

**ARTICLE III
REPAYMENTS; PREPAYMENTS; FEES**

Section 3.01. Repayment of DIP Loans. The Borrower promises to repay to the DIP Agent for the ratable account of the Lenders the aggregate unpaid principal amount of the DIP Loans on the Maturity Date or earlier, if otherwise required by the terms hereof.

Section 3.02. Mandatory Prepayments.

(a) Subject to the Intercreditor Agreement and the payment priorities in the DIP Orders, if the Debtors (i) incur any Debt (excluding any Debt permitted pursuant to Section 9.03), (ii) make any Asset Sale or (iii) receive Net Cash Proceeds as a result of a Recovery Event, in each case, including when an Event of Default exists, then within five (5) Business Days after the date of such incurrence, Asset Sale or receipt of Net Cash Proceeds, the Borrower shall prepay the principal amount of the DIP Loans in an amount equal to the amount of the Net Cash Proceeds therefrom. The provisions of this Section 3.02(a) do not constitute a consent to the incurrence of any Debt or any Asset Sale not otherwise permitted by the terms hereof.

(b) Subject to the terms of the Existing Intercreditor Agreement and the payment priorities in the DIP Orders, each prepayment of the DIP Loans pursuant to this Section 3.02 shall be applied in accordance with Section 2.06 and shall be accompanied by payment of accrued interest to such date of prepayment on the principal amount prepaid.

Section 3.03. Voluntary Prepayments.

(a) The Borrower may, subject the other provisions of this Agreement, upon not less than fifteen (15) Business Days' advance notice (or such shorter period as may be approved by the DIP Agent in its sole discretion) to the DIP Agent (who shall promptly notify each Lender), prepay the principal of the DIP Loans in whole or in part. Any partial prepayment shall be in a minimum amount of \$1,000,000 and shall be in an integral multiple of \$500,000.

(b) [Reserved.]

(c) Each prepayment pursuant to this Section 3.03 shall be made, together with accrued interest on the DIP Loans so prepaid to the date of payment, as set forth in Section 2.06.

Section 3.04. Fees.

(a) The Borrower agrees to pay to the DIP Agent, for the ratable account of each Lender, during the DIP Loan Availability Period, an unused commitment fee at the rate per annum equal to the Commitment Fee Rate on the daily unused amount of the DIP Commitments during such period. Such unused commitment fees shall be payable by the Borrower in arrears on each Monthly Payment Date, commencing with the first Monthly Payment Date following the Closing Date.

(b) The Borrower shall pay to the DIP Agent, for the ratable account of the Lenders, the fees in the amounts and at the times specified in the Fee Letter.

ARTICLE IV
PAYMENTS; PRO RATA TREATMENT; SHARING OF SET-OFFS

Section 4.01. Payments Generally; Pro Rata Treatment; Sharing of Set-offs.

(a) Payments by the Borrower. The Borrower shall make each payment required to be made by it hereunder (whether of principal, interest, fees, or of amounts payable under Section 5.01, Section 5.02 or otherwise) prior to 1:00 p.m.(Eastern time) on the date when due, in immediately available funds, without defense, deduction, recoupment, set-off or counterclaim. Fees, once paid, shall be fully earned and shall not be refundable under any circumstances. Any amounts received after such time on any date may, in the discretion of the DIP Agent, be deemed to have been received on the next succeeding Business Day for purposes of calculating interest thereon. All such payments shall be made to the DIP Agent at its offices specified in Section 12.01, except that payments pursuant to Section 5.01, Section 5.02 and Section 12.03 shall be made directly to the Persons entitled thereto. The DIP Agent shall distribute any such payments received by it for the account of any other Person to the appropriate recipient promptly following receipt thereof. 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 U.S. dollars.

(b) Application of Insufficient Payments. If at any time insufficient funds are received by and available to the DIP Agent to pay fully all amounts of principal, interest and fees then due hereunder, such funds shall be applied (i) first, towards payment of interest and fees then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of interest and fees then due to such parties, and (ii) second, towards payment of principal then due hereunder, ratably among the parties entitled thereto in accordance with the amount of principal then due to such parties.

(c) Sharing of Payments by Lenders. If any Lender shall, by exercising any right of set-off or counterclaim or otherwise, obtain payment in respect of any principal of, or interest on, any of its Loans resulting in such Lender receiving payment of a greater proportion of the aggregate amount of its Loans and accrued interest thereon than the proportion received by any other Lender, then the Lender receiving such greater proportion shall purchase (for cash at face value) participations in the DIP Loans of other Lenders to the extent necessary so that the benefit of all such payments shall be shared by the Lenders ratably in accordance with the aggregate amount of principal of and accrued interest on their respective Loans; *provided* that (i) if any such participations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations shall be rescinded and the purchase price restored to the extent of such recovery, without interest, and (ii) the provisions of this Section 4.01(c) shall not be construed to apply to any payment made by the Borrower pursuant to and in accordance with the express terms of this Agreement or any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans to any assignee or participant, other than to the Borrower or any Subsidiary or Affiliate thereof (as to which the provisions of this Section 4.01(c) shall apply). The Borrower consents to the foregoing and agrees, to the extent it may effectively do so under applicable law, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against the Borrower rights of set-off and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of the Borrower in the amount of such participation.

Section 4.02. Presumption of Payment by the Borrower. Unless the DIP Agent shall have received notice from the Borrower prior to the date on which any payment is due to the DIP Agent for the

account of the Lenders that the Borrower will not make such payment, the DIP Agent may assume that the Borrower has made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to the Lenders, as the case may be, the amount due. In such event, if the Borrower has not in fact made such payment, then each of the Lenders, as the case may be, severally agrees to repay to the DIP Agent forthwith on demand the amount so distributed to such Lender with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to the DIP Agent, at the rate then applicable to the DIP Loans.

Section 4.03. [Reserved].

ARTICLE V INCREASED COSTS; TAXES; ILLEGALITY

Section 5.01. Increased Costs.

(a) Changes in Law. If any Change in Law shall:

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

(ii) subject any Lender to any Taxes (other than (A) Indemnified Taxes or (B) Taxes described in clauses (b) through (d) of the definition of Excluded Taxes) on its loans, loan principal, letters of credit, commitments, or other obligations, or its deposits, reserves, other liabilities or capital attributable thereto; or

(iii) impose on any Lender any other condition affecting this Agreement or DIP Loans made by such Lender;

and the result of any of the foregoing shall be to increase the cost to such Lender of making or maintaining any DIP Loan (or of maintaining its obligation to make any such DIP Loan) or to reduce the amount of any sum received or receivable by such Lender (whether of principal, interest or otherwise), *then* the Borrower will pay to such Lender such additional amount or amounts as will compensate such Lender for such additional costs incurred or reduction suffered.

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

(c) Certificates. As promptly as practical, after a Lender obtains knowledge of the facts that entitle it to compensation under this Section 5.01, but in any event within ninety (90) days after such Lender acquires such knowledge, such Lender shall provide Borrower with a certificate which identifies the factual basis for its claim, the amount or amounts that such Lender has reasonably determined will compensate hereunder, and the manner in which such amount or amounts have been calculated. Any Lender claiming additional compensation under this Section 5.01 shall use reasonable efforts (consistent

with legal and regulatory restrictions) to reduce or eliminate any such additional compensation which may thereafter accrue and which efforts would not, in the sole discretion of such Lender, be otherwise. A certificate setting forth the basis for determining such amounts necessary to compensate such Lender (including the calculations used to arrive at such additional amounts and the assumptions on which such calculations were based), submitted to the Borrower by the DIP Agent, shall be conclusive evidence, absent manifest error, of the correctness of such amount. The Borrower shall pay such Lender the amount shown as due on any such certificate within 20 Business Days after receipt thereof.

(d) Effect of Failure or Delay in Requesting Compensation. Failure or delay on the part of any Lender to demand compensation pursuant to this Section 5.01 shall not constitute a waiver of such Lender's right to demand such compensation; *provided* that the Borrower shall not be required to compensate a Lender pursuant to this Section 5.01 for any increased costs or reductions incurred more than 180 days prior to the date that such Lender notifies the Borrower of the Change in Law giving rise to such increased costs or reductions and of such Lender's intention to claim compensation therefor; *provided further* that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the 180-day period referred to above shall be extended to include the period of retroactive effect thereof.

Section 5.02. Taxes.

(a) Payments Free of Taxes. Any and all payments by or on account of any obligation of the Borrower or any Guarantor under any Loan Document shall be made free and clear of and without deduction or withholding for any Taxes, including any Indemnified Taxes or Other Taxes; *provided* that if the Borrower or any Guarantor shall be required under applicable law to deduct any Taxes from such payments, then (i) if such Taxes are an Indemnified Tax or Other Taxes, the sum payable shall be increased as necessary so that after making all required deductions (including deductions applicable to additional sums payable under this Section 5.02(a)), the DIP Agent or Lender (as the case may be) receives an amount equal to the sum it would have received had no such deductions been made, (ii) the Borrower or such Guarantor shall make such deductions and (iii) the Borrower or such Guarantor shall pay the full amount deducted to the relevant Governmental Authority in accordance with applicable law.

(b) Payment of Other Taxes by the Borrower. The Borrower shall timely pay any Other Taxes to the relevant Governmental Authority in accordance with applicable law.

(c) Indemnification by the Borrower. The Borrower shall indemnify the DIP Agent and each Lender within 10 days after written demand therefor, for the full amount of any Indemnified Taxes or Other Taxes payable or paid by the DIP Agent, or such Lender, as the case may be, on or with respect to any payment by or on account of any obligation of the Borrower hereunder (including Indemnified Taxes or Other Taxes imposed or asserted on or attributable to amounts payable under this Section 5.02) and any penalties, interest and reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes or Other Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate of the DIP Agent or a Lender as to the amount of such payment or liability under this Section 5.02 shall be delivered to the Borrower and shall be conclusive absent manifest error; *provided* that the Borrower shall not have any obligation to indemnify the DIP Agent or such Lender for any amounts paid by the DIP Agent or such Lender under this Section 5.02 more than two years prior to the date the DIP Agent or such Lender notifies the Borrower of the amount of such payment.

(d) Indemnification by the Lenders. Each Lender shall severally indemnify the DIP Agent, within 10 days after demand therefor, for (i) any Indemnified Taxes attributable to such Lender (but

only to the extent that the Borrower has not already indemnified the DIP Agent for such Indemnified Taxes and without limiting the obligation of the Borrower to do so), (ii) any Taxes attributable to such Lender's failure to comply with the provisions of Section 12.04(c) relating to the maintenance of a Participant Register and (iii) any Excluded Taxes attributable to such Lender, in each case, that are payable or paid by the DIP Agent in connection with any Loan Document, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Lender by the DIP Agent shall be conclusive absent manifest error. Each Lender hereby authorizes the DIP Agent to set off and apply any and all amounts at any time owing to such Lender under any Loan Document or otherwise payable by the DIP Agent to the Lender from any other source against any amount due to the DIP Agent under this paragraph (d).

(e) Evidence of Payments. As soon as practicable after any payment of Taxes by the Borrower or a Guarantor to a Governmental Authority pursuant to this Section 5.02, the Borrower shall deliver to the DIP Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the DIP Agent.

(f) Status of Lenders.

(i) Any Lender that is entitled to an exemption from or reduction of withholding Tax with respect to payments made under any Loan Document shall deliver to the Withholding Agent, at the time or times reasonably requested by the Withholding Agent, such properly completed and executed documentation reasonably requested by the Withholding Agent as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender, if reasonably requested by the Withholding Agent, shall deliver such other documentation prescribed by applicable law or reasonably requested by the Withholding Agent as will enable the Withholding Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution and submission of such documentation (other than such documentation set forth in Section 5.02(f)(ii)(A) and 5.02(f)(ii)(B) and Section 5.02(g) below) shall not be required if in the Lender's reasonable judgment such completion, execution or submission would subject such Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender.

(ii) Without limiting the generality of the foregoing, in the event that the Borrower is a "United States person" as defined in Section 7701(a)(30) of the Code,

(A) any Lender that is a "United States person" as defined in Section 7701(a)(3) of the Code shall deliver to the Withholding Agent on or prior to the date on which such Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Withholding Agent), executed originals of IRS Form W-9 certifying that such Lender is exempt from United States federal backup withholding Tax;

(B) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Withholding Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under

this Agreement (and from time to time thereafter upon the reasonable request of the Withholding Agent), whichever of the following is applicable:

(1) in the case of a Foreign Lender claiming the benefits of an income Tax treaty to which the United States is a party (x) with respect to payments of interest under any Loan Document, executed originals of the applicable IRS Form W-8 establishing an exemption from, or reduction of, United States federal withholding Tax pursuant to the “interest” article of such Tax treaty and (y) with respect to any other applicable payments under any Loan Document, the applicable IRS Form W-8 or W-8BEN establishing an exemption from, or reduction of, United States federal withholding Tax pursuant to the “business profits” or “other income” article of such Tax treaty;

(2) executed originals of IRS Form W-8ECI;

(3) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Code, (x) a certificate substantially in the form of Exhibit F-1 to the effect that such Foreign Lender is not a “bank” within the meaning of Section 881(c)(3)(A) of the Code, a “10 percent equityholder” of the Borrower within the meaning of Section 871(h)(3)(B) of the Code, or a “controlled foreign corporation” described in Section 881(c)(3)(C) of the Code (together with any certificate substantially in the form of Exhibit F-2, F-3, or F-4, a “**U.S. Tax Compliance Certificate**”) and (y) executed originals of IRS Form W-8BEN-E; or

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

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

Each Lender agrees that if any form or certification it previously delivered expires or becomes obsolete or inaccurate in any respect, it shall update such form or certification or promptly notify the Withholding Agent in writing of its legal inability to do so.

(g) FATCA. If a payment made to a Lender under this Agreement would be subject to United States Federal withholding Tax imposed by FATCA if such Lender fails to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Lender shall deliver to the Withholding Agent, at the time or times prescribed by law and at such time or times reasonably requested by the Withholding Agent, such documentation prescribed by applicable law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by the Withholding Agent as may be necessary for the Withholding Agent to comply with its obligations under FATCA, to determine that such Lender has complied with such Lender's obligations under FATCA and to determine the amount to deduct and withhold from such payment. Solely for purposes of this Section 5.02(g), "FATCA" shall include any amendments made to FATCA after the date of this Agreement.

(h) Survival. Each party's obligations under this Section 5.02 shall survive the resignation or replacement of the DIP Agent or any assignment of rights by, or the replacement of, a Lender, the termination of the DIP Commitments and the repayment, satisfaction or discharge of all obligations under any Loan Document.

Section 5.03. Mitigation Obligations. Each Lender may make any DIP Loans to the Borrower through any Lending Office, *provided* that the exercise of this option shall not affect the obligation of the Borrower to repay Loans in accordance with the terms of this Agreement. If any Lender requests compensation under Section 5.01, or if the Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 5.02, then such Lender shall use reasonable efforts to designate a different Lending Office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the reasonable judgment of such Lender, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Section 5.01 or Section 5.02, as the case may be, in the future and (ii) would not subject such Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender. The Borrower hereby agrees to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment.

Section 5.04. Illegality. Notwithstanding any other provision of this Agreement, in the event that it becomes unlawful for any Lender or its applicable Lending Office to honor its obligation to make or maintain Loans, then such Lender shall promptly notify the Borrower and the DIP Agent thereof and such Lender's obligation to make such DIP Loans shall be suspended (the "Affected Loans") until such time as such Lender may again make and maintain such DIP Loans.

ARTICLE VI CONDITIONS PRECEDENT

Section 6.01. Closing Date. The obligations of the Lenders to enter into and execute this Agreement and to make available the Initial Borrowing (subject to the other terms and conditions set forth in this Agreement), shall commence on the first Business Day that each of the following conditions is satisfied (or waived in accordance with Section 12.02) (the "Closing Date"):

(a) [Reserved];

(b) the Bankruptcy Court shall have entered the Interim Order within three (3) Business Days following the Petition Date, (i) which Interim Order (A) shall have been entered on the

docket of the Bankruptcy Court and shall be in form and substance satisfactory to the Lenders and (B) shall be in full force and effect and shall not have been vacated, stayed, reversed, modified or amended in any respect without the prior written consent of the DIP Agent and the Required Lenders, and (ii) the Loan Parties shall be in compliance with the terms of the Interim Order in all respects;

(c) all first-day motions filed by the Debtors (including any motions related to cash management or any critical vendor or supplier motions) and related orders, including the Cash Management Order, entered by the Bankruptcy Court in the Chapter 11 Cases shall be in form and substance satisfactory to the DIP Agent and the Lenders;

(d) all motions related to the DIP Facility and related orders entered by the Bankruptcy Court (including the applicable DIP Order) shall be in form and substance satisfactory to the DIP Agent and the Lenders;

(e) the DIP Agent shall have received (i) duly executed and delivered counterparts (in such numbers as may be requested by the DIP Agent) of this Agreement and the other Loan Documents to be executed and delivered on or prior to such date, from each party hereto or thereto, as applicable, signed on behalf of such party, in each case in form and substance acceptable to the DIP Agent and Lenders, and (ii) the duly executed Notes payable to each Lender that requests a Note;

(f) [reserved];

(g) the DIP Agent shall have received a certificate of the Borrower and of each Guarantor certifying as of the Closing Date (i) resolutions of the board of directors or other managing body with respect to the authorization of the Borrower or such Guarantor to execute and deliver the Loan Documents to which it is a party and to enter into the transactions contemplated in those documents, (ii) the individuals (A) who are authorized to sign the Loan Documents to which the Borrower or such Guarantor is a party and (B) who will, until replaced by another individual duly authorized for that purpose, act as its representative for the purposes of signing documents and giving notices and other communications in connection with this Agreement and the transactions contemplated hereby, (iii) specimen signatures of such authorized individuals, and (iv) the articles or certificate of incorporation or formation and bylaws, operating agreement or partnership agreement, as applicable, of the Borrower and each Guarantor, in each case, certified as being true and complete. The DIP Agent and the Lenders may conclusively rely on such certificate until the DIP Agent receives notice in writing from the Borrower to the contrary;

(h) the DIP Agent shall have received certificates of the appropriate State agencies with respect to the existence, qualification and good standing of each Loan Party, to the extent not otherwise required to be delivered after the Petition Date pursuant to Section 8.03;

(i) [reserved];

(j) the DIP Agent shall have received a certificate of insurance coverage of the Loan Parties evidencing that the Loan Parties are carrying insurance reasonably acceptable to the DIP Agent;

(k) [reserved];

(l) subject to the applicable DIP Order, (i) all reasonable and documented pre- and post-petition fees, charges and expenses including, without limitation, the fees, charges and expenses of FTI Consulting, Inc., Sidley Austin LLP and one local counsel to the DIP Agent in each applicable

jurisdiction, in each case pursuant to invoices delivered to the Borrower at least two (2) Business Days before the Closing Date, (ii) the fees agreed to in the Fee Letter and (iii) all other amounts due and payable pursuant to invoices delivered to the Borrower at least two (2) Business Days before the Closing Date, in each case as required to be paid to the DIP Agent and Lenders on or before the Closing Date, shall have been paid;

(m) the DIP Agent shall have received a Budget, containing line items of sufficient detail to reflect the Loan Parties' projected receipts and disbursements for the 13-week period commencing on the Petition Date, in form and substance acceptable to the DIP Agent and the Lenders and in form similar to the 13-week projections and budget delivered to the Existing Administrative Agent under the Existing Credit Agreement, and which shall be attached hereto as Exhibit G (the "**Initial Budget**"), together with a certificate of the Borrower stating that such Initial Budget has been prepared on a reasonable basis and in good faith and is based on assumptions believed by the Borrower to be reasonable at the time made and from the best information then available to the Borrower;

(n) [reserved];

(o) there shall not exist any action, suit, investigation, litigation or proceeding pending or threatened in writing (other than the Chapter 11 Cases) in any court or before any Governmental Authority that, in the reasonable opinion of the DIP Agent and the Required Lenders, materially and adversely affects any of the Transactions contemplated hereby;

(p) [reserved];

(q) [reserved];

(r) the DIP Agent shall have received a certificate of a Responsible Officer of the Borrower certifying that the Borrower has received all consents and approvals referred to in Section 7.03;

(s) all Obligations shall be secured by a perfected lien and security interest on all Collateral of the Loan Parties pursuant to, and such Lien and security interest shall have the priorities set forth in, the Interim Order, subject only to the Liens permitted by Section 9.04 and all filing and recording fees and taxes with respect to such Liens and security interests that are due and payable as of the Closing Date shall have been duly paid;

(t) the DIP Agent shall have received appropriate UCC search certificates, fixture filing, judgment, tax and county-level real property record search results reflecting no Liens encumbering the Properties of the Loan Parties for each jurisdiction requested by the DIP Agent (other than those being assigned or released on or prior to the Closing Date or Liens permitted by Section 9.04) and litigation searches in form and substance satisfactory to the DIP Agent;

(u) [reserved];

(v) [reserved];

(w) there shall not have occurred any Material Adverse Effect;

(x) all governmental and third party approvals necessary in connection with the Transactions, the financing contemplated hereby and the continuing operations of the Loan Parties

(including equityholder approvals, if any) shall have been obtained on terms reasonably satisfactory to the DIP Agent and shall be in full force and effect;

(y) the DIP Agent shall have received, and satisfactorily completed its review of, information regarding ownership, business operations, business prospects, litigation, Tax, accounting, labor, insurance, pension liabilities (actual or contingent), real estate leases, Material Contracts, debt agreements, property ownership, and contingent liabilities of the Borrower and its Subsidiaries;

(z) Stephen Straty, or another independent director acceptable to the DIP Agent (the “**Approved Independent Director**”) shall continue to serve on the board of managers of the Parent, with rights thereof acceptable to the DIP Agent;

(aa) Gary Barton of Alvarez & Marsal, or another chief restructuring officer acceptable to the DIP Agent (the “**Approved CRO**”) shall continue to be retained by the Parent at the compensation approved by the Lenders prior to the Closing Date;

(bb) the legal, corporate and capital structure of the Loan Parties shall be consistent with the structure disclosed to the DIP Agent prior to the Closing Date;

(cc) each Debtor shall establish a cash management system satisfactory to the Lenders, including a cash collateral account at a bank to be mutually agreed upon by the DIP Agent and the Borrower, over which the DIP Agent shall have a perfected security interest and into which account the Loans will be funded on the date of each Borrowing (the “**DIP Cash Collateral Account**”);

(dd) the Debtors shall have filed a motion or motions with the Bankruptcy Court, in form and substance acceptable to the DIP Agent and the Lenders, to reject each of (i) that certain Management Services Agreement, dated as of May 1, 2017, among GBH Properties LLC, Parent and Gary B. Humphreys and (ii) that certain Management Services Agreement, dated as of May 1, 2017, among M&J Partnership, Ltd., Parent and Martin W. Robertson;

(ee) [reserved]; and

(ff) the DIP Agent shall have received such other documents as the DIP Agent may reasonably request.

Without limiting the generality of the provisions of Section 11.04, for purposes of determining compliance with the conditions specified in this Section 6.01, each Lender that has signed this Agreement shall be deemed to have consented to, approved or accepted or to be satisfied with, each document or other matter required under this Section 6.01 to be consented to or approved by or acceptable or satisfactory to a Lender unless the DIP Agent shall have received notice from such Lender prior to the Closing Date specifying its objection thereto. All documents executed or submitted pursuant to this Section 6.01 by and on behalf of the Borrower or any of its Subsidiaries shall be in form and substance reasonably satisfactory to the DIP Agent. The DIP Agent shall notify the Borrower and the Lenders of the Closing Date, and such notice shall be conclusive and binding.

Section 6.02. Each Credit Event. The obligation of each Lender to make a DIP Loan on the occasion of any Borrowing (including the funding of the DIP Loans, if any, on the Closing Date), is subject to the satisfaction of the following conditions:

(a) at the time of and immediately after giving effect to such Borrowing, no Default shall have occurred and be continuing;

(b) at the time of and immediately after giving effect to such Borrowing, no event, development or circumstance has occurred or shall then exist that has resulted in, or could reasonably be expected to have, a Material Adverse Effect;

(c) the representations and warranties of the Loan Parties set forth in this Agreement and in the other Loan Documents shall be true and correct in all material respects on and as of the date of such Borrowing, except that (i) to the extent any such representations and warranties are expressly limited to an earlier date, then on and as of the date of such Borrowing, such representations and warranties shall continue to be true and correct in all material respects as of such specified earlier date and (ii) to the extent that any such representation and warranty is qualified by materiality, such representation and warranty shall continue to be true and correct in all respects;

(d) the making of such DIP Loan shall not be prohibited by any applicable Governmental Requirement, and no litigation shall be pending or threatened (other than the Chapter 11 Cases), which does or, with respect to any threatened litigation, seeks to, enjoin, prohibit or restrain temporarily, preliminarily or permanently, the making or repayment of any DIP Loan or any participations therein or the consummation of the transactions contemplated by this Agreement or any other Loan Document;

(e) the receipt by the DIP Agent of a Borrowing Request Notice in accordance with Section 2.02;

(f) other than with respect to the Initial Borrowing, the Bankruptcy Court shall have entered the Final Order within thirty (30) days (or such later date consented to by the DIP Agent and the Required Lenders) following the entry of the Interim Order, which Final Order (i) shall be in substantially the form of the Interim Order, with only such modifications thereto as are satisfactory in form and substance to the DIP Agent and the Lenders, (ii) shall have been entered on the docket of the Bankruptcy Court and (iii) shall be in full force and effect and shall not have been vacated, stayed, reversed, modified or amended in any respect without the prior written consent of the DIP Agent and the Lenders;

(g) with respect to the period on and after entry of the Interim Order and prior to the entry of the Final Order, the Interim Order shall be in full force and effect and shall not have been vacated, reversed, modified, amended or stayed without the written consent of the DIP Agent and the Required Lenders;

(h) the Debtors shall be in compliance in all respects with (i) the Interim Order or the Final Order, as applicable, and (ii) subject to application of the Permitted Variance, with the Approved Budget; and

(i) for each Borrowing other than the Initial Borrowing, the DIP Agent shall have received evidence satisfactory to it that the Debtors have established (and identified to the DIP Agent) a

deposit account (which shall be a separate account from the DIP Cash Collateral Account identified as of the Petition Date) with a depository institution acceptable to the DIP Agent, which such account will be maintained thereafter as the DIP Cash Collateral Account.

Each request for a Borrowing shall be deemed to constitute a representation and warranty by the Borrower on the date thereof as to the matters, and to the extent, specified in Section 6.02(a) through (h).

ARTICLE VII REPRESENTATIONS AND WARRANTIES

Each Debtor represents and warrants to the Lenders that:

Section 7.01. Organization; Powers. Subject to any restrictions arising on account of any Debtor's status as a "debtor" under the Bankruptcy Code and entry of the DIP Orders, each Debtor is duly organized, validly existing and in good standing (or, subject to compliance with the proviso set forth in Section 8.03, will be in good standing within the time period set forth therein and thereafter, after making all requisite filings and/or applications as may be required by the State of Texas to reflect such good standing in the applicable state records) under the laws of the jurisdiction of its organization, has all requisite power and authority, and has all material governmental licenses, authorizations, consents and approvals necessary, to own its assets and to carry on its business as now conducted, and is qualified to do business in, and is in good standing in, every jurisdiction where such qualification is required, except where failure to have such power, authority, licenses, authorizations, consents, approvals and qualifications could not reasonably be expected to have a Material Adverse Effect.

Section 7.02. Authority; Enforceability. Subject to any restrictions arising on account of any Debtor's status as a "debtor" under the Bankruptcy Code and entry of the DIP Orders, the Transactions are within the Loan Parties' respective limited partnership or limited liability company powers and have been duly authorized by all necessary limited partnership or limited liability company and, if required, equityholder action (including, without limitation, any action required to be taken by any class of directors of the Borrower or any other Person, whether interested or disinterested, in order to ensure the due authorization of the Transactions). Each Loan Document to which any Loan Party is a party has been duly executed and delivered by such Loan Party, upon entry of the Interim Order or the Final Order, as applicable, and constitutes a legal, valid and binding obligation of such Loan Party, enforceable in accordance with its terms, subject to applicable Debtor Relief Laws and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law.

Section 7.03. Approvals; No Conflicts. Subject to the entry of the DIP Orders, the Transactions (a) do not require any consent or approval of, registration or filing with, or any other action by, any Governmental Authority or any other third Person (including equityholders, members, partners or any class of directors or managers, whether interested or disinterested, of the Borrower or any other Person), nor is any such consent, approval, registration, filing or other action necessary for the validity or enforceability of any Loan Document or the consummation of the transactions contemplated thereby, except such as have been obtained or made and are in full force and effect other than (i) the recording and filing of the Security Instruments as required by this Agreement and the applicable DIP Order, and (ii) those third party approvals or consents which, if not made or obtained, would not cause a Default hereunder, could not reasonably be expected to have a Material Adverse Effect and would not have an adverse effect on the enforceability of the Loan Documents, (b) other than violations arising as a result of the commencement of Chapter 11 Cases or where enforcement is stayed upon commencement of the Chapter 11 Cases or as otherwise excused by

the Bankruptcy Court, will not violate any applicable law or regulation or the Organizational Documents of any Debtor or any order of any Governmental Authority, (c) will not violate or result in a default under any indenture or other material agreement binding upon any Debtor or its Properties, or give rise to a right thereunder to require any payment to be made by any Debtor and (d) will not result in the creation or imposition of any Lien on any material Property of any Debtor (other than the Liens created by the Loan Documents).

Section 7.04. Financial Condition; No Material Adverse Change.

(a) The Borrower has heretofore furnished to the Lenders the unaudited consolidated and consolidating balance sheet of Parent and its subsidiaries and related consolidated and consolidating segment statement of operations as of and for the fiscal quarters ended September 30, 2019, certified by its chief financial officer. Such financial statements present fairly, in all material respects, the financial position and results of operations and cash flows of the Borrower and its consolidated subsidiaries as of such dates and for such periods in accordance with GAAP, subject to year-end audit adjustments and the absence of footnotes in the case of the unaudited quarterly financial statements.

(b) Since the Petition Date, there has been no event, development or circumstance that has had or could reasonably be expected to have a Material Adverse Effect.

(c) No Debtor has on the date hereof any material Debt (including Disqualified Capital Stock) or any contingent liabilities, off-balance sheet liabilities or partnerships, liabilities for Taxes, unusual forward or long-term commitments or unrealized or anticipated losses from any unfavorable commitments, except as referred to or reflected or provided for in the Financial Statements, the Approved Budget or the First Day Orders.

Section 7.05. Litigation.

(a) Except as set forth on Schedule 7.05, and other than the Chapter 11 Cases, there are no actions, suits, investigations or proceedings by or before any arbitrator or Governmental Authority pending against or, to the knowledge of the Borrower or Parent, threatened against or affecting any Debtor or any Lessor (i) not fully covered by insurance (except for normal deductibles) as to which there is a reasonable possibility of an adverse determination that, if adversely determined, could reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect, (ii) that involve any Loan Document or the Transactions, (iii) that could impair the consummation of the Transactions or (iv) which is not otherwise subject to the automatic stay as a result of the Chapter 11 Cases.

(b) Since the date of this Agreement, there has been no change in the status of the matters disclosed in Schedule 7.05 that, individually or in the aggregate, has resulted in a Material Adverse Effect.

Section 7.06. Environmental Matters. Except as set forth on Schedule 7.06:

(a) the Debtors and each of their respective Properties and operations thereon are, and within all applicable statute of limitation periods have been, in material compliance with all applicable Environmental Laws;

(b) the Debtors have obtained all Environmental Permits required for their respective operations and each of their Properties, with all such Environmental Permits being currently in full force

and effect, and none of the Debtors has received any written notice or otherwise has knowledge that any such existing Environmental Permit will be revoked or that any application for any new Environmental Permit or renewal of any existing Environmental Permit will be protested or denied;

(c) there are no material claims, demands, suits, orders, inquiries, or proceedings concerning any violation of, or any liability (including as a potentially responsible party or any liability for investigation, remediation, removal, abatement, or monitoring of Hazardous Materials) under, any applicable Environmental Laws that is pending or, to the Borrower's knowledge, threatened against any Loan Party or any of their respective Properties or as a result of any operations at such Properties;

(d) none of the Properties of the Debtors contain any: (i) underground storage tanks; (ii) asbestos-containing materials; (iii) landfills or dumps; (iv) hazardous waste management units as defined pursuant to RCRA or any comparable state law; or (v) sites on or nominated for the National Priorities List promulgated pursuant to CERCLA or any state remedial priority list promulgated or published pursuant to any comparable state law;

(e) there has been no material Release or, to the Borrower's knowledge, threatened Release, of Hazardous Materials at, on, under or from the Debtors' Properties, there are no investigations, remediations, abatements, removals, or monitorings of Releases of Hazardous Materials required under applicable Environmental Laws at such Properties and, to the knowledge of the Borrower, none of such Properties are adversely affected by any material Release or threatened Release of a Hazardous Material originating or emanating from any other real property;

(f) there has been no material exposure of any Person or Property to any Hazardous Materials as a result of or in connection with the operations and businesses of any of the Debtors' Properties that could reasonably be expected to form the basis for a claim for damages or compensation; and

(g) the Debtors have provided to the Lenders complete and correct copies of all material environmental site assessment reports, investigations, studies, analyses, and correspondence on environmental matters (including matters relating to any alleged non-compliance with or liability under Environmental Laws) that are in any of the Borrower's or any other Loan Party's possession or control and relating to their respective Properties or operations thereon.

Section 7.07. Compliance with the Laws and Agreements; No Defaults.

(a) Each of the Debtors (i) to its knowledge, is in material compliance with all Governmental Requirements applicable to it or its Property and all agreements and other instruments binding upon it or its Property, subject to any restrictions arising on account of any Debtor's status as a "debtor" under the Bankruptcy Code, and (ii) possesses all licenses, permits, franchises, exemptions, approvals and other governmental authorizations, in each case, necessary for the ownership of its Property and the conduct of its business.

(b) Except to the extent subject to the automatic stay under the Chapter 11 Cases, none of the Debtors is in default nor has any event or circumstance occurred which, but for the expiration of any applicable grace period or the giving of notice, or both, would result in or permit the acceleration of the maturity of or would require the Debtors to Redeem or make any offer to Redeem under any indenture, note, credit agreement or instrument pursuant to which any Material Indebtedness is outstanding or by which the Debtors or any of their Properties is bound.

(c) No Default has occurred and is continuing.

Section 7.08. Investment Company Act. None of the Debtors is an “investment company” or a company “controlled” by an “investment company,” within the meaning of, or subject to regulation under, the Investment Company Act of 1940.

Section 7.09. Taxes. Each of the Debtors has timely filed or caused to be filed all Tax returns and reports required by applicable law to have been filed, where such Tax returns accurately reflect in all material respects all liabilities for Taxes of the Debtors for the periods covered thereby, and has paid or caused to be paid all material Taxes required to have been paid by it, except (a) Taxes that are being contested in good faith by appropriate proceedings and for which such Debtors, as applicable, has set aside on its books adequate reserves in accordance with GAAP or (b) to the extent otherwise excused or prohibited by the Bankruptcy Code and not otherwise authorized by the Bankruptcy Court.

Section 7.10. ERISA. Except to the extent excused by the Bankruptcy Court or as a result of the filing of the Chapter 11 Cases:

(a) Each Plan is in compliance in all respects with the applicable provisions of ERISA, the Code and other applicable laws, except for such noncompliance as could not reasonably be expected, either individually or in the aggregate, to result in a Material Adverse Effect; and each Plan that is intended to be a qualified plan under Section 401(a) of the Code has received a favorable determination letter from the IRS to the effect that the form of such Plan is qualified under Section 401(a) of the Code and the trust related thereto has been determined by the IRS to be exempt from Federal income tax under Section 501(a) of the Code, or an application for such a letter is currently being processed by the IRS, and, to the knowledge of the Borrower, nothing has occurred that would prevent or cause the loss of such tax-qualified status.

(b) Other than routine claims for benefits, there are no pending or, to the knowledge of the Borrower, threatened claims, actions or lawsuits, or action by any Governmental Authority, with respect to any Plan that, either individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect. To the knowledge of the Borrower, there has been no “prohibited transaction” (as defined in Section 406 of ERISA or Section 4975 of the Code) or violation of the fiduciary responsibility rules with respect to any Plan that, either individually or in the aggregate, has had or could reasonably be expected to have a Material Adverse Effect.

(c) Except as could not reasonably be expected, either individually or in the aggregate, to have a Material Adverse Effect, no ERISA Event has occurred, and none of the Debtors, nor any ERISA Affiliate is aware of any fact, event or circumstance that, either individually or in the aggregate, could reasonably be expected to constitute or result in an ERISA Event with respect to any Pension Plan or Multiemployer Plan.

(d) Except as could not reasonably be expected, either individually or in the aggregate, to have a Material Adverse Effect, full payment when due has been made of all amounts which the Debtors or any ERISA Affiliate is required, under the terms of each Plan, Pension Plan, Multiemployer Plan or applicable law, to have paid as contributions to such Plan, Pension Plan or Multiemployer Plan as of the date hereof.

(e) None of the Debtors nor any ERISA Affiliate sponsors, maintains, or contributes to an employee welfare benefit plan, as defined in Section 3(1) of ERISA, including, without limitation,

any such plan maintained to provide benefits to former employees of such entities (other than in accordance with Section 4980B of the Code or any similar State law), that may not be terminated by the Debtors or any ERISA Affiliate in its sole discretion at any time without any material liability.

(f) The present value of all accrued benefit liabilities (as defined in Section 4001(a)(16) of ERISA) under each Pension Plan (based on those assumptions used to fund such Pension Plan) did not, as of the last annual valuation date prior to the date on which this representation is made or deemed made, exceed the value of the assets of such Pension Plan allocable to such accrued benefits by a material amount (any such excess, “**Unfunded Pension Liabilities**”). As of the most recent valuation date for each Multiemployer Plan, the potential liability of the Debtors or any ERISA Affiliate for a complete withdrawal from such Multiemployer Plan (within the meaning of Section 4203 of ERISA), when aggregated with such potential liability for a complete withdrawal from all Multiemployer Plans, is zero.

Section 7.11. Disclosure; No Material Misstatements. The Borrower has disclosed to the DIP Agent and the Lenders all agreements, instruments and corporate or other restrictions to which any Debtor 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 the Debtors to the DIP Agent or any Lender or any of their Affiliates in connection with the negotiation of this Agreement or any other Loan Document or delivered hereunder or under 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 Borrower represents only that such information was prepared in good faith based upon assumptions believed to be reasonable at the time. There is no fact peculiar to any Debtor other than as set forth in the DIP Orders which could reasonably be expected to have a Material Adverse Effect or in the future is reasonably likely to have a Material Adverse Effect and which has not been set forth in this Agreement or the Loan Documents or the other documents, certificates and statements furnished to the DIP Agent or the Lenders by or on behalf of the Debtors prior to, or on, the date hereof in connection with the transactions contemplated hereby.

Section 7.12. Insurance. The Debtors have (a) all insurance policies sufficient for the compliance by each of them with all material Governmental Requirements and all material agreements and (b) insurance coverage in at least amounts and against such risk (including, without limitation, public liability) that are usually insured against by companies similarly situated and engaged in the same or a similar business for the assets and operations of the Debtors. The DIP Agent and the Lenders have been named as additional insureds in respect of such liability insurance policies and the DIP Agent has been named as loss payee with respect to Property loss insurance.

Section 7.13. Restriction on Liens. Subject to any restrictions arising on account of any Debtor's status as a “debtor” under the Bankruptcy Code, no Debtor is a party to any material agreement or arrangement, or subject to any order, judgment, writ or decree, which either restricts or purports to restrict its ability to grant Liens to the DIP Agent and the Secured Parties on or in respect of its Properties to secure the Obligations, except for (a) restrictions in the Existing ABL Credit Agreement and the Existing Intercreditor Agreement with respect to granting Liens of higher or equal priority to the Liens securing the Existing ABL Obligations, (b) with respect to the Logistics Subsidiary Guarantors, restrictions or conditions imposed by the MAALT Credit Agreement on the property or assets securing such MAALT Obligations as of the Petition Date, and (c) as set forth in the Interim Order or Final Order, as applicable.

Section 7.14. Subsidiaries and Capitalization.

(a) Schedule 7.14(a) lists all Subsidiaries of the Borrower as of the Closing Date. The Borrower has no Foreign Subsidiaries.

(b) Schedule 7.14(b) lists the owners of all authorized and outstanding Equity Interests of each Debtor, including options and other equity equivalents of each Debtor, together with the amount and percentage of such Equity Interests held by each such owner. All of the outstanding Equity Interests of each Debtors are validly issued and free and clear of any and all Liens (other than Liens in favor of DIP Agent pursuant to the Security Instruments and Permitted Liens).

(c) Other than pursuant to an Acceptable Plan or as set forth on Schedule 7.14(c), there (i) are no outstanding or (ii) any present plans to issue any shares of capital stock or other Equity Interests, securities, rights, warrants or options convertible or exchangeable into or exercisable for any shares of capital stock or other Equity Interests, stock appreciation rights or phantom stock of any Debtor; *provided, however*, nothing contained in this Section 7.14 shall restrict any Debtor from granting equity options to its managers or directors in accordance with this Agreement or pursuant to Lender's prior written consent. Except as set forth on Schedule 7.14(c), no Debtor is under any obligation, contingent or otherwise, to redeem or otherwise acquire any shares of its capital stock or other Equity Interests or any securities, rights or options to acquire such capital stock, Equity Interests, stock appreciation rights or phantom stock. Other than as contemplated by an Acceptable Plan or as contemplated by the Organizational Documents of the Debtors in effect as of the date hereof and the Loan Documents, there are no agreements between any Persons, equityholders, or managers or directors of any Debtor with respect to the voting or transfer of any Equity Interests of a Debtor owned by such parties or with respect to any other aspect of their affairs concerning any Debtor other than those set forth on Schedule 7.14(c), none of which conflict with the primary rights granted to the DIP Agent or any Lender in the Loan Documents or any related agreements executed simultaneously herewith.

(d) Except as set forth on Schedule 7.14(d), there are no statutory or contractual shareholders' preemptive rights with respect to the Equity Interests of any Debtor. No Debtor has violated any applicable federal or state securities laws in connection with the offer, sale or issuance of any of its Equity Interests. Except as set forth on Schedule 7.14(d), there are no agreements granting registration rights to any Person with respect to any Equity Interests of a Debtors, none of which conflict with the primary rights granted to the DIP Agent or any Lender in the Loan Documents or any related agreements executed simultaneously herewith.

Section 7.15. Location of Business and Offices. The Borrower's jurisdiction of organization is Delaware; the name of the Borrower as listed in the public records of its jurisdiction of organization is VPROP Operating, LLC; and the organizational identification number of the Borrower in its jurisdiction of organization is 6588917 (or, in each case, as set forth in a notice delivered to the DIP Agent pursuant to Section 8.01(l) in accordance with Section 12.01). The Borrower's principal place of business and chief executive offices are located at the address specified in Section 12.01 (or as set forth in a notice delivered pursuant to Section 8.01(l) and Section 12.01(c)). Each other Debtor's jurisdiction of organization, name as listed in the public records of its jurisdiction of organization, organizational identification number in its jurisdiction of organization, and the location of its principal place of business and chief executive office is stated on Schedule 7.14(a) (or as set forth in a notice delivered pursuant to Section 8.01(l)).

Section 7.16. Properties; Titles, Etc. Except as a result of the filing of the Chapter 11 Cases:

(a) The Debtors have Marketable Title to the Sand Properties and each of the Debtors has good title to all its material personal Properties, in each case, free and clear of all Liens except Liens permitted by Section 9.04.

(b) Except (x) to the extent excused by the Bankruptcy Court in an order acceptable to the DIP Agent or (y) to the extent any such material leases or agreements are rejected in the Chapter 11 Cases as part of the Debtors' exercise of its reasonable business judgment and such rejection is approved by the DIP Agent, all material leases and agreements necessary for the conduct of the business of the Debtors are valid and subsisting, in full force and effect, and there exists no default or event or circumstance which with the giving of notice or the passage of time or both would give rise to a default under any such leases or agreements.

(c) The rights and Properties presently owned, leased or licensed by each Debtor including, without limitation, all easements and rights of way, include all rights and Properties necessary to permit each Debtor to conduct its business in all material respects in the same manner as its business has been conducted prior to the date hereof.

(d) All of the Properties of the Debtors which are reasonably necessary for the operation of their businesses are in good working condition and are maintained in accordance with prudent business standards.

(e) Each Debtor owns, or is licensed to use, all trademarks, trade names, copyrights, patents and other intellectual Property material to its business, and the use thereof by the Debtors does not infringe upon the rights of any other Person, except for any such infringements that, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect. The Debtors either own or have valid licenses or other rights to use all databases, geological data, geophysical data, engineering data, seismic data, maps, interpretations and other technical information used in their businesses as presently conducted, subject to the limitations contained in the agreements governing the use of the same, which limitations are customary for companies engaged in the business of the exploration and production of Finished Sand Inventory and other minerals.

Section 7.17. Maintenance of Properties. Except to the extent any leases, subleases or other contracts are rejected in the Chapter 11 Cases as part of the Debtors' exercise of its reasonable business judgment, the Sand Properties of the Debtors have been maintained, operated and developed in a good and workmanlike manner and in material conformity with all Governmental Requirements and in material conformity with the provisions of all leases, subleases or other contracts comprising a part of the Sand Interests and other contracts and agreements forming a part of the Sand Properties of the Debtors. Subject to any necessary order or authorization of the Bankruptcy Court, all material improvements, fixtures and equipment owned in whole or in part by the Debtors that are necessary to conduct normal operations are being maintained in a state adequate to conduct normal operations and in a manner consistent with the Debtors' past practices.

Section 7.18. Prepayments. Except as set forth on Schedule 7.18, on a net basis there are no prepayments which would require any Debtor to deliver Finished Sand Inventory or other minerals produced from their Sand Properties at some future time without then or thereafter receiving full payment therefor.

Section 7.19. [Reserved].

Section 7.20. Swap Agreements. Schedule 7.20, as of the Petition Date, sets forth, a true and complete list of all Swap Agreements of the Debtors, the material terms thereof (including the type, term, effective date, termination date and notional amounts or volumes), the net mark-to-market value thereof, all credit support agreements relating thereto and the counterparty to each such agreement.

Section 7.21. Use of DIP Loans. The proceeds of the DIP Loans shall be only for the purposes specified in Section 9.09. The Debtors are not engaged principally, or as one of its or their important activities, in the business of extending credit for the purpose, whether immediate, incidental or ultimate, of buying or carrying margin stock (within the meaning of Regulation T, U or X of the Board). No part of the proceeds of any DIP Loan will be used whether on or following the Closing Date for any purpose which violates the provisions of Regulations T, U or X of the Board.

Section 7.22. [Reserved.]

Section 7.23. Material Contracts. Neither Borrower nor any Subsidiary is a party to any Material Contract other than those Material Contracts set forth on Schedule 7.23. Except as a result of the Borrower filing the Chapter 11 Cases, each of the Borrower and its Subsidiaries is in material compliance with the terms of the Material Contracts to which it is a party.

Section 7.24. Foreign Corrupt Practices. No Debtor, nor any director, officer, agent, employee or Affiliate of the Debtors is aware of or has taken any action, directly or indirectly, that would result in a material violation by such Persons of the FCPA, including, without limitation, making use of the mails or any means or instrumentality of interstate commerce corruptly in furtherance of an offer, payment, promise to pay or authorization of the payment of any money, or other property, gift, promise to give, or authorization of the giving of anything of value to any “foreign official” (as such term is defined in the FCPA) or any foreign political party or official thereof or any candidate for foreign political office, in contravention of the FCPA; and, the Debtors and their Affiliates have conducted their business in material compliance with the FCPA and have instituted and maintain policies and procedures designed to ensure, and which are reasonably expected to continue to ensure, continued compliance therewith.

Section 7.25. OFAC. No Debtor, nor to the knowledge of any Debtor, any director, officer, employee, agent, Affiliate of a Debtor or representative thereof, is an individual or entity that is, or is owned or controlled by any individual or entity that is (a) currently the subject or target of any Sanctions or (b) located, organized or resident in a Designated Jurisdiction.

Section 7.26. Transactions with Affiliates. As of the Petition Date, neither the Borrower nor any Subsidiary has sold, leased or otherwise transferred any property or assets to, or purchased, leased or otherwise acquired any property or assets from, or otherwise engaged in any other transactions with, any of its Affiliates, except the transactions listed on Schedule 9.15.

Section 7.27. [Reserved].

Section 7.28. DIP Orders. The applicable DIP Order is in full force and effect and has not been vacated, reversed, modified, amended or stayed without the prior written consent of the DIP Agent.

Section 7.29. Budget. The Approved Budget was prepared in good faith based upon assumptions the Borrower believed to be reasonable assumptions on the date of delivery of such Approved Budget.

ARTICLE VIII AFFIRMATIVE COVENANTS

Until the DIP Commitments have expired or been terminated and the principal of and interest on each DIP Loan and all fees payable hereunder and all other amounts payable under the Loan Documents then outstanding shall have been paid in full, each Debtor covenants and agrees with the Lenders that:

Section 8.01. Financial Statements; Other Information. The Borrower will furnish to the DIP Agent and each Lender:

(a) Annual Financial Statements. As soon as available, but in any event not later than 120 days after the end of each fiscal year, Parent's audited consolidated and consolidating balance sheet and related consolidated and consolidating statements of operations, members' 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, including consolidating information that summarizes in reasonable detail the differences between the information relating to Parent and the Consolidated Subsidiaries, on the one hand, and the information relating to Borrower and its consolidated Subsidiaries, on a standalone basis, all reported on by Deloitte & Touche LLP or other independent public accountants of recognized national standing (without any qualification or exception as to the scope of such audit) to the effect that (i) such consolidated financial statements present fairly in all material respects the financial condition and results of operations of Parent and its Consolidated Subsidiaries on a consolidated and segment basis in accordance with GAAP consistently applied and (ii) such consolidating financial statements present fairly in all material respects the financial condition and results of operations of Parent and each of its Consolidated Subsidiaries on a consolidating basis in accordance with GAAP consistently applied.

(b) Quarterly Financial Statements. For each of the first three fiscal quarters of each fiscal year, as soon as available, but in any event not later than forty-five (45) days after the end of each such fiscal quarter, Parent's consolidated and consolidating balance sheet and related consolidated and consolidating statements of operations, members' equity and cash flows as of the end of and for such fiscal quarter 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 corresponding period or periods of) the previous fiscal year, including consolidating information that summarizes in reasonable detail the differences between the information relating to Parent and the Consolidated Subsidiaries, on the one hand, and the information relating to Borrower and its consolidated Subsidiaries, on a standalone basis, all certified by a Financial Officer of the Parent (i) in the case of any such consolidated financial statements, as presenting fairly in all material respects the financial condition and results of operations of Parent and its Consolidated Subsidiaries on a consolidated basis in accordance with GAAP consistently applied and (ii) in the case of any such consolidating financial statements, as presenting fairly in all material respects the financial condition and results of operations of Parent and its Consolidated Subsidiaries on a consolidating basis in accordance with GAAP consistently applied, in each case subject to normal year-end audit adjustments and the absence of footnotes.

(c) Certificate of Financial Officer - Compliance. Concurrently with any delivery of financial statements under Section 8.01(a) or Section 8.01(b), a certificate of a Financial Officer in substantially the form of Exhibit C hereto (i) certifying as to whether a Default has occurred and, if a Default

has occurred, specifying the details thereof and any action taken or proposed to be taken with respect thereto, (ii) setting forth reasonably detailed calculations demonstrating compliance with Section 9.01, and (iii) 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 7.04 and, if any such change has occurred, specifying the effect of such change on the financial statements accompanying such certificate.

(d) [Reserved.]

(e) Certificate of Insurer - Insurance Coverage. Upon request from the DIP Agent, a certificate of insurance coverage from each insurer evidencing that the Debtors are carrying the insurance required by Section 8.07, in form and substance satisfactory to the DIP Agent, and, if requested by the DIP Agent or any Lender, all copies of the applicable policies.

(f) Other Accounting Reports. Promptly upon receipt thereof, a copy of any “management letter” received by any of the Debtors by independent accountants that indicates, in the reasonable good faith judgment of the board of directors (or comparable governing body), as applicable, of the Debtors, a material weakness in such Person’s internal controls or procedures and the management’s responses thereto.

(g) SEC and Other Filings. Promptly after the same become publicly available, copies of all periodic and other reports, proxy statements and other materials filed by the Debtors with the SEC, or with any national or foreign securities exchange.

(h) [Reserved.]

(i) Lists of Purchasers. Promptly following the written request of the DIP Agent, a list of all Persons purchasing material quantities of Finished Sand Inventory and other minerals from the Debtors.

(j) Notice of Sales of Sand Properties. In the event any Debtor intends to sell, transfer, assign or otherwise dispose of any Sand Properties or any Equity Interests in any Loan Party in accordance with Section 9.13, prior written notice of such disposition, the price thereof and the anticipated date of closing and any other details thereof reasonably requested by the DIP Agent or any Lender.

(k) Notice of Casualty Events. Prompt written notice, and in any event within five Business Days, of the occurrence of any Casualty Event or the commencement of any action or proceeding that could reasonably be expected to result in a Casualty Event.

(l) Information Regarding Borrower and other Loan Parties. Prompt written notice, and in any event within five (5) days prior thereto (or such shorter period as may be approved by the DIP Agent in its sole discretion), of any change (i) in the Borrower or any other Loan Party’s corporate name or in any trade name used to identify such Person in the conduct of its business or in the ownership of its Properties, (ii) in the location of the Borrower’s or any other Loan Party’s chief executive office or principal place of business, (iii) in the Borrower’s or any other Loan Party’s identity or corporate structure or in the jurisdiction in which such Person is incorporated or formed, (iv) in the Borrower’s or any other Loan Party’s jurisdiction of organization or such Person’s organizational identification number in such jurisdiction of organization, and (v) in the Borrower’s or any other Loan Party’s federal taxpayer identification number.

(m) Quarterly Production and Operating Reports. Within forty-five (45) days after the end of each calendar quarter, the Borrower shall provide to the DIP Agent and the Lenders (i) a report setting forth, for each Fiscal Quarter during the then current fiscal year to date, the volume of production and sales attributable to production (and the prices at which such sales were made and the revenues derived from such sales) for each such Fiscal Quarter from the Sand Properties of the Loan Parties, and setting forth all related Taxes attributable thereto and incurred for each such Fiscal Quarter and (ii) a copy of the operating report prepared by or received by management in the ordinary course of business for such period, in reasonable detail.

(n) Monthly Financial Statements and Operating Reports. Within thirty (30) days after the end of each calendar month, the Borrower shall provide to the DIP Agent and the Lenders, (i) a monthly consolidated and consolidating financial statements of the Borrower and its Subsidiaries, including a balance sheet, income statement, and a cash flow report reflecting cash receipts and expenditures during such month and (ii) a report on the operations of the Borrower and its Subsidiaries during such month consistent with those delivered to the Existing Administrative Agent prior to the Closing Date.

(o) Notices of Certain Changes. Promptly, but in any event within five (5) Business Days after the execution thereof (or such longer period as may be approved by the DIP Agent in its sole discretion), copies of any amendment, modification or supplement to or termination of (i) any Organizational Document, any preferred stock designation or any other organic document of the Borrower or any Subsidiary, and (ii) any Material Contract (other than any Material Contract that is solely by and among Loan Parties).

(p) Budget Update; Cash Reporting.

(i) No later than 5:00 p.m. (Eastern time) beginning on [●], 2020, and then no later than 5:00 p.m. (Eastern time) on every fourth Wednesday thereafter (each, a “**Reporting Date**”), the Borrower shall deliver to the DIP Agent an updated Budget (each, a “**Proposed Budget**”) based on a rolling 13-week cash flow forecast, together with a reconciliation for the prior week, the prior 4-week cumulative period and the cumulative period from the Petition Date of actual expenses and disbursements (including professional fees) and sales receipts as to the amounts set forth in the Proposed Budget for such periods in form and substance reasonably satisfactory to the DIP Agent and the Required Lenders; provided that the DIP Agent and the Required Lenders shall have five (5) Business Days to approve any revised Proposed Budget; provided, further, that if the DIP Agent and the Required Lenders do not approve any updated Proposed Budget by the sixth (6th) Business Day following receipt thereof, the previously delivered Budget shall remain in effect (or be deemed to be rolled forward in the discretion of the DIP Agent and in effect, as applicable) for purposes of the variance testing covenant and reporting. Upon the Borrower’s receipt of notice of the consent of the DIP Agent and the Required Lenders to a Proposed Budget, such budget shall become an “**Approved Budget**” and shall replace the then-operative Approved Budget for all purposes. The Initial Budget shall be the Approved Budget until such time as a new Proposed Budget is approved, following which such Proposed Budget shall constitute the Approved Budget until a subsequent Proposed Budget is approved. The Debtors shall operate in accordance with the Approved Budget and all disbursements shall be consistent with the provisions of the Approved Budget.

(ii) No later than 5:00 p.m. (Eastern time) on each Wednesday beginning on [●], 2020 (such date, the “**Variance Testing Date**”), the Borrower shall deliver to the DIP Agent

(in form satisfactory to the DIP Agent) a variance report tested as of the immediately preceding Friday for (1) the weekly period ending on such Friday and (2) the prior weekly cumulative period ending on such Friday and commencing with the first week of the most recent Approved Budget (each such period, a “Variance Testing Period”) setting forth: (A) the aggregate disbursements of the Debtors during the applicable Variance Testing Period and (B) any variance (whether positive or negative, expressed as a percentage) between (1) the aggregate disbursements, on a line-item by line-item basis, made during such Variance Testing Period by the Debtors against the aggregate disbursements for each such line-item for the Variance Testing Period set forth in the applicable Approved Budget and (2) the cumulative disbursements made during such Variance Testing Period to the cumulative disbursements for such Variance Testing Period set forth in the applicable Approved Budget, which variance report shall include a report from a Financial Officer of the Borrower identifying and addressing any variance of actual performance to projected performance for the prior week.

(iii) Until such time as 4 weeks shall have elapsed since the Petition Date, any reference in this clause (p) to a 4-week cumulative period shall mean such shorter period from the Petition Date to the date of determination.

(iv) No later than 5:00 p.m. (Eastern time) on each Wednesday that is not a Reporting Date, the Borrower shall deliver to the DIP Agent a rolling 13-week cash flow forecast, together with a reconciliation for the prior week, the prior 4-week cumulative period and the cumulative period from the Petition Date of actual expenses and disbursements (including professional fees) and sales receipts as to the amounts set forth in the then applicable Approved Budget for such periods in form and substance satisfactory to the DIP Agent; provided that, for the avoidance of doubt, the cash flow forecasts delivered pursuant to this clause (iv) shall not be deemed to be Budgets or Approved Budgets for purposes of this Agreement.

(q) Communications with Other Lenders. Simultaneously with transmission thereof, copies of all material notices, agreements, instruments, certificates, documents and information and other communications as any Loan Party may be required to furnish to the Revolving Lender pursuant to the Existing ABL Credit Agreement or to any other lender or creditor of Material Indebtedness.

(r) [Reserved.]

(s) Beneficial Ownership Certification. Promptly, written notice of any change in the information provided in the Beneficial Ownership Certification that would result in a change to the list of beneficial owners identified in parts (c) or (d) of such certification.

(t) Weekly Operational Calls. The Borrower shall schedule weekly calls or meetings with the DIP Agent and the Lenders every Wednesday during the term of this Agreement or the next succeeding Business Day if such Wednesday is not a Business Day (commencing on [Wednesday, [●], 2020]) to update the DIP Agent and the Lenders on the business and operations of the Loan Parties.

(u) Weekly Advisor Calls. The Borrower shall cause Alvarez & Marsal to schedule weekly calls or meetings with the DIP Agent and the Lenders every Wednesday during the term of this Agreement or the next succeeding Business Day if such Wednesday is not a Business Day (commencing on Wednesday, [●], 2020) to provide its views directly to the DIP Agent and the Lenders on the business, operations and financial condition of the Loan Parties.

(v) Other Requested Information. Promptly following any request therefor, such other information regarding the operations, business affairs and financial condition of the Borrower or any other Loan Party (including, without limitation, any Plan and any reports or other information required to be filed with respect thereto under the Code or under ERISA), or compliance with the terms of this Agreement or any other Loan Document, as the DIP Agent or any Lender may reasonably request.

Section 8.02. Notices of Material Events. The Borrower will furnish to the DIP Agent and each Lender prompt written notice (and copies, if applicable) of the following:

- (a) the occurrence of any Default;
- (b) other than with respect to the filing of the Chapter 11 Cases, the occurrence of any material breach or default under a Material Contract, together with a copy of any default noticed issued in connection therewith;
- (c) other than the Chapter 11 Cases, the filing or commencement of, or the threat in writing of, any material action, suit, proceeding, investigation or arbitration by or before any arbitrator or Governmental Authority against or affecting the Borrower, any other Loan Party or any of their respective Sand Properties not previously disclosed in writing to the Lenders or any material adverse development in any such action, suit, proceeding, investigation or arbitration (whether or not previously disclosed to the Lenders);
- (d) 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;
- (e) entering into any Swap Agreement or the amendment, modification or termination of any Swap Agreement;
- (f) at least two (2) days prior to filing (or such shorter period as the DIP Agent may agree), the Borrower shall use commercially reasonable efforts to provide the DIP Agent copies of all pleadings and motions (other than “first day” motions and proposed orders, but including the Acceptable Plan and any disclosure statement related thereto) to be filed by or on behalf of the Borrower or any of the other Loan Parties with the Bankruptcy Court in the Chapter 11 Cases, or to be distributed by or on behalf of the Borrower or any of the other Loan Parties to any official committee appointed in the Chapter 11 Cases, which such pleadings shall include the DIP Agent as a notice party;
- (g) (i) on a timely basis as specified in any DIP Order, all notices required to be given to all parties specified in such DIP Order, in the manner specified therefor therein and (ii) substantially concurrently with such delivery thereof, copies of all reports delivered by or on behalf of the Borrower or any of the other Loan Parties to any official committee appointed in the Chapter 11 Cases;
- (h) substantially concurrently with the delivery to the Bankruptcy Court, copies of any monthly reports provided to the Bankruptcy Court or the chapter 11 trustee under the Chapter 11 Cases; and
- (i) other development that results in, or could reasonably be expected to result in, a Material Adverse Effect.

Each notice delivered under this Section 8.02 shall be accompanied by a statement of a Responsible Officer 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 8.03. Existence; Conduct of Business. Each Debtor will 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, licenses, permits, privileges and franchises material to the conduct of its business and maintain, if necessary, its qualification to do business in each other jurisdiction in which its Sand Properties are located or the ownership of its Properties requires such qualification; provided that, no later than the date that is 45 days after the Petition Date (or such later date as may be acceptable to the DIP Agent), the Debtors will provide the DIP Agent with evidence satisfactory to it that the Debtors have made all requisite filings, applications or modifications thereof as may be required by the State of Texas to reflect such good standing in the applicable state records.

Section 8.04. Payment of Obligations. Subject to the DIP Orders, each Debtor will pay and discharge all its obligations, including Tax liabilities, before the same shall become delinquent or in default, except (x) to the extent such payment is excused by, or is otherwise prohibited by the provisions of the Bankruptcy Code or order of the Bankruptcy Court, (y) to the extent such Tax liability was incurred prior to the Petition Date (for the avoidance of doubt, Taxes incurred prior to the Petition Date that are required to be paid in accordance with the DIP Orders or any other order of the Bankruptcy Court shall be permitted to be paid), or (z) where (a) the validity or amount thereof is being contested in good faith by appropriate proceedings, (b) such Debtor has set aside on its books adequate reserves with respect thereto in accordance with GAAP and (c) the failure to make payment pending such contest could not reasonably be expected to result in a Material Adverse Effect.

Section 8.05. Performance of Obligations. Except to the extent excused by the Bankruptcy Court or as a result of the filing of the Chapter 11 Cases each Debtor will pay its Obligations in accordance with the Loan Documents, and each Debtor will (a) do and perform every act and discharge all of its obligations to be performed and discharged by it under the Loan Documents and the Material Contracts, including, without limitation, this Agreement, at the time or times and in the manner specified, taking into consideration any grace periods therein and (b) do and perform every act and discharge all of its Contractual Obligations (other than the Loan Documents and the Material Contracts), at the time or times and in the manner specified, taking into consideration any grace periods therein, except where the failure to do so, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect.

Section 8.06. Operation and Maintenance of Properties. The Borrower at its sole expense will, and will cause each Subsidiary to:

(a) operate its Sand Properties and other material Properties to be operated in a careful manner in accordance with the practices of the industry and in material compliance with all applicable contracts and agreements and in material compliance with all Governmental Requirements, including, without limitation, applicable Environmental Laws, and all other applicable laws, rules and regulations of every Governmental Authority from time to time constituted to regulate the development and operation of its Sand Properties and the production and sale of Finished Sand Inventory and other minerals therefrom;

(b) keep and maintain all Property material to the conduct of its business in good working order and condition (ordinary wear and tear excepted), preserve, maintain and keep in good repair

and working order (ordinary wear and tear and obsolescence excepted) all of its material Sand Properties and other material Properties, including, without limitation, all equipment, machinery and facilities;

(c) promptly pay and discharge, or make reasonable and customary efforts to cause to be paid and discharged, all rentals, royalties, expenses and indebtedness accruing under the leases or other agreements affecting or pertaining to its Sand Properties and do all other things necessary to keep materially unimpaired its rights with respect thereto and prevent any forfeiture thereof or default thereunder;

(d) [reserved]; and

(e) operate its Sand Properties and other material Properties or cause or make reasonable and customary efforts to cause the Sand Properties and other material Properties operated by any Person other than a Loan Party to be operated in accordance with the practices of the industry and in material compliance with all applicable contracts and agreements and in compliance in all material respects with all Governmental Requirements.

Section 8.07. Insurance. Each Debtor will maintain, with financially sound and reputable insurance companies, insurance (a) in such amounts and against such risks as are customarily maintained by companies engaged in the same or similar businesses operating in the same or similar locations, (b) in accordance with all Governmental Requirements and (c) business interruption insurance in amounts and against such risks as are reasonably satisfactory to the DIP Agent. Subject to Section 8.18, the loss payable clauses or provisions in said insurance policy or policies insuring any of the Collateral (excluding any business interruption insurance) shall be endorsed in favor of and made payable to the DIP Agent as its interests may appear and such policies shall name the DIP Agent and the Lenders as “additional insureds” and provide that the insurer will endeavor to give at least thirty (30) days prior notice of any cancellation to the DIP Agent. Upon the DIP Agent’s request, the Debtors shall execute and deliver to the DIP Agent collateral assignments, in form and substance satisfactory to the DIP Agent, of each insurance policy maintained by the Debtors.

Section 8.08. Books and Records; Inspection Rights. Each Debtor will 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. Each Debtor will permit any representatives designated by the DIP Agent or any Lender, upon reasonable prior notice and during normal business hours, to visit and inspect its Properties, to examine and make extracts from its books and records, and to discuss its affairs, finances and condition with its officers and, *provided* the Borrower receives advance written notice of any proposed meetings and is given an opportunity to participate in such discussions, with its independent accountants, all at such reasonable times and as often as reasonably requested; it being understood that, unless an Event of Default has occurred and is continuing or is reasonably anticipated, the DIP Agent and the Lenders shall be limited to an aggregate of two (2) such visits or inspections per year.

Section 8.09. Compliance with Laws. Subject to any necessary order or authorization of the Bankruptcy Court, each Debtor will comply in all material respects with all laws, rules, regulations and orders of any Governmental Authority applicable to it or its Property.

Section 8.10. Environmental Matters.

(a) Subject to any necessary order or authorization of the Bankruptcy Court, each Debtor shall: (i) comply, and shall cause its Properties and operations and each other Debtor and each other

Debtor's Properties and operations to comply in all material respects, with all applicable Environmental Laws; (ii) not Release or threaten to Release or threaten to Release, any Hazardous Material on, under, about or from any of the Borrower's or any other Debtor's Properties or any other property offsite the Property to the extent caused by any Debtor's operations except in compliance with applicable Environmental Laws in all material respects; (iii) timely obtain or file, and shall cause each Subsidiary to timely obtain or file, all material Environmental Permits, if any, required under applicable Environmental Laws to be obtained or filed in connection with the operation or use of any Debtor's Properties; and (iv) promptly commence and diligently prosecute to completion, and shall cause each other Debtor to promptly commence and diligently prosecute to completion, any assessment, evaluation, investigation, monitoring, containment, cleanup, removal, repair, restoration, remediation or other remedial obligations (collectively, the "**Remedial Work**") in the event any Remedial Work is required or reasonably necessary under applicable Environmental Laws because of or in connection with the actual or suspected past, present or future Release or threatened Release of any Hazardous Material on, under, about or from any of such Debtor's Properties.

(b) The Borrower will promptly, but in no event later than five Business Days after obtaining knowledge of the occurrence of a triggering event, notify the DIP Agent and the Lenders in writing of any threatened action, investigation or inquiry by any Governmental Authority or any threatened demand or lawsuit by any Person against any Debtor or their respective Properties in connection with any Environmental Laws that, if adversely determined, could reasonably be expected to result in liability (whether individually or in the aggregate) in excess of \$250,000, not fully covered by insurance (subject to normal deductibles).

(c) Each Debtor will provide environmental assessments, audits and tests in accordance with the most current version of the American Society of Testing Materials standards upon request by the DIP Agent and the Lenders, however, Borrower shall not be required to provide or conduct such work any more frequently than once every twelve (12) months in the absence of any Event of Default (or as otherwise required to be obtained by any Governmental Authority), or in connection with any future acquisitions of Sand Properties.

Section 8.11. Further Assurances.

(a) Each Debtor at its sole expense will, and will cause each other Loan Party to, promptly execute and deliver to the DIP Agent all such other documents, agreements and instruments reasonably requested by the DIP Agent to comply with, cure any defects or accomplish the conditions precedent, covenants and agreements of such Debtor, as the case may be, in the Loan Documents or to further evidence and more fully describe the Collateral intended as security for the Obligations, or to correct any omissions in this Agreement or the Security Instruments, or to state more fully the obligations secured therein, or to perfect, protect or preserve any Liens created pursuant to this Agreement or any of the Security Instruments or the priority thereof, or to make any recordings, file any notices or obtain any consents, all as may be reasonably necessary or appropriate, in the reasonable discretion of the DIP Agent, in connection therewith.

(b) The Borrower hereby authorizes the DIP Agent to file one or more financing or continuation statements, and amendments thereto, relative to all or any part of the Collateral without the signature of the Borrower or any Guarantor where permitted by law. A carbon, photographic or other reproduction of the Security Instruments or any financing statement covering the Collateral or any part thereof shall be sufficient as a financing statement where permitted by law. The Borrower acknowledges

and agrees that any such financing statement may describe the Collateral as “all assets” of the Borrower and the Guarantors or words of similar effect as may be required by the DIP Agent.

Section 8.12. [Reserved].

Section 8.13. [Reserved].

Section 8.14. Additional Collateral; Additional Guarantors.

(a) The Parent shall, and shall cause each other Debtor to, guarantee the Obligations pursuant to the Guaranty Agreement. In connection with any such guarantee, the Parent shall, or shall cause such Debtor to promptly, (A) execute and deliver this Agreement or a joinder to this Agreement, in form and substance reasonably acceptable to the DIP Agent (the “**Joinder Agreement**”), and any other Loan Document reasonably requested by the DIP Agent, (B) pledge all of the Equity Interests of such Debtor pursuant to a Security Instrument or other Loan Document (including, without limitation, delivery of original stock certificates, if any, evidencing the Equity Interests of such Debtor, together with appropriate undated stock powers for each certificate duly executed in blank by the registered owner thereof) and (C) execute and deliver such other additional closing documents, certificates and legal opinions as shall reasonably be requested by the DIP Agent.

(b) Notwithstanding the restrictions in Section 9.07, each Subsidiary of a Loan Party now existing or created, acquired or coming into existence after the date hereof, other than the Guarantors party hereto, shall promptly execute and deliver to the DIP Agent a Joinder Agreement and any Security Instrument or other Loan Document (or joinder thereto) as may be required by the DIP Agent. Such Subsidiary shall, and the Parent shall cause such Subsidiary to, deliver to the DIP Agent, simultaneously with its delivery of such Joinder Agreement and any such Security Instrument or other Loan Document (or joinder), (x) written evidence reasonably satisfactory to the DIP Agent that such Subsidiary has taken all organizational action necessary to duly approve and authorize its execution, delivery and performance of such Joinder Agreement (including under the Guaranty Agreement), any such Security Instrument and any other documents which it is required to execute, and (y) such additional closing documents, certificates and opinions of counsel as the DIP Agent shall reasonably require.

Section 8.15. ERISA Compliance. The Parent will promptly furnish and will cause the other Debtors and any ERISA Affiliate to promptly furnish to the DIP Agent (i) promptly after the filing thereof with the United States Secretary of Labor or the IRS, copies of each annual and other report with respect to each Pension Plan or any trust created thereunder, and (ii) immediately upon becoming aware of the occurrence of any ERISA Event or any non-exempt “prohibited transaction,” as described in Section 406 of ERISA or in Section 4975 of the Code, in connection with any Plan or Pension Plan or any trust created thereunder that could reasonably be expected to result in liability of such Debtor in an aggregate amount exceeding \$2,000,000 (when taken together with all other such ERISA Events and prohibited transactions that have occurred within the preceding twelve (12) months), a written notice signed by the President or the principal Financial Officer, the Subsidiary or the ERISA Affiliate, as the case may be, specifying the nature thereof, what action the Parent, such applicable Debtor or the ERISA Affiliate is taking or proposes to take with respect thereto, and, when known, any action taken or proposed by the IRS, the Department of Labor or the PBGC with respect thereto.

Section 8.16. [Reserved.]

Section 8.17. [Reserved.]

Section 8.18. [Reserved.]

Section 8.19. Certificate of Inclusion. The Debtors shall comply with the terms and requirements in all material respects of the Certificate of Inclusion, including implementing and maintaining the conservation measures and/or land management actions as set forth in the Candidate Conservation Agreement with Assurances Component of the Texas Conservation Plan for the Dunes Sagebrush Lizard.

Section 8.20. Delivery of Proposed DIP Orders. The Borrower will deliver to the DIP Agent, as soon as practicable in advance of filing with the Bankruptcy Court, (i) the proposed DIP Orders (which must be in form and substance satisfactory to the DIP Agent) and (ii) the Acceptable Plan, including any proposed disclosure statement related to such Acceptable Plan.

Section 8.21. Cash Management. Each Debtor shall maintain its cash management system as in existence on the Closing Date, with any changes made pursuant to an order of the Bankruptcy Court.

Section 8.22. Consent under Purchase and Sale Agreement. The Parent shall use commercially reasonable efforts to deliver to the DIP Agent, as soon as reasonably practicable following the Closing Date, documentation satisfactory to the DIP Agent that the board of managers of the Parent has provided written consent (i) permitting Michael Joseph McKie ("**McKie**") to provide consultation services to the DIP Agent and the Lenders in connection with the Debtors, their business, the Chapter 11 Cases and transactions related thereto and (ii) acknowledging that such services described in clause (i) to be provided by McKie to the DIP Agent and the Lenders will not constitute a breach of Section 5.3 (or any other applicable provision) of that certain Purchase and Sale Agreement, dated as of December 4, 2017, by and among, McKie, Gary Humphreys, Marty Robertson, FR Sand Holdings LLC, Lonestar Prospects Holding Company, L.L.C., SJM Resources, LLC, Future New Deal, Ltd., M&J Partnership, Ltd., and GMHR Operations, L.L.C.

ARTICLE IX NEGATIVE COVENANTS

Until the DIP Commitments have expired or terminated and the principal of and interest on each DIP Loan and all fees payable hereunder and all other amounts payable under the Loan Documents then outstanding have been paid in full, the Borrower covenants and agrees with the Lenders that:

Section 9.01. Financial Covenants.

(a) Variance Testing Period. The Debtors shall not allow, as of any Variance Testing Date, the Debtors' actual cash expenses and disbursements during such applicable Variance Testing Period to be more than 115% of the projected cash expenses and disbursements for such Variance Testing Period (tested on a line-item by line-item basis and on a cumulative basis, excluding, in each case, Debtors' professionals' fees), as set forth in the applicable Approved Budget (the "**Permitted Variance**"); **provided** that additional variances, if any, from the Approved Budget shall be subject to the approval of the DIP Agent and the Required Lenders.

Section 9.02. [Reserved.]

Section 9.03. Debt. No Debtor will incur, create, assume or suffer to exist any Debt, except:

(a) (i) the Obligations, (ii) the Existing Obligations outstanding on the Petition Date, (iii) the Existing ABL Obligations outstanding on the Petition Date, (iv) the MAALT Obligations outstanding on the Petition Date and (v) other Debt for borrowed money outstanding on the Petition Date and set forth on Schedule 9.03(a);

(b) accounts payable and accrued expenses, liabilities or other obligations to pay the deferred purchase price of Property or services, from time to time incurred in the ordinary course of business which are not greater than sixty (60) days past the date of invoice or delinquent or which are being contested in good faith by appropriate action and for which adequate reserves have been maintained in accordance with GAAP;

(c) Debt of the Debtors under Capital Leases entered into prior to the Petition Date and set forth on Schedule 9.03(c);

(d) to the extent set forth on Schedule 9.03(d), Debt of the Debtors in existence on the Petition Date in respect of bonds or surety obligations required by Governmental Requirements in connection with the operation of the Sand Properties in the ordinary course of business;

(e) endorsements of negotiable instruments for collection in the ordinary course of business;

(f) [reserved];

(g) [reserved];

(h) Debt and obligations owing under Swap Agreements entered into prior to the Petition Date;

(i) Debt arising from the honoring by a bank or other financial institution of a check, draft or similar instrument inadvertently (except in the case of daylight overdrafts) drawn against insufficient funds in the ordinary course of business; *provided*, however, that such Debt is extinguished within two (2) Business Days of its incurrence;

(j) [reserved]; and

(k) unsecured Debt of Vista Sand incurred prior to the Petition Date under that certain Agreement for Engineering, Procurement, Construction and Financing a Rail Transload Terminal between Vista Sand and Watco Companies, LLC.

Section 9.04. Liens. No Debtor will incur, assume or permit to exist any Lien on any of its Properties (now owned or hereafter acquired), except:

(a) Liens securing the Obligations;

(b) Subject to the Existing Intercreditor Agreement, Liens securing the Existing ABL Obligations;

(c) Excepted Liens;

(d) (i) Liens existing on the Petition Date securing the MAALT Obligations and (ii) other Liens existing on the Petition Date and set forth on Schedule 9.04; and

(e) Liens securing Capital Leases (and other equipment financing arrangements) permitted by Section 9.03(c), but only on the Property under such lease (or equipment financing arrangement).

Section 9.05. Restricted Payments. No Debtor will declare or make, or agree to pay or make, directly or indirectly, any Restricted Payment, except that, so long as no Default or Event of Default exists or would result therefrom:

(a) the Borrower may declare and pay dividends with respect to its Equity Interests payable solely in additional units or shares of its Equity Interests (other than Disqualified Capital Stock); and

(b) Subsidiaries of the Borrower may declare and pay dividends to Loan Parties (other than the Parent) ratably with respect to the ownership of their Equity Interests.

Section 9.06. Investments and Loans. No Debtor will make or permit to remain outstanding any Investments in or to any Person or any intercompany loans, except that the foregoing restriction shall not apply to:

(a) Investments as of the Petition Date set forth in Schedule 9.06;

(b) accounts receivable arising in the ordinary course of business and promissory notes received in settlement of any such accounts receivable;

(c) direct obligations of the United States or any agency thereof, or obligations guaranteed by the United States or any agency thereof, in each case maturing within one year from the date of creation thereof;

(d) commercial paper maturing within one year from the date of creation thereof having a rating of at least P-1 or A-1 from either Moody's or S&P, respectively;

(e) deposits maturing within one year from the date of creation thereof with, including certificates of deposit issued by, any Lender or any office located in the United States of any other bank or trust company which is organized under the laws of the United States or any state thereof, has capital, surplus and undivided profits aggregating at least \$1,000,000 (as of the date of such bank or trust company's most recent financial reports) and has a short term deposit rating of no lower than A1 or P1, as such rating is set forth from time to time, by S&P or Moody's, respectively;

(f) deposits in money market funds investing not less than 90% of their assets in Investments described in Section 9.06(c), Section 9.06(d) or Section 9.06(e);

(g) Investments (i) made by the Borrower in or to any of the other Loan Parties (other than Parent or any Logistics Subsidiary Guarantor), (ii) made by any Loan Party in or to the Borrower or any other Loan Party (other than Parent and other than any Logistics Subsidiary Guarantor), (iii) made by

the Borrower or any other Loan Party (other than a Logistics Subsidiary Guarantor) in or to any Logistics Subsidiary Guarantor after the Petition Date in an aggregate amount not to exceed \$100,000 and (iv) made by any Logistics Subsidiary Guarantor in or to any other Logistics Subsidiary Guarantor;

(h) [reserved];

(i) Investments received in connection with the bankruptcy or reorganization of, or settlement of delinquent accounts and disputes with, customers and suppliers, in each case in the ordinary course of business;

(j) [reserved];

(k) [reserved];

(l) [reserved];

(m) any endorsement of a check or other medium of payment for deposit or collection through normal banking channels or similar transaction in the ordinary course of business; and

(n) extensions of trade credit in the ordinary course of business and not to exceed thirty (30) days in duration.

Section 9.07. Nature of Business; No International Operations.

(a) Subject to any restrictions arising on account of the Debtors' status as a "debtor" under the Bankruptcy Code and entry of the DIP Order, no Debtor will allow any material change to be made in the character of its business as a Finished Sand Inventory or other minerals production company.

(b) The Debtors will not permit any of the Logistics Subsidiary Guarantors to (i) own any Sand Properties or Finished Sand Inventory or (ii) conduct any business operations other than those related to providing transload terminals, transportation of supplies, storage of products and logistics monitoring.

(c) The Debtors will not, and will not permit any Subsidiary to, own, acquire or make any other expenditure (whether such expenditure is capital, operating or otherwise) in or related to, any Sand Properties not located within the geographical boundaries of the United States.

Section 9.08. Limitation on Leases. No Debtor will create, incur, assume or suffer to exist any obligation for the payment of rent or hire of real or personal, Property of any kind whatsoever under leases or lease agreements (including, without limitation, the Sand Hill Lease, the Lonestar Prop 50 Lease, the Tolar Lease, or the Winkler Lease) which would cause the aggregate amount of all payments made by the Borrower and the other Loan Parties pursuant to all such leases or lease agreements, including, without limitation, any residual payments at the end of any lease, to exceed the aggregate amount of such obligations existing under such leases (over the term of such leases), as in effect on the Petition Date, excluding any Capital Leases permitted under Section 9.03(c).

Section 9.09. Proceeds of DIP Loans.

(a) The Borrower will not permit the proceeds of the DIP Loans to be used for any purpose other than in accordance with the applicable Approved Budget (subject to Permitted Variances), (i) to pay costs, premiums, fees and expenses incurred in connection with the Chapter 11 Cases, (ii) with respect to the Initial Borrowing, to make payments pursuant to the First Day Orders, (iii) to make adequate protection payments as provided in the Interim Order and Final Order and (iv) to provide working capital for general corporate purposes.

(b) [Reserved].

(c) [Reserved].

(d) Neither the Borrower, any other Loan Party, or any Person acting on behalf of the Borrower or any other Loan Party will take any action which might cause any of the Loan Documents to violate Regulations T, U or X or any other regulation of the Board or to violate Section 7 of the Securities Exchange Act of 1934 or any rule or regulation thereunder, in each case as now in effect or as the same may hereinafter be in effect. If requested by the DIP Agent, the Borrower will furnish to the DIP Agent and each Lender a statement to the foregoing effect in conformity with the requirements of FR Form U-1 or such other form referred to in Regulation U, Regulation T or Regulation X of the Board, as the case may be.

Section 9.10. ERISA Compliance. No Debtor will, at any time, except as would not reasonably be expected, either individually or in the aggregate, to result in a Material Adverse Effect:

(a) engage in, or permit any ERISA Affiliate to engage in, any transaction or, with respect to subsection (c) of Section 502 of ERISA, omit to take any action, in each case in connection with which any Debtor could be subjected to either a civil penalty assessed pursuant to subsections (c), (i) or (l) of Section 502 of ERISA or a Tax imposed by Chapter 43 of Subtitle D of the Code;

(b) terminate, or permit any ERISA Affiliate to terminate, any Pension Plan in a manner, or take any other action with respect to any Pension Plan, which could result in any liability of the any Debtor to the PBGC;

(c) fail to make, or permit any ERISA Affiliate to fail to make, full payment when due of all amounts which, under the provisions of any Plan or Pension Plan, agreement relating thereto or applicable law, any Debtor or any ERISA Affiliate is required to pay as contributions thereto;

(d) permit the actuarial present value of the benefit liabilities under any Pension Plan maintained by any Debtor or any ERISA Affiliate to exceed the current value of the assets (computed on a plan termination basis in accordance with Title IV of ERISA) of such Pension Plan allocable to such benefit liabilities such that a determination would result that any Pension Plan is, or is expected to be, in “at risk” status (as defined in Section 303(i)(4) of ERISA or Section 430(i)(4) of the Code);

(e) incur a liability (whether direct or indirect) to or on account of a Pension Plan or Multiemployer Plan under Section 515, 4062, 4063, 4064, 4201 or 4204 of ERISA; or

(f) contribute to or assume an obligation to contribute to any “employee welfare benefit plan”, as defined in Section 3(1) of ERISA, including, without limitation, any such plan maintained

to provide benefits to former employees of such entities (other than in accordance with Section 4980B of the Code or any similar State law), that may not be terminated by the applicable Debtor in its sole discretion at any time without any material liability.

Section 9.11. Sale or Discount of Receivables. No Debtor will discount or sell (with or without recourse) any of its notes receivable or accounts receivable.

Section 9.12. Mergers, Divisions, Etc. No Debtor will merge into or with or consolidate with any other Person, or permit any other Person to merge into or consolidate with it, or sell, transfer, lease or otherwise dispose of (whether in one transaction or in a series of transactions) all or substantially all of its Property to any other Person (whether now owned or hereafter acquired) (any such transaction, a “consolidation”) or liquidate, wind-up or dissolve (or suffer any liquidation or dissolution), terminate or discontinue its business.

Section 9.13. Sale of Properties. No Debtor will sell, assign, convey, dispose of, or otherwise transfer any Property, except for:

(a) the sale of Finished Sand Inventory in the ordinary course of business and on customary terms;

(b) [reserved];

(c) [reserved];

(d) [reserved];

(e) [reserved];

(f) [reserved];

(g) [reserved];

(h) [reserved];

(i) solely to the extent approved by the DIP Agent or disposed of pursuant to a *de minimis* asset sales procedure order of the Bankruptcy Court approved by the DIP Agent, the sale or other disposition (including Casualty Events and events that would, but for their magnitude, constitute Casualty Events) of Properties (i) not otherwise permitted by Section 9.13(a) and (ii) the aggregate value of which does not exceed (x) \$500,000 in any single transaction or series of related transactions and (y) \$1,000,000 in the aggregate for all such dispositions permitted pursuant to this clause (i); and

(j) other dispositions of Property of any Debtor pursuant to an order of the Bankruptcy Court; *provided* that such disposition shall be subject to the prior consent of the DIP Agent and the Required Lenders.

Section 9.14. Environmental Matters. No Debtor will permit any of its Property to be in violation of, or do anything which will subject any such Property to a Release or threatened Release of Hazardous Materials, exposure to any Hazardous Materials, or to any Remedial Work, under any

Environmental Laws, assuming disclosure to the applicable Governmental Authority of all relevant facts, conditions and circumstances, if any, pertaining to such Property.

Section 9.15. Transactions with Affiliates. Except as set forth on Schedule 9.15, no Debtor will enter into any transaction, including, without limitation, any purchase, sale, or lease or exchange of Property, with any non-Debtor Affiliate, other than transactions or arrangements approved by the Bankruptcy Court pursuant to an order in form and substance satisfactory to the DIP Agent and the Required Lenders.

Section 9.16. Subsidiaries. No Debtor will create or acquire any additional Subsidiary. Other than pursuant to an Acceptable Plan, no Debtor will sell, assign or otherwise dispose of any Equity Interests in any Subsidiary. No Debtor shall have any Subsidiary that is a Foreign Subsidiary.

Section 9.17. Negative Pledge Agreements; Dividend Restrictions. No Debtor will create, incur, assume or suffer to exist any contract, agreement or understanding which in any way (a) prohibits or restricts the granting, conveying, creation or imposition of any Lien on any of its Property in favor of the DIP Agent and the Secured Parties, subject to the priorities set forth in the DIP Order or (b) restricts any Subsidiary from paying dividends or making distributions to the Borrower or any Subsidiary Guarantor, or which requires the consent of or notice to other Persons in connection therewith; *provided* that (i) none of the foregoing shall apply to restrictions in the Existing ABL Credit Agreement and the Existing Intercreditor Agreement, (ii) with respect to the Logistics Subsidiary Guarantors, none of the foregoing shall apply to restrictions or conditions imposed under the MAALT Credit Agreement as of the Petition Date and (iii) clause (b) of the foregoing shall not apply to restrictions substantially no more restrictive than those in Section 9.05.

Section 9.18. Prepayments. No Debtor will allow prepayments with respect to the Sand Properties of any Debtor that would require such Debtor to deliver Finished Sand Inventory or other minerals at some future time without then or thereafter receiving full payment therefor; provided that the Loan Parties may permit a prepayment with respect to the delivery of Finished Sand Inventory or other minerals at some future time at a discount no greater than \$5 per ton of Finished Sand Inventory, provided further that (x) the aggregate amount of such prepayments do not exceed \$100,000 in the aggregate and (y) the transactions giving rise to such prepayments do not result in any Loan Party incurring Debt (excluding, in the case of this clause (ii), obligations arising under contracts for the purchase or sale of Finished Sand Inventory).

Section 9.19. Swap Agreements. No Debtor will enter into any Swap Agreements with any Person after the Petition Date.

Section 9.20. Marketing Activities. No Debtor will engage in marketing activities for any Finished Sand Inventory or other minerals or enter into any contracts related thereto, in each case, without the consent of the DIP Agent, other than contracts for the sale of Finished Sand Inventory or other minerals in existence on the Petition Date.

Section 9.21. Sale and Leaseback. No Debtor will enter into any arrangement, directly or indirectly, with any Person whereby it shall sell or transfer any Property, whether now owned or hereafter acquired, and thereafter rent or lease such Property which it intends to use for substantially the same purpose or purposes as the Property being sold or transferred.

Section 9.22. Amendments to Organizational Documents; Changes in Fiscal Year End.

(a) No Debtor will amend, supplement or otherwise modify (or permit to be amended, supplemented or modified) its Organizational Documents in any manner that would be adverse to the Lenders in any material respect.

(b) No Debtor will change the last day of its fiscal year from December 31 of each year, or the last days of the first three fiscal quarters in each of its fiscal years from March 31, June 30 and September 30 of each year, respectively.

Section 9.23. Capital Expenditures. No Debtor shall make or commit to make any Capital Expenditure, except emergency maintenance Capital Expenditures of the Loan Parties in the ordinary course of business not exceeding \$100,000 in the aggregate unless approved in writing by the DIP Agent.

Section 9.24. Sanctions. No Debtor shall directly or indirectly, use the proceeds of any Borrowing, or lend, contribute or otherwise make available such proceeds to any Subsidiary, joint venture partner or other individual or entity, to fund any activities of or business with any individual or entity, or in any Designated Jurisdiction, that, at the time of such funding, is the subject of Sanctions, or in any other manner that will result in a violation by any individual or entity (including any individual or entity participating in the transaction, whether as Lender, DIP Agent, or otherwise) of Sanctions.

Section 9.25. Amendment to Existing ABL Loan Documents and MAALT Loan Document. No Debtor may amend, supplement or otherwise modify (including pursuant to a waiver, consent or otherwise) any document, instrument or agreement relating to (a) the Existing ABL Credit Agreement or (b) the MAALT Credit Agreement, in each case, to the extent such amendment, supplement or modification adversely affects the interests of the DIP Agent or the Lenders (as determined by the DIP Agent in its sole discretion), without the prior written approval of the DIP Agent.

Section 9.26. Entry into Material Contracts; Other Amendments. No Debtor may (a) enter into any Material Contract after the Petition Date, except for any Material Contract approved by the Bankruptcy Court pursuant to an order in form and substance satisfactory to the DIP Agent and the Required Lenders or (b) amend, supplement, modify, terminate or otherwise change, or permit any amendment, supplement, modification, early termination or other change to (pursuant to a waiver or otherwise), the terms and conditions of the Material Contracts in any manner that could reasonably be expected to (i) adversely affect the interests of the DIP Agent or the Lenders or (ii) have a Material Adverse Effect.

Section 9.27. Repurchase Agreements. No Debtor will enter into any agreement pursuant to which it sells, transfers or otherwise disposes of any Property and agrees to purchase such Property at a future date, whether on demand, at a date certain, or upon the occurrence of any contingency or contingencies.

Section 9.28. Key Employee Plans. No Debtor shall enter into, amend or modify any key employee retention plan and incentive plan, unless such plan, amendment or modification, as applicable, is satisfactory to the DIP Agent and Required Lenders.

Section 9.29. Superpriority Claims. No Debtor will create or permit to exist any Superpriority Claim other than Superpriority Claims permitted by the DIP Orders and the orders approving the “first day” motions in respect of the Chapter 11 Cases (the “**First Day Orders**”).

Section 9.30. Bankruptcy Orders. No Debtor will (a) obtain or seek to obtain any stay from the Bankruptcy Court on the exercise of the DIP Agent's or any Lender's remedies hereunder or under any other Loan Document, except as specifically provided in the DIP Order, (b) seek to change or otherwise modify any DIP Order or other order in the Bankruptcy Court with respect to the DIP Facility or (c) without the consent of the Required Lenders, propose, file, consent, solicit votes with respect to or support any chapter 11 plan or debtor in possession financing unless (i) such plan or financing would, on the date of effectiveness, pay in full in cash all Obligations or (ii) such plan is an Acceptable Plan.

ARTICLE X EVENTS OF DEFAULT; REMEDIES

Section 10.01. Events of Default. The occurrence of one or more of the following events shall constitute an "Event of Default":

(a) the Borrower shall fail to pay any principal of any DIP Loan, interest on any DIP Loan or any fee or any other amount payable under any Loan Document, when and as the same shall become due and payable, whether at the due date thereof or at a date fixed for prepayment thereof, by acceleration or otherwise;

(b) [reserved];

(c) any representation or warranty made or deemed made by or on behalf of the any Debtor in or in connection with any Loan Document or any amendment or modification of any Loan Document or waiver under such Loan Document, or in any report, certificate, financial statement or other document furnished pursuant to or in connection with any Loan Document or any amendment or modification thereof or waiver thereunder, shall prove to have been incorrect in any material respect when made or deemed made;

(d) any Debtor shall fail to observe or perform any covenant, condition or agreement contained in Section 8.01(l) through (p), Section 8.01(t), Section 8.01(u), Section 8.02, Section 8.03, Section 8.13, Section 8.14, Section 8.15, Section 8.17, Section 8.20, Section 8.21 or in Article IX of this Agreement;

(e) any Debtor shall fail to observe or perform any covenant, condition or agreement contained in this Agreement (other than those specified in Section 10.01(a), Section 10.01(b), Section 10.01(c) or Section 10.01(d)) or any other Loan Document, and such failure shall continue unremedied for a period of thirty (30) days after the earlier to occur of (i) notice thereof from the DIP Agent to the Borrower (which notice will be given at the request of any Lender) or (ii) a Responsible Officer of any Debtor otherwise becoming aware of such default;

(f) (i) any event or condition occurs that results in any Material Indebtedness incurred on or after the Petition Date becoming due prior to its scheduled maturity or (ii) any event or condition that enables or permits (after giving effect to all applicable notice and cure periods) the holder or holders of any such Material Indebtedness or any trustee or agent on its or their behalf to cause any such Material Indebtedness to become due, or to require the Redemption thereof or any offer to Redeem to be made in respect thereof, prior to its scheduled maturity or require any Debtor to make an offer in respect thereof;

(g) [Reserved];

(h) [Reserved];

(i) [Reserved];

(j) (i) one or more final, non-appealable judgments entered following the Petition Date for the payment of money in an aggregate amount in excess of \$1,000,000 (to the extent not covered by independent third party insurance as to which the insurer does not dispute coverage and is not subject to an insolvency proceeding) or (ii) any one or more final, non-appealable non-monetary judgments that have, or could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, shall be rendered against any Loan Party or any combination thereof and the same shall remain undischarged for a period of sixty (60) consecutive days during which execution shall not be effectively stayed (including as a result of the automatic stay under the Chapter 11 Cases), or any action shall be legally taken by a judgment creditor to attach or levy upon any assets of any Loan Party to enforce any such judgment;

(k) the Loan Documents after delivery thereof shall for any reason, except to the extent permitted by the terms thereof, cease to be in full force and effect and valid, binding and enforceable in accordance with their terms against any Loan Party thereto, or shall be repudiated by any of them, or cease to create a valid and perfected Lien of the priority required thereby on any material part of the Collateral purported to be covered thereby, except to the extent permitted by the terms of this Agreement, or the Borrower or any other Loan Party or any of their Affiliates shall so state in writing;

(l) a Change in Control (other than a Change in Control triggered in connection with the transactions contemplated by the Acceptable Plan) shall occur;

(m) (i) an ERISA Event shall have occurred that, in the opinion of the Required Lenders, when taken together with all other ERISA Events that have occurred, could reasonably be expected to result in liability of the Borrower and its Subsidiaries in an aggregate amount exceeding \$1,000,000 for all periods, or (ii) there shall exist an amount of Unfunded Pension Liabilities in respect of any one or more Pension Plans that could reasonably be expected to have a Material Adverse Effect;

(n) [reserved];

(o) [reserved];

(p) the rights, obligations or authority of the Approved CRO or the Approved Independent Director are terminated or otherwise materially reduced after the Petition Date without the prior written consent of the DIP Agent in its sole discretion;

(q) (i) the Existing Intercreditor Agreement shall for any reason, except to the extent permitted by the terms thereof, cease to be in full force and effect and valid, binding and enforceable in accordance with its terms against the Borrower or any party thereto or shall be repudiated by any of them, or (ii) any Security Instrument shall cease to create a valid and perfected Lien of the priority required thereby on any of the Collateral purported to be covered thereby, or the Borrower or any other Loan Party or any of their Affiliates shall so state in writing;

(r) (i) the entry of an order dismissing one or more of the Chapter 11 Cases or converting one or more of the Chapter 11 Cases to a case under chapter 7 of the Bankruptcy Code, (ii) the entry of an order appointing a Responsible Officer (other than the Approved CRO) as chapter 11 trustee in one or more of the Chapter 11 Cases, (iii) the entry of an order in one or more Chapter 11 Case appointing

an examiner having expanded powers (beyond those set forth under Sections 1106(a)(3) and (4) of the Bankruptcy Code) and (iv) the filing of any pleading by any Loan Party seeking, or otherwise consenting to, any of the matters set forth in clauses (i) through (iii) above;

(s) (A) an amendment, supplement or other modification shall have been made to, or a consent or waiver shall have been granted with respect to any departure by any Person from the provisions of, the Acceptable Plan (without giving effect to such amendment, supplement, modification, consent or waiver), in each case, in a manner that is not permitted pursuant to the definition thereof (it being agreed an amendment, supplement or other modification to the Acceptable Plan to provide for both the payment in full and in cash of all DIP Loans and all claims under the Existing Credit Agreement on the Closing Date and for third party releases in favor of the DIP Agent, the Lenders and any other secured parties under the Existing Credit Agreement, this Agreement or other Loan Documents (such a plan of reorganization, a **"Cash Pay Plan"**) shall not constitute an Event of Default), (B) the Acceptable Plan is withdrawn without the consent of the DIP Agent and Required Lenders unless within 30 days following its withdrawal the Loan Parties file a Cash Pay Plan for confirmation; provided that during such 30 day period the Borrower shall not have the ability to request a DIP Loan, (C) any plan other than the Acceptable Plan or a Cash Pay Plan is filed by, or with the support of, a Loan Party without the consent of the Required Lenders, (D) the Loan Parties shall have commenced or participated in furtherance of any solicitation in respect of a proposed plan or reorganization other than the Acceptable Plan or a Cash Pay Plan, (E) the Bankruptcy Court shall terminate or reduce the period pursuant to Section 1121 of the Bankruptcy Code during which the Loan Parties have the exclusive right to file a plan of reorganization and solicit acceptances thereof, (F) the Bankruptcy Court shall grant relief that is inconsistent with the Acceptable Plan in any material respect and that is adverse to the DIP Agent's, the Arrangers' or the Secured Parties' interests or inconsistent with the Loan Documents or (G) any of the Loan Parties or any of their affiliates shall file any motion or pleading with the Bankruptcy Court that is inconsistent in any material respect with the Acceptable Plan or a Cash Pay Plan;

(t) the failure of the Final Order to be entered within thirty (30) days after the entry of the Interim Order, or there shall be a breach by any Loan Party of any material provisions of the Interim Order (prior to entry of the Final Order) or the Final Order, or the Interim Order (prior to entry of the Final Order) or Final Order shall cease to be in full force and effect or shall have been reversed, modified, amended, stayed, vacated or subject to stay pending appeal, and in the case of any modification or amendment, without the prior written consent of DIP Agent and Required Lenders;

(u) the entry of any order in the Chapter 11 Cases charging any of the Collateral, including under Section 506(c) or Section 552(b) of the Bankruptcy Code, or the commencement of any action by any Loan Party which is adverse to the Lenders or their rights and remedies under the DIP Facility in the Chapter 11 Cases;

(v) the entry of an order granting relief from any stay of proceeding (including, without limitation, the automatic stay) so as to allow a third party to proceed with foreclosure (or granting of a deed in lieu of foreclosure) against any asset of the Debtors with a value in excess of \$500,000 in the aggregate;

(w) the payment of any pre-Petition Date claims (other than as permitted by the Interim Order, the Final Order or pursuant to an order entered in the Chapter 11 Cases that is supported, or not objected to, by the DIP Agent).

(x) any Lien securing, or Superpriority Claim in respect of, the Obligations shall cease to be valid, perfected (if applicable) and enforceable in all respects or to have the priority granted under the Interim Order and the Final Order, as applicable;

(y) except as otherwise set forth in the DIP Orders and Section 2.10(h)(iii), the Bankruptcy Court's granting of any superpriority claim or lien on the Collateral which is *pari passu* with or senior to the Superpriority Claims or Liens of the Lenders in the Chapter 11 Cases (or the filing of any pleading by a Debtor seeking, consenting to or otherwise supporting such action);

(z) any Debtor shall obtain court authorization to commence, or shall commence, join in, assist or otherwise participate as an adverse party in any suit or other proceeding against (i) the DIP Agent or the Lenders relating to the DIP Facility or (ii) the Existing Administrative Agent or the Existing Lenders relating to the Existing Credit Agreement;

(aa) the failure to satisfy any of the Chapter 11 Milestones in accordance with the terms relating to such Chapter 11 Milestone;

(bb) after the entry thereof by the Bankruptcy Court, the Confirmation Order shall cease to be in full force and effect, or any Loan Party shall fail to satisfy in full all Obligations on or prior to the effective date of the Acceptable Plan or fail to comply in any material respect with the Confirmation Order, or the Confirmation Order shall have been revoked, remanded, vacated, reversed, rescinded or modified or amended in any manner that (1) is adverse to the Secured Parties' interests, rights or treatment or inconsistent with the Loan Documents, (2) alters the debt capital structure of the Loan Parties as set forth in the Acceptable Plan, (3) allows for the incurrence of indebtedness upon or in conjunction with the Closing Date of the Acceptable Plan not otherwise contemplated under the Acceptable Plan (without giving effect to any such modification or supplement) or (4) changes the priority or treatment of any indebtedness from that set forth in the Acceptable Plan (without giving effect to any such modification or supplement);

(cc) any payment of or grant of adequate protection with respect to any Debt existing prior to the Petition Date other than in accordance with the DIP Orders without the consent of the DIP Agent and the Required Lenders; or

(dd) the Loan Parties, any shareholder of the Loan Parties, the Committee (if any), any *ad hoc* committee, or any other party in interest, shall file a complaint or pleading or initiate any other action against the DIP Agent or any of the Lenders or otherwise file an objection to the claims, or seek to avoid the liens, held by any such party.

Section 10.02. Remedies.

(a) In the case of an Event of Default, subject in all respects to the Carve-Out, (i) the Agent may, and at the request of the Required Lenders, shall (A) deliver a notice to the Borrower of the Event of Default, (B) declare the termination, reduction, or restriction of the DIP Commitments, and thereupon the DIP Commitments shall be terminated, reduced, or restricted immediately unless and until the Required Lenders and the Agent shall reinstate the same in writing, (C) declare the DIP Loans then outstanding to be due and payable in whole (or in part, in which case any principal not so declared to be due and payable may thereafter be declared to be due and payable), and thereupon the principal of the DIP Loans so declared to be due and payable, together with accrued interest thereon and all fees and other Obligations, shall become due and payable immediately, in each case, without presentment, demand,

protest, notice of intent to accelerate, notice of acceleration or other notice of any kind, all of which are hereby waived by each Loan Party, (D) declare a termination, reduction or restriction on the ability of the Loan Parties to use any cash collateral (other than cash collateral consisting of Revolving Priority Collateral or as set forth in clause (iii) below) and (E) terminate the DIP Facility (each of clauses (A) through (E) above, a “**Termination Declaration**” and the earliest date to occur of any such Termination Declaration, the “**Termination Declaration Date**”), in each case of clauses (A) through (E) above, without first obtaining relief from the automatic stay under section 362 of the Bankruptcy Code; (ii) five (5) Business Days after the Termination Declaration Date, the Loan Parties and/or any Committee shall be permitted to seek an emergency hearing before the Bankruptcy Court (which they shall seek on an expedited basis) solely to determine whether an Event of Default has occurred and in any such hearing, the only issue that may be raised by any party in opposition to the actions proposed or available to be taken by the DIP Agent shall be whether, in fact, an Event of Default has occurred and is continuing, *provided, however*, that (1) if the Loan Parties seek an expedited emergency hearing within five (5) Business Days, until such time the Bankruptcy Court has entered an order ruling on whether an Event of Default has occurred, the DIP Agent shall not be permitted to exercise its rights and remedies set forth in clauses (C) through (E) above with respect to such Termination Declaration or such Events of Default, and (2) if the Loan Parties and any Committee do not seek an expedited emergency hearing within five (5) Business Days after the Termination Declaration Date, the DIP Agent shall have relief from the automatic stay without further notice or order and shall be entitled to exercise all rights and remedies provided for in the Loan Documents with respect to such Termination Declaration, including the right to foreclose on, or otherwise exercise its rights with respect to all or any portion of the Collateral, including by applying the proceeds thereof to the Obligations (subject to the Intercreditor Agreement); and (iii) the Loan Parties shall not be permitted to use any proceeds of the DIP Loans, or any other cash collateral, except in accordance with the Approved Budget (subject to Permitted Variances) and the Existing Intercreditor Agreement. In addition, after the occurrence and during the continuance of an Event of Default, the DIP Agent and the Lenders will have all other rights and remedies available at law and equity.

(b) [reserved].

(c) All proceeds realized from the liquidation or other disposition of Collateral or otherwise received after maturity of the DIP Loans, whether by acceleration or otherwise, shall be applied as set forth in Section 2.06(c).

ARTICLE XI THE DIP AGENT

Section 11.01. Appointment and Authority.

(a) Each of the Lenders hereby irrevocably appoints ARCC to act on its behalf as the DIP Agent hereunder and under the other Loan Documents and authorizes the DIP Agent to take such actions on its behalf and to exercise such powers as are delegated to the DIP Agent by the terms hereof or thereof, together with such actions and powers as are reasonably incidental thereto. The provisions of this Article XI are solely for the benefit of the DIP Agent and the Lenders, and neither the Borrower nor any other Loan Party shall have rights as a third party beneficiary of any of such provisions. It is understood and agreed that the use of the term “agent” herein or in any other Loan Documents (or any other similar term) with reference to the DIP Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable law. Instead such term is used as a matter of

market custom, and is intended to create or reflect only an administrative relationship between contracting parties.

(b) The DIP Agent shall also act as the “collateral agent” under the Loan Documents, and each of the Lenders hereby irrevocably appoints and authorizes the DIP Agent to act as the agent of such Lender for purposes of acquiring, holding and enforcing any and all Liens on Collateral granted by the Borrower and the Guarantors to secure any of the Obligations, together with such powers and discretion as are reasonably incidental thereto. In this connection, the DIP Agent, as “collateral agent”, and any co-agents, sub-agents and attorneys-in-fact appointed by the DIP Agent pursuant to Section 11.05 for purposes of holding or enforcing any Lien on the Collateral (or any portion thereof) granted under the Security Instruments, or for exercising any rights and remedies thereunder at the direction of the DIP Agent, shall be entitled to the benefits of all provisions of this Article XI and Article XII (including Section 12.03(c)), as though such co-agents, sub-agents and attorneys-in-fact were the “collateral agent” under the Loan Documents.

Section 11.02. Rights as a Lender. The Person serving as the DIP Agent hereunder shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not the DIP Agent and the term “Lender” or “Lenders” shall, unless otherwise expressly indicated or unless the context otherwise requires, include the Person serving as the DIP Agent hereunder in its individual capacity. Such Person and its Affiliates may accept deposits from, lend money to, own securities of, act as the financial advisor or in any other advisory capacity for and generally engage in any kind of business with the Borrower or any Subsidiary or other Affiliate thereof as if such Person were not the DIP Agent hereunder and without any duty to account therefor to the Lenders.

Section 11.03. Exculpatory Provisions. The DIP Agent shall not have any duties or obligations except those expressly set forth herein and in the other Loan Documents, and its duties hereunder shall be administrative in nature. Without limiting the generality of the foregoing, the DIP Agent:

(a) shall not be subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing;

(b) shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by the other Loan Documents that the DIP Agent is required to exercise as directed in writing by the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Loan Documents), *provided* that the DIP Agent shall not be required to take any action that, in its opinion or the opinion of its counsel, may expose the DIP Agent to liability or that is contrary to any Loan Document or applicable law, including for the avoidance of doubt any action that may be in violation of the automatic stay under any Debtor Relief Law;

(c) shall not, except as expressly set forth herein and in the other Loan Documents, have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to the Borrower or any of its Affiliates that is communicated to or obtained by the Person serving as the DIP Agent or any of its Affiliates in any capacity;

(d) shall not be liable for any action taken or not taken by it (i) with the consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary, or as the DIP Agent shall believe in good faith shall be necessary, under the circumstances as

provided in Section 10.02 and Section 12.02) or (ii) in the absence of its own gross negligence or willful misconduct, as determined by a court of competent jurisdiction by a final and nonappealable judgment (the DIP Agent shall be deemed not to have knowledge of any Default unless and until notice describing such Default is given to the DIP Agent by the Borrower or a Lender); and

(e) shall not be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with this Agreement or any other Loan Document, (ii) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or therein or the occurrence of any Default, (iv) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Loan Document or any other agreement, instrument or document, or the creation, perfection or priority of any Lien purported to be created by the Security Instruments, (v) the value or the sufficiency of any Collateral, or (vi) the satisfaction of any condition set forth in Article VI or elsewhere herein or in any other Loan Document, other than to confirm receipt of items expressly required to be delivered to the DIP Agent.

Section 11.04. Reliance by DIP Agent. The DIP Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing (including any electronic message, Internet or intranet website posting or other distribution) believed by it to be genuine and to have been signed, sent or otherwise authenticated by the proper Person. The DIP Agent also may rely upon any statement made to it orally or by telephone and believed by it to have been made by the proper Person, and shall not incur any liability for relying thereon. In determining compliance with any condition hereunder to the making of a DIP Loan, that by its terms must be fulfilled to the satisfaction of a Lender, the DIP Agent may presume that such condition is satisfactory to such Lender unless the DIP Agent shall have received notice to the contrary from such Lender prior to the making of such DIP Loan. The DIP Agent may consult with legal counsel (who may be counsel for the Borrower), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

Section 11.05. Delegation of Duties. The DIP Agent may perform any and all of its duties and exercise its rights and powers hereunder or under any other Loan Document by or through any one or more sub-agents appointed by the DIP Agent. The DIP Agent and any such sub-agent may perform any and all of its duties and exercise its rights and powers by or through their respective Related Parties. The exculpatory provisions of this Article shall apply to any such sub-agent and to the Related Parties of the DIP Agent and any such sub-agent, and shall apply to their respective activities in connection with the syndication of the credit facilities provided for herein as well as activities as DIP Agent. The DIP Agent shall not be responsible for the negligence or misconduct of any sub-agents except to the extent that a court of competent jurisdiction determines in a final and nonappealable judgment that the DIP Agent acted with gross negligence or willful misconduct in the selection of such sub-agents.

Section 11.06. Resignation of DIP Agent.

(a) The DIP Agent may at any time give notice of its resignation to the Lenders and the Borrower. Upon receipt of any such notice of resignation, the Required Lenders shall have the right, in consultation with the Borrower (unless and Event of Default has occurred and is continuing), to appoint a successor, which shall be a financial institution with an office in the United States, or an Affiliate of any such financial institution with an office in the United States. If no such successor shall have been so

appointed by the Required Lenders and shall have accepted such appointment within thirty (30) days after the retiring DIP Agent gives notice of its resignation (or such earlier day as shall be agreed by the Required Lenders) (the “**Resignation Effective Date**”), then the retiring DIP Agent may (but shall not be obligated to) on behalf of the Lenders, appoint a successor DIP Agent meeting the qualifications set forth above. Whether or not a successor has been appointed, such resignation shall become effective in accordance with such notice on the Resignation Effective Date.

(b) With effect from the Resignation Effective Date, (1) the retiring DIP Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents (except that in the case of any Collateral held by the DIP Agent on behalf of the Lenders under any of the Loan Documents, the retiring DIP Agent shall continue to hold such Collateral until such time as a successor DIP Agent is appointed) and (2) except for any indemnity payments or other amounts then owed to the retiring DIP Agent, all payments, communications and determinations provided to be made by, to or through the DIP Agent shall instead be made by or to each Lender directly, until such time, if any, as the Required Lenders appoint a successor DIP Agent as provided for above. Upon the acceptance of a successor’s appointment as DIP Agent hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring DIP Agent (other than as provided in Section 12.05 with respect to Section 5.02 and other than any rights to indemnity payments or other amounts owed to the retiring DIP Agent as of the Resignation Effective Date), and the retiring DIP Agent shall be discharged from all of its duties and obligations hereunder or under the other Loan Documents (if not already discharged therefrom as provided above in this Section 11.06). The fees payable by the Borrower to a successor DIP Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Borrower and such successor. After the retiring DIP Agent’s resignation hereunder and under the other Loan Documents, the provisions of this Article shall continue in effect for the benefit of such retiring DIP Agent, its sub-agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while the retiring DIP Agent was acting as DIP Agent.

Section 11.07. Non-Reliance on DIP Agent and Other Lenders. Each Lender acknowledges that it has, independently and without reliance upon the DIP Agent or any other Lender, and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each such Lender also acknowledges that it will, independently and without reliance upon the DIP Agent or any other Lender, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking any action under this Agreement, any other Loan Document or any related agreement or any document furnished hereunder or thereunder. The DIP Agent shall not be required to keep itself informed as to the performance or observance by the Borrower or any of the other Loan Parties of this Agreement, the Loan Documents or any other document referred to or provided for herein or to inspect the Properties or books of the Borrower or the other Loan Parties. Each party hereto will consult with its own legal counsel to the extent that it deems necessary in connection with the Loan Documents and the matters contemplated therein.

Section 11.08. DIP Agent May File Proofs of Claim; Credit Bidding. In case of the pendency of any proceeding under any Debtor Relief Law or any other judicial proceeding relative to any Loan Party, the DIP Agent (irrespective of whether the principal of any DIP Loan shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether the DIP Agent shall have made any demand on the Borrower) shall be entitled and empowered, by intervention in such proceeding or otherwise:

(a) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the DIP Loans and all other Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Lenders and the DIP Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of the Lenders and the DIP Agent and their respective agents and counsel and all other amounts due the Lenders and the DIP Agent under Section 12.03) allowed in such judicial proceeding; and

(b) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same;

and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender to make such payments to the DIP Agent and, if the DIP Agent shall consent to the making of such payments directly to the Lenders, to pay to the DIP Agent any amount due for the reasonable compensation, expenses, disbursements and advances of the DIP Agent and its agents and counsel, and any other amounts due the DIP Agent under Section 12.03.

Nothing contained herein shall be deemed to authorize the DIP Agent to authorize or consent to or accept or adopt on behalf of any Lender any plan of reorganization, arrangement, adjustment or composition affecting the Obligations or the rights of any Lender to authorize the DIP Agent to vote in respect of the claim of any Lender or in any such proceeding.

The Secured Parties hereby irrevocably authorize the DIP Agent, at the direction of the Required Lenders, to credit bid all or any portion of the Obligations (including accepting some or all of the Collateral in satisfaction of some or all of the Obligations pursuant to a deed in lieu of foreclosure or otherwise) and in such manner purchase (either directly or through one or more acquisition vehicles) all or any portion of the Collateral (a) at any sale thereof conducted under the provisions of the Bankruptcy Code of the United States, including under Sections 363, 1123 or 1129 of the Bankruptcy Code of the United States, or any similar laws in any other jurisdictions to which a Loan Party is subject, (b) at any other sale or foreclosure or acceptance of collateral in lieu of debt conducted by (or with the consent or at the direction of) the DIP Agent (whether by judicial action or otherwise) in accordance with any applicable law. In connection with any such credit bid and purchase, the Obligations owed to the Secured Parties shall be entitled to be, and shall be, credit bid on a ratable basis (with Obligations with respect to contingent or unliquidated claims receiving contingent interests in the acquired assets on a ratable basis that would vest upon the liquidation of such claims in an amount proportional to the liquidated portion of the contingent claim amount used in allocating the contingent interests) in the asset or assets so purchased (or in the Equity Interests or debt instruments of the acquisition vehicle or vehicles that are used to consummate such purchase). In connection with any such bid (i) the DIP Agent shall be authorized to form one or more acquisition vehicles to make a bid, (ii) to adopt documents providing for the governance of the acquisition vehicle or vehicles (*provided* that any actions by the DIP Agent with respect to such acquisition vehicle or vehicles, including any disposition of the assets or Equity Interests thereof shall be governed, directly or indirectly, by the vote of the Required Lenders, irrespective of the termination of this Agreement and without giving effect to the limitations on actions by the Required Lenders contained in Section 12.02(b)), (iii) the DIP Agent shall be authorized to assign the relevant Obligations to any such acquisition vehicle pro rata by the Lenders, as a result of which each of the Lenders shall be deemed to have received a pro rata portion of any Equity Interests and/or debt instruments issued by such an acquisition vehicle on account of the assignment of the Obligations to be credit bid, all without the need for any Secured Party or acquisition vehicle to take any further action, and (iv) to the extent that Obligations that are assigned to an acquisition vehicle are not used to acquire Collateral for any reason (as a result of another bid being higher or better, because the amount

of Obligations assigned to the acquisition vehicle exceeds the amount of debt credit bid by the acquisition vehicle or otherwise), such Obligations shall automatically be reassigned to the Lenders pro rata and the Equity Interests and/or debt instruments issued by any acquisition vehicle on account of the Obligations that had been assigned to the acquisition vehicle shall automatically be cancelled, without the need for any Secured Party or any acquisition vehicle to take any further action.

Section 11.09. Collateral and Guaranty Matters. Without limiting the provision of Section 11.10, the Lenders irrevocably authorize the DIP Agent, at its option and in its discretion:

(a) to release any Lien on any Property granted to or held by the DIP Agent under any Loan Document (i) upon termination of the DIP Commitments and payment in full of all Obligations, (ii) that is sold or otherwise disposed of or to be sold or otherwise disposed of as part of or in connection with any sale or other disposition permitted hereunder or under any other Loan Document to a Person that is not the Borrower or a Guarantor, or (iii) if approved, authorized or ratified in writing in accordance with Section 12.02; and

(b) to subordinate any Lien on any property granted to or held by the DIP Agent under any Loan Document to the holder of any Lien on such property that is permitted by Section 9.04(d).

Upon request by the DIP Agent at any time, the Required Lenders will confirm in writing the DIP Agent's authority to release or subordinate its interest in particular types or items of Property, or to release any Guarantor from its obligations under the Guaranty Agreement pursuant to this Section 11.09. In each case as specified in this Section 11.09, the DIP Agent will, at the Borrower's expense, execute and deliver to the Borrower or any Guarantor, as applicable, such documents as such Person may reasonably request to evidence the release of such item of Property from the assignment and security interest granted under the Security Instruments or to subordinate its interest in such item, or to release such Guarantor from its obligations under the Guaranty Agreement, in each case in accordance with the terms of the Loan Documents and this Section 11.09.

The DIP Agent shall not be responsible for or have a duty to ascertain or inquire into any representation or warranty regarding the existence, value or collectability of the Collateral, the existence, priority or perfection of the DIP Agent's Lien thereon, or any certificate prepared by the Borrower or any Guarantor in connection therewith, nor shall the DIP Agent be responsible or liable to the Lenders for any failure to monitor or maintain any portion of the Collateral.

Section 11.10. Action by DIP Agent. The DIP Agent shall have no duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by the other Loan Documents that the DIP Agent is required to exercise in writing as directed by the Required Lenders (or such other number or percentage of the Lenders as shall be necessary under the circumstances as provided in Section 12.02) and in all cases the DIP Agent shall be fully justified in failing or refusing to take any discretionary action or exercise any discretionary power hereunder or under any other Loan Documents unless it shall (a) receive written instructions from the Required Lenders or the Lenders, as applicable, (or such other number or percentage of the Lenders as shall be necessary under the circumstances as provided in Section 12.02) specifying the action to be taken and (b) be indemnified to its satisfaction by the Lenders against any and all liability and expenses which may be incurred by it by reason of taking or continuing to take any such action. The instructions as aforesaid and any action taken or failure to act pursuant thereto by the DIP Agent shall be binding on all of the Lenders. If a Default has occurred and is continuing, then the DIP Agent shall take such action with respect to such Default as shall be directed

by the Required Lenders, *provided* that, unless and until the DIP Agent shall have received such directions, the DIP Agent may (but shall not be obligated to) take such action, or refrain from taking such action, with respect to such Default as it shall deem advisable in the best interests of the Lenders. In no event, however, shall the DIP Agent be required to take any action which exposes the DIP Agent to personal liability or which is contrary to this Agreement, the Loan Documents or applicable law. The DIP Agent shall not be liable to any Lender for any action taken or not taken by it with the consent or at the request of the Required Lenders or the Lenders (or such other number or percentage of the Lenders as shall be necessary under the circumstances as provided in Section 12.02), and otherwise the DIP Agent shall not be liable for any action taken or not taken by it hereunder or under any other Loan Document or under any other document or instrument referred to or provided for herein or therein or in connection herewith or therewith INCLUDING ITS OWN ORDINARY NEGLIGENCE, except for its own gross negligence or willful misconduct.

ARTICLE XII MISCELLANEOUS

Section 12.01. Notices.

(a) Except in the case of notices and other communications expressly permitted to be given by telephone (and subject to Section 12.01(b)), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by facsimile, as follows:

(i) if to the Borrower, to it at 4413 Carey Street, Fort Worth, Texas 76119, Attention: Kristin Smith, E-mail: ksmith@vprop.com, with a copy to Haynes and Boone, LLP, 2323 Victory Avenue, Suite 700, Dallas, Texas, 75129, Attn: Sakina Foster, Facsimile No. (214) 200-0944, E-mail: sakina.foster@haynesboone.com;

(ii) if to the DIP Agent, to it at 245 Park Avenue, 44th Floor, New York, New York 10167, Attn: General Counsel, Facsimile No. (212) 750-1777, E-mail: arccgeneralcounsel@aresmgmt.com, with a copy to Sidley Austin LLP, 1000 Louisiana Street, Suite 6000, Houston, TX 77027, Attn: Herschel Hamner, Facsimile No. (713) 495-7799, E-mail: hhamner@sidley.com; and

(iii) if to any other Lender, to its at its address (or facsimile number) set forth on Annex I hereto.

(b) Notices and other communications to the Lenders hereunder may be delivered or furnished by electronic communications (including e-mail, FpML Messaging, and Internet or intranet websites pursuant to procedures approved by the DIP Agent); *provided* that the foregoing shall not apply to notices pursuant to Article II, Article III, Article IV and Article V unless otherwise agreed by the DIP Agent and the applicable Lender. The DIP Agent or the Borrower may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it; *provided* that approval of such procedures may be limited to particular notices or communications.

(c) Any party hereto may change its address or facsimile number for notices and other communications hereunder by notice to the other parties hereto. All notices and other communications

given to any party hereto in accordance with the provisions of this Agreement shall be deemed to have been given on the date of receipt.

Section 12.02. Waivers; Amendments.

(a) No failure on the part of the DIP Agent or any Lender to exercise and no delay in exercising, and no course of dealing with respect to, any right, power or privilege, or any abandonment or discontinuance of steps to enforce such right, power or privilege, under any of the Loan Documents shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege under any of the Loan Documents preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies of the DIP Agent and the Lenders hereunder and under the other Loan Documents are cumulative and are not exclusive of any rights or remedies that they would otherwise have. No waiver of any provision of this Agreement or any other Loan Document or consent to any departure by the Borrower therefrom shall in any event be effective unless the same shall be permitted by Section 12.02(b), 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 DIP Loan shall not be construed as a waiver of any Default, regardless of whether the DIP Agent or any Lender may have had notice or knowledge of such Default at the time.

(b) Subject to the last sentence of the definition of “LIBO Rate”, neither this Agreement nor any provision hereof nor any other Loan Document nor any provision thereof may be waived, amended or modified except pursuant to an agreement or agreements in writing entered into by the Borrower and the Required Lenders or by the Borrower and the DIP Agent with the consent of the Required Lenders; *provided* that no such agreement shall (i) increase the DIP Commitment of any Lender without the written consent of such Lender, (ii) reduce the principal amount of any DIP Loan or reduce the rate of interest thereon, or reduce any fees payable hereunder, or reduce any other Obligations hereunder or under any other Loan Document, without the written consent of each Lender affected thereby, (iii) postpone the scheduled date of payment or prepayment of the principal amount of any DIP Loan, or any interest thereon, or any fees payable hereunder, or any other Obligations hereunder or under any other Loan Document, or reduce the amount of, waive or excuse any such payment, or postpone or extend the Maturity Date, without the written consent of each Lender affected thereby, (iv) change Section 4.01(b) or Section 4.01(c) in a manner that would alter the pro rata sharing of payments required thereby, without the written consent of each Lender, (v) waive or amend Article ARTICLE VI, Section 8.14 or Section 10.02(c) or change the definition of the terms “Domestic Subsidiary,” “Foreign Subsidiary,” or “Subsidiary,” without the written consent of each Lender, (vi) waive or amend Section 11.10 without the written consent of each Lender affected thereby, (vii) release any Guarantor (except as set forth in the Guaranty Agreement) or release all or substantially all of the Collateral, without the written consent of each Lender, or (viii) change any of the provisions of this Section 12.02(b) or any other provision hereof specifying the number or percentage of Lenders required to waive, amend or modify any rights hereunder or under any other Loan Documents or make any determination or grant any consent hereunder or any other Loan Documents, without the written consent of each Lender; *provided further* that no such agreement shall amend, modify or otherwise affect the rights or duties of the DIP Agent or any other Agent hereunder or under any other Loan Document without the prior written consent of the DIP Agent or such other Agent, as the case may be. Notwithstanding the foregoing, any supplement to Schedules 7.14(a)-(d) (Loan Parties and Subsidiaries) shall be effective simply by delivering to the DIP Agent a supplemental schedule clearly marked as such and, upon receipt, the DIP Agent will promptly deliver a copy thereof to the Lenders. Notwithstanding the foregoing, no consent with respect to any amendment, waiver or other modification of this Agreement shall be required of any Defaulting Lender, except with respect to any amendment, waiver or other modification

referred to in clause (i), (ii) or (iii) of the first proviso of this paragraph and then only in the event such Defaulting Lender shall be directly affected by such amendment, waiver or other modification.

(c) The Borrower will not, and will not permit Parent or any of the Borrower's Subsidiaries to, directly or indirectly, pay or cause to be paid any consideration to or for the benefit of any Lender for or as an inducement to any consent, waiver or amendment of any of the terms or provisions of any Loan Document unless such consideration is offered to be paid and is paid to all Lenders that consent, waive or agree to amend in the time frame set forth in the solicitation documents relating to such consent, waiver or agreement (it being understood that this provision shall not apply to (i) arrangement fees or other consideration payable to any financial institution acting as an arranger (or similar role) for any such consent, waiver or amendment or (ii) any consideration payable to the DIP Agent in its capacity as such).

Section 12.03. Expenses, Indemnity; Damage Waiver.

(a) The Borrower shall pay (i) all reasonable and documented out-of-pocket expenses incurred by the DIP Agent and its Affiliates, including, without limitation, the reasonable and documented fees, charges and disbursements of counsel and other outside consultants for the DIP Agent (including FTI Consulting, Inc.), the reasonable and documented travel, photocopy, mailing, courier, telephone and other similar expenses, including all Syndtrak (or similar service) expenses, and the reasonable and documented cost of environmental assessments and audits and surveys and appraisals, in connection with the syndication of the credit facilities provided for herein, the preparation, negotiation, execution, delivery and administration (both before and after the execution hereof and including advice of counsel to the DIP Agent as to the rights and duties of the DIP Agent and the Lenders with respect thereto) of this Agreement, the Chapter 11 Cases and the other Loan Documents and any amendments, modifications or waivers of or consents related to the provisions hereof or thereof (whether or not the transactions contemplated hereby or thereby shall be consummated), (ii) all reasonable and documented costs, expenses, Taxes, assessments and other charges incurred by the DIP Agent or any Lender in connection with any filing, registration, recording or perfection of any security interest contemplated by this Agreement or any Security Instrument or any other document referred to therein and (iii) all documented out-of-pocket expenses incurred by the DIP Agent or any Lender, including the fees, charges and disbursements of any counsel for the DIP Agent or any Lender, in connection with the enforcement or protection of its rights in connection with this Agreement or any other Loan Document, including its rights under this Section 12.03, or in connection with the DIP Loans made, including, without limitation, all such out-of-pocket expenses incurred during any workout, restructuring or negotiations in respect of such DIP Loans; *provided* that all Lenders shall be represented by the same legal counsel (which may be a law firm engaged by the Lenders or attorneys employed by a Lender or a combination of the foregoing) selected by the Lenders; *provided*, that if such legal counsel determines in good faith that representing all such Lenders would or could result in a conflict of interest under Laws or ethical principles applicable to such legal counsel or that a defense or counterclaim is available to a Lender that is not available to all such Lenders, then to the extent reasonably necessary to avoid such a conflict of interest or to permit unqualified assertion of such a defense or counterclaim, each affected Lender shall be entitled to separate representation by legal counsel selected by that Lender and reasonably acceptable to Borrower; and *provided* further that the DIP Agent shall at all times be entitled to representation by separate legal counsel (which may be a law firm or attorneys employed by the DIP Agent or a combination of the foregoing).

(b) THE BORROWER SHALL INDEMNIFY THE DIP AGENT AND EACH LENDER, AND EACH RELATED PARTY OF ANY OF THE FOREGOING PERSONS (EACH SUCH PERSON BEING CALLED AN "INDEMNITEE") AGAINST, AND DEFEND AND HOLD EACH

INDEMNITEE HARMLESS FROM, ANY AND ALL LOSSES, CLAIMS, DAMAGES, PENALTIES, LIABILITIES AND RELATED EXPENSES, INCLUDING THE REASONABLE FEES, CHARGES AND DISBURSEMENTS OF ANY COUNSEL FOR ANY INDEMNITEE, INCURRED BY OR ASSERTED AGAINST ANY INDEMNITEE ARISING OUT OF, IN CONNECTION WITH, OR AS A RESULT OF (i) THE EXECUTION OR DELIVERY OF THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR ANY AGREEMENT OR INSTRUMENT CONTEMPLATED HEREBY OR THEREBY, THE PERFORMANCE BY THE PARTIES HERETO OR THE PARTIES TO ANY OTHER LOAN DOCUMENT OF THEIR RESPECTIVE OBLIGATIONS HEREUNDER OR THEREUNDER OR THE CONSUMMATION OF THE TRANSACTIONS CONTEMPLATED HEREBY OR BY ANY OTHER LOAN DOCUMENT (*PROVIDED* THAT THE INDEMNIFICATION IN THIS CLAUSE (i) SHALL NOT EXTEND TO DISPUTES SOLELY BETWEEN OR AMONG THE DIP AGENT, THE LENDERS OR THEIR RESPECTIVE AFFILIATES), (ii) THE FAILURE OF THE BORROWER OR ANY OTHER LOAN PARTY TO COMPLY WITH THE TERMS OF ANY LOAN DOCUMENT, INCLUDING THIS AGREEMENT, OR WITH ANY GOVERNMENTAL REQUIREMENT, (iii) ANY INACCURACY OF ANY REPRESENTATION OR ANY BREACH OF ANY WARRANTY OR COVENANT OF THE BORROWER OR ANY GUARANTOR SET FORTH IN ANY OF THE LOAN DOCUMENTS OR ANY INSTRUMENTS, DOCUMENTS OR CERTIFICATIONS DELIVERED IN CONNECTION THEREWITH, (iv) ANY LOAN OR THE USE OF THE PROCEEDS THEREFROM, (v) ANY OTHER ASPECT OF THE LOAN DOCUMENTS, (vi) THE OPERATIONS OF THE BUSINESS OF THE BORROWER AND THE OTHER LOAN PARTIES BY THE BORROWER AND THE OTHER LOAN PARTIES, (vii) ANY ASSERTION THAT THE LENDERS WERE NOT ENTITLED TO RECEIVE THE PROCEEDS RECEIVED PURSUANT TO THE SECURITY INSTRUMENTS, (viii) ANY ENVIRONMENTAL LAW APPLICABLE TO THE BORROWER OR ANY OTHER LOAN PARTY REGARDING ANY OF THEIR PROPERTIES OR OPERATIONS, INCLUDING, THE PRESENCE, GENERATION, STORAGE, RELEASE, THREATENED RELEASE, USE, TRANSPORT, DISPOSAL, ARRANGEMENT FOR DISPOSAL OR TREATMENT OF HAZARDOUS MATERIALS ON OR AT ANY OF THEIR PROPERTIES OR AT ANY OTHER PROPERTY TO WHICH HAZARDOUS MATERIALS GENERATED BY THE BORROWER, ANY OTHER LOAN PARTY OR THEIR OPERATIONS WERE OR ARE SENT FOR DISPOSAL, (ix) THE BREACH OR NON-COMPLIANCE BY THE BORROWER OR ANY OTHER LOAN PARTY WITH ANY ENVIRONMENTAL LAW APPLICABLE TO THE BORROWER OR ANY OTHER LOAN PARTY, (x) THE PAST OWNERSHIP BY THE BORROWER OR ANY OTHER LOAN PARTY OF ANY OF THEIR PROPERTIES OR PAST ACTIVITY ON ANY OF THEIR PROPERTIES WHICH, THOUGH LAWFUL AND FULLY PERMISSIBLE AT THE TIME, COULD RESULT IN PRESENT LIABILITY, (xi) THE PRESENCE, USE, RELEASE, STORAGE, TREATMENT, DISPOSAL, GENERATION, THREATENED RELEASE, TRANSPORT, ARRANGEMENT FOR TRANSPORT OR ARRANGEMENT FOR DISPOSAL OF HAZARDOUS MATERIALS ON OR AT ANY OF THE PROPERTIES OWNED OR OPERATED BY THE BORROWER OR ANY OTHER LOAN PARTY, OR ANY ACTUAL OR ALLEGED PRESENCE OR RELEASE OF HAZARDOUS MATERIALS ON OR FROM ANY PROPERTY OWNED OR OPERATED BY THE BORROWER OR ANY OF THE OTHER LOAN PARTIES OR AT ANY OTHER PROPERTY TO WHICH HAZARDOUS MATERIALS GENERATED BY THE BORROWER, ANY OTHER LOAN PARTY OR THEIR OPERATIONS WERE OR ARE SENT FOR DISPOSAL, (xii) ANY ENVIRONMENTAL LIABILITY RELATED IN ANY WAY TO THE BORROWER OR ANY OF THE OTHER LOAN PARTIES, OR (xiii) ANY OTHER ENVIRONMENTAL, HEALTH OR SAFETY CONDITION IN CONNECTION WITH THE LOAN DOCUMENTS, OR (xiv) ANY ACTUAL OR PROSPECTIVE CLAIM, LITIGATION, INVESTIGATION OR PROCEEDING RELATING TO ANY OF THE FOREGOING, WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY AND REGARDLESS OF WHETHER

ANY INDEMNITEE IS A PARTY THERETO, AND SUCH INDEMNITY SHALL EXTEND TO EACH INDEMNITEE NOTWITHSTANDING THE SOLE OR CONCURRENT NEGLIGENCE OF EVERY KIND OR CHARACTER WHATSOEVER, WHETHER ACTIVE OR PASSIVE, WHETHER AN AFFIRMATIVE ACT OR AN OMISSION INCLUDING, WITHOUT LIMITATION, ALL TYPES OF NEGLIGENT CONDUCT IDENTIFIED IN THE RESTATEMENT (SECOND) OF TORTS OF ONE OR MORE OF THE INDEMNITEES OR BY REASON OF STRICT LIABILITY IMPOSED WITHOUT FAULT ON ANY ONE OR MORE OF THE INDEMNITEES; *PROVIDED* THAT SUCH INDEMNITY SHALL NOT, AS TO ANY INDEMNITEE, BE AVAILABLE TO THE EXTENT THAT SUCH LOSSES, CLAIMS, DAMAGES, LIABILITIES OR RELATED EXPENSES (A) ARE DETERMINED BY A COURT OF COMPETENT JURISDICTION BY FINAL AND NONAPPEALABLE JUDGMENT TO HAVE RESULTED FROM THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF SUCH INDEMNITEE OR (B) ARE IN RESPECT OF ANY PROPERTY FOR ANY OCCURRENCE ARISING FROM THE ACTS OR OMISSIONS OF THE DIP AGENT OR ANY LENDER DURING THE PERIOD AFTER WHICH SUCH PERSON, ITS SUCCESSORS OR ASSIGNS HAVE OBTAINED TITLE AND POSSESSION OF SUCH PROPERTY BY FORECLOSURE OR DEED IN LIEU OF FORECLOSURE; BUT EXCLUDING ANY OCCURRENCE REGARDING ANY VIOLATION OF ENVIRONMENTAL LAW FIRST OCCURRING BEFORE SUCH PERIOD AND ANY HAZARDOUS MATERIAL OR ENVIRONMENTAL CONDITION FIRST PRESENT ON THE PROPERTY BEFORE SUCH PERIOD.

(c) To the extent that the Borrower fails to pay any amount required to be paid by it to the DIP Agent under Section 12.03(a) or (b), each Lender severally agrees to pay to the DIP Agent such Lender's ratable share, based on the aggregate outstanding Loans of such Lender (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought) of such unpaid amount; *provided* that the unreimbursed expense or indemnified loss, claim, damage, liability or related expense, as the case may be, was incurred by or asserted against the DIP Agent in its capacity as such.

(d) To the extent permitted by applicable law, the Borrower shall not assert, and hereby waives, any claim against any Indemnitee, 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 DIP Loan or the use of the proceeds thereof.

(e) All amounts due under this Section 12.03 shall be payable not later than 10 Business Days after written demand therefor accompanied by appropriate documentation thereof.

Section 12.04. 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 (i) no Debtor may assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of each Lender (and any attempted assignment or transfer by the Borrower without such consent shall be null and void) and (ii) no Lender may assign or otherwise transfer its rights or obligations hereunder except in accordance with this Section 12.04. Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants (to the extent provided in Section 12.04(c)) and, to the extent expressly contemplated hereby, the Related Parties of each of the DIP Agent and the Lenders and their respective successors and assigns permitted hereby) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) Subject to the conditions set forth in Section 12.04(b)(i), any Lender may assign to one or more Persons all or a portion of its interests, rights and obligations under this Agreement (including all or a portion of its DIP Commitment and the DIP Loans at the time owing to it), with notice to the Borrower and the DIP Agent (failure to provide or delay in providing such notice shall not invalidate such assignment).

(i) Assignments shall be subject to the following additional conditions:

(A) the DIP Agent shall have consented to such assignment, such consent not to be unreasonably withheld, conditioned or delayed; *provided* that no such consent of the DIP Agent shall be required if such assignment is to an Eligible Assignee;

(B) except in the case of (1) an assignment to an assignee that is a Lender immediately prior to giving effect to such assignment or an Affiliate of a Lender or (2) an assignment of the entire remaining amount of the assigning Lender's DIP Commitment or DIP Loans, the amount of the DIP Commitment or DIP Loans of the assigning Lender subject to each such assignment (determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the DIP Agent) shall not be less than \$1,000,000 unless each of the Borrower and the DIP Agent otherwise consent, *provided* that no such consent of the Borrower shall be required if the assignee is an Eligible Assignee or if an Event of Default has occurred and is continuing;

(C) each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement;

(D) [reserved];

(E) the parties to each assignment shall execute and deliver to the DIP Agent an Assignment and Assumption, together with a processing and recordation fee of \$3,500;

(F) the assignee, if it shall not already be a Lender, shall deliver to the DIP Agent an Administrative Questionnaire; and

(G) in no event may any Lender assign all or a portion of its rights and obligations under this Agreement to the Borrower, any Affiliate of the Borrower or a natural person.

(ii) Subject to Section 12.04(b)(iii) and the acceptance and recording thereof, and except in the case of an assignment to an Affiliate of a Lender, from and after the Closing Date specified in each Assignment and Assumption the assignee thereunder shall be a party hereto and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto but shall continue to be entitled to the benefits of Section 5.01, Section 5.02 and Section

12.03). Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this Section 12.04 shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with Section 12.04(c).

(iii) The DIP Agent, acting solely for this purpose as an agent of the Borrower, shall maintain at one of its offices a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of the Lenders, and the DIP Commitment of, and principal amount of the DIP Loans owing to, each Lender pursuant to the terms hereof from time to time (the “**Register**”). The entries in the Register shall be conclusive absent manifest error, and the Borrower, the DIP Agent and the Lenders may treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. The Register shall be available for inspection by the Borrower and any Lender, at any reasonable time and from time to time upon reasonable prior notice. In connection with any changes to the Register, if necessary, the DIP Agent will reflect the revisions on Annex I and forward a copy of such revised Annex I to the Borrower and each Lender. For the avoidance of doubt, the foregoing provisions are intended to comply with the registration requirements in United States Treasury Regulations Section 5f.103-1(c), or any successor provisions thereof, so that any payments made on a DIP Loan or Note are considered to be paid on a debt instrument issued in “registered form” pursuant to such regulations, and all parties hereto shall construe the provisions of this Credit Agreement to ensure that the DIP Loans or Notes will be considered to have been so issued.

(iv) Upon its receipt of a duly completed Assignment and Assumption executed by an assigning Lender and an assignee, the assignee’s completed Administrative Questionnaire and applicable tax forms (unless the assignee shall already be a Lender hereunder), the processing and recordation fee referred to in Section 12.04(b) and any written consent to such assignment required by Section 12.04(b), the DIP Agent shall accept such Assignment and Assumption and record the information contained therein in the Register. No assignment shall be effective for purposes of this Agreement unless it has been recorded in the Register as provided in this Section 12.04(b).

(c) (i) Any Lender may, without the consent of the Borrower, sell participations to one or more banks or other Person (other than the Borrower, any Affiliate of the Borrower or a natural person) (a “**Participant**”) in all or a portion of such Lender’s rights and obligations under this Agreement (including all or a portion of its DIP Commitment and the DIP Loans owing to it); *provided* that (A) such Lender’s obligations under this Agreement shall remain unchanged, (B) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations, (C) the Borrower, the DIP Agent and the other Lenders shall continue to deal solely and directly with such Lender in connection with such Lender’s rights and obligations under this Agreement, and (D) if the Participant or, if the Participant is a partnership, one or more direct or indirect partners of such Participant are claiming the portfolio interest exemption, such Participant may provide a U.S. Tax Compliance Certificate substantially in the form of Exhibit F-2 or Exhibit F-3, as applicable. Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; *provided* that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, modification or waiver described in the proviso to Section 12.02 that affects such Participant. In addition such agreement must provide that the Participant be bound by the provisions of Section 12.03. Subject to Section 12.04(c)(ii), the Borrower agrees that each Participant shall be entitled to

the benefits of Section 5.01, and Section 5.02 (in each case, without duplication of any benefits afforded the Lender granting such participation) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to Section 12.04(b). Each Lender that sells a participation shall, acting solely for this purpose as an 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 DIP Loans or other obligations under the Loan Documents (the "**Participant Register**"); *provided* that no Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any information relating to a Participant's interest in any commitments, loans, letters of credit or its other obligations under any Loan Document) to any Person except to the extent that such disclosure is necessary to establish that such commitment, loan, letter of credit or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, the DIP Agent (in its capacity as DIP Agent) shall have no responsibility for maintaining a Participant Register. For the avoidance of doubt, the foregoing provisions are intended to comply with the registration requirements in United States Treasury Regulations Section 5f.103-1(c), or any successor provisions thereof, so that any payments made on a Participant's interest are considered to be paid on a debt instrument issued in "registered form" pursuant to such regulations, and all parties hereto shall construe (and shall cause any participants to construe) the provisions of this Credit Agreement to ensure that any participant's interest will be considered to have been so issued.

(ii) A Participant shall not be entitled to receive any greater payment under Section 5.01 or Section 5.02 than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant, unless the sale of the participation to such Participant is made with the Borrower's prior written consent. A Participant that would be a Foreign Lender if it were a Lender shall not be entitled to the benefits of Section 5.02 unless the Borrower is notified of the participation sold to such Participant and such Participant agrees, for the benefit of the Borrower, to comply with Section 5.02(f) as though it were a Lender.

(d) Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement to secure obligations of such Lender, including, without limitation, any pledge or assignment to secure obligations to a Federal Reserve Bank or other central bank, and this Section 12.04 shall not apply to any such pledge or assignment of a security interest; *provided* that no such pledge or assignment of a security interest shall release a Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

(e) Notwithstanding any other provisions of this Section 12.04, no transfer or assignment of the interests or obligations of any Lender or any grant of participations therein shall be permitted if such transfer, assignment or grant would require the Borrower and the Guarantors to file a registration statement with the SEC or to qualify the DIP Loans under the "Blue Sky" laws of any state.

Section 12.05. Survival; Revival; Reinstatement.

(a) All covenants, agreements, representations and warranties made by the Borrower herein 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 this Agreement and the making of any DIP Loans, regardless of

any investigation made by any such other party or on its behalf and notwithstanding that the DIP Agent or any Lender may have had notice or knowledge of any Default or incorrect representation or warranty at the time any credit is extended hereunder, and shall continue in full force and effect as long as the principal of or any accrued interest on any DIP Loan or any fee or any other amount payable under this Agreement is outstanding and unpaid and so long as the DIP Commitments have not expired or terminated. The provisions of Section 5.01 (subject to Section 5.01(d)), Section 5.02 (subject to the proviso in the last sentence of Section 5.02(c)) and Section 12.03 (for a period of two years after the Maturity Date) and Article XI shall survive and remain in full force and effect regardless of the consummation of the transactions contemplated hereby, the repayment of the DIP Loans, the expiration or termination of the DIP Commitments or the termination of this Agreement, any other Loan Document or any provision hereof or thereof; *provided* that any time limitation on the survival of any provision hereunder shall be tolled for any claims filed prior to the expiration of such time limitation until two months after final, non-appealable adjudication of any such claim.

(b) To the extent that any payments on the Obligations or proceeds of any Collateral are subsequently invalidated, declared to be fraudulent or preferential, set aside or required to be repaid to a trustee, debtor in possession, receiver or other Person under any bankruptcy law, common law or equitable cause, then to such extent, the Obligations so satisfied shall be revived and continue as if such payment or proceeds had not been received and the DIP Agent's and the Lenders' Liens, security interests, rights, powers and remedies under this Agreement and each Loan Document shall continue in full force and effect. In such event, each Loan Document shall be automatically reinstated and the Borrower shall take such action as may be reasonably requested by the DIP Agent and the Lenders to effect such reinstatement.

Section 12.06. Counterparts; Integration; Effectiveness.

(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.

(b) This Agreement, the other Loan Documents and any separate letter agreements with respect to fees payable to the DIP Agent constitute the entire contract among the parties relating to the subject matter hereof and thereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof and thereof.

(c) THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS REPRESENT THE FINAL AGREEMENT AMONG THE PARTIES HERETO AND THERETO AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.

(d) Except as provided in Section 6.01, this Agreement shall become effective when it shall have been executed by the DIP Agent and when the DIP Agent shall have received counterparts hereof which, when taken together, bear the signatures of each of the other parties hereto, and thereafter shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. Delivery of an executed counterpart of a signature page of this Agreement by facsimile or other electronic transmission (e.g. .pdf) shall be effective as delivery of a manually executed counterpart of this Agreement.

Section 12.07. Severability. Any provision of this Agreement or any other 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 hereof or thereof; and the invalidity of a particular provision in a particular jurisdiction shall not invalidate such provision in any other jurisdiction.

Section 12.08. Right of Setoff. If an Event of Default shall have occurred and be continuing, each Lender and each of its Affiliates is hereby authorized at any time and from time to time, 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 (of whatsoever kind) at any time owing by such Lender or Affiliate to or for the credit or the account of the Borrower or any other Loan Party against any of and all the obligations of the Borrower or any other Loan Party owed to such Lender now or hereafter existing under this Agreement or any other Loan Document, irrespective of whether or not such Lender shall have made any demand under this Agreement or any other Loan Document and although such obligations may be unmatured. The rights of each Lender under this Section 12.08 are in addition to other rights and remedies (including other rights of setoff) which such Lender or its Affiliates may have.

Section 12.09. GOVERNING LAW; JURISDICTION; CONSENT TO SERVICE OF PROCESS.

(a) THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.

(b) ANY LEGAL ACTION OR PROCEEDING WITH RESPECT TO THE LOAN DOCUMENTS SHALL BE BROUGHT IN THE BANKRUPTCY COURT OR, IF THE BANKRUPTCY COURT DOES NOT HAVE (OR ABSTAINS FROM) JURISDICTION, IN ANY STATE OR FEDERAL COURT OF COMPETENT JURISDICTION IN THE STATE, COUNTY, AND CITY OF NEW YORK, BOROUGH OF MANHATTAN. BY EXECUTION AND DELIVERY OF THIS AGREEMENT, EACH PARTY HEREBY ACCEPTS FOR ITSELF AND (TO THE EXTENT PERMITTED BY LAW) IN RESPECT OF ITS PROPERTY, GENERALLY AND UNCONDITIONALLY, THE JURISDICTION OF THE AFORESAID COURTS. EACH PARTY HEREBY IRREVOCABLY WAIVES ANY OBJECTION, INCLUDING, WITHOUT LIMITATION, ANY OBJECTION TO THE LAYING OF VENUE OR BASED ON THE GROUNDS OF FORUM NON CONVENIENS, WHICH IT MAY NOW OR HEREAFTER HAVE TO THE BRINGING OF ANY SUCH ACTION OR PROCEEDING IN SUCH RESPECTIVE JURISDICTIONS. THIS SUBMISSION TO JURISDICTION IS NON-EXCLUSIVE AND DOES NOT PRECLUDE A PARTY FROM OBTAINING JURISDICTION OVER ANOTHER PARTY IN ANY COURT OTHERWISE HAVING JURISDICTION.

(c) EACH PARTY IRREVOCABLY CONSENTS TO THE SERVICE OF PROCESS OF ANY OF THE AFOREMENTIONED COURTS IN ANY SUCH ACTION OR PROCEEDING BY THE MAILING OF COPIES THEREOF BY REGISTERED OR CERTIFIED MAIL, POSTAGE PREPAID, TO IT AT THE ADDRESS SPECIFIED IN SECTION 12.01 OR SUCH OTHER ADDRESS AS IS SPECIFIED PURSUANT TO SECTION 12.01 (OR ITS ASSIGNMENT AND ASSUMPTION), SUCH SERVICE TO BECOME EFFECTIVE THIRTY (30) DAYS AFTER SUCH MAILING. NOTHING HEREIN SHALL AFFECT THE RIGHT OF A PARTY OR ANY HOLDER OF A DIP LOAN TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY LAW OR TO

COMMENCE LEGAL PROCEEDINGS OR OTHERWISE PROCEED AGAINST ANOTHER PARTY IN ANY OTHER JURISDICTION.

(d) EACH PARTY HEREBY (i) IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, TRIAL BY JURY IN ANY LEGAL ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT AND FOR ANY COUNTERCLAIM THEREIN; (ii) IRREVOCABLY WAIVES, TO THE MAXIMUM EXTENT NOT PROHIBITED BY LAW, ANY RIGHT IT MAY HAVE TO CLAIM OR RECOVER IN ANY SUCH LITIGATION ANY SPECIAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES, OR DAMAGES OTHER THAN, OR IN ADDITION TO, ACTUAL DAMAGES; (iii) CERTIFIES THAT NO PARTY HERETO NOR ANY REPRESENTATIVE OR AGENT OR COUNSEL FOR ANY PARTY HERETO HAS REPRESENTED, EXPRESSLY OR OTHERWISE, OR IMPLIED THAT SUCH PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVERS, AND (iv) ACKNOWLEDGES THAT IT HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT, THE LOAN DOCUMENTS AND THE TRANSACTIONS CONTEMPLATED HEREBY AND THEREBY BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS CONTAINED IN THIS Section 12.09.

Section 12.10. Headings. Article and Section headings and the Table of Contents used herein are for convenience of reference only, are not part of this Agreement and shall not affect the construction of, or be taken into consideration in interpreting, this Agreement.

Section 12.11. Confidentiality. Each of the DIP Agent and the Lenders agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (a) to its and its Affiliates' directors, officers, partners, funding sources, administrators, employees and agents, including accountants, legal counsel and other advisors and sub-advisors (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential), (b) to the extent requested by any regulatory authority, (c) to the extent required by applicable laws or regulations or by any subpoena or similar legal process; *provided* that, subject to the Borrower's obligation to reimburse expenses under Section 12.03, it shall use commercially reasonable efforts to seek to obtain confidential treatment of such Information; *provided further*, that it shall not be liable for failure to obtain such confidential treatment, (d) to any other party to this Agreement or any other Loan Document, (e) in connection with the exercise of any remedies hereunder or under any other Loan Document or any suit, action or proceeding relating to this Agreement or any other Loan Document or the enforcement of rights hereunder or thereunder, (f) subject to an agreement containing provisions substantially the same as those of this Section 12.11, to (i) any assignee of or Participant or investor in, or any prospective assignee of or Participant or investor in, any of its rights or obligations under this Agreement or (ii) any actual or prospective counterparty (or its advisors) to any Swap Agreement relating to the Borrower and its obligations, (g) with the consent of the Borrower or (h) to the extent such Information (i) becomes publicly available other than as a result of a breach of this Section 12.11 or (ii) becomes available to the DIP Agent or any Lender on a nonconfidential basis from a source other than the Borrower. For the purposes of this Section 12.11, "**Information**" means all information received from the Borrower or any other Loan Party relating to the Borrower or any other Loan Party and their businesses, other than any such information that is available to the DIP Agent or any Lender on a nonconfidential basis prior to disclosure by the Borrower or any other Loan Party; *provided* that, in the case of information received from the Borrower or any other Loan Party after the date hereof, such information is clearly identified at the time of delivery as confidential. Any Person required to maintain the confidentiality of Information as provided in this Section 12.11 shall be considered to have complied with

its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information. Notwithstanding anything herein to the contrary, “Information” shall not include, and the Borrower, the other Loan Parties, the DIP Agent, each Lender and the respective Affiliates of each of the foregoing (and the respective partners, directors, officers, employees, agents, advisors and other representatives of the aforementioned Persons), and any other party, may disclose to any and all Persons, without limitation of any kind (a) any information with respect to the United States federal and state income tax treatment of the transactions contemplated hereby and any facts that may be relevant to understanding the United States federal or state income tax treatment of such transactions (“Tax Structure”), which facts shall not include for this purpose the names of the parties or any other person named herein, or information that would permit identification of the parties or such other persons, or any pricing terms or other nonpublic business or financial information that is unrelated to such tax treatment or Tax Structure, and (b) all materials of any kind (including opinions or other tax analyses) that are provided to the Borrower, the DIP Agent or such Lender relating to such tax treatment or Tax Structure.

Section 12.12. Interest Rate Limitation. It is the intention of the parties hereto that each Lender shall conform strictly to usury laws applicable to it. Accordingly, if the transactions contemplated hereby would be usurious as to any Lender under laws applicable to it (including the laws of the United States of America, the State of Texas or any other jurisdiction whose laws may be mandatorily applicable to such Lender notwithstanding the other provisions of this Agreement), then, in that event, notwithstanding anything to the contrary in any of the Loan Documents or any agreement entered into in connection with or as security for the DIP Loans, it is agreed as follows: (i) the aggregate of all consideration which constitutes interest under law applicable to any Lender that is contracted for, taken, reserved, charged or received by such Lender under any of the Loan Documents or agreements or otherwise in connection with the DIP Loans shall under no circumstances exceed the maximum amount allowed by such applicable law, and any excess shall be canceled automatically and if theretofore paid shall be credited by such Lender on the principal amount of the Obligations (or, to the extent that the principal amount of the Obligations shall have been or would thereby be paid in full, refunded by such Lender to the Borrower); and (ii) in the event that the maturity of the DIP Loans is accelerated by reason of an election of the holder thereof resulting from any Event of Default under this Agreement or otherwise, or in the event of any required or permitted prepayment, then such consideration that constitutes interest under law applicable to any Lender may never include more than the maximum amount allowed by such applicable law, and excess interest, if any, provided for in this Agreement or otherwise shall be canceled automatically by such Lender as of the date of such acceleration or prepayment and, if theretofore paid, shall be credited by such Lender on the principal amount of the Obligations (or, to the extent that the principal amount of the Obligations shall have been or would thereby be paid in full, refunded by such Lender to the Borrower). All sums paid or agreed to be paid to any Lender for the use, forbearance or detention of sums due hereunder shall, to the extent permitted by law applicable to such Lender, be amortized, prorated, allocated and spread throughout the stated term of the DIP Loans until payment in full so that the rate or amount of interest on account of any DIP Loans hereunder does not exceed the maximum amount allowed by such applicable law. If at any time and from time to time (A) the amount of interest payable to any Lender on any date shall be computed at the Highest Lawful Rate applicable to such Lender pursuant to this Section 12.12 and (B) in respect of any subsequent interest computation period the amount of interest otherwise payable to such Lender would be less than the amount of interest payable to such Lender computed at the Highest Lawful Rate applicable to such Lender, then the amount of interest payable to such Lender in respect of such subsequent interest computation period shall continue to be computed at the Highest Lawful Rate applicable to such Lender until the total amount of interest payable to such Lender shall equal the total amount of interest which would have been payable to such Lender if the total amount of interest had been computed without giving effect to this Section 12.12.

To the extent that Chapter 303 of the Texas Finance Code is relevant for the purpose of determining the Highest Lawful Rate applicable to a Lender, such Lender elects to determine the applicable rate ceiling under such Chapter by the weekly ceiling from time to time in effect. Chapter 346 of the Texas Finance Code does not apply to the Borrower's obligations hereunder.

Section 12.13. EXCULPATION PROVISIONS. EACH OF THE PARTIES HERETO SPECIFICALLY AGREES THAT IT HAS A DUTY TO READ THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS AND AGREES THAT IT IS CHARGED WITH NOTICE AND KNOWLEDGE OF THE TERMS OF THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS; THAT IT HAS IN FACT READ THIS AGREEMENT AND IS FULLY INFORMED AND HAS FULL NOTICE AND KNOWLEDGE OF THE TERMS, CONDITIONS AND EFFECTS OF THIS AGREEMENT; THAT IT HAS BEEN REPRESENTED BY INDEPENDENT LEGAL COUNSEL OF ITS CHOICE THROUGHOUT THE NEGOTIATIONS PRECEDING ITS EXECUTION OF THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS; AND HAS RECEIVED THE ADVICE OF ITS ATTORNEY IN ENTERING INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS; AND THAT IT RECOGNIZES THAT CERTAIN OF THE TERMS OF THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS RESULT IN ONE PARTY ASSUMING THE LIABILITY INHERENT IN SOME ASPECTS OF THE TRANSACTION AND RELIEVING THE OTHER PARTY OF ITS RESPONSIBILITY FOR SUCH LIABILITY. EACH PARTY HERETO AGREES AND COVENANTS THAT IT WILL NOT CONTEST THE VALIDITY OR ENFORCEABILITY OF ANY EXCULPATORY PROVISION OF THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS ON THE BASIS THAT THE PARTY HAD NO NOTICE OR KNOWLEDGE OF SUCH PROVISION OR THAT THE PROVISION IS NOT "CONSPICUOUS."

Section 12.14. No Third Party Beneficiaries. This Agreement, the other Loan Documents, and the agreement of the Lenders to make DIP Loans are solely for the benefit of the Borrower, and no other Person (including, without limitation, any other Loan Party, any obligor, contractor, subcontractor, supplier or materialsman) shall have any rights, claims, remedies or privileges hereunder or under any other Loan Document against the DIP Agent or any Lender for any reason whatsoever. Except as specified in Section 11.10 and Section 12.03, there are no third party beneficiaries.

Section 12.15. USA Patriot Act Notice. Each Lender hereby notifies the Borrower that pursuant to the requirements of the USA Patriot Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the "Act"), it is required to obtain, verify and record information that identifies the Borrower, which information includes the name and address of the Borrower and other information that will allow such Lender to identify the Borrower in accordance with the Act.

Section 12.16. No Advisory or Fiduciary Responsibility. In connection with all aspects of each transaction contemplated hereby (including in connection with any amendment, waiver or other modification hereof or of any other Loan Document), the Borrower acknowledges and agrees, and acknowledges its Subsidiaries' understanding, that: (a)(i) no fiduciary, advisory or agency relationship between the Borrower and its Subsidiaries and the DIP Agent or any Lender is intended to be or has been created in respect of the transactions contemplated hereby or by the other Loan Documents, irrespective of whether the DIP Agent or any Lender has advised or is advising the Borrower or any Subsidiary on other matters; (ii) the arranging and other services regarding this Agreement provided by the DIP Agent and the Lenders are arm's-length commercial transactions between the Borrower and its Subsidiaries, on the one hand, and the DIP Agent and the Lenders, on the other hand; (iii) the Borrower has consulted its own legal, accounting, regulatory and tax advisors to the extent that it has deemed appropriate; and (iv) the Borrower

is capable of evaluating, and understands and accepts, the terms, risks and conditions of the transactions contemplated hereby and by the other Loan Documents; and (b)(i) the DIP Agent and the Lenders each is and has been acting solely as a principal and, except as expressly agreed in writing by the relevant parties, has not been, is not, and will not be acting as an advisor, agent or fiduciary for the Borrower or any of its Subsidiaries, or any other Person; (ii) none of the DIP Agent nor the Lenders has any obligation to the Borrower or any of its Subsidiaries with respect to the transactions contemplated hereby except those obligations expressly set forth herein and in the other Loan Documents; and (iii) the DIP Agent and the Lenders and their respective Affiliates may be engaged, for their own accounts or the accounts of customers, in a broad range of transactions that involve interests that differ from those of the Borrower and its Subsidiaries, and none of the DIP Agent nor the Lenders has any obligation to disclose any of such interests to the Borrower or its Subsidiaries. To the fullest extent permitted by law, the Borrower hereby waives and releases any claims that it may have against the DIP Agent and the Lenders with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transaction contemplated hereby.

Section 12.17. Electronic Execution of Assignments and Certain Other Documents. The words “execution,” “execute,” “signed,” “signature,” and words of like import in or related to any document to be signed in connection with this Agreement and the transactions contemplated hereby (including without limitation Assignment and Assumptions, Borrowing Request Notices, amendments, waivers and consents) shall be deemed to include electronic signatures, the electronic matching of assignment terms and contract formations on electronic platforms approved by the DIP Agent, or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act; *provided* that notwithstanding anything contained herein to the contrary the DIP Agent is under no obligation to agree to accept electronic signatures in any form or in any format unless expressly agreed to by the DIP Agent pursuant to procedures approved by it.

Section 12.18. [Reserved].

Section 12.19. Joinder of Subsidiaries. Upon the execution and delivery by a Subsidiary and the DIP Agent of a Joinder Agreement and a joinder agreement to the Guaranty Agreement in form and substance satisfactory to the DIP Agent, and delivery to the DIP Agent of such other Security Instruments, documents and opinions with respect to such Subsidiary as may reasonably be requested by the DIP Agent, such Subsidiary shall become a Guarantor hereunder, with the same force and effect as if originally named as such herein, and without the consent of any other party hereto. The rights and obligations of each Loan Party hereunder and under the other Loan Documents shall remain in full force and effect notwithstanding the addition of any Subsidiary as a party to this Agreement.

Section 12.20. Cashless Settlement.

(a) Notwithstanding anything to the contrary contained in this Agreement, any Lender may exchange, continue, or rollover all or a portion of its Loans or DIP Commitments in connection with any refinancing, extension, loan modification, or similar transaction permitted by this Agreement pursuant to a cashless settlement mechanism approved by the Borrower, the DIP Agent and such Lender and such cashless settlement shall be deemed to comply with any requirement hereunder or any other Loan Document

or DIP Order that such payment be made “in dollars,” in “immediately available funds,” “in cash” or any other similar concept.

Section 12.21. Acknowledgement and Consent to Bail-In of Affected Financial Institutions. Notwithstanding anything to the contrary in any Loan Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any Affected Financial Institution arising under any Loan Document, to the extent such liability is unsecured, may be subject to the write-down and conversion powers of the applicable Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

(a) the application of any Write-Down and Conversion Powers by an the applicable Resolution Authority to any such liabilities arising hereunder that may be payable to it by any party hereto that is an Affected Financial Institution; and

(b) the effects of any Bail-in Action on any such liability, including, if applicable:

(i) a reduction in full or in part or cancellation of any such liability;

(ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such Affected Financial Institution, its parent undertaking, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Loan Document; or

(iii) the variation of the terms of such liability in connection with the exercise of the write-down and conversion powers of any the applicable Resolution Authority.

Section 12.22. Acknowledgement Regarding Any Supported QFCs. To the extent that the Loan Documents provide support, through a guarantee or otherwise, for Swap Agreements or any other agreement or instrument that is a QFC (such support, “**QFC Credit Support**” and each such QFC a “**Supported QFC**”), the parties acknowledge and agree as follows with respect to the resolution power of the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act and Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (together with the regulations promulgated thereunder, the “**U.S. Special Resolution Regimes**”) in respect of such Supported QFC and QFC Credit Support (with the provisions below applicable notwithstanding that the Loan Documents and any Supported QFC may in fact be stated to be governed by the laws of the State of New York and/or of the United States or any other state of the United States):

In the event a Covered Entity that is party to a Supported QFC (each, a “**Covered Party**”) becomes subject to a proceeding under a U.S. Special Resolution Regime, the transfer of such Supported QFC and the benefit of such QFC Credit Support (and any interest and obligation in or under such Supported QFC and such QFC Credit Support, and any rights in property securing such Supported QFC or such QFC Credit Support) from such Covered Party will be effective to the same extent as the transfer would be effective under the U.S. Special Resolution Regime if the Supported QFC and such QFC Credit Support (and any such interest, obligation and rights in property) were governed by the laws of the United States or a state of the United States. In the event a Covered Party or a BHC Act Affiliate of a Covered Party becomes subject to a proceeding under a U.S. Special Resolution Regime, Default Rights under the Loan Documents that might otherwise apply to such Supported QFC or any QFC Credit Support that may be exercised against such

Covered Party are permitted to be exercised to no greater extent than such Default Rights could be exercised under the U.S. Special Resolution Regime if the Supported QFC and the Loan Documents were governed by the laws of the United States or a state of the United States.

[SIGNATURES BEGIN NEXT PAGE]

The parties hereto have caused this Agreement to be duly executed as of the day and year first above written.

BORROWER:

VPROP OPERATING, LLC

By: Vista Proppants and Logistics, LLC, its sole member

By: _____
Name: _____
Title: _____

PARENT:

VISTA PROPPANTS AND LOGISTICS, LLC

By: _____
Name: _____
Title: _____

DEBTORS:

LONESTAR PROSPECTS, LTD.,
a Texas limited liability company

By: LONESTAR PROSPECTS MANAGEMENT, L.L.C.,
a Texas limited liability company,
its general partner

By: VPROP OPERATING, LLC,
a Delaware limited liability company,
its sole member

By: VISTA PROPPANTS AND LOGISTICS, LLC,
a Delaware limited liability company,
its sole member

By: _____
Name: _____
Title: _____

LONESTAR PROSPECTS MANAGEMENT, L.L.C.,
a Texas limited liability company

By: VPROP OPERATING, LLC,
a Delaware limited liability company,
its sole member

By: VISTA PROPPANTS AND LOGISTICS, LLC,
a Delaware limited liability company,
its sole member

By: _____
Name: _____
Title: _____

MAALT, L.P.,
a Texas limited partnership

By: DENETZ LOGISTICS, L.L.C.,
a Texas limited liability company,
its general partner

By: VPROP OPERATING, LLC,
a Delaware limited liability company,
its sole member

By: VISTA PROPPANTS AND LOGISTICS, LLC,
a Delaware limited liability company,
its sole member

By: _____
Name: _____
Title: _____

DENETZ LOGISTICS, L.L.C.,
a Texas limited liability company

By: VPROP OPERATING, LLC,
a Delaware limited liability company,
its sole member

By: VISTA PROPPANTS AND LOGISTICS, LLC,
a Delaware limited liability company,
its sole member

By: _____
Name: _____
Title: _____

MAALT SPECIALIZED BULK, LLC,
a Texas limited liability company

By: VPROP OPERATING, LLC,
a Delaware limited liability company,
its sole member

By: VISTA PROPPANTS AND LOGISTICS, LLC,
a Delaware limited liability company,
its sole member

By: _____
Name: _____
Title: _____

DIP AGENT:

ARES CAPITAL CORPORATION, as DIP Agent and Lender

By: _____
Name: _____
Title: _____

LENDERS:

ARES CAPITAL CORPORATION, as a Lender

By: _____
Name: _____
Title: _____

LENDERS:

ARES CAPITAL CP FUNDING LLC, as a Lender

By: _____
Name: _____
Title: _____

AC AMERICAN FIXED INCOME IV, L.P., as a
Lender

By: Ares Capital Management LLC, its investment
manager

By: _____
Name: _____
Title: _____

FEDERAL INSURANCE COMPANY, as a Lender

By: Ares Capital Management LLC, its investment
manager

By: _____
Name: _____
Title: _____

LENDERS:

ARES CENTRE STREET PARTNERSHIP, L.P., as a
Lender

By: Ares Centre Street GP, Inc., as general partner

By: _____
Name: _____
Title: _____

SC ACM PRIVATE DEBT FUND L.P., as a Lender

By: Ares Capital Management LLC, its investment
advisor

By: _____
Name: _____
Title: _____

GREAT AMERICAN LIFE INSURANCE COMPANY,
as a Lender

By: Ares Capital Management LLC, its investment
manager

By: _____
Name: _____
Title: _____

LENDERS:

SA REAL ASSETS 20 LIMITED

By: Ares Management LLC, its investment manager

By: _____
Name: _____
Title: _____

PREMIA LV1 LTD., as a Lender

By: Ares Management LLC, its investment manager

By: Ares Capital Management LLC, as subadvisor

By: _____
Name: _____
Title: _____

LENDERS:

MSD CREDIT OPPORTUNITY FUND, L.P.

By: _____

Name: _____

Title: _____

SOF INVESTMENTS II, L.P.

By: MSD Credit Opportunity Fund, L.P., [its investment manager]

By: _____

Name: _____

Title: _____

LENDERS:

AG ENERGY FUNDING, LLC
In respect of Series 17 as a Lender

By: _____
Name: _____
Title: _____

ANNEX I**DIP COMMITMENTS**

Lender	DIP Commitment
Ares Capital Corporation	\$4,906,288.23
245 Park Avenue, 44th Floor New York, NY 10167 Attn: General Counsel Facsimile No. (212) 750-1777	
Ares Capital CP Funding LLC	-
c/o Ares Capital Corporation, DIP Agent 245 Park Avenue, 44th Floor New York, NY 10167 Attn: General Counsel Facsimile No. (212) 750-1777	
AC American Fixed Income IV, L.P.	\$1,246,789.41
c/o Ares Capital Corporation, DIP Agent 245 Park Avenue, 44th Floor New York, NY 10167 Attn: General Counsel Facsimile No. (212) 750-1777	
Federal Insurance Company	\$837,437.56
c/o Ares Capital Corporation, DIP Agent 245 Park Avenue, 44th Floor New York, NY 10167 Attn: General Counsel Facsimile No. (212) 750-1777	
Ares Centre Street Partnership, L.P.	\$320,598.74
c/o Ares Capital Corporation, DIP Agent 245 Park Avenue, 44th Floor New York, NY 10167 Attn: General Counsel Facsimile No. (212) 750-1777	

Lender	DIP Commitment
SC ACM Private Debt Fund L.P.	\$318,328.40
c/o Ares Capital Corporation, DIP Agent 245 Park Avenue, 44th Floor New York, NY 10167 Attn: General Counsel Facsimile No. (212) 750-1777	
Great American Life Insurance Company	\$159,216.89
c/o Ares Capital Corporation, DIP Agent 245 Park Avenue, 44th Floor New York, NY 10167 Attn: General Counsel Facsimile No. (212) 750-1777	
SA Real Assets 20 Limited	\$118,526.42
c/o Ares Capital Corporation, DIP Agent 245 Park Avenue, 44th Floor New York, NY 10167 Attn: General Counsel Facsimile No. (212) 750-1777	
Premia LVI Ltd.	\$127,307.78
c/o Ares Capital Corporation, DIP Agent 245 Park Avenue, 44th Floor New York, NY 10167 Attn: General Counsel Facsimile No. (212) 750-1777	
MSD Credit Opportunity Fund, L.P.	\$627,881.11
c/o MSD Credit Partners L.P., Lender 645 Fifth Ave, 21st Floor New York, NY 10022 Attn: General Counsel Phone No. (212) 303-1650	

Lender	DIP Commitment
SOF Investments II, L.P.	\$752,671.78
c/o MSD Credit Partners L.P., Lender 645 Fifth Ave, 21st Floor New York, NY 10022 Attn: General Counsel Phone No. (212) 303-1650	
AG Energy Funding, LLC	\$1,584,953.68
c/o Angelo Gordon & Co, L.P., Lender 245 Park Avenue New York, NY 10167 Attn: General Counsel Phone No. (212) 692-2000	
<u>TOTAL</u>	<u>\$11,000,000.00</u>

Execution Version

Exhibit A

FORM OF NOTE

[see attached]

NOTE

[], 2020

FOR VALUE RECEIVED, VPROP OPERATING, LLC, a Delaware limited liability company (the “**Borrower**”), hereby promises to pay to [LENDER], or its permitted assigns (the “**Lender**”), at the principal office of **ARES CAPITAL CORPORATION** (the “**DIP Agent**”), at 245 Park Avenue, 44th Floor, New York, NY 10167, the unpaid principal amount of the DIP Loans made by the Lender to the Borrower under the Credit Agreement (as hereinafter defined), in lawful money of the United States of America and in immediately available funds, on the dates and in the principal amounts provided in the Credit Agreement, and to pay cash interest on the unpaid principal amount of each such DIP Loan, at such office, in like money and funds, for the period commencing on the date of such Loan until such Loan shall be paid in full, at the rates per annum and on the dates provided in the Credit Agreement.

The date, amount, and interest rate of each DIP Loan made by the Lender to the Borrower, and each payment made on account of the principal hereof, shall be recorded by the Lender on its books and, prior to any transfer of this Note (this “**Note**”), may be endorsed by the Lender on **Schedule A** attached hereto or any continuation thereof or on any separate record maintained by the Lender. Failure to make any such notation or to attach a schedule shall not affect any Lender’s or the Borrower’s rights or obligations in respect of such DIP Loans or affect the validity of such transfer by any Lender of this Note.

This Note is one of the Notes referred to in the Senior Secured Debtor-In-Possession Credit Agreement dated as of [], 2020 among the Parent, the Borrower, the Debtors party thereto, the DIP Agent and the Persons party thereto as “**Lenders**,” including the Lender (such Senior Secured Debtor-In-Possession Credit Agreement, as the same may be amended, restated, supplemented, or otherwise modified from time to time, the “**Credit Agreement**”) and evidences the DIP Loans made by the Lender thereunder. Capitalized terms used but not defined herein have the respective meanings given to them in the Credit Agreement.

This Note is issued pursuant to, and is subject to the terms and conditions set forth in, the Credit Agreement and is entitled to the benefits provided for in the Credit Agreement and the other Loan Documents. The Credit Agreement provides for the acceleration of the maturity of the DIP Loans evidenced by this Note upon the occurrence of certain events, for prepayments of the DIP Loans upon the terms and conditions specified therein and other provisions relevant to this Note. The Credit Agreement contains requirements for the transfer of the DIP Loans evidenced by this Note and for the registration of such transfer.

[SIGNATURE PAGE FOLLOWS]

**THIS NOTE SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE
WITH, THE LAWS OF THE STATE OF NEW YORK.**

VPROP Operating, LLC,
a Delaware limited liability company,

By: **Vista Proppants and Logistics, LLC,**
a Delaware limited liability company,
its sole member

By: _____
Name:
Title:

[illegible]

Exhibit B

FORM OF BORROWING REQUEST NOTICE

[_____] , 20[___]

VPROP Operating, LLC, a Delaware limited liability company (the “**Borrower**”), pursuant to Section 2.02 of the Senior Secured Debtor-In-Possession Credit Agreement dated as of [●], 2020 (together with all amendments, restatements, supplements or other modifications thereto, the “**Credit Agreement**”) among the Parent, the Borrower, the Debtors party thereto, Ares Capital Corporation, as DIP Agent, and the Persons party thereto as “lenders”, hereby requests a Borrowing as follows:

Aggregate amount of the requested Borrowing is \$[_____];

Date of such Borrowing is [_____], 20___; and

Location and account number of the Borrower’s account(s)¹ to which funds are to be disbursed, is as follows:

[_____
[_____
[_____
[_____
[_____]

The undersigned certifies on behalf of the Borrower (and not individually) that he/she is the [_____] of the Borrower, and that as such he/she is authorized to execute this Borrowing Request Notice on behalf of the Borrower. The undersigned further certifies, represents and warrants on behalf of the Borrower (and not individually) that all applicable conditions precedent to such Borrowing set forth in Section 6.01 and Section 6.02 of the Credit Agreement including, without limitation, the absence of any Default at the time of and immediately after giving effect to such Borrowing, are satisfied.

Capitalized terms used but not defined herein have the respective meanings given to them in the Credit Agreement.

[Signature page follows]

¹ Loans proceeds required to be placed in the DIP Cash Collateral Account.

EXECUTED AND DELIVERED as of the day first set forth above.

VPROP Operating, LLC,
a Delaware limited liability company,

By: **Vista Proppants and Logistics, LLC,**
a Delaware limited liability company,
its sole member

By: _____
Name:
Title:

Exhibit C

FORM OF COMPLIANCE CERTIFICATE

The undersigned hereby certifies that he/she is the Financial Officer of VPROP Operating, LLC, a Delaware limited liability company (the “**Borrower**”), and that as such he/she is authorized to execute this certificate on behalf of the Borrower. With reference to the Senior Secured Debtor-In-Possession Credit Agreement dated as of [●], 2020 (together with all amendments, restatements, supplements or other modifications thereto being the “**Credit Agreement**”) among the Parent, the Borrower, the Debtors party thereto, Ares Capital Corporation, as DIP Agent, and the Persons party thereto as “Lenders”, the undersigned certifies (in the above capacity on behalf of the Borrower) the following information to be true and correct:

As of the date hereof, no Default has occurred *[or specify Default and describe the details thereof and any action taken or proposed to be taken with respect thereto]*.

No change in GAAP or the application thereof that is applicable to the Borrower has occurred since the date of the audited financial statements referred to in Section 7.04 of the Credit Agreement *[or specify change in GAAP and the effect of such change on the financial statements accompanying this certificate]*.

[Attached hereto are reasonably detailed calculations demonstrating compliance with Section 9.01 of the Credit Agreement as of the end of the [fiscal quarter][fiscal year] ending [_____]..]

Capitalized terms used but not defined herein have the respective meanings given to them in the Credit Agreement.

[Signature page follows]

EXECUTED AND DELIVERED as of the day first set forth above.

VPROP Operating, LLC,
a Delaware limited liability company,

By: **Vista Proppants and Logistics, LLC,**
a Delaware limited liability company,
its sole member

By: _____
Name:
Title:

Exhibit D

RESERVED

Exhibit E**FORM OF ASSIGNMENT AND ASSUMPTION**

This Assignment and Assumption (the “**Assignment and Assumption**”) is dated as of the Effective Date set forth below and is entered into by and between *[Insert name of Assignor]* (the “**Assignor**”) and *[Insert name of Assignee]* (the “**Assignee**”). Capitalized terms used but not defined herein shall have the respective meanings given to them in the Credit Agreement identified below (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, the “**Credit Agreement**”), receipt of a copy of which is hereby acknowledged by the Assignee. The Standard Terms and Conditions set forth in Annex 1 attached hereto are hereby agreed to and incorporated herein by reference and made a part of this Assignment and Assumption as if set forth herein in full.

For an agreed consideration, the Assignor hereby irrevocably sells and assigns to the Assignee, and the Assignee hereby irrevocably purchases and assumes from the Assignor, subject to and in accordance with the Standard Terms and Conditions and the Credit Agreement, as of the Effective Date inserted by the DIP Agent as contemplated below (a) all of the Assignor’s rights and obligations in its capacity as a Lender under the Credit Agreement and any other documents or instruments delivered pursuant thereto to the extent related to the amount and percentage interest identified below of all of such outstanding rights and obligations of the Assignor under the Credit Agreement and (b) to the extent permitted to be assigned under applicable law, all claims, suits, causes of action and any other right of the Assignor (in its capacity as a Lender) against any Person, whether known or unknown, arising under or in connection with the Credit Agreement, any other documents or instruments delivered pursuant thereto or the loan transactions governed thereby or in any way based on or related to any of the foregoing, including, but not limited to, contract claims, tort claims, malpractice claims, statutory claims and all other claims at law or in equity related to the rights and obligations sold and assigned pursuant to clause (a) above (the rights and obligations sold and assigned pursuant to clauses (a) and (b) above being referred to herein collectively as the “**Assigned Interest**”). Such sale and assignment is without recourse to the Assignor and, except as expressly provided in this Assignment and Assumption, without representation or warranty by the Assignor.

1. Assignor: _____
2. Assignee: _____ *and is a[n] [Lender/Affiliate/Related Party]² of [identify Lender]*
3. Borrower: VPROP Operating, LLC, a Delaware limited liability company
4. DIP Agent: Ares Capital Corporation, as the DIP agent under the Credit Agreement.

² Select as applicable.

5. Credit Agreement: The Senior Secured Debtor-In-Possession Credit Agreement dated as of [●], 2020 among the Parent, VPROP Operating, LLC, the Debtors party thereto, Ares Capital Corporation, as DIP Agent and the Persons party thereto as “lenders”.

6. Assigned Interest:

Commitment/Loans Assigned	Aggregate Amount of Commitment/Loans for all Lenders	Amount of Commitment/Loans Assigned	Percentage Assigned of Commitment/Loans ³
	\$	\$	%
	\$	\$	%
	\$	\$	%

Effective Date: _____, 20____ *[TO BE INSERTED BY DIP AGENT AND WHICH SHALL BE THE EFFECTIVE DATE OF RECORDATION OF TRANSFER IN THE REGISTER THEREFOR.]*

The terms set forth in this Assignment and Assumption are hereby agreed to:

ASSIGNOR

[NAME OF ASSIGNOR]

By: _____
Title:

ASSIGNEE

[NAME OF ASSIGNEE]

By: _____
Title:

³ Set forth, to at least 9 decimals, as a percentage of the Commitment/Loans of all Lenders thereunder.

*[Consented to and]*⁴Accepted:

Ares Capital Corporation, as DIP
Agent

By: _____
Title:

[Consented to:]

VPROP Operating, LLC, Borrower⁵

By: _____
Name:
Title:

⁴ To be added only if the consent of the DIP Agent is required by the terms of the Credit Agreement.

⁵ To be added only if the consent of the Borrower is required by the terms of the Credit Agreement.

ANNEX 1

[_____] ⁶STANDARD TERMS AND CONDITIONS FOR
ASSIGNMENT AND ASSUMPTION1. Representations and Warranties.

1.1 Assignor. The Assignor (a) represents and warrants that (i) it is the legal and beneficial owner of the Assigned Interest, (ii) the Assigned Interest is free and clear of any lien, encumbrance or other adverse claim and (iii) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and Assumption and to consummate the transactions contemplated hereby; and (b) assumes no responsibility with respect to (i) any statements, warranties or representations made in or in connection with the Credit Agreement or any other Loan Document, (ii) the execution, legality, validity, enforceability, genuineness, sufficiency or value of the Loan Documents or any collateral thereunder, (iii) the financial condition of the Borrower, any of its Subsidiaries or Affiliates or any other Person obligated in respect of any Loan Document or (iv) the performance or observance by the Borrower, any of its Subsidiaries or Affiliates or any other Person of any of their respective obligations under any Loan Document.

1.2 Assignee. The Assignee (a) represents and warrants that (i) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and Assumption and to consummate the transactions contemplated hereby and to become a Lender under the Credit Agreement, (ii) it satisfies the requirements, if any, specified in the Credit Agreement that are required to be satisfied by it in order to acquire the Assigned Interest and become a Lender, (iii) from and after the Effective Date, it shall be bound by the provisions of the Credit Agreement as a Lender thereunder and, to the extent of the Assigned Interest, shall have the obligations of a Lender thereunder, (iv) it is sophisticated with respect to decisions to acquire assets of the type represented by the Assigned Interest and either it, or the Person exercising discretion in making its decision to acquire the Assigned Interest, is experienced in acquiring assets of such type, (v) it has received a copy of the Credit Agreement, and has received or has been accorded the opportunity to receive copies of the most recent financial statements delivered pursuant to Section 8.01 thereof, as applicable, and such other documents and information as it has deemed appropriate to make its own credit analysis and decision to enter into this Assignment and Assumption and to purchase the Assigned Interest on the basis of which it has made such analysis and decision independently and without reliance on the DIP Agent or any other Lender, (vi) it has, independently and without reliance upon the DIP Agent or any other Lender and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Assignment and Assumption and to purchase the Assigned Interest, and (vii) if it is a Foreign Lender, attached to the Assignment and Assumption is any documentation required to be delivered by it pursuant to the terms of the Credit Agreement, duly completed and executed by the Assignee; and (b) agrees that (i) it will, independently and without reliance upon the DIP Agent, the Assignor or any other Lender, and based on such documents and information as it shall deem

⁶ Describe Credit Agreement at option of DIP Agent.

appropriate at the time, continue to make its own credit decisions in taking or not taking action under the Loan Documents, and (ii) it will perform in accordance with their terms all of the obligations which by the terms of the Loan Documents are required to be performed by it as a Lender.

2. Payments. From and after the Effective Date, the DIP Agent shall make all payments in respect of the Assigned Interest (including payments of principal, interest, fees and other amounts) to the Assignor for amounts which have accrued to but excluding the Effective Date and to the Assignee for amounts which have accrued from and after the Effective Date.

3. General Provisions. This Assignment and Assumption shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns. This Assignment and Assumption may be executed in any number of counterparts, which together shall constitute one instrument. Delivery of an executed counterpart of a signature page of this Assignment and Assumption by facsimile or other electronic transmission (e.g. .pdf) shall be effective as delivery of a manually executed counterpart of this Assignment and Assumption. This Assignment and Assumption shall be governed by, and construed in accordance with, the law of the State of New York.

Exhibit F-1

**FORM OF U.S. TAX COMPLIANCE CERTIFICATE
(FOREIGN LENDERS; NOT PARTNERSHIPS)**

Reference is hereby made to the Senior Secured Debtor-In-Possession Credit Agreement dated as of [●], 2020, among the Parent, VPROP Operating, LLC, a Delaware limited liability company (the “**Borrower**”), the Debtors party thereto, Ares Capital Corporation (the “**DIP Agent**”) and the Persons party thereto as “lenders” (as the same may be amended, restated, supplemented or otherwise modified from time to time, the “**Credit Agreement**”). Capitalized terms used but not defined herein have the respective meanings given to them in the Credit Agreement.

Pursuant to the provisions of Section 5.02(f) of the Credit Agreement, the undersigned hereby certifies that (i) it is the sole record and beneficial owner of the Loan(s) (as well as any Note(s) evidencing such Loan(s)) in respect of which it is providing this certificate, (ii) it is not a bank within the meaning of Section 881(c)(3)(A) of the Code, (iii) it is not a “10 percent equityholder” of the Borrower within the meaning of Section 871(h)(3)(B) of the Code and (iv) it is not a “controlled foreign corporation” related to the Borrower as described in Section 881(c)(3)(C) of the Code.

The undersigned has furnished the DIP Agent and the Borrower with a certificate of its non-U.S. Person status on the applicable IRS Form W-8. By executing this certificate, the undersigned agrees that (1) if the information provided on this certificate changes, the undersigned shall promptly so inform the Borrower and the DIP Agent, and (2) the undersigned shall have at all times furnished the Borrower and the DIP Agent with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments.

[NAME OF LENDER]

By: _____
Name: _____
Title: _____

Date: _____, 20[]

Exhibit F-2

**FORM OF U.S. TAX COMPLIANCE CERTIFICATE
(FOREIGN PARTICIPANTS; NOT PARTNERSHIPS)**

Reference is hereby made to the Senior Secured Debtor-In-Possession Credit Agreement dated as of [●], 2020, among the Parent, VPROP Operating, LLC, a Delaware limited liability company (the “**Borrower**”), the Debtors party thereto, Ares Capital Corporation (the “**DIP Agent**”) and the Persons party thereto as “lenders” (as the same may be amended, restated, supplemented or otherwise modified from time to time, the “**Credit Agreement**”). Capitalized terms used but not defined herein have the respective meanings given to them in the Credit Agreement.

Pursuant to the provisions of Section 5.02(f) of the Credit Agreement, the undersigned hereby certifies that (i) it is the sole record and beneficial owner of the participation in respect of which it is providing this certificate, (ii) it is not a bank within the meaning of Section 881(c)(3)(A) of the Code, (iii) it is not a “10 percent equityholder” of the Borrower within the meaning of Section 871(h)(3)(B) of the Code, and (iv) it is not a “controlled foreign corporation” related to the Borrower as described in Section 881(c)(3)(C) of the Code.

The undersigned has furnished its participating Lender with a certificate of its non-U.S. Person status on the applicable IRS Form W-8. By executing this certificate, the undersigned agrees that (1) if the information provided on this certificate changes, the undersigned shall promptly so inform such Lender in writing, and (2) the undersigned shall have at all times furnished such Lender with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments.

[NAME OF PARTICIPANT]

By: _____

Name: _____

Title: _____

Date: _____, 20[]

Exhibit F-3

**FORM OF U.S. TAX COMPLIANCE CERTIFICATE
(FOREIGN PARTICIPANTS; PARTNERSHIPS)**

Reference is hereby made to the Senior Secured Debtor-In-Possession Credit Agreement dated as of [●], 2020, among the Parent, VPROP Operating, LLC, a Delaware limited liability company (the “**Borrower**”), the Debtors party thereto, Ares Capital Corporation (the “**DIP Agent**”) and the Persons party thereto as “lenders” (as the same may be amended, restated, supplemented or otherwise modified from time to time, the “**Credit Agreement**”). Capitalized terms used but not defined herein have the respective meanings given to them in the Credit Agreement.

Pursuant to the provisions of Section 5.02(f) of the Credit Agreement, the undersigned hereby certifies that (i) it is the sole record owner of the participation in respect of which it is providing this certificate, (ii) its direct or indirect partners/members are the sole beneficial owners of such participation, (iii) with respect to such participation, neither the undersigned nor any of its direct or indirect partners/members is a bank extending credit pursuant to a loan agreement entered into in the ordinary course of its trade or business within the meaning of Section 881(c)(3)(A) of the Code, (iv) none of its direct or indirect partners/members is a “10 percent equityholder” of the Borrower within the meaning of Section 871(h)(3)(B) of the Code, and (v) none of its direct or indirect partners/members is a “controlled foreign corporation” related to the Borrower as described in Section 881(c)(3)(C) of the Code.

The undersigned has furnished its participating Lender with IRS Form W-8IMY accompanied by the applicable IRS Form W-8 from each of its partners/members and such partner’s/member’s beneficial owners (as applicable) that is claiming the portfolio interest exemption. By executing this certificate, the undersigned agrees that (1) if the information provided on this certificate changes, the undersigned shall promptly so inform such Lender and (2) the undersigned shall have at all times furnished such Lender with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments.

[NAME OF PARTICIPANT]

By: _____

Name: _____

Title: _____

Date: _____, 20[]

Exhibit F-4**FORM OF U.S. TAX COMPLIANCE CERTIFICATE
(FOREIGN LENDERS; PARTNERSHIPS)**

Reference is hereby made to the Senior Secured Debtor-In-Possession Credit Agreement dated as of [●], 2020, among the Parent, VPROP Operating, LLC, a Delaware limited liability company (the “**Borrower**”), the Debtors party thereto, Ares Capital Corporation (the “**DIP Agent**”) and the Persons party thereto as “lenders” (as the same may be amended, restated, supplemented or otherwise modified from time to time, the “**Credit Agreement**”). Capitalized terms used but not defined herein have the respective meanings given to them in the Credit Agreement.

Pursuant to the provisions of Section 5.02(f) of the Credit Agreement, the undersigned hereby certifies that (i) it is the sole record owner of the Loan(s) (as well as any Note(s) evidencing such Loan(s)) in respect of which it is providing this certificate, (ii) its direct or indirect partners/members are the sole beneficial owners of such Loan(s) (as well as any Note(s) evidencing such Loan(s)), (iii) with respect to the extension of credit pursuant to this Credit Agreement or any other Loan Document, neither the undersigned nor any of its direct or indirect partners/members is a bank extending credit pursuant to a loan agreement entered into in the ordinary course of its trade or business within the meaning of Section 881(c)(3)(A) of the Code, (iv) none of its direct or indirect partners/members is a “10 percent equityholder” of the Borrower within the meaning of Section 871(h)(3)(B) of the Code, and (v) none of its direct or indirect partners/members is a “controlled foreign corporation” related to the Borrower as described in Section 881(c)(3)(C) of the Code.

The undersigned has furnished the DIP Agent and the Borrower with IRS Form W-8IMY accompanied by the applicable IRS Form W-8 from each of its partners/members and such partner’s/member’s beneficial owners (as applicable) that is claiming the portfolio interest exemption. By executing this certificate, the undersigned agrees that (1) if the information provided on this certificate changes, the undersigned shall promptly so inform the Borrower and the DIP Agent, and (2) the undersigned shall have at all times furnished the Borrower and the DIP Agent with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments.

[NAME OF LENDER]

By: _____

Name: _____

Title: _____

Date: _____, 20[]

Exhibit G

INITIAL BUDGET

[see attached]

Exhibit B

DIP Budget

Actuals / Forecast Week Number Week Ending	Post-Petition																	06/12/20 10/02/20 17 Weeks
	Forecast 2020-23 6/12	Forecast 2020-24 6/19	Forecast 2020-25 6/26	Forecast 2020-26 7/3	Forecast 2020-27 7/10	Forecast 2020-28 7/17	Forecast 2020-29 7/24	Forecast 2020-30 7/31	Forecast 2020-31 8/7	Forecast 2020-32 8/14	Forecast 2020-33 8/21	Forecast 2020-34 8/28	Forecast 2020-35 9/4	Forecast 2020-36 9/11	Forecast 2020-37 9/18	Forecast 2020-38 9/25	Forecast 2020-39 10/2	
	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	
Total Receipts	\$ 717	\$ 722	\$ 975	\$ 576	\$ 515	\$ 461	\$ 588	\$ 370	\$ 332	\$ 299	\$ 269	\$ 847	\$ 218	\$ 197	\$ 178	\$ 162	\$ 147	\$ 7,573
Payroll & Benefits	-	(240)	(8)	(248)	(64)	(99)	(0)	(99)	(64)	(99)	(0)	(99)	(64)	(99)	(0)	(99)	(0)	(1,286)
Freight	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Repairs & Maintenance	-	-	-	(25)	-	-	-	(25)	-	-	-	(10)	-	-	-	-	(10)	(70)
Insurance	-	(1,021)	-	(218)	-	-	-	(218)	-	-	-	(218)	-	-	-	-	(218)	(1,892)
Rentals & Leases	-	(6)	(6)	(6)	(33)	(8)	(8)	(8)	(33)	(8)	(8)	(8)	(31)	(6)	(6)	(6)	(6)	(183)
Railcar Lease	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Other Operating Disbursements	-	(31)	(41)	(166)	(39)	(39)	(49)	(174)	(36)	(36)	(46)	(121)	(29)	(29)	(29)	(39)	(114)	(1,021)
Operating Disbursements	-	(1,298)	(55)	(662)	(136)	(146)	(57)	(524)	(133)	(143)	(54)	(456)	(125)	(135)	(35)	(145)	(348)	(4,452)
Ordinary Course Professionals	-	-	-	(50)	-	-	(50)	-	-	-	(50)	-	-	-	-	(50)	-	(200)
Other Disbursements	-	-	-	(15)	-	-	-	(44)	-	-	-	(59)	-	-	-	-	(104)	(222)
Other Disbursements	-	-	-	(65)	-	-	(50)	(44)	-	-	(50)	(59)	-	-	-	(50)	(104)	(422)
GHMR Debt Service	-	-	-	(133)	-	-	-	(133)	-	-	-	(133)	-	-	-	-	(133)	(530)
Debt Service	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Royalties	-	-	-	(164)	-	-	-	(164)	-	-	-	(164)	-	-	-	-	(164)	(654)
Debt Service & Royalties	-	-	-	(296)	-	-	-	(296)	-	-	-	(296)	-	-	-	-	(296)	(1,184)
Specified Advisors	-	-	-	(315)	-	(200)	(495)	(215)	-	(200)	-	(757)	-	(180)	-	-	(1,418)	(3,780)
Agent Advisors	-	-	-	-	-	-	(480)	-	-	-	-	(500)	-	-	-	-	(875)	(1,855)
Other Advisors	-	-	-	-	-	-	-	-	-	-	-	(80)	-	-	-	-	(220)	(300)
Restructuring Costs	-	(343)	(50)	(50)	(50)	(50)	(50)	(50)	-	-	(45)	-	-	-	-	(38)	-	(725)
Advisor Fees	-	(343)	(50)	(365)	(50)	(250)	(1,025)	(265)	-	(200)	(45)	(1,337)	-	(180)	-	(38)	(2,513)	(6,660)
ABL Draws / (Paydowns)	(717)	(634)	(560)	(494)	(437)	(386)	(341)	(301)	(266)	(235)	(207)	(183)	(162)	(143)	(126)	(112)	(99)	(5,402)
Financing Activity	(717)	(634)	(560)	(494)	(437)	(386)	(341)	(301)	(266)	(235)	(207)	(183)	(162)	(143)	(126)	(112)	(99)	(5,402)
Net Cash Flow	-	(1,553)	310	(1,307)	(108)	(321)	(885)	(1,059)	(67)	(280)	(87)	(1,484)	(68)	(260)	17	(183)	(3,213)	(10,547)
Beginning Cash Balance	-	3,395	1,842	2,152	845	2,678	2,357	1,472	414	2,287	2,007	1,920	436	3,763	3,503	3,519	3,336	-
Net Cash Flow	-	(1,553)	310	(1,307)	(108)	(321)	(885)	(1,059)	(67)	(280)	(87)	(1,484)	(68)	(260)	17	(183)	(3,213)	(10,547)
DIP Loan - Ares	3,395	-	-	-	1,940	-	-	-	1,940	-	-	-	3,395	-	-	-	-	10,670
Ending Cash Balance	\$ 3,395	\$ 1,842	\$ 2,152	\$ 845	\$ 2,678	\$ 2,357	\$ 1,472	\$ 414	\$ 2,287	\$ 2,007	\$ 1,920	\$ 436	\$ 3,763	\$ 3,503	\$ 3,519	\$ 3,336	\$ 123	\$ 123
ABL Balance	14,880	14,246	13,687	13,192	12,755	12,370	12,029	11,728	11,462	11,227	11,020	10,836	10,675	10,532	10,405	10,294	10,195	10,195
DIP Loan Balance	3,500	3,500	3,500	3,500	5,500	5,500	5,500	5,500	7,500	7,500	7,500	7,500	11,000	11,000	11,000	11,000	11,000	11,000
Total Lines of Credit Balance	18,380	17,746	17,187	16,692	18,255	17,870	17,529	17,228	18,962	18,727	18,520	18,336	21,675	21,532	21,405	21,294	21,195	21,195