

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

In re:

HRI HOLDING CORP., *et al.*<sup>1</sup>

Debtors.

Chapter 11

Case No. 19-12415 (\_\_\_)

(Joint Administration Requested)

**MOTION OF THE DEBTORS AND DEBTORS-IN-POSSESSION FOR INTERIM AND FINAL ORDERS (I) AUTHORIZING THE DEBTORS TO (A) OBTAIN POST-PETITION FINANCING, (B) GRANT LIENS AND SUPERPRIORITY ADMINISTRATIVE EXPENSE CLAIMS TO POST-PETITION LENDERS AND (C) UTILIZE CASH COLLATERAL, (II) PROVIDING ADEQUATE PROTECTION TO THE PRE-PETITION SECURED PARTIES, (III) MODIFYING THE AUTOMATIC STAY, (IV) GRANTING RELATED RELIEF, PURSUANT TO 11 U.S.C. SECTIONS 105, 361, 362, 363, 364 AND 507, AND (V) SCHEDULING A FINAL HEARING PURSUANT TO BANKRUPTCY RULE 4001 AND LOCAL RULE 4001-2**

The above-captioned debtors and debtors-in-possession (the “Debtors”) by and through their proposed undersigned counsel, hereby file this motion (the “Motion”) for the entry of an interim order substantially in the form of the proposed order annexed hereto (the “Interim Order”)<sup>2</sup> and a final order (the “Final Order,” and together with the Interim Order, the “DIP Orders”) authorizing the Debtors, pursuant to title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq.* (as amended or modified, the “Bankruptcy Code”), including sections 105, 361, 362,

<sup>1</sup> The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number, are: HRI Holding Corp. (4677), Houlihan’s Restaurants, Inc. (8489), HDJG Corp. (3479), Red Steer, Inc. (2214), Sam Wilson’s/Kansas, Inc. (5739), Darryl’s of St. Louis County, Inc. (7177), Darryl’s of Overland Park, Inc. (3015), Houlihan’s of Ohio, Inc. (6410), HRI O’Fallon, Inc. (4539), Algonquin Houlihan’s Restaurant, L.L.C. (0449), Geneva Houlihan’s Restaurant, L.L.C. (3156), Hanley Station Houlihan’s Restaurant, LLC (4948), Houlihan’s Texas Holdings, Inc. (5485), Houlihan’s Restaurants of Texas, Inc. (4948), JGIL Mill OP LLC (0741), JGIL Millburn, LLC (6071), JGIL Milburn Op LLC (N/A), JGIL, LLC (5485), JGIL Holding Corp. (N/A), JGIL Omaha, LLC (5485), HOP NJ NY, LLC (1106), HOP Farmingdale LLC (7273), HOP Cherry Hill LLC (5012), HOP Paramus LLC (5154), HOP Lawrenceville LLC (5239), HOP Brick LLC (4416), HOP Secaucus LLC (5946), HOP Heights LLC (6017), HOP Bayonne LLC (7185), HOP Fairfield LLC (8068), HOP Ramsey LLC (8657), HOP Bridgewater LLC (1005), HOP Parsippany LLC (1520), HOP Westbury LLC (2352), HOP Weehawken LLC (2571), HOP New Brunswick LLC (2637), HOP Holmdel LLC (2638), HOP Woodbridge LLC (8965), and Houlihan’s of Chesterfield, Inc. (5073). The Debtors’ corporate headquarters and the mailing address is 8700 State Line Road, Suite 100, Leawood, Kansas 66206.

<sup>2</sup> Capitalized terms used herein and not otherwise defined herein have the meanings given to them in the Interim Order and the DIP Credit Agreement, as applicable.



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363, 364(c)(1), 364(c)(2), 364(c)(3), 364(d), and 507(b) thereof, and the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), including rules 2002, 4001, 6004 and 9014, to:

(i) obtain postpetition loans, advances and other financial accommodations (the “Postpetition Financing”) pursuant to and in accordance with the terms and conditions of that certain Debtor-In-Possession Credit Agreement (as it may be amended, modified, supplemented, extended, restated or replaced from time to time, the “DIP Credit Agreement”), substantially in the form annexed to the Interim Order as **Exhibit 1**, by and among the Debtors, as borrowers, CIT Bank, National Association, in its capacity as administrative agent and collateral agent, (in such capacity, “DIP Agent”) and the financial institutions from time to time party thereto, as lenders, (collectively, including any financial institution that may issue letters of credit on behalf of any Debtor, “DIP Lenders” and together with the DIP Agent, the “DIP Secured Parties”); (ii) grant Liens and superpriority administrative expense claims to Post-Petition Lenders; (iii) utilize cash collateral, (iv) provide adequate protection to the Pre-Petition Secured Parties; (v) modify the automatic stay, (vi) granting related relief, and (vii) scheduling a final hearing on the Motion (“Final Hearing”). In support of the Motion, the Debtors rely on the *Declaration of Matthew R. Manning in Support of the Debtors’ Chapter 11 Petitions and First Day Pleadings* (the “First Day Declaration”) and the *Declaration of Jean E. Hosty in Support of the Motion of the Debtors and Debtors-in-Possession for Interim and Final Orders (I) Authorizing the Debtors to (A) Obtain Post-Petition Financing, (B) Grant Liens and Superpriority Administrative Expense Claims to Post-Petition Lenders and (C) Utilize Cash Collateral, (II) Providing Adequate Protection to the Pre-Petition Secured Parties, (III) Modifying The Automatic Stay, (IV) Granting Related Relief, Pursuant to 11 U.S.C. Sections 105, 361, 362, 363, 364 and 507, and (V) Scheduling a Final Hearing Pursuant to Bankruptcy Rule 4001 and Local Rule 4001-2* (the

“Hosty Declaration” and together with the First Day Declaration, the “Declarations”). In further support of this Motion, the Debtors submit as follows:

### **PRELIMINARY STATEMENT**

The Debtors have secured a debtors-in-possession credit facility in a maximum principal amount of up to \$5,000,000 through the earlier of (i) the closing of a sale approved by the Court and (ii) January 31, 2020. To continue operating in the ordinary course while formulating and seeking approval of the terms of a sale of substantially all of the Debtors’ assets pursuant to Bankruptcy Code section 363 during this period, the Debtors need to access liquidity. The Debtors will obtain this liquidity from the use of cash collateral and the DIP Facility. However, the use of cash collateral alone would be insufficient to meet the Debtors’ postpetition liquidity needs and provide appropriate assurances to customers, vendors and employees during this period. In fact, without the DIP Facility, the Debtors would not be able to operate at all for more than a few days into these Chapter 11 Cases. Therefore, additional financing is necessary to maintain the value of the Debtors’ businesses and, ultimately, effectuate a successful sale and reorganization process.

As discussed below and in the Hosty Declaration, the Debtors’ decision to proceed with the DIP Facility comes after a dedicated and diligent search for other and better financing alternatives. The DIP Facility is the best, and likely the only, available source of financing and provides the Debtors with the liquidity they need to operate during these Chapter 11 Cases. The DIP Facility was negotiated at arm’s length on terms that are reasonable. Thus, to ensure the Debtors’ access to sufficient liquidity that will provide the foundation for maximizing value for all stakeholders, the DIP Facility should be approved. Such approval is requested on an interim basis for funding up to \$3,200,000 (the “Interim DIP Amount”), which the Debtors require over

the next several weeks, and on a final basis for funding up to a total of \$5,000,000 required to operate through the expected conclusion of the proposed sale process.

### **JURISDICTION AND VENUE**

1. The Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference from the United States District Court for the District of Delaware* dated as of February 29, 2012. Venue is proper in this district pursuant to 28 U.S.C. § 1408. This matter is core within the meaning of 28 U.S.C. § 157(b)(2).<sup>3</sup>

2. The bases for the relief requested herein are sections 105, 361, 362, 363, 364(c)(1), 364(c)(2), 364(c)(3), 364(d), and 507(b) of title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq.* (as amended or modified, the “Bankruptcy Code”), rules 2002, 4001, 6004 and 9014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) and Local Rules 2002-1, 4001-2 and 9013-1.

### **BACKGROUND**

#### **A. General Background**

3. On the date hereof (the “Petition Date”), the Debtors commenced the above-captioned chapter 11 cases (the “Chapter 11 Cases”) by filing voluntary petitions for relief under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware (the “Court”).

4. The Debtors continue to operate their businesses and manage their properties as debtors-in-possession pursuant to Bankruptcy Code sections 1107(a) and 1108.

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<sup>3</sup> Pursuant to rule 9013-1(f) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”), the Debtors hereby confirm their consent to entry of a final order by the Court in connection with this Motion if it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments consistent with Article III of the United States Constitution.

5. As of the date of this Motion, no trustee, examiner or statutory committee has been appointed in these Chapter 11 Cases.

6. Additional information regarding the circumstances leading to the commencement of these Chapter 11 Cases and information regarding the Debtors' businesses and capital structure is set forth in detail in the Declarations filed contemporaneously with this Motion and incorporated herein by reference.

**B. The Debtors' Liquidity Needs**

***The Prepetition Obligations***

7. Prior to the Petition Date, the Pre-Petition Secured Parties made loans, advances and provided other financial accommodations to certain of the Debtors pursuant that certain Credit and Guaranty Agreement dated as of December 17, 2015 (the "Pre-Petition Credit Agreement"), among (1) HDJG Merger Corp., (2) HRI Holding Corp., (3) Houlihan's Restaurants, Inc., and the other Borrowers (as defined in the Pre-Petition Credit Agreement) thereto, (4) HDJG Corp. and the other Guarantors (as defined in the Pre-Petition Credit Agreement), (5) the Lenders (as defined in the Pre-Petition Credit Agreement) from time to time party thereto, and (6) CIT Bank, N.A. (the "Pre-Petition Agent"), as Administrative Agent (as amended or modified, the "Pre-Petition Credit Agreement").

8. As of the Petition Date, the aggregate amount of all Obligations (as defined in the Pre-Petition Credit Agreement) owing by Pre-Petition Borrowers to the Pre-Petition Secured Parties under and in connection with the Pre-Petition Financing Documents was not less than (a) \$44,583,642, plus interest accrued and accruing thereon at the rate in effect on the Petition Date, including (b) outstanding letters of credit in the aggregate amount of \$1,824,569, plus (c) accrued and accruing fees, plus (d) all accrued and accruing costs and expenses (including

attorneys' fees and legal expenses), plus (e) any other charges and liabilities accrued, accruing or chargeable, whether due or to become due, matured or contingent, under the Pre-Petition Credit Agreement (collectively, "Pre-Petition Obligations").

9. The Pre-Petition Obligations were secured pursuant to the Pre-Petition Financing Documents by valid, binding, perfected, enforceable and non-avoidable first priority security interests and liens ("Pre-Petition Credit Liens") granted by Borrower to the Pre-Petition Agent, for the benefit of itself and the Pre-Petition Lenders, upon the Collateral (hereafter "Pre-Petition Collateral"), subject only to any valid, perfected and unavoidable lien or security interest otherwise existing as of the Petition Date, which are acknowledged to be senior in priority under the Pre-Petition Credit Agreement (collectively, "Prior Permitted Liens" and each a "Prior Permitted Lien").

10. The purpose of these Chapter 11 Cases, which have been consented to by each of the Pre-Petition Secured Parties and the Pre-Petition Agent, is to conduct a sale of the Debtors' assets. The DIP Facility and the sale process will accomplish this goal.

***Debtors' Liquidity***

11. The Debtors do not currently have sufficient available cash. Based on expected receipts and disbursements in the ordinary course of business, the Debtors' cash balance will, absent new financing, drop to near or below zero within a few days. Accordingly, the use of Cash Collateral alone will not be sufficient to fund these Chapter 11 Cases through a sale process. Without additional cash resources being made immediately available, the Debtors will be unable to provide comfort to their customers, vendors and employees that might otherwise discontinue business with the Debtors during the proposed sale process.

12. Accordingly, a critical need exists for the Debtors to obtain funds in order to continue the operation of their businesses and consummate an orderly sale of their assets. The Debtors are unable to obtain the required funds (i) in the forms of (x) unsecured credit or debt allowable under Bankruptcy Code section 503(b)(1), (y) an administrative expense pursuant to Bankruptcy Code sections 364(a) or (b), (z) unsecured debt having the priority afforded by Bankruptcy Code section 364(c)(1) or (w) debt secured only as described in Bankruptcy Code sections 364(c)(2) or (3); or (ii) on terms more favorable than those offered by the DIP Lender.

13. The Debtors have requested that, pursuant to the terms of the DIP Financing Documents, the Prepetition Secured Lenders permit the use of Cash Collateral and the DIP Lenders make loans and advances and provide other financial accommodations to the Debtors (in the amount set forth in the Interim Order in the first instance, on an interim basis, and for the balance of the DIP Facility, on a final basis). The ability of the Debtors to continue to operate their businesses through their proposed sale process, and indeed in the very immediate future, depends on the Debtors obtaining this financing. The DIP Lenders are only willing to make these loans and advances and provide other financial accommodations on a priming secured and superpriority administrative basis, as more particularly described herein.

14. Accordingly, the relief requested in this Motion is necessary, essential and appropriate for the continued operation of the Debtors' businesses and the management and preservation of their assets and properties through the proposed sale process, and is in the best interests of the Debtors, their estates and creditors.

15. The terms of the DIP Facility have been negotiated at arm's length and in "good faith," as that term is used in Bankruptcy Code section 364(e), and are in the best interests of the Debtors, their estates and creditors. The DIP Lenders are extending financing to the Debtors in

good faith, and the DIP Lenders are entitled to the benefits of the provisions of Bankruptcy Code section 364(e).

16. The relief requested by this Motion is necessary to avoid harm to the Debtors' estates, and good, adequate and sufficient cause has been shown to justify the granting of the relief requested herein, and the immediate entry of the Interim Order. The terms of the DIP Facility and the use of Cash Collateral are fair and reasonable under the facts and circumstances of these Chapter 11 Cases, reflect the Debtors' exercise of prudent business judgment consistent with their fiduciary duties, and constitute reasonably equivalent value and fair consideration.

**C. The Debtors' Efforts to Obtain DIP Financing**

17. The Debtors have been unable to obtain the required funds in the forms of (i) unsecured credit or debt allowable under Bankruptcy Code section 503(b)(1), (ii) an administrative expense pursuant to Bankruptcy Code sections 364(a) or (b), (iii) unsecured debt having the priority afforded by Bankruptcy Code section 364(c)(1) or (iv) debt secured only as described in Bankruptcy Code sections 364(c)(2) or (3).

18. It is unlikely that any other lender would provide financing to the Debtors at this stage. The DIP Facility is a strictly limited loan for a very short duration (78 days at most) intended to provide the Debtors with the minimal cash needed to proceed with their proposed asset sale. Based on the Investment Banker's (as hereinafter defined) experience with numerous similar financings, absent the Prepetition Secured Parties' consent to be primed, the Debtors are unable to secure alternative financing. Accordingly, it is not surprising that the DIP Lenders are not only the best source of postpetition financing, but the only source of postpetition financing for the Debtors. Further, the terms and conditions of the DIP Facility are well within the range of commercial reasonableness.

**D. DIP Financing Documents and DIP Obligations**

19. To the extent requested by the DIP Lenders, the Debtors may enter into and deliver the DIP Financing Documents, including such additional documents, instruments, notes, and agreements that are consistent with the terms of the DIP Orders as may be reasonably required by the DIP Lenders to implement the terms or effectuate the purposes of the DIP Orders.

**E. Development of the Budget**

20. The budget for the Debtors' receipts and disbursements during these Chapter 11 Cases (the "DIP Budget") is attached to the Interim Order as **Exhibit 2**. To best assess the Debtors' funding needs during these Chapter 11 Cases, the Debtors have analyzed their cash needs to determine what is necessary to maintain their operations in chapter 11 and work toward a successful sale (to close on or before December 31, 2019) and reorganization. In undertaking this analysis, the Debtors and their advisors have considered the Debtors' near-term projected financial performance, including trends in the Debtors' industry and the cost to better optimize the Debtors' operations.

21. As part of the Debtors' financial review and analysis, the Debtors developed a cash flow forecast that takes into account anticipated cash receipts and disbursements during the projected 7 week sale period. This forecast considers a number of factors, including the impact of the chapter 11 filing, material cash disbursements, required vendor payments, cash flows from the Debtors' ongoing operations, and the cost of necessary services and maintenance and includes all of the expenditures for which the Debtors seek authority to pay in various "First-Day" pleadings.

22. Utilizing this cash flow forecast to project its cash needs during these Chapter 11 Cases, the Debtors believe that the proposed DIP Facility will provide the Debtors with sufficient liquidity to fund their operations during the early stages of these Chapter 11 Cases, through the projected sale closing date, with an agreed minimum cash balance as set forth in the DIP Budget. The immediate availability of the DIP Facility, in the Interim Order Amount on an interim basis, is necessary to provide assurance of payment and “business as usual” continued operations to customers, vendors and employees. Without such assurances, vendors may very well refuse to provide goods and services to the Debtors and/or require cumbersome credit terms, which could negatively affect the Debtors’ sale and reorganization efforts and the Debtors’ bankruptcy estates as a whole. Further, customers may take their business elsewhere, and employees—one of the Debtors’ most crucial assets—may seek alternative employment. As described above and as set forth in the DIP Budget, the Debtors’ use of Cash Collateral will be insufficient in itself to carry the Debtors through the proposed sale process.

23. The Debtors (in consultation with their advisors) have determined that (i) the DIP Budget is reasonable and will allow the Debtors to operate in these Chapter 11 Cases and (ii) the DIP Budget includes all reasonable, necessary and foreseeable expenses to be incurred for the period set forth in the DIP Budget through the proposed sale period. To be clear, the DIP Budget depends on an asset sale on terms equal or better to those proposed in the stalking horse bid. The DIP Facility will finance the Debtors through the anticipated sale closing date.

**F. Concise Statement Pursuant to Bankruptcy Rule 4001(b) and (c)**

24. Pursuant to Bankruptcy Rule 4001(b) and (c), the Debtors submit this concise statement of the material terms of the DIP Facility, as specified in the Interim Order.<sup>4</sup>

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<sup>4</sup> The summaries and descriptions of the terms and conditions of the DIP Credit Agreement and the Interim Order set forth in this motion are intended solely for informational purposes to provide the Court and parties in interest with

<b>Provision</b>	<b>Summary Description</b>
<b>Facility Structure</b>  <i>Fed. R. Bankr. P. 4001(c)(1)(B)</i>  <i>Del. Bankr. L.R. 4001-2(a)(ii)</i>	Revolving advance loan facility  <i>See DIP Credit Agreement § 2.01(a)</i>
<b>Borrower</b>  <i>Fed. R. Bankr. P. 4001(c)(1)(B)</i>	HRI HOLDING CORP., HOULIHAN'S RESTAURANTS, INC., RED STEER, INC., SAM WILSON'S/KANSAS, INC., DARRYL'S OF ST. LOUIS COUNTY, INC., DARRYL'S OF OVERLAND PARK, INC., HOULIHAN'S OF CHESTERFIELD, INC., HOULIHAN'S OF OHIO, INC., HRI O'FALLON, INC., ALGONQUIN HOULIHAN'S RESTAURANT, L.L.C., GENEVA HOULIHAN'S RESTAURANT, L.L.C., HANLEY STATION HOULIHAN'S RESTAURANT, LLC, HOULIHAN'S TEXAS HOLDINGS, INC., and HOULIHAN'S RESTAURANTS OF TEXAS, INC.  <i>See DIP Credit Agreement at Preamble, § 1.01</i>  <i>See Interim Order at ¶ 1</i>
<b>Guarantors</b>  <i>Fed. R. Bankr. P. 4001(c)(1)(B)</i>	JGIL MILL OP LLC, JGIL MILLBURN LLC, JGIL, LLC, and JGIL OMAHA, LLC  <i>See DIP Credit Agreement at Preamble, § 1.01</i>
<b>Security Agent</b>  <i>Fed. R. Bankr. P. 4001(c)(1)(B)</i>	None
<b>Postpetition Lender</b>  <i>Fed. R. Bankr. P. 4001(c)(1)(B)</i>	CIT Bank, N.A., Garrison Funding 2018-1 LP, Garrison Funding 2018-2 LTD, Garrison MML CLO 2019-1 LP  <i>See DIP Credit Agreement at Preamble at § 1.01</i>  <i>See Interim Order at ¶ 1</i>

an overview of significant terms thereof and should only be relied upon as such. This motion is qualified in its entirety by reference to the provisions of the DIP Credit Agreement and the Interim Order. In the event that there is a conflict between this motion and the DIP Credit Agreement, the DIP Credit Agreement shall control in all respects, or in the case of a conflict between this motion and/or the DIP Credit Agreement and the Interim Order, the Interim Order shall control in all respects.

<b>Provision</b>	<b>Summary Description</b>
<p><b>Interest Rate</b></p> <p><i>Fed. R. Bankr. P. 4001(c)(1)(B)</i></p> <p><i>Del. Bankr. L.R. 4001-2(a)(ii)</i></p>	<p>Subject to the provisions of DIP Credit Agreement § 2.08(b), (i) each LIBOR Loan shall bear interest on the outstanding principal amount thereof for each Interest Period at a rate per annum equal to the sum of (A) the LIBO Rate for such Interest Period <u>plus</u> (B) the Applicable Margin; and (ii) each Base Rate Loan bear interest on the outstanding principal amount thereof from the applicable borrowing or conversion date at a rate per annum equal to the (A) Base Rate <u>plus</u> (B) the Applicable Margin.</p> <p>“Applicable Margin” means the following percentages per annum: with respect to Revolving Loans, 7.00% for Base Rate Loans and 8.00 % for LIBOR Loans.</p> <p><i>See</i> DIP Credit Agreement at §§ 1.01, 2.08(a)</p>
<p><b>Default Interest Rate</b></p> <p><i>Fed. R. Bankr. P. 4001(c)(1)(B)</i></p> <p><i>Del. Bankr. L.R. 4001-2(a)(ii)</i></p>	<p>(a) when used with respect to Obligations other than a LIBOR Loan, an interest rate equal to (i) the Base Rate <u>plus</u> (ii) the Applicable Margin applicable to Base Rate Loans <u>plus</u> (iii) 2% per annum; and (b) when used with respect to a LIBOR Loan, an interest rate equal to (i) the LIBO Rate applicable to such LIBOR Loan <u>plus</u> (ii) the Applicable Margin applicable to LIBOR Loans <u>plus</u> (iii) 2% per annum. Interest Accruing at the Default Rate shall be immediately payable upon demand.</p> <p><i>See</i> DIP Credit Agreement at §§ 1.01, 2.08(b)</p> <p><i>See</i> Interim Order at § I(E)</p>
<p><b>Fees</b></p> <p><i>Fed. R. Bankr. P. 4001(c)(1)(B)</i></p>	<p>The Borrowers shall pay, or cause to be paid, to the Administrative Agent for the account of each Revolving Lender in accordance with its Pro Rata Share, an unused fee equal to the product of (i) one-half of one percent (.50%) per annum <u>times</u> (ii) the average daily amount by which the total Revolving Commitments exceed the total outstanding amount of Revolving Loans.</p> <p>On the Closing Date, the Borrowers shall pay, or cause to be paid, to Administrative Agent for the for the account of each Revolving Lender in accordance with its Pro Rata Share, a closing fee equal to 5.00% of the total Revolving Commitments on the Closing Date. Such fee shall be fully earned when paid and shall be non-refundable for any reason whatsoever.</p> <p><i>See</i> DIP Credit Agreement at § 2.09</p>

<b>Provision</b>	<b>Summary Description</b>
	<i>See Interim Order at § I(E)</i>
<b>Maturity Date</b>  <i>Fed. R. Bankr. P. 4001(c)(1)(B)</i>  <i>Del. Bankr. L.R. 4001-2(a)(ii)</i>	<p>The earlier to occur of: (i) the closing of an Approved 363 Sale; and (ii) January 31, 2020.</p> <p><i>See DIP Credit Agreement at § 1.01</i></p>
<b>Use of Proceeds/ Advances and Cash Collateral</b>  <i>Fed. R. Bankr. P. 4001(b)(1)(B)</i>	<p>The advances under the DIP Facility (the “<b>Advances</b>”) shall be used in each case in a manner consistent with the terms and conditions of the DIP Financing Agreements, and in accordance with and as may be limited by the DIP Budget (subject to any variances thereto permitted under the terms and conditions of the DIP Credit Agreement), solely as follows:</p> <ul style="list-style-type: none"> <li>a) to pay fees, costs, and expenses as provided in the DIP Financing Documents, including amounts incurred in connection with the preparation, negotiation, execution and delivery of the DIP Credit Agreement and the other DIP Financing Documents;</li> <li>b) for general operating and working capital purposes, for the payment of fees, expenses, and costs incurred in connection with the Cases, and other proper corporate purposes of the Debtors not otherwise prohibited by the terms hereof for working capital, and other lawful corporate purposes of the Debtors;</li> <li>c) for making other payments as provided in this Interim Order; and</li> <li>d) to fund the Carve-Out Reserve Account</li> </ul> <p><i>See Interim Order at § I(C)(5)</i></p> <p><i>See DIP Credit Agreement at § 6.11</i></p>
<b>Milestones</b>  <i>Fed. R. Bankr. P. 4001(b)(1)(B) and (c)(1)(B)</i>	<p>The Interim Order establishes the following milestones:</p> <ul style="list-style-type: none"> <li>• Entry of the Final Order on or before twenty-five (25) days from the Petition Date, unless otherwise agreed in writing by the Pre-Petition Agent;</li> </ul>

Provision	Summary Description
	<ul style="list-style-type: none"> <li>• Bid Procedures Motion filed on or the second day following the Petition Date;</li> <li>• Entry of the Bid Procedures Order on or before December 5, 2019;</li> <li>• File the Approved 363 Sale Motion on or before the second day following the Petition Date;</li> <li>• Entry of the Approved 363 Sale Order by the Bankruptcy Court on or before December 20, 2019.</li> </ul> <p><i>See Interim Order at §§ VII(A)(3)-(7)</i></p>
<p><b>Conditions Precedent</b></p> <p><i>Fed. R. Bankr. P. 4001(c)(1)(B)</i></p> <p><i>Del. Bankr. L.R. 4001-2(a)(ii)</i></p>	<p>The obligation of each Lender to make its initial Credit Extension is subject to satisfaction of the following conditions precedent:</p> <ul style="list-style-type: none"> <li>• <u>Loan Documents.</u> Receipt by the Administrative Agent of executed counterparts of DIP Credit Agreement, the Security Agreement, each Intellectual Property Security Agreement, the Notes (if requested), and the other Loan Documents to be executed as of the Closing Date, each properly executed by a Responsible Officer of the signing Loan Party and each other Person a party thereto.</li> <li>• <u>Resolutions, Etc.</u> Receipt by the Administrative Agent of the following, each dated as of a recent date before the Closing Date and in form and substance satisfactory to the Administrative Agent and its legal counsel such resolutions or other action, and incumbency certificates evidencing the identity, authority and capacity of each Responsible Officer thereof (A) executing any agreement, certificate or other document required to be delivered hereby (including the Loan Documents) or (B) authorized to act as a Responsible Officer in connection with the DIP Credit Agreement and the other Loan Documents to which such Loan Party is a party, in each case certified by a secretary or assistant secretary or other Responsible Officer of such Loan Party to be true and correct as of the Closing Date.</li> <li>• <u>Pledged Stock; Stock Powers.</u> Receipt by the Administrative Agent of certificates representing the shares of Capital Stock of the Borrowers and their Subsidiaries, together with an undated stock (or analogous) power for each such certificate executed</li> </ul>

Provision	Summary Description
	<p>in blank by a duly authorized officer of the pledgor thereof.</p> <ul style="list-style-type: none"> <li>• <u>Evidence of Insurance.</u> Receipt by the Administrative Agent of reasonable evidence that insurance required to be maintained by <u>Section 5.10</u> is in full force and effect, including insurance certificates.</li> <li>• <u>Fees.</u> Receipt by the Administrative Agent and the Lenders of the fees required to be paid on or before the Closing Date under the DIP Credit Agreement.</li> <li>• <u>Attorney Costs.</u> The Loan Parties shall have paid all Attorney Costs of the Administrative Agent to the extent invoiced prior to the Closing Date.</li> <li>• <u>Bankruptcy Cases.</u> The Cases shall have been commenced in the Bankruptcy Court and all of the first day orders entered at the time of commencement of the Cases shall be reasonably satisfactory, in form and substance, to the Administrative Agent and no trustee or examiner shall have been appointed with respect to the Debtors, or any of them, or any property of or any estate of any Debtor.</li> <li>• <u>Interim Order.</u> The Interim Order shall have been entered by the Bankruptcy Court on or before the second (2<sup>nd</sup>) Business Day after the Petition Date, which Interim Order (i) shall have been entered upon an application or motion of the Debtors reasonably satisfactory in form and substance to the Administrative Agent and upon prior notice to such parties required to receive such notice and such other parties as may be reasonably requested by the Administrative Agent; (ii) shall be in full force and effect and shall not have been amended, modified or stayed, or reversed; and, if the Interim Order is the subject of a pending objection, appeal or motion for reconsideration in any respect, neither the Interim Order, nor the making of the Loans, the issuance, extension or renewal of any Letters of Credit, or the performance by the Debtors of any of the Obligations shall be the subject of a presently effective stay, and (iii) shall otherwise satisfy the requirements of the definition of Interim Order set forth herein. The Debtors and the Secured Parties shall be entitled to rely in good faith upon the Interim Order notwithstanding any such objection, appeal or motion for reconsideration.</li> <li>• <u>Budget.</u> The Administrative Agent shall have received and</li> </ul>

Provision	Summary Description
	<p>approved the Budget.</p> <ul style="list-style-type: none"> <li>• <u>Cash Management Order</u>. The Bankruptcy Court shall have entered a customary “cash management order” adopting and implementing cash management arrangements for the Debtors, which shall be in form and substance and on terms and conditions satisfactory to the Administrative Agent in its sole and absolute discretion (any such order, the “<u>Cash Management Order</u>”).</li> </ul> <p><i>See DIP Credit Agreement at § 4.01</i></p> <p>The obligation of each Lender to honor any Request for Credit Extension, whether on the Closing Date or at any time thereafter, is subject to the following conditions precedent:</p> <ul style="list-style-type: none"> <li>• The representations and warranties of each Loan Party contained in <u>Article 5</u> or any other Loan Document, or which are contained in any document furnished at any time under or in connection herewith or therewith, shall be true and correct in all material respects (<u>provided</u>, that if any representation or warranty is by its terms qualified by concepts of materiality, such representation shall be true and correct in all respects) on and as of such date, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they shall be true and correct as of such earlier date.</li> <li>• No Default or Event of Default shall exist, or would result from such proposed Credit Extension; provided, however, that the Administrative Agent and the Lenders, in their sole and absolute discretion, may continue to make Credit Extensions notwithstanding the existence of a Default or Event of Default and that any Credit Extensions so made shall not be deemed a waiver of any such Default or Event of Default.</li> <li>• The Administrative Agent shall have received a Request for Credit Extension in accordance with the requirements hereof.</li> <li>• The Interim Order shall have been entered by the Bankruptcy Court on or before the twenty-fifth (25th) Business Day after the Petition Date, which Interim Order (i) shall have been entered upon an application or motion of the Debtors reasonably satisfactory in form and substance to the Administrative Agent and upon prior notice to such parties required to receive such notice and such other parties as may be reasonably requested by the</li> </ul>

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	<p>Administrative Agent; (ii) shall be in full force and effect and shall not have been amended, modified or stayed, or reversed; and, if the Interim Order is the subject of a pending objection, appeal or motion for reconsideration in any respect, neither the Interim Order, nor the making of the Loans or the performance by the Debtors of any of the Obligations shall be the subject of a presently effective stay, and (iii) shall otherwise satisfy the requirements of the definition of Interim Order set forth herein. Until the date the Final Order shall have been entered by the Bankruptcy court, the Debtors and the Secured Parties shall be entitled to rely in good faith upon the Interim Order notwithstanding any such objection, appeal or motion for reconsideration.</p> <p>Each Request for Credit Extension submitted by the Borrower Representative shall be deemed to be a representation and warranty by the Loan Parties that the conditions specified in <u>Section 4.02</u> have been satisfied on and as of the date of the applicable Credit Extension.</p> <p><i>See DIP Credit Agreement at § 4.02</i></p> <p><i>See Interim Order at § I(C)(6)</i></p>
<p><b>Conditions Subsequent</b></p> <p><i>Fed. R. Bankr. P. 4001(c)(1)(B)</i></p>	<p><b><u>Financial Statements.</u></b> Deliver to the Administrative Agent for the benefit of each Lender as, as soon as available, but in any event within thirty (30) days after the end calendar month of the Loan Parties and their Subsidiaries, consolidated balance sheets of the Loan Parties and their Subsidiaries as at the end of such month, and the related consolidated statements of income or operations, retained earnings, shareholders' equity and cash flows for such month, setting forth in each case in comparative form the figures as of the end of and for the corresponding month of the previous Fiscal Year and to any budget provided pursuant to Section 6.02(c), all in reasonable detail and certified by a Responsible Officer of the Borrower Representative as fairly presenting in all material respects the financial condition, results of operations, shareholders' equity and cash flows of the Loan Parties and their Subsidiaries in accordance with GAAP, subject only to normal year-end audit adjustments and the absence of footnotes.</p> <p><b><u>Certificates; Other Information.</u></b> Deliver to the Administrative Agent for the benefit of each Lender, in form and detail</p>

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	<p>satisfactory to the Administrative Agent:</p> <p><u>Liquor Licenses.</u> Promptly upon the occurrence thereof, written notice thereof, if (x) five (5) or more Stores owned by the Loan Parties or any Subsidiary thereof suffer the loss of a liquor license for five (5) days or more in any 12-month period or (y) Stores accounting for \$1,000,000 or more in Consolidated EBITDA in any 12-month period suffer the loss of a liquor license for five (5) days or more.</p> <p><u>Franchises.</u> Promptly upon the occurrence thereof, written notice of (i) any failure to maintain any liquor license required to lawfully operate any Franchise, which failure is not cured within five (5) days of the occurrence thereof, (ii) any payment default by a Franchisee under a Franchise Agreement, which failure is not cured within five (5) days of the occurrence thereof and (iii) any other material default by a Franchisee under a Franchise Agreement, which failure is not cured within five (5) days of the occurrence thereof.</p> <p><u>Additional Information.</u> Promptly (and in any event within three (3) Business Days after a request therefor), such additional information regarding the business, financial or corporate affairs of any Loan Party or any Subsidiary, or compliance with the terms of the Loan Documents, as the Administrative Agent or any Lender through the Administrative Agent may from time to time reasonably request (including as required under the Patriot Act).</p> <p><u>Budget.</u> Furnish the Administrative Agent and the Lenders, no less frequently than every other week commencing on the Closing Date, a proposed updated Budget for the time period commencing on the Closing Date and ending on the Revolving Loan Maturity Date, which shall be in substantially the same form and detail of the Initial Budget, and accompanied by a certificate signed by a Responsible Officer of the Borrowers to the effect that such Budget has been prepared in good faith based upon assumptions which the Borrowers believe to be reasonable at the time made and in light of the conditions existing at the time of delivery thereof and that such officer has no reason to question the reasonableness of any material assumptions on which such projections were prepared (it being understood and agreed that the Borrowers may (but are not required to) furnish one or more proposed updated Budgets more frequently than every other week; provided that, such proposed Budget shall become the "Budget" or "DIP Budget" as defined and for all purposes hereunder and under the Interim</p>

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	<p>Order and (upon entry of the Final Order) the Final Order upon written approval thereof by the Administrative Agent and the Lenders in their sole and absolute discretion following a reasonable opportunity to review and comment thereon.</p> <p><u>Variances from Budget.</u> Deliver to the Administrative Agent on or before Wednesday of each week, a comparison of actual receipts and disbursements and actual Revolving Loans outstanding hereunder to projected receipts and disbursements and projected Revolving Loans outstanding hereunder of the prior week in a form substantially similar to that attached as <u>Exhibit C</u> to the DIP Credit Agreement. In addition, Debtors shall, and shall cause their Chief Restructuring Officer to attend calls no less than once a week to discuss the Borrowers' businesses and the status of the Cases with the Administrative Agent, the Lenders and the Administrative Agent's advisors.</p> <p><u>Other Bankruptcy Documents.</u> Deliver to the Administrative Agent: (i) substantially contemporaneous with the filing thereof, copies of all pleadings, motions, applications, financial information and other papers and documents filed by the Debtors in the Cases, with copies of such papers and documents also provided to or served on the Administrative Agent's counsel; (ii) substantially contemporaneous with the receipt and/or execution thereof, copies of all letters of intent, expressions of interest, and offers to purchase with respect to any of the Collateral; (iii) substantially contemporaneously with delivery thereof to the Committee or any other official or unofficial committee in the Cases, copies of all material written reports and all term sheets for a Reorganization Plan or any sale under Section 363 of the Bankruptcy Code given by the Debtors to the Committee or any other official or unofficial committee in the Cases, with copies of such reports and term sheets also provided to or served on the Administrative Agent's counsel; and (iv) projections, operating plans and other financial information and information, reports or statements regarding the Debtors, their business and the Collateral as the Administrative Agent may from time to time reasonably request.</p> <p><u>Notices.</u></p> <ul style="list-style-type: none"> <li>• Promptly (and in any event within three (3) Business Days) notify the Administrative Agent and each Lender in writing of the occurrence of any Default or Event of Default.</li> </ul>

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	<ul style="list-style-type: none"> <li>• Promptly (and in any event within three (3) Business Days) notify the Administrative Agent and each Lender in writing of any matter that has resulted or could reasonably be expected to result in a Material Adverse Effect.</li> <li>• Promptly (and in any event within three (3) Business Days) notify the Administrative Agent and each Lender in writing of the occurrence of any ERISA Event.</li> <li>• Promptly (and in any event within three (3) Business Days) notify the Administrative Agent and each Lender in writing of any material change in accounting policies or financial reporting practices by any Loan Party or any Subsidiary.</li> <li>• Promptly (and in any event within three (3) Business Days), notify the Administrative Agent and each Lender, in writing, of the threat or institution of, or any material development in, any Proceeding against or affecting any Loan Party, which could reasonably be expected to have a Material Adverse Effect.</li> <li>• Promptly (and in any event within three (3) Business Days of such event), notify the Administrative Agent in writing, of any loss, damage or destruction to the Collateral in the amount of \$75,000 or more individually, whether or not covered by insurance.</li> </ul> <p><b><u>Payment of Taxes.</u></b></p> <ul style="list-style-type: none"> <li>• Pay and discharge as the same shall become due and payable, all federal and state income taxes and other material tax liabilities, assessments and governmental charges or levies in the nature of a tax upon it or its properties or assets, unless the same are being Properly Contested.</li> <li>• Timely file or cause to be timely filed all federal and state income tax returns and other material tax returns required by applicable law.</li> </ul> <p><b><u>Preservation of Existence.</u></b></p> <ul style="list-style-type: none"> <li>• Preserve, renew and maintain in full force and effect its legal existence under the Laws of the jurisdiction of its organization except in a transaction permitted by <u>Section 7.04</u> or <u>Section 7.05</u>.</li> <li>• Preserve, renew and maintain in full force and effect its good</li> </ul>

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	<p>standing and qualification to do business under the Laws of the jurisdiction of its organization and in any other jurisdiction where failure to so maintain good standing or qualification would have or would constitute a Material Adverse Effect.</p> <ul style="list-style-type: none"> <li>• Preserve, renew and maintain all Governmental Approvals as are necessary for the conduct of its business as currently conducted and herein contemplated.</li> <li>• Preserve, register and renew whenever applicable all of its material registered patents, copyrights, trademarks, trade names and service marks.</li> </ul> <p><b><u>Maintenance of Properties.</u></b> Maintain, preserve and protect all of its property necessary in the operation of its business in good working order and condition, ordinary wear and tear excepted.</p> <p><b><u>Maintenance of Insurance.</u></b> Maintain or cause to be maintained, with financially sound and reputable insurers rated not less than A-, Class VII by Best's, commercial general liability insurance, product liability insurance, business interruption insurance, and all risk property insurance, in each case with respect to liabilities, losses or damage in respect of the assets, properties and businesses of each Loan Party as may customarily be carried or maintained under similar circumstances by Persons of established reputation engaged in similar businesses, in each case in such amounts (after giving effect to any self-insurance in respect of (a) workers compensation insurance and (b) liability for insurance deductibles), with such deductibles, covering such risks, and in amounts and otherwise on such terms and conditions as shall be customary for such Persons (including perils of flood, quake and/or windstorm, as applicable) and reasonably acceptable to the Administrative Agent. Each such policy of insurance shall (i) name Administrative Agent, on behalf of each Lender as an additional insured by endorsement thereunder as its interests may appear, (ii) in the case of each property insurance policy, contain a lender's loss payable clause or endorsement, satisfactory in form and substance to Administrative Agent, that names Administrative Agent, on behalf of Lenders, as the lender's loss payee thereunder and (iii) provide for at least thirty (30) days' (or ten (10) days' in the case of cancellation due to non-payment of premiums) prior written notice to Administrative Agent of any modification or cancellation of such policy. Such lender's loss payable endorsements shall specify that the proceeds of such insurance shall be payable to the Administrative Agent as its interests may</p>

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	<p>appear and further specify that the Administrative Agent shall be paid regardless of any act or omission by Debtor or any of their Affiliates. The Administrative Agent and Secured Parties have no responsibility for premiums, warranties or representations to underwriters. The Loan Parties or their insurance broker shall provide a certificate of insurance upon each policy renewal or replacement. In the event Borrowers fail within five (5) Business Days after Administrative Agent's request to provide Administrative Agent with evidence of the insurance coverage required by this Agreement, Administrative Agent may purchase insurance at Borrowers' expense to protect the Administrative Agent's interests in the Collateral. This insurance may, but need not, protect Borrowers' interests. The coverage purchased by Administrative Agent may, but need not, pay any claim made by any Borrower or any claim that is made against any Borrower in connection with the Collateral. Borrowers may later cancel any insurance purchased by Administrative Agent, but only after providing Administrative Agent with evidence that Borrowers have obtained insurance as required by this Agreement. If Administrative Agent purchases insurance for the Collateral, to the fullest extent provided by law, Borrowers will be responsible for the costs of that insurance, including interest and other charges imposed by Administrative Agent in connection with the placement of the insurance, until the effective date of the cancellation or expiration of the insurance. The costs of the insurance may be added to the Obligations. The costs of the insurance may be more than the cost of insurance Borrowers are able to obtain on their own.</p> <p>Borrowers will (i) use commercially reasonable efforts to obtain payment or reimbursement from any Directors and Officers Liability Insurance maintained by the Borrowers, (ii) provide copies of such policies to the Lenders upon request, (iii) provide written updates to the Lenders regarding their efforts to collect on such policy or policies and (iv) cause all on such policy or policies to be paid directly to the Borrowers.</p> <p><b><u>Compliance with Laws.</u></b> Comply with the requirements of all Laws and Governmental Approvals applicable to it (including Environmental Laws and Franchise Laws) and all orders, writs, injunctions and decrees applicable to it or to its business or Property, except in such instances in which such requirement of Law or order, writ, injunction or decree is being Properly Contested and except in each case, where the failure to comply would not reasonable be expected to have a Material Adverse</p>

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	<p>Effect.</p> <p><b><u>Books and Records.</u></b></p> <ul style="list-style-type: none"> <li>• Maintain proper books of record and account, in which full, true and correct entries shall be made of all financial transactions and matters involving the assets and business of such Loan Party or such Subsidiary, as the case may be, in each case in accordance with GAAP.</li> <li>• Maintain such books of record and account in material conformity with all applicable requirements of any Governmental Authority having regulatory jurisdiction over such Loan Party or such Subsidiary, as the case may be.</li> </ul> <p><b><u>Inspection Rights.</u></b> Permit representatives and independent contractors of the Administrative Agent (or Garrison Middle Market Funding II LP and representatives thereof) to visit and inspect any of its properties, to examine its corporate, financial and operating records, and conduct audits and make copies thereof or abstracts therefrom, and to discuss its affairs, finances and accounts with its directors, officers, and independent public accountants, all at the expense of the Borrowers and at such reasonable times during normal business hours and as often as may be reasonably desired, upon reasonable advance notice to the Loan Parties. A representative of each Lender shall have the right to accompany the Administrative Agent in connection with all such inspections, audits and examinations, at such Lender's sole cost and expense unless an Event of Default shall have occurred and be continuing.</p> <p><b><u>Additional Subsidiaries.</u></b></p> <p>Borrowers shall cause each Domestic Subsidiary (other than a Foreign Subsidiary Holdco, CFC or a Subsidiary of a Controlled Foreign Subsidiary) hereafter formed or acquired to execute and deliver to the Administrative Agent, within 30 days (or such longer period as the Agent shall agree in its sole discretion) of the formation or acquisition thereof, a joinder to the Loan Documents, in form and substance acceptable to the Agent, pursuant to which such Subsidiary shall become a Borrower or a Guarantor, as the Administrative Agent shall elect. Borrowers shall deliver to the Administrative Agent (i) appropriate Lien searches indicating the Administrative Agent's first priority Lien (subject to Permitted Liens) on such Subsidiary's personal property, (ii) a favorable</p>

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	<p>written opinion of counsel reasonably satisfactory to the Agent, (iii) original stock certificates or other certificates evidencing equity ownership in such Domestic Subsidiary, accompanied by stock or other appropriate transfer powers duly executed in blank, with regard to the Capital Stock of such Domestic Subsidiary, (iv) certified copies of the Organization Documents of such Domestic Subsidiary, along with appropriate resolutions and an incumbency certificate of such Domestic Subsidiary and (v) such other agreements, instruments, approvals or other documents as the Administrative Agent may reasonably request with respect thereto.</p> <p>With respect to each first-tier Foreign Subsidiary that is a CFC and any Foreign Subsidiary Holdco, Borrowers shall within thirty (30) days (or such longer period as the Administrative Agent shall agree in its sole discretion) of the formation or acquisition thereof, take all actions reasonably requested by the Administrative Agent to grant to the Administrative Agent a perfected Lien on no more than 65% of each class of the Capital Stock of such Subsidiary entitled to vote (within the meaning of Treasury Regulation Section 1.956-2(c)(2)) and 100% of each class of the Capital Stock of such Subsidiary not entitled to vote (within the meaning of Treasury Regulation Section 1.956-2(c)(2)) of such CFC. For the avoidance of doubt, no CFC or Foreign Subsidiary Holdco shall be required to pledge any of the Capital Stock of their respective Subsidiaries.</p> <p><b><u>ERISA Compliance.</u></b> Do, and cause each of its ERISA Affiliates to, except to the extent such failure would not reasonably be expected to result in a Material Adverse Effect, do each of the following: (a) maintain each Plan in compliance with the applicable provisions of ERISA, the Internal Revenue Code and other federal or state Law; (b) cause each Plan that is qualified under <u>Section 401(a)</u> of the Internal Revenue Code to maintain such qualification; and (c) make all required contributions to any Plan subject to <u>Section 412</u>, <u>Section 430</u> or <u>Section 431</u> of the Internal Revenue Code.</p> <p><b><u>Cash Management; Control Agreements.</u></b> The Borrowers shall, and shall cause each Subsidiary to, maintain with CIT each of their primary operating and deposit accounts and each securities account (other than Excluded Accounts), <u>provided that</u> (i) local deposit accounts maintained with respect to any Store may remain at and continue to be maintained with another financial institution, but amounts credited thereto (other than amounts reasonably expected to be applied towards expenditures in accordance with the Budget</p>

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	<p>within the immediately following five (5) Business Day period) shall be required to be transferred to one or more deposit accounts maintained with CIT in accordance with the Cash Management Order and the Borrowers' customary practices.</p> <p><b><u>Covenant with Respect to Environmental Matters.</u></b> In respect of all environmental matters:</p> <ul style="list-style-type: none"> <li>• comply in all material respects with the requirements of all federal, state, and local Environmental Laws applicable to the Loan Parties or their Property;</li> <li>• notify the Administrative Agent promptly in the event of any spill, release or disposal of Hazardous Material on, or hazardous waste pollution or contamination affecting, the Facilities in material violation of applicable Environmental Laws of which a Loan Party has actual knowledge;</li> <li>• forward to the Administrative Agent promptly any written notices relating to such matters received from any Governmental Authority; and pay when due any fine or assessment against the Facilities arising under Environmental Laws, <u>provided</u>, that the Loan Parties shall not be required to pay any such fine or assessment so long as the validity thereof shall be Properly Contested; and <u>provided further</u> that, in any event, payment of any such fine or assessment shall be made before any of their Property shall be subjected to a Lien or be seized or sold in satisfaction thereof;</li> <li>• promptly notify the Administrative Agent upon becoming aware of any fact or change in circumstances that would be expected to cause any of the representations and warranties contained in <u>Section 5.09</u> to cease to be true in all material respects (without duplication of any materiality qualifier therein) for any time before the Termination Date;</li> <li>• not become involved, and will not knowingly permit any tenant of the Facilities to become involved, in any operations at the Facilities generating, storing, disposing, or handling Hazardous Materials in material violation of applicable Environmental Laws or any other activity that could reasonably be expected to lead to the imposition on any Lender or the Administrative Agent of any liability, or the imposition on the Loan Parties or the Facilities of any material liability or any lien under any Environmental Laws;</li> <li>• promptly contain or remove any Hazardous Materials found on the Facilities in violation of any applicable Environmental Law,</li> </ul>

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	<p>to the extent required by and in compliance with applicable Environmental Laws and at the Borrowers' expense; and the Borrowers agree that the Administrative Agent has the right, at its sole option but at the Borrowers' expense, to have an environmental engineer or other representative review the work being done; and</p> <ul style="list-style-type: none"> <li>• indemnify, protect, defend and hold harmless each Indemnitee from and against and all liabilities, obligations, losses, damages (including, consequential damages), penalties, actions, judgments, suits, claims, costs, expenses and disbursements of any kind or nature whatsoever (including, the reasonable fees and disbursements of counsel for and consultants of such Indemnitees in connection with any investigative, administrative or judicial proceeding, whether or not such Indemnitees shall be designated a party thereto), which may be imposed on, incurred by, or asserted against such Indemnitees (whether direct, indirect, or consequential) now or hereafter arising as a result of any claim for environmental cleanup costs, any resulting damage to the environment and any other environmental claims against any Loan Party, any Lender, the Administrative Agent, any other Indemnitee or the Facilities. The provisions of this <u>Section 6.15(e)</u> shall continue in effect and shall survive the Termination Date.</li> </ul> <p><b><u>Site Leases.</u></b> The Borrowers shall, and shall cause each Subsidiary to, perform and carry out in all material respects the material terms and provisions of Site Leases, except in each case as would not reasonably be expected to result in a Material Adverse Effect.</p> <p><b><u>Budget Compliance.</u></b></p> <p><b><u>Disbursements Covenant.</u></b> Commencing with the weekly period ending November 24, 2019, reflected in the Initial Budget delivered as of the Closing Date, cause Debtors' (i) "Operating Disbursements" or "Other Chapter 11 Related Cash Flows" (as such terms are described in the applicable Budget), (A) on an individual basis to be not more than 105% and (B) on an aggregate basis to be not more than 110% (provided, however, that, in each of clauses (A) and (B), in the Administrative Agent's sole and absolute discretion and without court order, approval of, or notice to, any other Persons, the Administrative Agent may increase such percentage up to 107% (in the case of clause (A)) and up to 115% (in the case of clause (B)) of forecasted Operating Disbursements or Other Chapter 11 Related Cash Flows set forth in the Budget for the applicable period (the "<u>Permitted Variance</u>") or (ii) "Chapter</p>

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	<p>11 Professional Costs” (as such term is described in the applicable Budget) to be more than the forecasted Chapter 11 Professional Costs set forth in the Budget for the applicable period, in each case, such covenant to be tested on a rolling four-week period, commencing with the four-week period ending on December 15, 2019.</p> <p><u>Minimum Receipt Covenant.</u> Commencing with the weekly period ending November 24, 2019 reflected in the Initial Budget delivered as of the Closing Date, cause Debtors’ receipts, (i) on an individual basis to be at least 95% and (ii) on an aggregate basis to be at least 90% (provided, however, that, in each of clauses (i) and (ii), in the Administrative Agent’s sole and absolute discretion and without court order, approval of, or notice to, any other Persons, the Administrative Agent may decrease such percentage down to 93% (in the case of clause (i)) and down to 85%) of the forecasted receipts as set forth in the Budget for the applicable period, such covenant to be tested on a rolling four-week basis; provided that for the initial three weekly tests such covenant shall be tested against the Budget as follows: (i) for the second week based on two weeks forecast and two weeks actual; and (ii) for the third week based on three weeks forecast and three weeks actual, in each case, on a cumulative basis.</p> <p><b><u>Bankruptcy Schedules and Covenants.</u></b></p> <p>File with the Bankruptcy Court and deliver to the Administrative Agent, all Schedules of the Debtors within the time periods required by the Bankruptcy Code as may be extended by express written consent of the Administrative Agent and subject to approval by the Bankruptcy Court.</p> <p>Serve all:</p> <ul style="list-style-type: none"> <li>• secured creditors, all judgment creditors (if any) actually known to the Debtors, the twenty (20) largest unsecured creditors, the federal and state taxing authorities, any and all Governmental Authorities holding a claim, any of the Debtors’ unions, and any other party claiming an interest in the Collateral in accordance with the Federal Rules of Bankruptcy Procedure a copy of the Motion and Interim Order as approved by the Bankruptcy Court in accordance with the Federal Rules of Bankruptcy Procedure; and</li> <li>• all parties from whom the Debtors have received or that the</li> </ul>

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	<p>Debtors believe they may have received goods from within twenty (20) days of the filing of the Cases, a copy of the Interim Order and notice of the hearing on entry of the proposed Final Order in accordance with the Federal Rules of Bankruptcy Procedure.</p> <p><b><u>Patriot Act; OFAC.</u></b> (a) Comply with the Patriot Act, (b) use no part of the proceeds of the Loans, directly or indirectly, for any payments to any governmental official or employee, political party, official of a political party, candidate for political office, or anyone else acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage, in violation of the United States Foreign Corrupt Practices Act of 1977, as amended, and (c) comply with the OFAC Sanctions.</p> <p>See DIP Credit Agreement at §§ 6.01-21</p>
<p><b>Termination Events &amp; Remedies</b></p> <p><i>Fed. R. Bankr. P. 4001(c)(1)(B)</i></p> <p><i>Del. Bankr. L.R. 4001-2(a)(ii)</i></p>	<p><b><u>Events of Default.</u></b> Any of the following shall constitute an Event of Default:</p> <ul style="list-style-type: none"> <li>• The occurrence of any Event of Default as defined and under the DIP Credit Agreement.</li> <li>• The failure of the Debtors to obtain entry of a Final Order on or before twenty-five (25) days from the Petition Date, unless otherwise agreed in writing by the Pre-Petition Agent and the DIP Agent.</li> <li>• The failure of Debtors to file on or before the second day following the Petition Date the Bidding Procedures Motion.</li> <li>• The Bidding Procedures Order is not entered by the Bankruptcy Court on or before December 5, 2019.</li> <li>• The failure of Debtors to file on or before the second day following the Petition Date the Approved 363 Sale Motion.</li> <li>• The Approved 363 Sale Order is not entered by the Bankruptcy Court on or before December 20, 2019.</li> </ul> <p>See Interim Order at § (VII)(A)</p> <p><b><u>Remedies upon Event of Default.</u></b></p> <p>(1) Upon the occurrence of and during the continuance of an Event of Default, and without the necessity of seeking relief from the automatic stay or any further Order of the Bankruptcy Court (i) the</p>

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	<p>DIP Agent and DIP Lenders shall no longer have any obligation to make any Advances (or otherwise extend credit) under the DIP Facility; (ii) all amounts outstanding under the DIP Financing Documents shall, at the option of the DIP Agent, be accelerated and become immediately due and payable; (iii) the DIP Agent shall have the right to issue the Carve Out Trigger Notice, (iv) the DIP Agent and the Pre-Petition Agent shall be entitled to immediately terminate the Debtors' right to use Cash Collateral, without further application or order of this Court, <u>provided, however,</u> that the Debtors shall have the right to use Cash Collateral to pay their weekly ordinary course payroll included in the DIP Budget through and including the date immediately following the date on which such Event of Default occurs, (v) the Debtors shall be bound by all post-default restrictions, prohibitions, and other terms as provided in this Interim Order, the DIP Credit Agreement and the other DIP Financing Documents and the Pre-Petition Financing Documents, (vi) the DIP Agent shall be entitled to charge the default rate of interest under the DIP Credit Agreement and (vi) subject only to the notice requirement set forth in Section VII(B)(2) of the Interim Order, both the DIP Agent and the Pre-Petition Agent shall be entitled to take any other act or exercise any other right or remedy as provided in the Interim Order, the DIP Financing Documents, the Pre-Petition Financing Documents, or applicable law, including, without limitation, setting off any Post-Petition Obligations or Pre-Petition Obligations with DIP Collateral, Pre-Petition Collateral or proceeds in the possession of any Pre-Petition Secured Party or DIP Lender, and enforcing any and all rights and remedies with respect to the DIP Collateral or Pre-Petition Collateral, as applicable</p> <p>(2) Without further notice, application or order of this Court, upon the occurrence and during the continuance of an Event of Default, and after providing five (5) business days' prior written notice thereof (which five (5) business days period only applies to the DIP Collateral enforcement remedies described below) to counsel for the Debtors, counsel for any Committee, and the U.S. Trustee, the DIP Agent for the benefit of itself and the DIP Lenders, and the Pre-Petition Agent, for the benefit of itself and the other Pre-Petition Secured Parties, as applicable, shall be entitled to take any action and exercise all rights and remedies provided to them by this Interim Order, the DIP Financing Documents or the Pre-Petition Financing Documents, or applicable law, unless otherwise ordered by this Court, as the DIP Agent or the Pre-Petition Agent, as applicable, may deem appropriate in</p>

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	<p>their sole discretion to, among other things, proceed against and realize upon the DIP Collateral (including the Pre-Petition Collateral) or any other assets or properties of the Estates upon which the DIP Agent, for the benefit of itself and the DIP Lenders, and the Pre-Petition Agent, for the benefit of itself and the other Pre-Petition Secured Parties, has been or may hereafter be granted liens or security interests to obtain the full and indefeasible payment of all the Pre-Petition Obligations and Post-Petition Obligations. Notwithstanding the foregoing or anything in Section VII(B)(1) of the Interim Order, DIP Agent may continue to apply proceeds received into the lockbox or collection account to reduce the Post-Petition Obligations in any order at the sole discretion of the DIP Agent during such five (5) business days period. During such five business days period, either or both the Debtors and the Committee shall be entitled to seek an emergency hearing with this Court.</p> <p>Additionally, upon the occurrence and during the continuance of an Event of Default and the exercise by the DIP Agent or the Pre-Petition Agent of their respective rights and remedies under this Interim Order, the DIP Financing Documents, or Pre-Petition Financing Documents, provided that the Debtors and the DIP Agent agree upon a mutually acceptable wind down budget, the Debtors shall cooperate with the DIP Agent in the exercise of rights and remedies and assist the DIP Agent in effecting any sale or other disposition of the DIP Collateral required by the DIP Agent, including any sale of DIP Collateral pursuant to Bankruptcy Code section 363 or assumption and assignment of DIP Collateral consisting of contracts and leases pursuant to Bankruptcy Code section 365, in each case, upon such terms that are acceptable to the DIP Agent.</p> <p>(3) Upon the occurrence and during the continuance of an Event of Default, and subject to the five business days notice provision provided above, in connection with a liquidation of any of the DIP Collateral, the DIP Agent (or any of its employees, agents, consultants, contractors, or other professionals) shall have the right, at the sole cost and expense of the Debtors, to: (i) enter upon, occupy, and use any real or personal property, fixtures, equipment, leasehold interests, or warehouse arrangements owned or leased by the Debtors; <u>provided, however</u>, the DIP Agent and Pre-Petition Agent may only be permitted to do so in accordance with (a) existing rights under applicable non-bankruptcy law, including, without limitation, applicable leases, (b) any pre-petition (and, if applicable, post-petition) landlord waivers or consents, or (c)</p>

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	<p>further order of this Court on motion and notice appropriate under the circumstances; and (ii) upon entry of a Final Order, use any and all trademarks, tradenames, copyrights, licenses, patents, equipment or any other similar assets of the Debtors, or assets which are owned by or subject to a lien of any third party and which are used by the Debtors in their businesses, <u>provided, however</u>, DIP Agent may use such assets upon entry of this Interim Order to the extent permitted by applicable non-bankruptcy law. The DIP Agent and the DIP Lenders will be responsible for the payment of any applicable fees, rentals, royalties, or other amounts owing to such lessor, licensor or owner of such property (other than the Debtors) for the period of time that the DIP Agent actually occupies any real property or uses the equipment or the intellectual property (but in no event for any accrued and unpaid fees, rentals, or other amounts owing for any period prior to the date that the DIP Agent actually occupies or uses such assets or properties).</p> <p>(4) The rights and remedies of the DIP Agent specified herein are cumulative and not exclusive of any rights or remedies that the DIP Agent and/or Pre-Petition Agent may have under the DIP Financing Documents, Pre-Petition Financing Documents, or otherwise and may be exercised in whole or in part in any order.</p> <p><i>See Interim Order at § (VII)(B)</i></p>
<p><b>Security and Priority</b></p> <p><i>Fed. R. Bankr. P. 4001(c)(1)(B)</i></p>	<p>The Debtors represent, warrant and covenant that, upon the entry by the Bankruptcy Court of the Interim Order and/or the Final Order, as applicable:</p> <p>(a) for all Obligations now existing or hereafter arising and for diminution in value of any Pre-Petition Collateral used by the Debtors pursuant to the Interim Order, DIP Credit Agreement or otherwise, the Administrative Agent, for the benefit of itself and the other Secured Parties, is granted an allowed superpriority administrative claim in the Debtors' estates pursuant to Section 364(c)(1) of the Bankruptcy Code, having priority in right of payment over any and all other obligations, liabilities and indebtedness of any of the Debtors, whether now in existence or hereafter incurred by any of the Debtors, and over any and all administrative expenses or priority claims of the kind specified in, or ordered pursuant to the Bankruptcy Code, including without limitation, inter alia, Sections 105, 326, 328, 330, 331, 503(b), 506(c) (upon entry of the Final Order), 507, 364(c)(1), 546(c), 726</p>

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	<p>or 1114 of the Bankruptcy Code, subject as to priority only to the Carve-Out; and</p> <p>(b) (i) to secure the prompt payment and performance of any and all Obligations of the Debtors to the Secured Parties of whatever kind, nature or description, absolute or contingent, now existing or hereafter arising, the Administrative Agent, for the benefit of itself and the other Secured Parties, shall have and is hereby granted, effective as of the Petition Date, valid and perfected first priority (subject to the Senior Liens (as defined in the Interim Order) and the Carve-Out), security interests and liens in and upon all pre- and post- petition property of the Debtors, whether existing on the Petition Date or thereafter acquired (1) pursuant to Section 364(c) (2), that, on or as of the Petition Date is not subject to valid, perfected and non-avoidable liens (collectively, the “<u>Unencumbered Property</u>”), (2) pursuant to Section 364(c) and (d) of the Bankruptcy Code, all of the Pre-Petition Collateral, and (3) pursuant to Section 364(c) and (d) of the Bankruptcy Code, all of the Collateral (as defined in the DIP Credit Agreement), (ii) such security interests and Liens shall be senior in all respects to interests of other parties arising out of security interests or Liens, if any, in such assets and property existing immediately prior to the Petition Date and (iii) the Liens securing the Obligations shall not be subject to Section 551 of the Bankruptcy Code.</p> <p><i>See DIP Credit Agreement at § 5.22</i></p>
<p><b>Carve-Out</b></p> <p><i>Fed. R. Bankr. P. 4001(c)(1)(B)</i></p> <p><i>Del. Bankr. L.R. 4001-2(a)(ii)</i></p>	<p>The DIP Liens, DIP Superpriority Claims, Adequate Protection Liens, and First Lien Adequate Protection Claims, and any other liens or claims granted by this Interim Order or the Final Order shall be subject only to the right of payment and priority of the following expenses (collectively, the “<b>Carve-Out</b>”), to the extent provided herein:</p> <p>(1) the allowed administrative expenses pursuant to 28 U.S.C. § 1930 for fees payable to the U.S. Trustee or to this Court, unless otherwise ordered by this Court; and</p> <p>(2) the allowed fees and expenses actually incurred by persons or firms retained by the Debtors or the Committee (if appointed) on or after the Petition Date whose retention is approved by the Bankruptcy Court pursuant to section 327, 328, 363, or 1103 of the Bankruptcy Code (each a “<b>Professional</b>” and collectively, the “<b>Professionals</b>”) in a cumulative, aggregate sum</p>

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	<p>of (i) for the period prior to the occurrence of the delivery of a Carve-Out Trigger Notice (as defined below), an amount not to exceed the lesser of (A) the aggregate weekly amounts budgeted to be funded in advance for each such Professional for such week in accordance with the DIP Budget (to the extent a Carve-Out Trigger Notice is delivered mid-week, pro-rated for such week) and (B) the actual amount of such Allowed Professional Fees for each Professional incurred on or after the Petition Date up through and including the date a Carve-Out Trigger Notice is delivered (“<b>Allowed Professional Fees</b>”), subject in all respects to the terms of this Interim Order, the Final Order, and any other interim or other compensation order entered by the Bankruptcy Court (the “<b>Interim Compensation Procedures</b>”). The Carve-Out shall include all Allowed Professional Fees that are incurred or earned (i) at any time before delivery of a Carve-Out Trigger Notice, whether allowed by the Bankruptcy Court prior to or after delivery of a Carve-Out Trigger Notice, subject and limited in all respects to the amounts set forth in the DIP Budget for payment of such Professionals; and (ii) beginning the first day after the delivery by the DIP Agent of written notice (which for the avoidance of doubt may be by electronic mail) of the occurrence of an Event of Default (the “<b>Carve-Out Trigger Notice</b>”) to the Debtors, the Debtors’ counsel, and counsel for any Committee, the fees and expenses incurred by the Professionals retained by the Debtors in an aggregate amount not to exceed \$75,000 (the “<b>Post-EOD Carve-Out Amount</b>”) (the aggregate amount of clauses (1) and (2), collectively, the “<b>Carve-Out Cap</b>”); <i>provided, however</i> the Carve-Out shall not include any bonus, sale transaction fees, success fees, completion fees, substantial contribution fees, or any other fees of similar import of any of the Professionals. Notwithstanding the foregoing, the Carve-Out Trigger Notice shall be deemed to have been delivered to the required notice parties on the Termination Date.</p> <p>(3) Subject to the terms of the Interim Order, the Carve-Out Cap shall be allocated on a Professional by Professional basis based on the amounts budgeted to be funded in advance for each Professional pursuant to the Budget.</p> <p><i>See Interim Order at § VI(M)</i></p>
<p><b>DIP Budget</b> <i>Fed. R. Bankr. P. 4001(b)(1)</i></p>	<p>The use of extensions of credit under the DIP Facility shall be in accordance with the DIP Budget, subject to the Permitted Variances (as defined in the DIP Credit Agreement) and as</p>

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<p><i>and (c)(1)</i></p> <p><i>Del. Bankr. L.R. 4001-2(a)(ii)</i></p>	<p>provided in Section 6.7 of the DIP Credit Agreement. The Budget shall be updated by the Debtors no less frequently than every two (2) weeks in accordance with the terms and provisions the DIP Credit Agreement. A copy of any updated DIP Budget shall be filed with this Court within one (1) Business Day after it has been approved by the DIP Agent.</p> <p><i>See Interim Order at § I(C)(4).</i></p>

**G. Provisions to be Highlighted Pursuant to Local Rule 4001-2(a)(i)**

25. The DIP Facility includes certain provisions the Debtors are required to highlight pursuant to Local Rule 4001-2(a)(i). As discussed in detail herein, the Debtors believe these provisions are reasonable in light of the facts and circumstances of these Chapter 11 Cases and should be approved.

- a. **Local Rule 4001-2(a)(i)(A) — Cross Collateralization.** None.
- b. **Local Rule 4001-2(a)(i)(B) — Validity, Perfection and Amount of Prepetition Secured Obligations.**  
  
*Debtors' Acknowledgment and Agreements*  
  
*See Interim Order at ¶¶ (D)(1)-(3)*
- c. **Local Rule 4001-2(a)(i)(C) — 506(c) Waiver.**  
  
*See Interim Order at § IX(A)*
- d. **Local Rule 4001-2(a)(i)(D) — Liens on Avoidance Actions.** To secure the prompt payment and performance of any and all Post-Petition Obligations of Borrower and Guarantors to the DIP Agent and the DIP Lenders of whatever kind, nature, or description, absolute or contingent, now existing or hereafter arising, the DIP Agent, for the benefit of itself and the DIP Lenders, shall have and is hereby granted, effective nunc pro tunc as of the Petition Date, valid, binding, enforceable, continuing, non-avoidable and perfected first priority (subject only to any Senior Liens and the Carve-Out), security interests and liens in and upon all claims and causes of action under Chapter 5 of the Bankruptcy Code or any other avoidance actions under the Bankruptcy Code (collectively, "Avoidance Actions") of the Debtors or the Estates and proceeds thereof upon entry of the Final Order. *See Interim Order at § II(A)(2).*

- e. **Local Rule 4001-2(a)(i)(E) — Use of Postpetition Debt from Prepetition Creditor to Pay Such Prepetition Creditors' Prepetition Debt.** The DIP Facility does not include the payment of any prepetition debt.
- f. **Local Rule 4001-2(a)(i)(F) — Treatment of Committee Professionals.** The Committee's professional fees are included in the Carve-Out. As discussed above, the DIP Facility is subject and subordinate to the Carve-Out. *See* Interim Order at § V(A)(3).
- g. **Local Rule 4001-2(a)(i)(G) — Non-Consensual Priming Provisions.** Subject to any applicable Senior Liens, pursuant to Bankruptcy Code section 364(d), valid, enforceable, and fully perfected first priority senior priming security interests in and senior priming liens upon all of the Debtors' right, title, and interest in, to, and under all DIP Collateral, including, without limitation, priming security interests and priming liens which are senior to (i) the security interests and liens held by the Pre-Petition Agent, on behalf of the Pre-Petition Secured Parties; and (ii) the Adequate Protection Liens. *See* Interim Order at § II(A)(3)(c).
- h. **Local Rule 4001-2(a)(i)(H) — 552(b) Waiver.** Effective upon the entry of a Final Order, the Pre-Petition Secured Parties and DIP Lenders shall each be entitled to all of the rights and benefits of Bankruptcy Code section 552(b), and the "equities of the case" exception under Bankruptcy Code section 552(b) shall not apply to the Pre-Petition Secured Parties and DIP Lenders with respect to proceeds, products, offspring or profits of any of the Pre-Petition Collateral or DIP Collateral, as applicable. *See* Interim Order at § IX(A).

### **RELIEF REQUESTED**

26. By this motion, the Debtors request entry of the Interim Order and Final Order authorizing the Debtors to enter into the DIP Facility. More specifically, the Debtors seek authority to:

- a. Enter into, execute and perform under (i) the DIP Credit Agreement and (ii) all DIP Financing Documents;
- b. Take and perform all other acts and steps as may be required or contemplated by or in connection with the DIP Financing Documents, the Interim Order and Final Order;
- c. Grant to the DIP Agent, for itself and on behalf of the DIP Lenders, first priority, priming, valid, perfected and enforceable Liens (as defined in section 101(37) of the Bankruptcy Code) in and upon all of the DIP Collateral, subject only to the Carve-Out and any Senior Liens, to secure all Post-Petition Obligations;

- d. Grant to the DIP Agent and the DIP Lenders allowed superpriority administrative expense claim status for the Post-Petition Obligations, subject only to the Carve-Out;
- e. Use Cash Collateral in accordance with the terms of the DIP Financing Documents and as limited by the DIP Budget;
- f. Grant adequate protection, including without limitation Adequate Protection Liens, First Lien Adequate Protection Claims, and First Lien Adequate Protection Payments to the Pre-Petition Secured Parties all such adequate protection with the priority set forth in this Interim Order and otherwise in accordance with the terms set forth in this Interim Order, with respect to the use and aggregate diminution in the value of their respective interests in the Pre-Petition Collateral), including the Cash Collateral;
- g. Apply collections and proceeds of all of the Pre-Petition Collateral and DIP Collateral, payment of any First Lien Adequate Protection Payments and Post-Petition Obligations in the manner and on the terms set forth in the Interim Order (and, as applicable, by the Final Order);
- h. Waive, upon entry of the Final Order, any right to surcharge the DIP Collateral and the Pre-petition Collateral pursuant to section 506(c) of the Bankruptcy Code, (b) any rights under the “equities of the case” exception in section 552(b) of the Bankruptcy Code, and (c) the equitable doctrine of “marshaling” or any similar doctrine with respect to the DIP Collateral and the Pre-petition Collateral;
- i. Modify the automatic stay imposed by section 362 of the Bankruptcy Code to the extent hereinafter set forth and waiving the fourteen (14) day stay provisions of Bankruptcy Rules 4001(a)(3);
- j. Wave any applicable stay (including under Bankruptcy Rule 6004) and provision for immediate effectiveness of the Interim Order; and
- k. Set a Final Hearing for entry of a Final Order authorizing the post-petition financing and use of cash collateral contemplated hereby on a final basis and granting such other relief as is requested in the Motion and approving the form of notice with respect to the Final Hearing.

**A. Financing Under Bankruptcy Code Section 364**

27. Pursuant to Bankruptcy Code section 364(c), a court may authorize a debtor to incur debt that is: (a) entitled to a superpriority administrative expense status; (b) secured by a lien on otherwise unencumbered property or (c) secured by a junior lien on encumbered property if the debtor cannot obtain postpetition credit on an unsecured basis, as an administrative

expense priority or secured solely by junior liens on the debtor's assets. *See* 11 U.S.C. § 364(c);<sup>5</sup> *see also Pearl-Phil GMT (Far East) Ltd. v. Caldor Corp.*, 266 B.R. 575, 584 (S.D.N.Y. 2001) (authorizing superpriority administrative expenses where debtor could not obtain credit as an administrative expense).

28. Additionally, Bankruptcy Code section 364(d)(1) provides that a court may authorize a debtor to incur postpetition debt on a senior or “priming” basis if (a) the debtor is unable to obtain credit otherwise and (b) there is “adequate protection” of the interest of the holder of the lien on the property of the estate on which such senior or equal lien is proposed to be granted. *See* 11 U.S.C. § 364(d)(1). Specifically, section 364(d)(1) provides, in relevant part, that a court may, after notice and a hearing:

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

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

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

11 U.S.C. § 364(d)(1).

29. Courts in this jurisdiction and others have fashioned guidelines in applying these statutory requirements. Generally, courts advocate using a “holistic approach” to evaluate superpriority postpetition financing agreements, focusing on the transaction as a whole. As one court has noted:

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<sup>5</sup> Specifically, Bankruptcy Code section 364(c) provides, in pertinent part, that: “If the trustee [or debtor in possession] is unable to obtain unsecured credit allowable under section 503(b)(1) of this title as an administrative expense, the court, after notice and a hearing, may authorize the obtaining of credit or the incurring of debt — (1) with priority over any or all administrative expenses of the kind specified in section 503(b) or 507(b) of this title; (2) secured by a junior 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).

Obtaining credit should be permitted not only because it is not available elsewhere, which could suggest the unsoundness of the basis for use of the funds generated by credit, but also because the credit acquired is of significant benefit to the debtor's estate and . . . the terms of the proposed loan are within the bounds of reason, irrespective of the inability of the debtor to obtain comparable credit elsewhere.

*In re Aqua Assocs.*, 123 B.R. 192, 196 (Bankr. E.D. Pa. 1991).

30. More specifically, in evaluating a debtor's proposed postpetition financing, courts consider whether the postpetition financing (a) is necessary to preserve the assets of the estate and is necessary, essential and appropriate for continued operation of the debtor's business, (b) is in the best interests of the debtor's creditors and estates, (c) is an exercise of a debtor's sound and reasonable business judgment, (d) was negotiated in good faith and at arm's length between the debtor, on the one hand, and the agents and the lender on the other, and (e) contains terms that are fair, reasonable and adequate given the circumstances of the debtor and the proposed postpetition lender. *See, e.g., In re Indianapolis Downs, LLC*, Case No. 11-11046 (BLS) (Bankr. D. Del. Apr. 26, 2011); *In re East West Resort Dev. V, L.P., L.L.P.*, Case No. 10-10452 (BLS) (Bankr. D. Del. Mar. 11, 2010); *In re Aleris Int'l, Inc.*, Case No. 09-10478 (BLS) (Bankr. D. Del. Mar. 18, 2009); *In re LandSource Communities Dev. LLC*, Case No. 08-11111 (KJC) (Bankr. D. Del. July 21, 2008, as amended May 22, 2009).

31. The Debtors submit that entry into the DIP Facility is in the best interests of the Debtors' creditors, is necessary to preserve the value of estate assets and is an exercise of the Debtors' sound and reasonable business judgment.

**B. Entry into the DIP Facility is in the Best Interests of the Debtors' Creditors and Estates, is Necessary to Preserve Estate Assets, and is an Exercise of the Debtors' Sound and Reasonable Business Judgment**

32. A debtor's decision to enter into a postpetition lending facility under Bankruptcy Code section 364 is governed by the business judgment standard. *See, e.g., Trans World*

*Airlines, Inc. v. Travelers Intl AG (In re Trans World Airlines, Inc.)*, 163 B.R. 964, 974 (Bankr. D. Del. 1994) (approving postpetition loan and receivables facility because such facility “reflect[ed] sound and prudent business judgment”); *In re Ames Dep’t Stores*, 115 B.R. 34, 38 (Bankr. S.D.N.Y. 1990) (noting that financing decisions under section 364 of the Bankruptcy Code must reflect a debtor’s business judgment); *In re Barbara K Enters.*, No. 08-11474 (MG), 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.”); *Bray v. Shenandoah Fed. Sav. & Loan Ass’n (In re Snowshoe Co., Inc.)*, 789 F.2d 1085, 1088 (4th Cir. 1986); *Ames*, 115 B.R. at 40 (“[C]ases consistently reflect that the court’s discretion under section 364 is to be utilized on grounds that permit reasonable business judgment to be exercised so long as the financing agreement does not contain terms that leverage the bankruptcy process and powers or its purpose is not so much to benefit the estate as it is to benefit a party-in-interest”); *In re Curlew Valley Assocs.*, 14 B.R. 506, 513-14 (Bankr. D. Utah 1981); *In re Simasko Prod. Co.*, 47 B.R. 444, 449 (D. Colo. 1985).

33. Generally, the business judgment standard requires that, absent evidence to the contrary, a debtor-in-possession is afforded discretion to act with regard to business decision-making. *See Simasko Prod. Co.*, 47 B.R. at 449 (“[D]iscretion to act with regard to business planning activities is at the heart of the debtor’s power.”) (citations omitted).

34. Specifically, to determine whether the business judgment standard is met, a court is “required to examine whether a reasonable business person would make a similar decision under similar circumstances.” *In re Exide Techs.*, 340 B.R. 222, 239 (Bankr. D. Del. 2006); *see also Curlew Valley Assocs.*, 14 B.R. at 513-14 (noting that courts should not second guess a

debtor's business decision when that decision involves "a business judgment made in good faith, upon a reasonable basis, and within the scope of [the debtor's] authority under the [Bankruptcy] Code") (citation omitted).

35. The Debtors' decision to incur the proposed DIP Facility satisfies this standard. This decision is the culmination of an intense process targeted at procuring the best available financing under the circumstances. Because the Debtors had no other viable financing alternative, if the Debtors rejected the DIP Facility, it would not be able to continue operating its businesses, resulting in lost jobs and a destruction of value.

36. Incurring the DIP Facility and securing the financing available thereunder is absolutely necessary to the preservation of estate assets and is in the best interest of the Debtors' creditors and all parties in interest. Thus, obtaining the DIP Facility is an exercise of the Debtors' sound business judgment. Given the Debtors' significantly constrained liquidity position, the DIP Facility is of critical importance to the Debtors' continued operations and to preserving going concern value, especially following the commencement of these Chapter 11 Cases and the general uncertainty in the marketplace that will accompany this process.

37. Specifically, the Debtors have an urgent need to obtain access to the DIP Facility to, among other things, continue the operation of their restaurants in an orderly manner, maintain business relationships and assure the continuity of operations with, and ability to make payment to, vendors, pay employees, and satisfy other working capital and operational needs – each of which is vital to preserving and maintaining the value of the Debtors' estates for the benefit of all stakeholders.

**C. The Terms of the DIP Facility are Fair, Reasonable and Appropriate in Light of the Debtors' Needs and the Current Market Environment**

38. It is well recognized in this jurisdiction and others that the appropriateness of a proposed postpetition financing facility must be considered in light of current market conditions. *See, e.g., Snowshoe Co. Inc.*, 789 F.2d at 1088 (noting that a debtor is not required to seek credit from every possible lender before determining such credit is unavailable). Indeed, courts often recognize that where there are few lenders likely, able and willing to extend the necessary credit to a debtor, "it would be unrealistic and unnecessary to require [a debtor] to conduct such an exhaustive search for financing." *In re Sky Valley, Inc.*, 100 B.R. 107, 113 (Bankr. N.D. Ga. 1988), *aff'd*, 99 B.R. 117 (N.D. Ga. 1989); *see also In re Garland Corp.*, 6 B.R. 456, 461 (1st Cir. B.A.P. 1980) (authorizing secured credit under section 364(c)(2), after notice and a hearing, upon showing that unsecured credit was unobtainable); *In re Stanley Hotel, Inc.*, 15 B.R. 660, 663 (D. Colo. 1981) (finding refusal of two national banks to grant unsecured loans was sufficient to support conclusion that requirements of section 364 requirement had been met); *Ames*, 115 B.R. at 37-39 (holding that debtor must show that it made reasonable efforts to seek other sources of financing under section 364(a) and (b)).

39. Rather, a debtor must demonstrate that it made a reasonable effort to seek credit from other sources available under Bankruptcy Code sections 364(a) and 364(b). *See Snowshoe*, 789 F.2d at 1088; *see also In re Plabell Rubber Prods., Inc.*, 137 B.R. 897, 899-900 (Bankr. N.D. Ohio 1992).

40. The Debtors' efforts to obtain alternative postpetition financing made clear that there is no ready market for the Debtors to obtain financing on any other commercially reasonable terms, and certainly not on the favorable terms offered by the DIP Lenders. As discussed above and in the Declarations, the DIP Facility was the only available financing that

satisfied the Debtors' needs. Accordingly, the Debtors submit that the terms of the DIP Facility are reasonable and represent the best source of financing available to the Debtors under the circumstances.

41. Further, in considering whether the terms of postpetition financing are fair and reasonable, courts consider the terms in light of the relative circumstances of both the debtor and the potential lender. *In re Farmland Indus., Inc.*, 294 B.R. 855, 886 (Bankr. W.D. Mo. 2003); *see also Unsecured Creditors' Comm. Mobil Oil Corp. v. First Nat'l Bank & Trust Co. (In re Elingsen MacLean Oil Co.)*, 65 B.R. 358, 365 (W.D. Mich. 1986) (recognizing a debtor may have to enter into hard bargains to acquire funds for its reorganization); *see also In re Capmark Fin. Grp. Inc.*, 438 B.R. 471, 510-11 (Bankr. D. Del. 2010) (noting "there is no *per se* rule against paying pre-petition secured claims outside of a plan of reorganization" which can be accomplished through a "roll-up" where "[t]he proceeds of the DIP loan are used to pay off or replace the pre-petition debt, resulting in a post-petition debt equal to the pre-petition debt plus any new money being lent to the debtor").

42. The Pre-Petition Agent has explicitly stated that it will not agree to an alternative DIP Facility with less favorable terms, which the Debtors have been unable to procure. Accordingly, for the reasons set forth above and in the Declarations, the Debtors submit a substantial showing has been made that the DIP Facility contains not only the most favorable terms available, it is likely the only source of postpetition financing available to the Debtors.

**D. The Scope of the Carve-Out is Appropriate**

43. The proposed DIP Facility subjects the security interests and administrative expense claims of the DIP Lenders to the Carve-Out. Similar Carve-Outs for professional fees have been found to be reasonable and necessary to ensure that a debtor's estate and any statutory committee can retain assistance from counsel. *See Ames*, 115 B.R. at 40. The DIP Facility does

not directly or indirectly deprive the Debtors' estates or other parties in interest of possible rights and powers by restricting the services for which professionals may be paid in these Chapter 11 Cases. *See id.* at 38 (observing that courts insist on Carve-Outs for professionals representing parties-in-interest because “[a]bsent such protection, the collective rights and expectations of all parties-in-interest are sorely prejudiced”). Additionally, the Carve-Out protects against administrative insolvency during the course of these Chapter 11 Cases by ensuring that assets remain for the payment of U.S. Trustee fees and professional fees, notwithstanding the grant of superpriority and administrative liens and claims under the DIP Facility.

**E. The Payment of Costs and Expenses to the DIP Lender is Appropriate**

44. The fees, costs and expenses to be paid to the DIP Lenders pursuant to the DIP Facility are within the range of reasonableness and appropriate under the circumstances. Courts routinely authorize similar lender incentives beyond the explicit liens and rights specified in Bankruptcy Code section 364. *See Resolution Trust Co. v. Official Unsecured Creditors Comm. (In re Defender Drug Stores, Inc.)*, 145 B.R. 312, 316 (9th Cir. B.A.P. 1992) (approving financing facility pursuant to Bankruptcy Code § 364 that included a lender “enhancement fee”). Here, the DIP Lender is asking for much less than a postpetition lender would usually request.

**F. The DIP Facility was Negotiated in Good Faith and Should be Afforded the Protection of Bankruptcy Code Section 364(e)**

45. Pursuant to Bankruptcy Code section 364(e), any reversal or modification on appeal of an authorization to obtain credit or incur debt or a grant of priority or a lien under Bankruptcy Code section 364 shall not affect the validity of that debt incurred or priority or lien granted as long as the entity that extended credit “extended such credit in good faith.”

*See* 11 U.S.C. § 364(e).

46. The terms of the DIP Facility were negotiated in good faith and at arm's-length between the Debtors and the DIP Lenders, and all of the Post-Petition Obligations will be extended by the DIP Lenders in good faith (as such term is used in Bankruptcy Code section 364(e)). No consideration is being provided to any party in connection with the DIP Lenders other than as set forth herein. Moreover, the DIP Facility has been extended in express reliance upon the protections afforded by Bankruptcy Code section 364(e), and the DIP Lenders should be entitled to the full protection of Bankruptcy Code section 364(e) in the event that the Interim Order or the Final Order or any provision thereof is vacated, reversed or modified on appeal or otherwise. *See* 11 U.S.C. § 363(e).

**G. The Debtors' Proposed Grant of Adequate Protection to Use Cash Collateral is Appropriate**

47. The Pre-Petition Secured Parties do not object to the use of Cash Collateral in accordance with the DIP Budget (subject to the Permitted Variances) and to the imposition of the Carve-Out, in consideration of the availability of the DIP Facility and in consideration of receiving the adequate protection described herein.

48. As adequate protection for the priming of the Pre-Petition Secured Parties by the Post-Petition Obligations, the Pre-Petition Secured Parties shall receive, to the extent of any diminution in value of their interest in the collateral securing the Pre-Petition Obligations (collectively the "Adequate Protection"):

- valid, binding, enforceable and perfected replacement and additional security interests in and liens ("First Lien Adequate Protection Liens") on all the Debtors' right, title, and interest in and to the DIP Collateral to the extent of the First Lien Adequate Protection Obligations, which liens shall be junior in all respects only to the DIP Liens, the Senior Liens and the Carve Out.;
- to the extent that the First Lien Adequate Protection Liens do not adequately protect the diminution in value of the Pre-Petition Agent's interest in the Pre-Petition Collateral, the Pre-Petition Agent, for the benefit of the Pre-Petition Lenders, is hereby granted an

allowed superpriority administrative expense claim (“First Lien Adequate Protection Claim”) against the Estates under Bankruptcy Code sections 503 and 507(b), which shall, subject only to the DIP Superpriority Claim and the Carve-Out, have priority over all other administrative expense claims, priority claims and unsecured claims against the Debtors or the Estates, which are now existing or hereafter arising, of any kind or nature whatsoever, including, without limitation, administrative expenses and priority or other claims of the kinds specified in or ordered pursuant to Bankruptcy Code sections 105, 326, 328, 330, 331, 364, 365, 503(a), 503(b), 506(c) (upon entry of the Final Order), 507(a), 507(b), 546(c) (upon entry of the Final Order), 726, 1113 and 1114;

- the Pre-Petition Agent, for the benefit of the Pre-Petition Lenders, shall be entitled to interest on account of the outstanding Pre-Petition Obligations at the default rate set forth in the Pre-Petition Financing Documents, which was in effect as of the Petition Date and which shall accrue in the manner set forth in the Pre-Petition Financing Documents; and
- as further adequate protection, and without limiting any rights of the Pre-Petition Agent, for the benefit of the Pre-Petition Lenders, under Bankruptcy Code section 506(b) which are hereby preserved, the Debtors shall pay or reimburse the Pre-Petition Agent and the Pre-Petition Lenders (“First Lien Adequate Protection Payments”) for any and all of its reasonable fees, costs, expenses and charges accrued and payable under the Pre-Petition Financing Documents, including, without limitation, the fees and expenses of the Pre-Petition Agent as provided in Section 12.05 of the Pre-Petition Credit Agreement, whether accrued and unpaid pre-petition or accrued and unpaid post-petition, all without further notice, motion or application to, order of, or hearing before, this Court

49. The DIP Facility contemplates providing the DIP Lenders with liens that prime those of the Pre-Petition Secured Parties pursuant to Bankruptcy Code section 364(d). Accordingly, the Debtors are required to show that the interests of the Pre-Petition Secured Parties are “adequately protected.” 11 U.S.C. § 364(d). Additionally, pursuant to Bankruptcy Code section 363(c), the Debtors may only use Cash Collateral of the Pre-Petition Secured Parties subject to the consent of those parties or the grant of adequate protection. 11 U.S.C. § 363(c)(2).

50. What constitutes adequate protection is decided on a case-by-case basis and it can come in various forms, including payment of adequate protection fees, payment of interest, granting of replacement liens, and administrative claims. *See In re Columbia Gas Sys., Inc.*, No. 91-803, 91-804, 1992 WL 79323, at \*2 (Bankr. D. Del. Feb. 18, 1992); *In re Mosello*, 195 B.R.

277, 289 (Bankr. S.D.N.Y. 1996) (“[t]he determination of adequate protection is a fact-specific inquiry . . . left to the vagaries of each case”); *see also In re Realty Sw. Assocs.*, 140 B.R. 360, 362 (Bankr. S.D.N.Y. 1992); *In re Beker Indus. Corp.*, 58 B.R. 725, 736 (Bankr. S.D.N.Y. 1986) (the application of adequate protection “is left to the vagaries of each case, but its focus is protection of the secured creditor from diminution in the value of its collateral during the reorganization process”) (citation omitted); *see also In re Continental Airlines Inc.*, 154 B.R. 176, 180-81 (Bankr. D. Del. 1993).

51. In light of the Adequate Protection described above, the Pre-Petition Secured Parties have consented to the terms of the Interim Order and the DIP Facility.

**H. Approval of the DIP Facility on an Interim Basis is Necessary to Prevent Immediate and Irreparable Harm**

52. Bankruptcy Rule 4001(c)(2) governs the procedures for obtaining authorization to obtain postpetition financing and provides, in relevant part:

The court may commence a final hearing on a motion for authority to obtain credit no earlier than 14 days after service of the motion. If the motion so requests, the court may conduct a hearing before such 14-day period expires, but the court may authorize the obtaining of credit only to the extent necessary to avoid immediate and irreparable harm to the estate pending a final hearing.

Fed. R. Bankr. P. 4001(c)(2).

53. In examining requests for interim relief under the immediate and irreparable harm standard, courts apply the same business judgment standard applicable to other business decisions. *See, e.g., Ames*, 115 B.R. at 36; *Simasko*, 47 B.R. at 449. After the 14-day period, the request for financing is not limited to those amounts necessary to prevent the destruction of the debtor’s business, and the debtor is entitled to borrow those amounts that it believes are prudent to the operation of its business. *Ames*, 115 B.R. at 36.

54. The crucial importance of a debtor's ability to secure postpetition financing to prevent immediate and irreparable harm to its estate has been repeatedly recognized in this district. *See, e.g., In re Taylor-Wharton Int'l LLC*, Case No. 09-14089 (Bankr. D. Del. Nov. 20, 2009); *In re Lazy Days' R.V. Ctr. Inc.*, Case No. 09-13911 (Bankr. D. Del. Nov. 6, 2009); *In re Source Interlink Cos.*, Case No. 09-11424 (Bankr. D. Del. May 28, 2009); *In re Abitibi-Bowater Inc.*, Case No. 09-11296 (Bankr. D. Del. Apr. 20, 2009); *In re EZ Lube, LLC*, Case No. 08-13256 (Bankr. D. Del. Jan 14, 2009).

55. Immediate and irreparable harm would result if the relief requested herein is not granted on an interim basis. As described in detail herein and in the Stratton Declaration, the Debtors have an immediate need to obtain access to liquidity to, among other things, maintain their restaurants, provide comfort to their employees, customers and vendors as well as to continue to operate their business, maintain key business relationships, make payroll and satisfy other working capital and operational needs. Funding each of these expenditures is necessary to preserve and maintain the value of the Debtors' estates for the benefit of all parties in interest.

56. Without approval of the DIP Facility, customers may take their business elsewhere and vendors might discontinue the provision of goods and services, which would disrupt operations and frustrate the Debtors' sale and efforts in these Chapter 11 Cases. Additionally, absent access to liquidity under the DIP Facility, the Debtors face the potential inability to satisfy their payroll and other direct operating expenses necessary to run their businesses in the ordinary course. Thus, availability of sufficient working capital and liquidity is vital to the preservation and maintenance of the value of the Debtors' estates. Simply put, the Debtors are trying to maximize the value of their assets through a sale process that is wholly

dependent upon additional financing, and the only additional financing available is the DIP Facility—which, fortunately, has been offered on favorable terms.

**I. Modification of the Automatic Stay Provided Under Bankruptcy Code Section 362 is Appropriate Under the Circumstances**

57. The Interim Order proposes that, unless otherwise ordered by the Court, the Pre-Petition Agent, on behalf of the other Pre-Petition Secured Parties, and DIP Agent, on behalf of the other DIP Secured Parties, shall be automatically and completely relieved from the effect of any stay under Bankruptcy Code section 362, any other restriction on the enforcement of their liens upon and security interests in the DIP Collateral or any other rights granted to them, or any of them, pursuant to the terms and conditions of the DIP Financing Documents, the Pre-Petition Financing Documents or the Interim Order. The Interim Order also proposes that, on the fifth (5<sup>th</sup>) business day after notice to the Debtors of an Event of Default, the DIP Agent and/or Pre-Petition Agent shall have automatic and immediate relief from the automatic stay Bankruptcy Rules 6004(h) and 4001(a)(3), and shall be entitled to exercise all rights and remedies under the DIP Financing Documents, Pre-Petition Financing Documents, or otherwise. *See* Interim Order at § VII(R)(4).

58. Stay modification provisions of this sort are ordinary and usual features of debtor-in-possession financing facilities and, in the Debtors' business judgment, are reasonable under the present circumstances. Accordingly, the Court should modify the automatic stay to the extent contemplated under the proposed Interim Order and, subsequently, the Final Order.

**REQUEST FOR FINAL HEARING**

59. Pursuant to Bankruptcy Rules 4001(b)(2) and (c)(2) and Local Rule 4001-2(c), the Debtor requests that the Court set a date for the Final Hearing that is as soon as practicable,

but in no event later than twenty-five (25) days after the Petition Date and fix the time and date prior to the Final Hearing for parties to file objections to this Motion.

**WAIVER OF BANKRUPTCY RULES REGARDING  
NOTICE AND STAY OF AN ORDER**

60. To implement the foregoing successfully, the Debtors seek 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 Rules 6004(h), 7062, 9014, or otherwise.

**NOTICE**

61. Notice of this Motion has been given to the following parties or, in lieu thereof, to their counsel, if known: (i) the Office of the United States Trustee for this District (the “U.S. Trustee”); (ii) the Internal Revenue Service and all taxing authorities of states in which the Debtors are doing business; (iii) counsel to the DIP Agent; (iv) the holders of the thirty (30) largest unsecured claims against the Estates; (v) all parties known to the Debtors who hold any liens or security interests in the Debtors’ assets, including those parties who have filed UCC-1 financing statements against the Debtors, or who, to the Debtors’ knowledge, have asserted any liens on any of the Debtors’ assets; (vi) all landlords and warehouseman of the Debtors; (vii) all guarantors of the Pre-Petition Obligations; (viii) all creditors known to the Debtors to be holding a judgment against any of the Debtors; (ix) any governmental bodies holding a claim against the Debtors; (x) any other parties claiming an interest in the Pre-Petition Collateral; and (xi) all other parties entitled to receive notice pursuant to the Bankruptcy Rules and the Local Rules (collectively, the “Notice Parties”). As the Motion is seeking “first day” relief, within two (2) business days of the Interim Hearing on the Motion, the Debtors will serve copies of the Motion and any order entered respecting the Motion in accordance with the Local Rules. The Debtors submit that, in light of the nature of the relief requested, no other or further notice need be given.

**NO PRIOR REQUEST**

62. No prior motion for the relief requested herein has been made to this or any other Court.

WHEREFORE, for the reasons set forth herein and in the Declarations, the Debtors respectfully request entry of the DIP Orders: (i) authorizing the Debtors to obtain postpetition financing and enter into the DIP Facility on an interim basis, on the terms set forth in the Interim Order, (ii) authorizing the Debtors to grant mortgages, security interests, liens, and superpriority claims for the benefit of the DIP Lender in respect of the DIP Obligations, in each case as set forth in the Interim Order, (iii) authorizing the Debtors to utilize Cash Collateral, (iv) authorizing the Debtors to provide the Adequate Protection, (v) modifying the automatic stay pursuant to Bankruptcy Code section 362, (vi) authorizing the Debtors to fund the Carve-Out, (vii) in accordance with Bankruptcy Rule 4001(c)(2), scheduling the Final Hearing and approving notice with respect thereto, (viii) granting the relief requested herein on a final basis, and (ix) granting such other and further relief as may be appropriate.

Dated: November 14, 2019  
Wilmington, Delaware

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*Proposed Counsel for the Debtors  
and Debtors-In-Possession*

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

In re:

HRI HOLDING CORP., *et al.*<sup>1</sup>

Debtors.

Chapter 11

Case No. 19-12415 (\_\_\_)

(Jointly Administered)

RE: Docket No. \_\_\_\_\_

**ORDER (I) AUTHORIZING THE DEBTORS, ON AN INTERIM BASIS, TO (A) OBTAIN POST-PETITION FINANCING, (B) GRANT LIENS AND SUPERPRIORITY ADMINISTRATIVE EXPENSE CLAIMS TO POST-PETITION LENDERS AND (C) UTILIZE CASH COLLATERAL, (II) PROVIDING ADEQUATE PROTECTION TO THE PRE-PETITION SECURED PARTIES, (III) MODIFYING THE AUTOMATIC STAY, (IV) GRANTING RELATED RELIEF, PURSUANT TO 11 U.S.C. SECTIONS 105, 361, 362, 363, 364 AND 507, AND (V) SCHEDULING A FINAL HEARING PURSUANT TO BANKRUPTCY RULE 4001 AND LOCAL RULE 4001-2**

Upon the motion (“**Motion**”) of the Debtors in the above-captioned Chapter 11 cases (collectively, “**Cases**”), pursuant to Sections 105, 361, 362, 363, 364(c)(1), 364(c)(2), 364(c)(3), 364(d), and 507(b) of Title 11 of the United States Code, 11 U.S.C. § 101 *et seq.* (“**Bankruptcy Code**”) and Rules 2002, 4001, 6004 and 9014 of the Federal Rules of Bankruptcy Procedure (“**Bankruptcy Rules**”) and Rule 2002-1, 4001-2, and 9013-1 of the Local Rules of Bankruptcy Practice and Procedure (“**Local Rules**”) of the United States Bankruptcy Court for the District of Delaware (this “**Court**”) seeking entry of an interim order (this “**Interim Order**”) and a final

<sup>1</sup> The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number, are: HRI Holding Corp. (4677), Houlihan’s Restaurants, Inc. (8489), HDJG Corp. (3479), Red Steer, Inc. (2214), Sam Wilson’s/Kansas, Inc. (5739), Darryl’s of St. Louis County, Inc. (7177), Darryl’s of Overland Park, Inc. (3015), Houlihan’s of Ohio, Inc. (6410), HRI O’Fallon, Inc. (4539), Algonquin Houlihan’s Restaurant, L.L.C. (0449), Geneva Houlihan’s Restaurant, L.L.C. (3156), Hanley Station Houlihan’s Restaurant, LLC (4948), Houlihan’s Texas Holdings, Inc. (5485), Houlihan’s Restaurants of Texas, Inc. (4948), JGIL Mill OP LLC (0741), JGIL Millburn, LLC (6071), JGIL Milburn Op LLC (N/A), JGIL, LLC (5485), JGIL Holding Corp. (N/A), JGIL Omaha, LLC (5485), HOP NJ NY, LLC (1106), HOP Farmingdale LLC (7273), HOP Cherry Hill LLC (5012), HOP Paramus LLC (5154), HOP Lawrenceville LLC (5239), HOP Brick LLC (4416), HOP Secaucus LLC (5946), HOP Heights LLC (6017), HOP Bayonne LLC (7185), HOP Fairfield LLC (8068), HOP Ramsey LLC (8657), HOP Bridgewater LLC (1005), HOP Parsippany LLC (1520), HOP Westbury LLC (2352), HOP Weehawken LLC (2571), HOP New Brunswick LLC (2637), HOP Holmdel LLC (2638), HOP Woodbridge LLC (8965), and Houlihan’s of Chesterfield, Inc. (5073). The Debtors’ corporate headquarters and the mailing address is 8700 State Line Road, Suite 100, Leawood, Kansas 66206.

order (the “**Final Order**”) granting the following relief to be provided on an interim basis until the date that a Final Order has been entered (such interim period being the “**Interim Period**”):

1. authorization and approval for the Debtors to obtain up to \$3,200,000 in post-petition financing (the “**DIP Facility**”) pursuant to and in accordance with the terms and conditions of a certain Debtor-In-Possession Credit Agreement (a copy of which is attached hereto as **Exhibit 1**, and as it may be amended, modified, supplemented, extended, restated or replaced from time to time, the “**DIP Credit Agreement**”), substantially as filed with this Court, by and among the Debtors, as borrowers, CIT Bank, National Association, in its capacity as administrative agent and collateral agent, (in such capacity, “**DIP Agent**”) and the financial institutions from time to time party thereto, as lenders, (collectively, including any financial institution that may issue letters of credit on behalf of any Debtor, “**DIP Lenders**” and together with the DIP Agent, the “**DIP Secured Parties**”), which may, inter alia, be used for the following purposes:

- a) for general operating and working capital purposes in accordance with the DIP Financing Documents and as limited by the Approved Budget (as defined below);
- b) for making adequate protection payments and other payments as provided in this Interim Order; and
- c) for making payment of transaction expenses as well as fees, costs and other expenses as provided in this Interim Order;

2. approval of and authorization and direction for Debtors to (a) enter into, execute and perform under (i) the DIP Credit Agreement and (ii) all security agreements, pledge agreements, notes, guarantees, mortgages, deeds of trust, control agreements, Uniform Commercial Code financing statements, certificates, reports and other agreements, documents

and instruments either or both executed and/or delivered with or to the DIP Agent and/or the DIP Lenders in connection with or related thereto (collectively, as amended, modified, supplemented, extended, restated or replaced from time to time, the “**DIP Financing Documents**”) and (b) take and perform all other acts and steps as may be required or contemplated by or in connection with the DIP Financing Documents and this Interim Order;

3. granting to the DIP Agent, for itself and on behalf of the DIP Lenders, first priority, priming, valid, perfected and enforceable Liens (as defined in section 101(37) of the Bankruptcy Code) in and upon all of the DIP Collateral (as defined below), subject only to the Carve-Out (as defined below) and any Senior Liens (as defined below), to secure all existing and future obligations and liabilities of every kind or nature (including without limitation bank products, reimbursement obligations in respect of letters of credit, and indemnity obligations) under or in connection with the DIP Financing Documents, whether due or to become due, absolute or contingent, (collectively, the “**Post-Petition Obligations**”) as provided by and more fully defined in, the DIP Financing Documents;

4. granting to the DIP Agent and the DIP Lenders allowed superpriority administrative expense claim status for the Post-Petition Obligations, subject only to the Carve-Out, in accordance with the terms of this Interim Order;

5. authorizing the Debtors’ use in accordance with the terms of the DIP Financing Documents and as limited by the Approved Budget of “cash collateral” (“**Cash Collateral**”) as such term is defined in section 363 of the Bankruptcy Code and shall include, without limitation, all cash and cash equivalents of the Debtors, whenever or wherever acquired, and the proceeds of all collateral pledged to the Pre-Petition Agent (as defined below) and to the DIP Agent, all in accordance with the terms set forth herein;

6. granting adequate protection, including without limitation Adequate Protection Liens, First Lien Adequate Protection Claims, and First Lien Adequate Protection Payments (each as defined below) to the Pre-Petition Secured Parties (as defined below) all such adequate protection with the priority set forth in this Interim Order and otherwise in accordance with the terms set forth in this Interim Order, with respect to the use and aggregate diminution in the value of their respective interests in the Pre-Petition Collateral (as defined below), including the Cash Collateral;

7. approving the application of collections and proceeds of all of the Pre-Petition Collateral (as defined below) and DIP Collateral (as defined below), payment of any First Lien Adequate Protection Payments and Post-Petition Obligations in the manner and on the terms set forth in this Interim Order (and, as applicable, by the Final Order);

8. solely upon entry of the Final Order, the waiver by the Debtors of (a) any right to surcharge the DIP Collateral and the Pre-petition Collateral (as defined below) pursuant to section 506(c) of the Bankruptcy Code, (b) any rights under the “equities of the case” exception in section 552(b) of the Bankruptcy Code, and (c) the equitable doctrine of “marshaling” or any similar doctrine with respect to the DIP Collateral and the Pre-petition Collateral;

9. modifying the automatic stay imposed by section 362 of the Bankruptcy Code to the extent hereinafter set forth and waiving the fourteen (14) day stay provisions of Bankruptcy Rules 4001(a)(3);

10. waiving any applicable stay (including under Bankruptcy Rule 6004) and provision for immediate effectiveness of this Interim Order: and

11. scheduling a final hearing on the Motion (“**Final Hearing**”) for entry of a Final Order authorizing the post-petition financing and use of cash collateral contemplated hereby on a

final basis and granting such other relief as is requested in the Motion and approving the form of notice with respect to the Final Hearing; and notice of the Motion, the relief requested therein, and the Interim Hearing (as defined below) (“**Notice**”) having been served by the Debtors in accordance with Bankruptcy Rule 4001(c) on: (i) the United States Trustee for the District of Delaware (“**U.S. Trustee**”); (ii) the Internal Revenue Service and all taxing authorities of states in which the Debtors are doing business; (iii) counsel to the DIP Agent; (iv) the holders of the twenty (20) largest unsecured claims against the Estates; (v) all parties known to the Debtors who hold any liens or security interests in the Debtors’ assets, including those parties who have filed UCC-1 financing statements against the Debtors, or who, to the Debtors’ knowledge, have asserted any liens on any of the Debtors’ assets; (vi) all landlords and warehouseman of the Debtors; (vii) all guarantors of the Pre-Petition Obligations; (viii) all creditors known to the Debtors to be holding a judgment against any of the Debtors; (ix) any governmental bodies holding a claim against the Debtors; (x) any other parties claiming an interest in the Pre-Petition Collateral; and (xi) all other parties entitled to receive notice pursuant to the Bankruptcy Rules and the Local Rules (collectively, the “**Noticed Parties**”); and the initial hearing on the Motion having been held by this Court on November 15, 2019 (“**Interim Hearing**”); and based upon the record made by the Debtors at the Interim Hearing, including the Motion, the Declaration of Matthew R. Manning filed contemporaneously with the Motion (the “**First Day Declaration**”), the Declaration of Jean E. Hosty filed contemporaneously with the Motion (the “**Hosty Declaration**”) and the filings and pleadings in the Cases, with all objections, if any, to the entry of the Interim Order having been withdrawn, resolved or overruled, and after due deliberation and consideration, and good and sufficient cause appearing therefor:

THE COURT HEREBY MAKES THE FOLLOWING FINDINGS OF FACT AND CONCLUSIONS OF LAW:<sup>2</sup>

A. Petition. On November 14, 2019 (“**Petition Date**”), each Debtor filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code. The Debtors continue to operate their businesses and manage their properties as debtors-in-possession pursuant to Bankruptcy Code sections 1107(a) and 1108. No trustee or examiner has been appointed in the Chapter 11 cases and no official committee of unsecured creditors or any other statutory committee (a “**Committee**”) has been appointed in these Chapter 11 cases.

B. Jurisdiction and Venue. The Court has jurisdiction of these Cases, the Motion, this Interim Order and the parties and property affected hereby pursuant to 28 U.S.C. §§ 157(b) and 1334, and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012. The Motion is a “core” proceeding as defined in 28 U.S.C. §§ 157(b)(2)(A), (D) and (M). Venue of the Cases and the Motion in this Court is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

C. Notice. The Interim Hearing is being held pursuant to the authorization of Bankruptcy Rule 4001 after notice was provided to the Notice Parties in accordance with Bankruptcy Rule 4001(b) and (c).

D. Debtors’ Acknowledgments and Agreements. Without prejudice to the rights of certain non-Debtor parties specifically set forth in Section VIII below, the Debtors admit, stipulate, acknowledge, and agree that:

(1) Pre-Petition Financing Documents. Prior to the commencement of the

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<sup>2</sup> Findings of fact shall be construed as conclusions of law, and conclusions of law shall be construed as findings of fact pursuant to Fed. R. Bankr. P. 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014. Any statements of this Court from the bench at the Interim Hearing shall constitute additional findings of fact and

Cases, the Pre-Petition Secured Parties made loans, advances and provided other financial accommodations to certain of the Debtors pursuant that certain Credit and Guaranty Agreement dated as of December 17, 2015 (the “**Pre-Petition Credit Agreement**”), among (1) HDJG MERGER CORP., a Delaware corporation; (2) HRI HOLDING CORP., a Delaware corporation, HOULIHAN’S RESTAURANTS, INC., a Virginia corporation, and each other Person listed on Schedule A to the Pre-Petition Credit Agreement and joined thereto as a Borrower (together the “**Pre-Petition Borrowers**”); (3) HDJG CORP., a Delaware corporation and the other Guarantors (as defined in the Pre-Petition Credit Agreement), (4) the Lenders (as defined in the Pre-Petition Credit Agreement and further defined as the “**Pre-Petition Secured Parties**”) from time to time party thereto, and (5) CIT BANK, N.A. (the “**Pre-Petition Agent**”), as Administrative Agent (as amended or modified, the “**Pre-Petition Credit Agreement**”) (the Pre-Petition Credit Agreements and the Loan Documents (as defined in the Pre-Petition Credit Agreement), the “**Pre-Petition Financing Documents**”). The Pre-Petition Obligations (as defined below) shall be deemed to have been automatically accelerated on the Petition Date as a result of the commencement of the Cases in accordance with the terms of the Pre-Petition Financing Documents and all commitments of the Pre-Petition Secured Parties have been terminated provided that the Lenders (as defined in the Pre-Petition Credit Agreement) shall have no obligation to renew, extend, increase or issue any letters of credit except to the extent the Lenders (as defined in the Pre-Petition Credit Agreement) agree in writing to do so.

(2) Pre-Petition Obligations.

a) As of the Petition Date, the aggregate amount of all Obligations (as defined in the Pre-Petition Credit Agreement) owing by Pre-Petition Borrowers to the Pre-

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conclusions of law as appropriate and are expressly incorporated by reference into this Interim Order to the extent not inconsistent herewith.

Petition Secured Parties under and in connection with the Pre-Petition Financing Documents was not less than (a) \$44,583,642, plus interest accrued and accruing thereon at the rate in effect on the Petition Date, including (b) outstanding letters of credit in the aggregate amount of \$1,824,569, plus (c) accrued and accruing fees, plus (d) all accrued and accruing costs and expenses (including attorneys' fees and legal expenses), plus (e) any other charges and liabilities accrued, accruing or chargeable, whether due or to become due, matured or contingent, under the Pre-Petition Credit Agreement (collectively, "**Pre-Petition Obligations**"). Without limiting the foregoing, the Pre-Petition Obligations shall include all indemnification obligations of Borrowers and Guarantors to the Pre-Petition Secured Parties arising under the Pre-Petition Financing Documents, including without limitation the indemnitee and other protections provided to indemnitees under the obligations arising under the Pre-Petition Credit Agreement, which survive payment in full of the Pre-Petition Obligations.

b) The Pre-Petition Obligations constitute allowed, legal, valid, binding, enforceable, and non-avoidable obligations of Pre-Petition Borrowers, and are not subject to any offset, deduction, defense, counterclaim, avoidance, recovery, recharacterization, or subordination pursuant to the Bankruptcy Code or any other applicable law, and the Debtors do not possess and shall not assert any claim, counterclaim, setoff, deduction, or defense of any kind, nature or description, which would in any way impair, reduce, or affect the validity, enforceability, and non-avoidability of any of the Pre-Petition Obligations.

(3) **Pre-Petition Collateral (for Pre-Petition Obligations)**.

a) As of the Petition Date, the Pre-Petition Obligations were secured pursuant to the Pre-Petition Financing Documents by valid, binding, perfected, enforceable and non-avoidable first priority security interests and liens ("**Pre-Petition Credit Liens**") granted by

Borrower to the Pre-Petition Agent, for the benefit of itself and the Pre-Petition Lenders, upon the Collateral (as defined in the Pre-Petition Credit Agreement, hereafter “**Pre-Petition Collateral**”), subject only to any valid, perfected and unavoidable lien or security interest otherwise existing as of the Petition Date, which are acknowledged to be senior in priority under the Pre-Petition Credit Agreement (collectively, “**Prior Permitted Liens**” and each a “**Prior Permitted Lien**”). The Prior Permitted Liens together with (i) any valid, perfected, and unavoidable lien or security interest otherwise existing as of the Petition Date, which is senior in priority to the liens granted to the Pre-Petition Secured Parties in the Pre-Petition Collateral, and (ii) any valid and unavoidable lien or security interest, which is senior in priority to the liens granted to the Pre-Petition Secured Parties in the Pre-Petition Collateral that is validly perfected subsequent to the Petition Date as permitted by Bankruptcy Code section 546(b), shall be collectively referred to in this Interim Order as “**Senior Liens**”.

b) The Pre-Petition Agent, on behalf of the Pre-Petition Lenders, has a valid, binding and perfected nonavoidable and first priority security interest and lien in all of the Cash Collateral, including all amounts on deposit in all of Debtors’ banking, checking or other deposit accounts with each of the Pre-Petition Secured Parties, whether as original collateral or proceeds of other Pre-Petition Collateral, and all such Cash Collateral is part of the Pre-Petition Collateral.

c) The Debtors do not possess and will not assert any claim, counterclaim, setoff, deduction, or defense of any kind, nature or description that would in any way impair, reduce, or affect the validity, enforceability and non-avoidability of any of the Pre-Petition Secured Parties’ liens, claims or security interests in the Pre-Petition Collateral, which liens and security interests are not subject to subordination or avoidance pursuant to the

Bankruptcy Code or any other applicable law.

E. Adequate Protection.

(1) Adequate Protection Obligations. The Debtors acknowledge and agree that the Pre-Petition Secured Parties are entitled to and being provided with adequate protection resulting from (1) the provisions of this Interim Order granting either or both first priority and priming liens on the Pre-Petition Collateral to the DIP Agent, for the benefit of the DIP Lenders, with respect to the DIP Facility, (2) use of the Cash Collateral, (3) use, sale, lease, decrease, or depreciation or other diminution in value of the Pre-Petition Collateral (4) the subordination to the Carve-Out, and (5) the imposition of the automatic stay under Bankruptcy Code section 362(a) or otherwise pursuant to Bankruptcy Code sections 361(a), 363(c), 364(c), and 364(d)(1); and

(2) The amount of the aggregate diminution in value in the Pre-Petition Secured Parties' respective interests in the Pre-Petition Collateral resulting from (1) the provisions of this Interim Order granting first priority and priming liens on the Pre-Petition Collateral to the DIP Agent, for the benefit of the DIP Lenders, (2) use of Cash Collateral, (3) use, sale, lease, decrease or depreciation or other diminution in value of the Pre-Petition Collateral, and (4) the imposition of the automatic stay under Bankruptcy Code section 362(a) or otherwise pursuant to Bankruptcy Code sections 361(a), 363(c), 364(c), and 364(d)(1) is collectively referred to in this Interim Order as "**Adequate Protection Obligations**". In exchange for such adequate protection, the Pre-Petition Secured Parties agreed to the Debtors' use of Cash Collateral on the terms set forth in this Interim Order and to the imposition of the Carve-Out as set forth herein.

(3) Necessity for Adequate Protection. The adequate protection and other treatment agreed to be provided by the Debtors pursuant to Section IV below of this Interim Order are authorized by the Bankruptcy Code, will minimize disputes and litigation over use of the Cash Collateral, is consistent with the Debtors' need for a DIP Facility and will facilitate the Debtors' ability to continue their business operations.

F. Prior Liens. Nothing herein contained is intended to (1) subordinate, invalidate, negate, avoid, or prejudice the holders of Senior Liens, (2) find or rule that any Senior Liens (or any other liens, excepting only the liens of the Pre-Petition Agent in the Pre-Petition Collateral, subject only to Section VIII below) are valid, binding, perfected, enforceable, non-avoidable or senior, or (3) prejudice the right of any party-in-interest, including without limitation the Debtors, any Committee, the Pre-Petition Agent, or DIP Agent, from challenging the validity, enforceability, perfection, extent or priority of any Senior Lien (or any other liens, excepting only the liens of the Pre-Petition Agent in the Pre-Petition Collateral).

G. Findings Regarding the Post-Petition Financing.

(1) Request for Post-Petition Financing. Debtors have requested from the DIP Agent and the DIP Lenders, and the DIP Agent and the DIP Lenders are willing to extend, certain loans, advances, and other financial accommodations, as more particularly described, and subject to the terms and conditions set forth, in this Interim Order and the DIP Financing Documents.

(2) Need for Post-Petition Financing. The Debtors do not have sufficient available sources of working capital to operate the Debtors' businesses in the ordinary course without the DIP Facility and the ability to use Cash Collateral as described in this Interim Order. The Debtors' ability to maintain business relationships with their vendors, suppliers, and

customers, to pay their employees, and to otherwise fund their operations is essential to the viability of the Cases. The ability of the Debtors to obtain sufficient working capital and liquidity through the proposed DIP Facility and the use of Cash Collateral on the terms set forth in the DIP Financing Documents and this Interim Order is vital to the preservation and maximization of the going-concern value of one or more of the Debtors' currently operating businesses pending sale(s) of the Debtors' assets. Additionally, the liquidity provided under the DIP Financing Documents is necessary for Debtors to maintain operations and to satisfy the Milestones in respect of an Acceptable Sale Process in accordance with the DIP Credit Agreement through the implementation of the Bidding Procedures in respect of a sale of all or substantially all of the Debtors' assets or the equity interests in the DIP Borrower through a public auction or private process whereby the Pre-Petition Agent and the DIP Agent shall have the right to credit bid, in their respective sole and absolute discretion (independently or together), up to the full amount of the Pre-petition Obligations and the DIP Obligations. Accordingly, the Debtors have an immediate need to obtain funds from the DIP Facility and authorization to use Cash Collateral for the purposes set forth herein to, among other things, permit the orderly operation of their business, support a process for a going concern sale of their business, minimize disruption of their business operations, and manage and preserve the assets of the Debtors' bankruptcy estates (as defined under Bankruptcy Code section 541, the "**Estates**") to maximize the recoveries to creditors of the Estates.

(3) No Credit Available on More Favorable Terms. Consistent with the First Day Declaration and the Hosty Declaration, the Debtors are unable to procure financing in the form of unsecured credit allowable under Bankruptcy Code section 503(b)(1), as an administrative expense under Bankruptcy Code section 364(a) or (b), or in exchange for the

grant of an administrative expense priority pursuant to Bankruptcy Code section 364(c)(1), without the grant of liens on all or substantially all of Debtors' assets pursuant to Bankruptcy Code sections 364(c) and (d). Debtors have been unable to procure the necessary financing on terms more favorable than the financing offered by the DIP Agent and the DIP Lenders pursuant to the DIP Financing Documents and this Interim Order.

(4) Budget. Based upon the record presented to this Court by the Debtors, (a) Debtors have prepared and delivered the Budget (as defined in the DIP Credit Agreement (a copy of such Budget being annexed hereto as Exhibit 2 (the "Approved Budget")), (b) the Budget has been thoroughly reviewed by the Debtors and their management and (c) the Budget sets forth, among other things, the projected cash receipts and disbursements for the periods covered thereby. The Debtors believe in good faith that the Budget is achievable and will allow the Debtors to operate in Chapter 11 without the accrual of unpaid administrative expenses during the term of the Budget. The Pre-Petition Secured Parties and the DIP Secured Parties are relying upon the Debtors' compliance with the Budget in determining to consent to the use of Cash Collateral for the limited purposes expressly set forth herein and to enter into (or as the case may be, consent to) the DIP Facility provided for herein.

(5) Business Judgment and Good Faith Pursuant to Section 364(e) and Section 363 (m). Based on the record before this Court, including the Debtors' stipulations, (a) the Debtors and each of the Pre-Petition Secured Parties and the DIP Secured Parties have negotiated at arms' length and in good faith regarding the terms of the DIP Financing Documents, the DIP Facility, and the Debtors' use of Cash Collateral, respectively, all subject to the terms of this Interim Order and (b) the terms of the DIP Credit Agreement, the other DIP Financing Documents and the DIP Facility are fair and reasonable, reflect Borrower's and Guarantors'

exercise of prudent business judgment consistent with their fiduciary duties, and constitute reasonably equivalent value and fair consideration. Any credit extended under the terms of this Interim Order shall be deemed to have been extended in “good faith” (as that term is used in Bankruptcy Code sections 364(e) and 363(m)) by the Pre-Petition Secured Parties and the DIP Lenders.

(6) No Objection. The Pre-Petition Secured Parties have no objection to the DIP Facility and the use of Cash Collateral on the terms and conditions set forth in this Interim Order. Nothing in this Interim Order, including, without limitation, any of the provisions herein with respect to adequate protection, shall constitute, or be deemed to constitute, a finding that the interests of the Pre-Petition Secured Parties are or will be adequately protected with respect to any non-consensual use of Cash Collateral.

(7) Good Cause. The relief requested in the Motion is necessary, essential and appropriate, and is in the best interest of and will benefit the Debtors and the Estates, as its implementation will, among other things, provide the Debtors with the necessary liquidity to (a) minimize disruption to the Debtors’ efforts for the orderly operation of their business and to facilitate a going-concern sale process for the businesses, (b) preserve and maximize the value of the Estates, and (c) avoid immediate and irreparable harm to the Debtors, their respective businesses, employees, and assets.

(8) Immediate Entry. Sufficient cause exists for immediate entry of this Interim Order pursuant to Bankruptcy Rules 4001(c)(2). No party appearing in the Cases has filed or made an objection to the relief sought in the Motion or the entry of this Interim Order, or any objections that were made (to the extent such objections have not been resolved or withdrawn) are hereby overruled.

Based upon the foregoing, and after due consideration and good cause appearing therefor;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, that:

**I. Authorization and Terms of Financing.**

A. Motion Granted. The Motion is granted in accordance with Bankruptcy Rule 4001(c)(2) under the terms and conditions provided in this Interim Order.

B. Authorization to Borrow. The Debtors are hereby authorized to immediately borrow funds in accordance with the terms of the DIP Credit Agreement and the Approved Budget and to incur indebtedness and obligations owing to the DIP Agent and the DIP Lenders on the terms and subject to the conditions (including without limitation borrowing formulae, sublimits and availability restrictions) set forth in the DIP Financing Documents and this Interim Order up to the maximum amount of \$3,200,000, subject, as applicable, to the Approved Budget (with any variances permitted thereto under the terms and conditions of the DIP Credit Agreement) and to entry of the Final Order.

C. Financing Documents.

(1) Authorization. The Debtors are hereby authorized to (a) enter into, execute, deliver, perform, and comply with all of the terms, conditions, and covenants of the DIP Financing Documents, including without limitation, the DIP Credit Agreement, and all security and pledge agreements, (b) execute and deliver all certificates, reports, statements and other agreements and documents required or contemplated by the DIP Financing Documents (including without limitation documents required for the Debtors' performance of their obligations under the DIP Financing Documents and creation and perfection of liens granted or contemplated therein, and (c) pay all obligations incurred under or described in (whether

principal, interest, fees, costs, expenses, indemnities or otherwise) and perform all other undertakings and acts required or contemplated by the DIP Financing Documents.

(2) Approval of DIP Facility. The DIP Facility is approved subject to the terms and provisions of the DIP Financing Documents and this Interim Order.

(3) Amendment of DIP Financing Documents. The Debtors, the DIP Agent, and the DIP Lenders are hereby authorized to approve and implement, in accordance with the terms of the DIP Financing Documents, any modification of the DIP Financing Documents; provided, however, that any material modification or amendment to the DIP Financing Documents shall be subject to providing notice of such material modification or amendment to counsel to any Committee and the U.S. Trustee each of whom shall have five (5) business days from the date of such notice within which to object in writing to such modification or amendment unless the Committee and U.S. Trustee agree in writing to a shorter period, which modification shall be filed with this Court. Unless the Committee or the U.S. Trustee timely objects to any material modification or amendment to the DIP Financing Documents, then such modification or amendment shall become effective upon the expiration of the aforementioned notice period. If a timely objection is interposed, this Court shall resolve such objection prior to such modification or amendment becoming effective.

(4) Budget Maintenance. The use of extensions of credit under the DIP Facility shall be in accordance with the Approved Budget, subject to the Permitted Variances (as defined in the DIP Credit Agreement) and as provided in Section 6.17 of the DIP Credit Agreement. The Budget shall be updated by the Debtors no less frequently than every two (2) weeks in accordance with the terms and provisions of the DIP Credit Agreement. A copy of any updated Approved Budget shall be filed with this Court within one (1) Business Day after it has

been approved by the DIP Agent.

(5) Application of DIP Facility Proceeds. The advances under the DIP Facility (the “**Advances**”) shall be used in each case in a manner consistent with the terms and conditions of the DIP Financing Agreements, and in accordance with and as may be limited by the Approved Budget (subject to any variances thereto permitted under the terms and conditions of the DIP Credit Agreement), solely as follows:

a) to pay fees, costs, and expenses as provided in the DIP Financing Documents, including amounts incurred in connection with the preparation, negotiation, execution and delivery of the DIP Credit Agreement and the other DIP Financing Documents;

b) for general operating and working capital purposes, for the payment of fees, expenses, and costs incurred in connection with the Cases, and other proper corporate purposes of the Debtors not otherwise prohibited by the terms hereof for working capital, and other lawful corporate purposes of the Debtors;

c) for making other payments as provided in this Interim Order; and

d) to fund the Carve-Out Reserve Account (as defined below).

(6) Conditions Precedent. The DIP Lenders shall have no obligation to make any loan or advance (or issue any letter of credit) under the DIP Credit Agreement unless the conditions precedent to make such loan or extension of credit under the DIP Credit Agreement have been satisfied in full or waived in accordance with the DIP Credit Agreement.

D. Payments and Application of Payments. The Debtors are authorized to make all payments and transfers of the Estates’ property to the DIP Agent and the DIP Lenders as provided, permitted or required under the DIP Financing Documents and this Interim Order, which payments and transfers shall not be avoidable or recoverable from the DIP Lenders under

Bankruptcy Code section 547, 548, 550, 553, or any other section thereof, or be subject to any other claim, charge, assessment, or other liability, whether by application of the Bankruptcy Code, other law, or otherwise. Without limiting the generality of the foregoing, Debtors are authorized and directed, without further order of this Court, to (i) pay all principal, interest, fees and indemnities, when due, under the DIP Financing Documents and (ii) pay or reimburse the DIP Agent and the DIP Lenders, in accordance with the DIP Financing Documents, for all present and future costs and expenses, including, without limitation, all reasonable and documented professional fees, consultant fees, and legal fees and expenses paid or incurred by the DIP Agent and the DIP Lenders in connection with the financing transactions as provided in the DIP Financing Documents and this Interim Order, regardless of whether such amounts are in the Budget, all of which shall be and are included as part of the principal amount of the Obligations (as defined in the DIP Credit Agreement) under the DIP Financing Documents and secured by the DIP Collateral (as defined below); provided that DIP Agent shall send a redacted summary invoice of such fees and expenses (subject in all respects to applicable privilege or work product doctrines) to Debtors, the U.S. Trustee and, if appointed, the Committee or its counsel and such invoices shall be promptly paid by Debtors if no objection has been raised within ten (10) days, and to the extent there is an objection, this Court may resolve the objection.

E. Interest and Fees. The rate(s) of interest to be charged for borrowings under the DIP Facility pursuant to the DIP Credit Agreement shall be the rates set forth in the DIP Credit Agreement and shall be calculated in the manner and payable at the times set forth in the DIP Credit Agreement. The fees charged under the DIP Facility shall be those set forth in the DIP Credit Agreement and shall be unconditionally payable in the amounts and at the times set forth in the DIP Credit Agreement, including without limitation the Closing Fee, which is absolutely

and unconditionally earned upon execution of the DIP Credit Agreement, and shall be non-refundable.

F. Interim Period Application of Collections. During the Interim Period, all cash, collections, and proceeds of the Pre-petition Collateral and DIP Collateral, including all proceeds realized in connection with any and all asset sales, shall be paid to the DIP Agent for application in reduction of the Post-Petition Obligations in accordance with the terms of the DIP Financing Documents and this Interim Order, in such order and manner determined by the DIP Agent, including, without limitation, applying all payments, proceeds and other amounts to the Post-Petition Obligations in the DIP Agent's sole and absolute discretion.

G. Continuation of Pre-petition Procedures. All pre-petition practices and procedures for the payment and collection of proceeds of Pre-Petition Collateral and DIP Collateral, as applicable, the turnover of cash, the delivery of property to the Pre-Petition Secured Parties, and the funding pursuant to the Pre-Petition Credit Agreement, including use of any lockbox or blocked depository bank account arrangements, will be unchanged, remain in place and be identical under the DIP Financing Documents for the benefit of the DIP Agent and the DIP Lenders and are hereby approved and shall continue without interruption after the commencement of the Cases, provided that the practices and procedures are otherwise consistent with the terms of the Order approving the *Motion of the Debtors for Entry of Interim and Final Orders (A) Authorizing the Maintenance of Bank Accounts and Continued Use of Existing Business Forms and Checks, (B) Authorizing the Continued Use of Existing Cash Management System and (C) Granting Limited Relief from the Requirements of Bankruptcy Code Section 345(b) and the United States Trustee Operating Guidelines.*

**II. Collateralization and Superpriority Administrative Claim Status.**

A. Collateralization.

(1) DIP Lien Grant. To secure the prompt payment and performance of any and all Post-Petition Obligations of Borrower and Guarantors to the DIP Agent and the DIP Lenders of whatever kind, nature, or description, absolute or contingent, now existing or hereafter arising, the DIP Agent, for the benefit of itself and the DIP Lenders, shall have and is hereby granted, effective nunc pro tunc as of the Petition Date, valid, binding, enforceable, continuing, non-avoidable and perfected first priority (subject only to any Senior Liens and the Carve-Out), security interests and liens in and upon (such security interests and liens collectively, "**DIP Liens**") all property and rights and interests in property of each of the Debtors of any kind or nature whatsoever in existence as of the Petition Date as well as thereafter created or acquired, and wherever located, including without limitation, (a) all Pre-Petition Collateral, (b) all accounts and accounts receivable, inventory, chattel paper, equipment, fixtures, machinery, commercial tort claims, deposit accounts, instruments, documents, cash and cash equivalents, investment property (including without limitation all equity interests in subsidiaries), books and records, patents, trademarks, trade names, copyrights, rights under license agreements and all other intellectual property, rights, rebates, refunds and other claims under and with respect to insurance policies, tax refunds, deposits, rebates, contract rights and other general intangibles, software, letter of credit rights, money and inter-company claims or receivables (whether or not evidenced by notes) at any time owing to each Debtor, (c) all real property, leaseholds, rents and profits and proceeds thereof; (provided, however, that as to a lien on all fee, leasehold, and other real property interests and the proceeds thereof: (i) with respect to non-residential real property leases, no liens or encumbrances shall be granted or extended to

such leases under this Interim Order, except as permitted by the applicable lease or pursuant to applicable law, but if any such restriction applies, liens shall then be deemed to extend only to the economic value of proceeds of any sale or other disposition of, and any other proceeds or products of, such leasehold interests; and (ii) should any DIP Lender's internal regulatory or compliance requirements require the completion of either or both flood due diligence and obtaining evidence of applicable flood insurance with respect to any real property or leasehold interest, then until completion of such flood due diligence, the DIP Agent shall be deemed to have obtained a lien only on the economic value of, proceeds of any sale or other disposition of such real property interests), (d) if not otherwise described, all of the property or rights in property identified as Collateral (as defined in the Pre-Petition Credit Agreement, and the DIP Credit Agreement), (e) (i) all causes of action (other than Avoidance Actions, as defined below) whether pursuant to federal or applicable state law, and the proceeds thereof and property received thereby whether by judgment, settlement, or otherwise, and (ii) upon entry of the Final Order, all claims and causes of action under Chapter 5 of the Bankruptcy Code or any other avoidance actions under the Bankruptcy Code (collectively, "**Avoidance Actions**") of the Debtors or the Estates and proceeds thereof, and (f) as to all of the foregoing, all rents, issues, products, proceeds (including insurance policies), and profits of, from, or generated by any of the foregoing (all of the foregoing being sometimes collectively referred to in this Interim Order as "**DIP Collateral**").

(2) Subject, in each instance, to the Carve-Out, the DIP Liens shall be:

a) Liens on Unencumbered Assets. Pursuant to Bankruptcy Code section 364(c)(2), continuing valid, perfected, enforceable, first priority, and fully perfected liens on and security interests in all of the Debtors' right, title, and interest in, to, and under all DIP

Collateral that is not otherwise encumbered by a validly perfected security interest or lien as of the Petition Date (“**Unencumbered Property**”).

b) Liens on Encumbered Assets. Pursuant to Bankruptcy Code section 364(c)(3), a continuing valid, enforceable, second priority, and fully perfected lien on and security interest (other than as set forth in clause (c) below) in all of the Debtors’ right, title, and interest in, to, and under all DIP Collateral which is subject to, as of the Petition Date, a Senior Lien.

c) Priming Liens on Encumbered Assets. Subject to any applicable Senior Liens, pursuant to Bankruptcy Code section 364(d), valid, enforceable, and fully perfected first priority senior priming security interests in and senior priming liens upon all of the Debtors’ right, title, and interest in, to, and under all DIP Collateral, including, without limitation, priming security interests and priming liens which are senior to (i) the security interests and liens held by the Pre-Petition Agent, on behalf of the Pre-Petition Secured Parties; and (ii) the Adequate Protection Liens (as defined below).

d) Liens Senior to Certain Other Liens. Notwithstanding anything to the contrary contained in this Interim Order, except for the last paragraph of Section VIII with respect to the First Lien Adequate Protection Liens (as defined below), the DIP Liens and the First Lien Adequate Protection Liens shall not be subject or subordinate to (i) Bankruptcy Code sections 510, 549, or 550; (ii) any lien or security interest that is avoided or preserved for the benefit of the Debtors or the Estates under Bankruptcy Code section 551 or (iii) any intercompany or affiliate liens of the Debtors.

(3) Post-Petition Lien Perfection. This Interim Order shall be sufficient and conclusive evidence of the priority, perfection, and validity of the post-petition liens and security

interests granted herein, effective as of the Petition Date, without any further act and without regard to any other federal, state, or local requirements or law requiring notice, filing, registration, recording, or possession of the DIP Collateral, or other act to validate or perfect such security interest or lien, including without limitation, control agreements with any financial institution(s) holding any deposit account of Debtors (a "**Perfection Act**"). Notwithstanding the foregoing, if the DIP Agent, the Pre-Petition Agent (on account of its First Lien Adequate Protection Liens) shall, in its sole discretion, elect for any reason to file, record, or otherwise effectuate any Perfection Act, each of the DIP Agent and the Pre-Petition Agent is authorized to perform such act, and Debtors are authorized to perform such acts to the extent necessary or required by the DIP Agent, the Pre-Petition Agent which act or acts shall be deemed to have been accomplished as of the Petition Date notwithstanding the date and time actually accomplished, and in such event, the subject filing or recording office is authorized to accept, file or record any document in regard to such act in accordance with applicable law. The DIP Agent, the Pre-Petition Agent may choose to file, record or present a certified copy of this Interim Order in the same manner as a Perfection Act, which shall be tantamount to a Perfection Act, and, in such event, the subject filing or recording office is authorized to accept, file, or record such certified copy of this Interim Order in accordance with applicable law. Should the DIP Agent, and/or the Pre-Petition Agent so choose and attempt to file, record or perform a Perfection Act, no defect or failure in connection with such attempt shall in any way limit, waive, or alter the validity, enforceability, attachment, priority, or perfection of the DIP Liens, the First Lien Adequate Protection Liens or the Second Lien Adequate Protection Liens granted herein by virtue of the entry of this Interim Order.

B. Superpriority Administrative Expense.

(1) For all Post-Petition Obligations, whether now existing or hereafter arising, subject only to the Carve-Out, the DIP Agent, for the benefit of itself and the DIP Lenders, is granted an allowed superpriority administrative expense claim of the Estates pursuant to Bankruptcy Code section 364(c)(1), having priority in right of payment over any and all other obligations, liabilities, and indebtedness of any of such Debtors, whether now in existence or hereafter incurred by any of such Debtors of every kind or nature, including any and all unsecured claims, administrative expenses, adequate protection claims, priority claims or any other claims of the kind specified in, or ordered pursuant to, the Bankruptcy Code, including without limitation, *inter alia*, Bankruptcy Code sections 105, 326, 328, 330, 331, 503(b), 507, 364(c)(1), 546(c), 726 or 1114 and, upon entry of the Final Order, sections 506(c) and 552(b) (the “DIP Superpriority Claim”).

(2) Other than the Carve-Out, (a) effective upon entry of the Final Order with respect to rights preserved under section 506(c) of the Bankruptcy Code, no costs or expenses of administration, including without limitation, professional fees allowed and payable under sections 328, 330, and 331 of the Bankruptcy Code, or otherwise, that have been or may be incurred in the Chapter 11 Cases, or in any Successor Cases, and (b) no priority claims are, or will be, senior to, prior to, or on a parity with the DIP Superpriority Claim or the Post-Petition Obligations or with any other claims of the DIP Lenders arising hereunder.

**III. Authorization to Use Cash Collateral.** Subject to the terms and conditions of this Interim Order, pursuant to Bankruptcy Code section 363(c)(2), the Debtors are authorized to use Cash Collateral in accordance with the DIP Financing Documents and as may be limited by the Approved Budget (subject to variances permitted under the terms and conditions of the DIP

Credit Agreement). Absent entry of the Final Order by this Court, the Debtors shall no longer be authorized to use Cash Collateral at the expiration of the Interim Period without the prior written approval of the DIP Agent. Except for the sale of inventory in the ordinary course of Debtors' business or as may be otherwise expressly permitted herein, or in any agency arrangement between Debtors and a third party in connection with the liquidation of the DIP Collateral approved in writing by DIP Agent and Pre-Petition Agent, nothing in this Interim Order shall be deemed to authorize the use, sale, lease, encumbrance, or disposition of any assets of the Debtors or the Estates or the use of any Cash Collateral or other proceeds resulting therefrom.

**IV. Adequate Protection for Pre-Petition Secured Parties.** As adequate protection for the interests of the Pre-Petition Agent, for the benefit of itself and the Pre-Petition Lenders, on account of the Adequate Protection Obligations owed to the Pre-Petition Secured Parties (the "**First Lien Adequate Protection Obligations**"), the Pre-Petition Agent is being provided with adequate protection (collectively, "**First Lien Adequate Protection**").

A. **First Lien Adequate Protection Liens.** Until the indefeasible discharge of the Pre-Petition Obligations, the Pre-Petition Agent, for itself and for the benefit of the Pre-Petition Lenders, is hereby granted valid, binding, enforceable and perfected replacement and additional security interests in and liens ("**First Lien Adequate Protection Liens**") on all the Debtors' right, title, and interest in and to the DIP Collateral to the extent of the First Lien Adequate Protection Obligations, which liens shall be junior in all respects only to the DIP Liens, the Senior Liens and the Carve Out.

(1) The First Lien Adequate Protection Liens shall be deemed to be fully perfected as of the Petition Date and, subject to Section VIII below, not subject to subordination or avoidance for any cause or purpose in the Cases.

(2) Except for the DIP Liens, the Senior Liens, and the Carve Out, and subject to the last paragraph of Section VIII, the First Lien Adequate Protection Liens (i) shall not be made subject to or *pari passu* with any lien or security interest by any court order heretofore or hereafter entered in the Cases (unless with the consent of the Pre-Petition Secured Parties); (ii) shall not be subject to Bankruptcy Code sections 506(c) (upon entry of the Final Order), 510, 549, or 550; and (iii) no lien or interest avoided and preserved for the benefit of any Estate pursuant to Bankruptcy Code section 551 shall be made *pari passu* with or senior to the First Lien Adequate Protection Liens.

B. First Lien Adequate Protection Claims. As further adequate protection, to the extent that the First Lien Adequate Protection Liens do not adequately protect the diminution in value of the Pre-Petition Agent's interest in the Pre-Petition Collateral, the Pre-Petition Agent, for the benefit of the Pre-Petition Lenders, is hereby granted an allowed superpriority administrative expense claim ("**First Lien Adequate Protection Claim**") against the Estates under Bankruptcy Code sections 503 and 507(b), which shall, subject only to the DIP Superpriority Claim and the Carve-Out, have priority over all other administrative expense claims, priority claims and unsecured claims against the Debtors or the Estates, which are now existing or hereafter arising, of any kind or nature whatsoever, including, without limitation, administrative expenses and priority or other claims of the kinds specified in or ordered pursuant to Bankruptcy Code sections 105, 326, 328, 330, 331, 364, 365, 503(a), 503(b), 506(c) (upon entry of the Final Order), 507(a), 507(b), 546(c) (upon entry of the Final Order), 726, 1113 and 1114.

C. First Lien Adequate Protection Payments.

(1) As further adequate protection, the Pre-Petition Agent, for the benefit of

the Pre-Petition Lenders, shall be entitled to interest on account of the outstanding Pre-Petition Obligations at the default rate set forth in the Pre-Petition Financing Documents, which was in effect as of the Petition Date and which shall accrue in the manner set forth in the Pre-Petition Financing Documents.

(2) As further adequate protection, and without limiting any rights of the Pre-Petition Agent, for the benefit of the Pre-Petition Lenders, under Bankruptcy Code section 506(b) which are hereby preserved, the Debtors shall pay or reimburse the Pre-Petition Agent and the Pre-Petition Lenders (“**First Lien Adequate Protection Payments**”) for any and all of its reasonable fees, costs, expenses and charges accrued and payable under the Pre-Petition Financing Documents, including, without limitation, the fees and expenses of the Pre-Petition Agent as provided in Section 12.05 of the Pre-Petition Credit Agreement, whether accrued and unpaid pre-petition or accrued and unpaid post-petition, all without further notice, motion or application to, order of, or hearing before, this Court; provided that DIP Agent shall be permitted to include such fees and expenses in the Post-Petition Obligations and to effectuate such payment following submission of a redacted summary invoice to the Debtors, the U.S. Trustee and, if appointed, a Committee or its counsel, of a written invoice (subject in all respects to applicable privilege or work product doctrines) provided no objection has been raised within ten (10) days, and to the extent there is an objection, this Court may resolve the objection. Such written invoices shall include the invoices of (i) Katten Muchin Rosenman LLP, counsel to the Pre-Petition Agent, and (ii) any other professional, advisor, or agent reasonably retained by the Pre-Petition Agent or its counsel in connection with the Pre-Petition Financing Documents pursuant to the Cases; provided that none of such fees and expenses as adequate protection payments hereunder shall be subject to approval by this Court or the United States Trustee Guidelines

unless an objection is interposed and cannot be resolved by the parties. No recipient of any such payment shall be required to file with respect thereto any interim or final fee application with this Court. Any and all fees charged under the Pre-Petition Financing Documents shall be as set forth in the Pre-Petition Financing Documents and shall be payable at the times set forth in the Pre-Petition Financing Documents.

**V. Carve Out.**

A. Carve-Out. The DIP Liens, DIP Superpriority Claims, Adequate Protection Liens, and First Lien Adequate Protection Claims, and any other liens or claims granted by this Interim Order or the Final Order shall be subject only to the right of payment and priority of the following expenses (collectively, the “**Carve-Out**”), to the extent provided herein:

- (1) the allowed administrative expenses pursuant to 28 U.S.C. § 1930 for fees payable to the U.S. Trustee or to this Court, unless otherwise ordered by this Court; and
- (2) the allowed fees and expenses actually incurred by persons or firms retained by the Debtors or the Committee (if appointed) on or after the Petition Date whose retention is approved by the Bankruptcy Court pursuant to section 327, 328, 363, or 1103 of the Bankruptcy Code (each a “**Professional**” and collectively, the “**Professionals**”) in a cumulative, aggregate sum of (i) for the period prior to the occurrence of the delivery of a Carve-Out Trigger Notice (as defined below), an amount not to exceed the lesser of (A) the aggregate weekly amounts budgeted to be funded in advance for each such Professional for such week in accordance with the Approved Budget (to the extent a Carve-Out Trigger Notice is delivered mid-week, pro-rated for such week) and (B) the actual amount of such Allowed Professional Fees for each Professional incurred on or after the Petition Date up through and including the date a Carve-Out Trigger Notice is delivered (“**Allowed Professional Fees**”), subject in all

respects to the terms of this Interim Order, the Final Order, and any other interim or other compensation order entered by the Bankruptcy Court (the “**Interim Compensation Procedures**”). The Carve-Out shall include all Allowed Professional Fees that are incurred or earned (i) at any time before delivery of a Carve-Out Trigger Notice, whether allowed by the Bankruptcy Court prior to or after delivery of a Carve-Out Trigger Notice, subject and limited in all respects to the amounts set forth in the Approved Budget for payment of such Professionals; and (ii) beginning the first day after the delivery by the DIP Agent of written notice (which for the avoidance of doubt may be by electronic mail) of the occurrence of an Event of Default (the “**Carve-Out Trigger Notice**”) to the Debtors, the Debtors’ counsel, and counsel for any Committee, the fees and expenses incurred by the Professionals retained by the Debtors in an aggregate amount not to exceed \$75,000 (the “**Post-EOD Carve-Out Amount**”) (the aggregate amount of clauses (1) and (2), collectively, the “**Carve-Out Cap**”); *provided, however* the Carve-Out shall not include any bonus, sale transaction fees, success fees, completion fees, substantial contribution fees, or any other fees of similar import of any of the Professionals. Notwithstanding the foregoing, the Carve-Out Trigger Notice shall be deemed to have been delivered to the required notice parties on the Termination Date.

(3) Subject to the terms of this Interim Order, the Carve-Out Cap shall be allocated on a Professional by Professional basis based on the amounts budgeted to be funded in advance for each Professional pursuant to the Budget.

B. **Excluded Professional Fees**. Notwithstanding anything to the contrary in this Interim Order, neither the Carve-Out, nor the proceeds of any borrowings under the DIP Credit Agreement or DIP Collateral shall be used to pay any Allowed Professional Fees or any other fees or expenses incurred by any Professional in connection with any of the following: (a) an

assertion or joinder in any claim, counter-claim, action, proceeding, application, motion, objection, defense, or other contested matter seeking any order, judgment, determination, or similar relief: (i) challenging the legality, validity, priority, perfection, or enforceability of the Pre-Petition Obligations, the Post-Petition Obligations, or the Pre-Petition Agent's, DIP Agent's respective liens on and security interests in any of the Pre-Petition Collateral or DIP Collateral, , as applicable, (ii) seeking to invalidate, set aside, avoid, or subordinate, in whole or in part, the Pre-Petition Obligations or Post-Petition Obligations or the Pre-Petition Agent's or DIP Agent's respective liens on and security interests in the Pre-Petition Collateral or the DIP Collateral, as applicable, or (iii) subject to entry of a Final Order, preventing, hindering or delaying the Pre-Petition Agent's or DIP Agent's respective assertion or enforcement of any lien, claim, right, or security interest or realization upon any Pre-Petition Collateral or DIP Collateral, as applicable, in accordance with the terms and conditions of this Interim Order, (b) a request to use the Cash Collateral (as such term is defined in Bankruptcy Code section 363) without the prior written consent of the Pre-Petition Agent and the DIP Agent, except to the extent expressly permitted herein, (c) a request for authorization to obtain debtor-in-possession financing or other financial accommodations pursuant to Bankruptcy Code section 364(c) or (d), other than from the DIP Secured Parties, without the prior written consent of the DIP Agent unless such other debtor-in-possession financing or financial accommodation is used, in part, to indefeasibly pay and satisfy in full all Pre-Petition Obligations and Post-Petition Obligations owed respectively to the Pre-Petition Secured Parties and DIP Secured Parties, (d) the commencement or prosecution of any action or proceeding of any claims, causes of action, or defenses against the Pre-Petition Secured Parties or the DIP Secured Parties or any of their respective officers, directors, employees, agents, attorneys, affiliates, successors, or assigns, including, without limitation, any attempt to

avoid any claim, lien, or interest of, or obtain any recovery from any of the Pre-Petition Secured Parties or the DIP Secured Parties, under Chapter 5 of the Bankruptcy Code; provided, however, that, subject to the Carve-Out Cap, an amount not to exceed \$25,000.00 in the aggregate of the indebtedness incurred pursuant to the DIP Facility may be used to pay the Allowed Professional Fees of a Committee to investigate (but not prosecute) claims against and possible objections with respect to the Pre-Petition Obligations, and the pre-petition liens and security interests of, the Pre-Petition Secured Parties (including, without limitation, issues regarding validity, perfection, priority, or enforceability of the secured claims of the Pre-Petition Secured Parties).

C. Carve-Out Reserve. At the DIP Agent's sole discretion, the DIP Agent may at any time establish (and adjust) a reserve against the amount of Revolving Advances or other credit accommodations that would otherwise be made available to the Debtors in respect of the Carve-Out, provided, however, that the setting (or adjustment) of any such reserve shall not diminish the Carve-Out Cap. Nothing contained herein shall limit, modify, or restrict in any way the DIP Agent's rights to establish (and adjust) any other reserves in accordance with the DIP Financing Documents.

D. Payment of Carve-Out.

(1) An account shall be maintained with Landis Rath & Cobb LLP ("LRC") for the payment of Allowed Professional Fees (the "Carve-Out Reserve Account") which account shall be funded by or on behalf of the Debtors, including through borrowings under the DIP Credit Agreement, in accordance with the Approved Budget on a weekly basis, in advance, until the delivery of a Carve-Out Trigger Notice, provided that for this purpose borrowing availability must exist under the DIP Credit Agreement. Upon the occurrence and during the continuance of an Event of Default, the Carve-Out Reserve Account may continue to be funded

at the DIP Agent's option, up to the Carve-Out Cap. From funds in the Carve-Out Reserve Account, LRC shall pay Allowed Professional Fees to the Professionals, as applicable, in compliance with the Interim Compensation Procedures and in the manner set forth in this Interim Order in accordance with the Budget; provided, however, that, prior to payment in full of the Pre-Petition Obligations, as applicable, and Post-Petition Obligations and termination of the Carve-Out, to the extent that Allowed Professional Fees that have accrued from the Petition Date through and including the date a Carve-Out Trigger Notice is delivered are less than the amounts funded into the Carve-Out Reserve Account, the excess amounts in the Carve-Out Reserve Account shall be applied (a) first to fund the Post EOD Carve-Out Amount, and (b) second remitted to the DIP Agent to apply to reduce either or both the Pre-Petition Obligations and the Post-Petition Obligations at DIP Agent's sole discretion. For the avoidance of doubt, (a) in making payments from the Carve-Out Reserve Account, LRC shall be entitled to conclusively rely upon written certifications of each Professional as to the amount due and owing to such Professional from the Carve-Out Reserve Account and in accordance with the Budget and shall have no liability to any party based upon its reliance on such certifications; and (b) in no circumstances shall LRC be obligated to pay any Professional other than from funds held, from time to time, in the Carve-Out Reserve Account. Provided that the amounts DIP Agent is obligated to allocate to Professionals as required in this Section V has been funded, all obligations of the DIP Secured Parties and Pre-Petition Secured Parties with respect to the Carve-Out shall be terminated. Notwithstanding anything to the contrary contained in this Interim Order, the Carve-Out and all obligations of the DIP Secured Parties and Pre-Petition Secured Parties with respect to the Carve-Out shall be terminated upon the payment in full and satisfaction of the Pre-Petition Obligations and the Post-Petition Obligations.

(2) The Carve-Out Cap shall be reduced on a dollar-for-dollar basis on a weekly basis by the amounts actually funded into the Carve-Out Reserve Account. To the extent the Carve-Out Reserve Account has not been funded in accordance with the Approved Budget prior to the delivery of a Carve-Out Trigger Notice, the DIP Agent, on behalf of the DIP Lenders, shall remit the difference to the Carve-Out Reserve Account solely from DIP Collateral proceeds. Payment of any amounts on account of the Carve-Out, whether by or on behalf of the DIP Agent or any DIP Lender, shall not and shall not be deemed to reduce the Pre-Petition Obligations or the Post-Petition Obligations, and shall not and shall not be deemed to subordinate any of the DIP Secured Parties' liens and security interests in the DIP Collateral or the DIP Superpriority Claim to any junior pre- or post-petition lien, interest or claim in favor of any other party. No DIP Secured Party shall, under any circumstance, be responsible for the direct payment or reimbursement of any fees or disbursements of any Professionals incurred in connection with the Cases or Successor Cases (as hereinafter defined) under any chapter of the Bankruptcy Code, and nothing in this Section V shall be construed to obligate any DIP Secured Party, in any way, to pay compensation to or to reimburse expenses of any Professional, or to ensure that the Debtors have sufficient funds to pay such compensation or reimbursement.

(3) Nothing herein shall be construed as a consent to the allowance of the fees and expenses of any Professional or shall affect the right of the Pre-Petition Secured Parties or the DIP Secured Parties to object to the allowance and payment of such fees and expenses. So long as no Event of Default has occurred or is continuing, the Debtors shall be permitted to pay fees and expenses allowed and payable pursuant to an Order of the Bankruptcy Court, including any Order approving Interim Compensation Procedures, under sections 330 and 331 of the Bankruptcy Code, as the same may be due and payable, solely to the extent set forth in the

Approved Budget and not to exceed the amounts set forth in the Approved Budget, provided that any such payment shall be subject to entry of a final order of the Bankruptcy Court of each Professional's final application for allowance of such fees and expenses.

**VI. Right to Credit Bid.** Pursuant to section 363(k) of the Bankruptcy Code and subject to entry of a Final Order, in connection with any sale of assets by any Debtor outside of the ordinary course of business, the Pre-Petition Agent, on behalf of the Pre-Petition Lenders, and the DIP Agent, on behalf of the DIP Lenders, as the case may be, shall, in their respective sole and absolute discretion, be entitled to credit bid (independently or together) all or any part of the outstanding amount of the Pre-Petition Obligations and/or Post-Petition Obligations, as applicable, in respect of any such sale.

**VII. Default; Rights and Remedies; Relief from Stay.**

A. Events of Default. The following shall constitute an "Event of Default" under this Interim Order:

- (1) The occurrence of any Event of Default as defined and under the DIP Credit Agreement.
- (2) The failure of the Debtors to obtain entry of a Final Order on or before twenty-five (25) days from the Petition Date, unless otherwise agreed in writing by the Pre-Petition Agent and the DIP Agent.
- (3) The failure of Debtors to file on or before the second day following the Petition Date the Bidding Procedures Motion.
- (4) The Bidding Procedures Order is not entered by the Bankruptcy Court on or before December 5, 2019.
- (5) The failure of Debtors to file on or before the second day following the

Petition Date the Approved 363 Sale Motion.

(6) the Approved 363 Sale Order is not entered by the Bankruptcy Court on or before December 20, 2019.

B. Rights and Remedies Upon Event of Default/Relief from Stay.

(1) Upon the occurrence of and during the continuance of an Event of Default, and without the necessity of seeking relief from the automatic stay or any further Order of the Bankruptcy Court (i) the DIP Agent and DIP Lenders shall no longer have any obligation to make any Advances (or otherwise extend credit) under the DIP Facility; (ii) all amounts outstanding under the DIP Financing Documents shall, at the option of the DIP Agent, be accelerated and become immediately due and payable; (iii) the DIP Agent shall have the right to issue the Carve Out Trigger Notice, (iv) the DIP Agent and the Pre-Petition Agent shall be entitled to immediately terminate the Debtors' right to use Cash Collateral, without further application or order of this Court, provided, however, that the Debtors shall have the right to use Cash Collateral to pay their weekly ordinary course payroll included in the Approved Budget through and including the date immediately following the date on which such Event of Default occurs, (v) the Debtors shall be bound by all post-default restrictions, prohibitions, and other terms as provided in this Interim Order, the DIP Credit Agreement and the other DIP Financing Documents and the Pre-Petition Financing Documents, (vi) the DIP Agent shall be entitled to charge the default rate of interest under the DIP Credit Agreement and (vi) subject only to the notice requirement set forth in Section VII(B)(2) below, both the DIP Agent and the Pre-Petition Agent shall be entitled to take any other act or exercise any other right or remedy as provided in this Interim Order, the DIP Financing Documents, the Pre-Petition Financing Documents, or applicable law, including, without limitation, setting off any Post-Petition Obligations or Pre-

Petition Obligations with DIP Collateral, Pre-Petition Collateral or proceeds in the possession of any Pre-Petition Secured Party or DIP Lender, and enforcing any and all rights and remedies with respect to the DIP Collateral or Pre-Petition Collateral, as applicable.

(2) Without further notice, application or order of this Court, upon the occurrence and during the continuance of an Event of Default, and after providing five (5) business days' prior written notice thereof (which five (5) business days period only applies to the DIP Collateral enforcement remedies described below) to counsel for the Debtors, counsel for any Committee, and the U.S. Trustee, the DIP Agent for the benefit of itself and the DIP Lenders, and the Pre-Petition Agent, for the benefit of itself and the other Pre-Petition Secured Parties, as applicable, shall be entitled to take any action and exercise all rights and remedies provided to them by this Interim Order, the DIP Financing Documents or the Pre-Petition Financing Documents, or applicable law, unless otherwise ordered by this Court, as the DIP Agent or the Pre-Petition Agent, as applicable, may deem appropriate in their sole discretion to, among other things, proceed against and realize upon the DIP Collateral (including the Pre-Petition Collateral) or any other assets or properties of the Estates upon which the DIP Agent, for the benefit of itself and the DIP Lenders, and the Pre-Petition Agent, for the benefit of itself and the other Pre-Petition Secured Parties, has been or may hereafter be granted liens or security interests to obtain the full and indefeasible payment of all the Pre-Petition Obligations and Post-Petition Obligations. Notwithstanding the foregoing or anything in Section VII(B)(1) above, DIP Agent may continue to apply proceeds received into the lockbox or collection account to reduce the Post-Petition Obligations in any order at the sole discretion of the DIP Agent during such five (5) business days period. During such five business days period, either or both the Debtors and the Committee shall be entitled to seek an emergency hearing with this Court.

Additionally, upon the occurrence and during the continuance of an Event of Default and the exercise by the DIP Agent or the Pre-Petition Agent of their respective rights and remedies under this Interim Order, the DIP Financing Documents, or Pre-Petition Financing Documents, provided that the Debtors and the DIP Agent agree upon a mutually acceptable wind down budget, the Debtors shall cooperate with the DIP Agent in the exercise of rights and remedies and assist the DIP Agent in effecting any sale or other disposition of the DIP Collateral required by the DIP Agent, including any sale of DIP Collateral pursuant to Bankruptcy Code section 363 or assumption and assignment of DIP Collateral consisting of contracts and leases pursuant to Bankruptcy Code section 365, in each case, upon such terms that are acceptable to the DIP Agent.

(3) Upon the occurrence and during the continuance of an Event of Default, and subject to the five business days notice provision provided above, in connection with a liquidation of any of the DIP Collateral, the DIP Agent (or any of its employees, agents, consultants, contractors, or other professionals) shall have the right, at the sole cost and expense of the Debtors, to: (i) enter upon, occupy, and use any real or personal property, fixtures, equipment, leasehold interests, or warehouse arrangements owned or leased by the Debtors; provided, however, the DIP Agent and Pre-Petition Agent may only be permitted to do so in accordance with (a) existing rights under applicable non-bankruptcy law, including, without limitation, applicable leases, (b) any pre-petition (and, if applicable, post-petition) landlord waivers or consents, or (c) further order of this Court on motion and notice appropriate under the circumstances; and (ii) upon entry of a Final Order, use any and all trademarks, tradenames, copyrights, licenses, patents, equipment or any other similar assets of the Debtors, or assets which are owned by or subject to a lien of any third party and which are used by the Debtors in

their businesses, provided, however, DIP Agent may use such assets upon entry of this Interim Order to the extent permitted by applicable non-bankruptcy law. The DIP Agent and the DIP Lenders will be responsible for the payment of any applicable fees, rentals, royalties, or other amounts owing to such lessor, licensor or owner of such property (other than the Debtors) for the period of time that the DIP Agent actually occupies any real property or uses the equipment or the intellectual property (but in no event for any accrued and unpaid fees, rentals, or other amounts owing for any period prior to the date that the DIP Agent actually occupies or uses such assets or properties).

(4) The rights and remedies of the DIP Agent specified herein are cumulative and not exclusive of any rights or remedies that the DIP Agent and/or Pre-Petition Agent may have under the DIP Financing Documents, Pre-Petition Financing Documents, or otherwise and may be exercised in whole or in part in any order. The fourteen-day stay provisions of Bankruptcy Rules 6004(h) and 4001(a)(3) are hereby waived.

C. Relief from Stay. For the purpose of exercising rights, options and remedies set forth in this Section VIII, upon expiration of the five business-days period set forth in Section VII(B)(2), unless otherwise ordered by this Court, the Pre-Petition Agent, on behalf of the other Pre-Petition Secured Parties, and DIP Agent, on behalf of the other DIP Secured Parties, shall be automatically and completely relieved from the effect of any stay under Bankruptcy Code section 362, any other restriction on the enforcement of their liens upon and security interests in the DIP Collateral or any other rights granted to them, or any of them, pursuant to the terms and conditions of the DIP Financing Documents, the Pre-Petition Financing Documents or this Interim Order.

D. Waiver Agreements. Subject to entry of the Final Order, all rights, options, and remedies granted to the Pre-Petition Agent or DIP Agent in either or both of any landlord or warehouseman's waiver and/or consent executed and delivered in connection with the Pre-Petition Obligations and Pre-Petition Credit Agreement, including the right to access any premises leased by Debtors and access the Pre-Petition Collateral, shall be deemed to be continuing, enforceable and applicable to and binding upon the landlords and other parties to such waiver or consent agreements with respect to the Pre-Petition Collateral and DIP Collateral.

### VIII. Challenges to Pre-Petition Obligations.

E. The Debtors have admitted, stipulated, and agreed to the various stipulations and admissions contained in this Interim Order, including, without limitation, the stipulations and admissions included in paragraph D of the Findings of Fact and Conclusions of Law (the "Paragraph D Stipulations"), which stipulations and admissions are and shall be binding upon the Debtors and any successors thereto (other than with respect to a successor Trustee appointed before the expiration of the Initial Challenge Period, which successor Trustee shall be bound by the Paragraph D Stipulations upon expiration of the Challenge Period, as provided in this paragraph) in all circumstances. The stipulations and admissions contained in this Interim Order, including without limitation, the Paragraph D Stipulations, shall also be binding upon the Debtors, the Estates and all other parties in interest, including the Committee or any chapter 7 or chapter 11 trustee appointed or elected for any of the Debtors (a "Trustee"), for all purposes unless (a) (i) any party in interest other than the Committee, no later than the date that is seventy five (75) days from entry of this Interim Order, and (ii) the Committee, no later than sixty (60) days from the appointment of the Committee (as applicable for clauses (i) and (ii), the "Initial Challenge Period") has properly filed an adversary proceeding as required under the

Bankruptcy Rules (x) challenging the amount, validity, enforceability, priority or extent of the Pre-Petition Obligations, the liens of the Pre-Petition Agent on the Pre-Petition Collateral securing the Pre-Petition Obligations or (y) otherwise asserting any other claims, counterclaims, causes of action, objections, contests or defenses against the Pre-Petition Agent and/or any other Pre-Petition Secured Party on behalf of the Estates ((x) and (y), collectively, referred to herein as “**Challenges**”), and (b) this Court rules in favor of the plaintiff sustaining any such challenge or claim in any such duly filed adversary proceeding or contested matter; *provided that*, as to the Debtors, all such Challenges are hereby irrevocably waived and relinquished effective as of the Petition Date. If during the Initial Challenge Period, the Committee or other third party files a motion for standing with a draft complaint identifying and describing all Challenge(s) consistent with applicable law and rules of procedure, the Initial Challenge Period will be tolled for the Committee or other third party solely with respect to the Challenge(s) asserted in the draft complaint until three (3) business days from the entry of an order granting the motion for standing to prosecute such Challenge(s) described in the draft complaint and permitted by this Court (the “**Extended Challenge Period**”, together with the Initial Challenge Period, the “**Challenge Period**”). If standing is denied by this Court, the Challenge Period shall be deemed to have expired. If no such Challenge or motion for standing, as applicable, is timely filed prior to the expiration of the Initial Challenge Period, without further order of this Court: (1) the Debtors’ stipulations, admissions and releases contained in this Interim Order (including the Paragraph D Stipulations and the releases set forth in Section IX(B) below) shall be binding on all parties in interest, including the Debtors, the Estates, the Committee, and any subsequently appointed Trustee, case fiduciary, or successors and assigns; (2) the Pre-Petition Obligations shall constitute allowed claims, not subject to counterclaim, setoff, subordination,

recharacterization, defense or avoidance, for all purposes in these Cases and any subsequent chapter 7 case; (3) the Pre-Petition Agent's liens on the Pre-Petition Collateral shall be deemed to have been, as of the Petition Date, and to be, legal, valid, binding, perfected, and with the priority specified in the Paragraph D Stipulations, not subject to defense, counterclaim, recharacterization, subordination or avoidance; and (4) the Pre-Petition Obligations, the Pre-Petition Secured Parties' liens on the Pre-Petition Collateral, as applicable; and the Pre-Petition Secured Parties (and their respective agents, affiliates, subsidiaries, directors, officers, representatives, attorneys or advisors) shall not be subject to any other or further challenge by any Committee or any other party in interest, and any such Committee or party in interest shall be enjoined from seeking to exercise the rights of the Debtors or the Estates, including without limitation, any successor thereto (including, without limitation, any estate representative or a Trustee, whether such Trustee is appointed or elected prior to or following the expiration of the Initial Challenge Period); *provided* that if the Cases are converted to chapter 7 or a Trustee is appointed prior to the expiration of the Initial Challenge Period, any such estate representative or Trustee shall receive the full benefit of the later of (a) the expiration of the Initial Challenge Period and (b) thirty (30) days from the appointment of such estate representative or Trustee, subject to the limitations described herein. If any Challenge or motion for standing, as applicable, is timely and properly filed prior to the expiration of the Initial Challenge Period, the releases, stipulations and admissions contained in this Interim Order, including without limitation, in the Paragraph D Stipulations, of this Interim Order, shall nonetheless remain binding and preclusive (as provided in the second sentence of this paragraph) on any Committee and any other person, including any Trustee appointed in any Case(s) or any subsequently converted bankruptcy case(s) of any Debtors (collectively, the "**Successor Cases**"), as

applicable, except as to any such findings and admissions that were expressly challenged in the original complaint initiating the adversary proceeding and excluding any amended or additional claims that may or could have been asserted thereafter through an amended complaint under FRCP 15 or otherwise. Nothing in this Interim Order vests or confers on any person, including any Committee, any Trustee, or any other party in interest, standing or authority to pursue any cause of action belonging to the Debtors or the Estates. This stipulation shall be binding upon the Debtors, the Estates, all parties in interest in the Cases and their respective successors and assigns, including any Trustee or other fiduciary appointed in the Cases or Successor Cases and shall inure to the benefit of the Pre-Petition Secured Parties and the Debtors and their respective successors and assigns. For the avoidance of doubt, Challenges may be filed against one or more of the Pre-Petition Secured Parties without filing Challenges against each of the other parties and likewise the Challenge Period may expire as to some but not all of the Pre-Petition Secured Parties if a Challenge is filed against one or more of the Pre-Petition Secured Parties but not all of them.

**IX. Debtors' Waivers and Releases.**

A. Section 506(c) Claims and 552(b) Equities. Effective upon the entry of a Final Order, no costs or expenses of administration which have been or may be incurred in the Cases or Successor Cases at any time shall be charged against any of the Pre-Petition Secured Parties or the DIP Secured Parties their respective claims or the DIP Collateral, Pre-Petition Collateral, as applicable, pursuant to Bankruptcy Code section 506(c) without the prior written consent of the DIP Agent (and no such consent shall be implied from any other action, inaction or acquiescence by the DIP Agent or any DIP Lender). Effective upon the entry of a Final Order, the Pre-Petition Secured Parties and DIP Lenders shall each be entitled to all of the rights and benefits of

Bankruptcy Code section 552(b), and the “equities of the case” exception under Bankruptcy Code section 552(b) shall not apply to the Pre-Petition Secured Parties and DIP Lenders with respect to proceeds, products, offspring or profits of any of the Pre-Petition Collateral or DIP Collateral, as applicable.

B. Release.

(1) In consideration of and as a condition to the DIP Agent and the DIP Lenders making Advances, the consent of the DIP Lenders, the DIP Agent, the Pre-Petition Agent, and the Pre-Petition Lenders consent to use of Cash Collateral and providing other credit and financial accommodations to the Debtors pursuant to the provisions of this Interim Order and the DIP Financing Documents, each Debtor, on behalf of itself, and successors and assigns and such Debtor’s Estate (collectively, “**Releasors**”), subject only to Section VIII above, hereby absolutely releases and forever discharges and acquits (i) each Pre-Petition Secured Party, including the Pre-Petition Agent, (ii) the respective successors, participants, and assigns of each Pre-Petition Secured Party, (iii) the present and former shareholders, affiliates, subsidiaries, divisions, and predecessors of each Pre-Petition Secured Parties, and (iv) the directors, officers, attorneys, employees, and other representatives of the parties identified in clauses (i) through (iii) but solely in their capacity as such and not in any other capacity (the parties identified in clauses (i) through (iv) being hereinafter referred to collectively as “**Releasees**”) of and from any and all claims, demands, causes of action, suits, covenants, contracts, controversies, agreements, promises, sums of money, accounts, bills, reckonings, damages, and any and all other claims, counterclaims, cross claims, defenses, rights of set-off, demands, and liabilities whatsoever (individually, a “**Pre-Petition Released Claim**” and collectively, “**Pre-Petition Released Claims**”) of every kind, name, nature and description, known or unknown, foreseen or

unforeseen, matured or contingent, liquidated or unliquidated, primary or secondary, suspected or unsuspected, both at law and in equity, which, including, without limitation, any so-called “lender liability” claims or defenses, that any Releasor may now or hereafter own, hold, have, or claim to have against Releasees, or any of them for, upon, or by reason of any nature, cause, or thing whatsoever which arose or may have arisen at any time on or prior to the date of this Interim Order, in respect of the Debtors, the Pre-Petition Obligations, the Pre-Petition Financing Documents, and any Advances, Letters of Credit, or other financial accommodations under the Pre-Petition Financing Documents; provided that such release shall not be effective with respect to the Debtors until entry of the Final Order, and with respect to the Estates, until the expiration of the Challenge Period. In addition, upon entry of the Final Order and the indefeasible payment in full of all Obligations (as defined in the DIP Credit Agreement) owed to the DIP Agent and the DIP Lenders by the Debtors and termination of the rights and obligations arising under this Interim Order and the DIP Financing Documents (which payment and termination shall be on terms and conditions acceptable to the DIP Agent), the DIP Agent and the DIP Lenders shall be automatically deemed absolutely and forever released and discharged from any and all obligations, liabilities, actions, duties, responsibilities, commitments, claims and causes of action arising or occurring in connection with or related to the DIP Financing Documents or this Interim Order (whether known or unknown, direct or indirect, matured or contingent, foreseen or unforeseen, due or not due, primary or secondary, liquidated or unliquidated).

(2) Upon the entry of the Final Order, and subject to Section VIII with respect to all applicable parties other than the Debtors, each Releasor hereby absolutely, unconditionally and irrevocably, covenants and agrees with each Releasee that it will not sue (at law, in equity, in any regulatory proceeding or otherwise) any Releasee on the basis of any Pre-

Petition Released Claim released and discharged by each Releasor pursuant to Section IX(B)(1) above and provided further, however, that nothing in the Interim Order or the Final Order shall release or be deemed to release the Pre-Petition Agent or the Lenders (as defined in the Pre-Petition Credit Agreement) from any obligation under section 10 of that certain Forbearance and Sale Support Agreement dated as of June 21, 2019.

(3) If any Releasor violates the forgoing covenant, Debtors agree to pay, in addition to such other damages as any Releasee may sustain as a result of such violation, all attorneys' fees and costs incurred by any Releasee as a result of such violation.

**X. Other Rights and Obligations.**

A. No Modification or Stay of this Interim Order. Based upon the record presented to this Court by the Debtors, notwithstanding any reversal or modification on appeal of the authorization to obtain credit or incur debt, or of a grant of a priority or lien under this Interim Order, the DIP Financing Documents or any term hereunder or thereunder, the DIP Agent and the DIP Lenders shall retain and be entitled to all of the rights, remedies, privileges, and benefits in favor of the DIP Agent and the DIP Lenders pursuant to Bankruptcy Code section 364(e). Further, the liens, claims, rights, remedies, privileges, and benefits granted herein shall not be affected by Debtors' failure to obtain a Final Order pursuant to Bankruptcy Rule 4001(c)(2).

B. Power to Waive Rights; Duties to Third Parties. The Pre-Petition Secured Parties and DIP Lenders shall have the right, in their respective sole discretion, to waive any of the terms, rights and remedies provided or acknowledged in this Interim Order ("**Lender Rights**") with respect to each of them, as applicable, and shall have no obligation or duty to any other party with respect to the exercise or enforcement, or failure to exercise or enforce, any Lender Right(s). Any waiver by any of them of any Lender Rights shall apply solely to such party and

to the Lender Right so waived and shall not be or constitute a continuing waiver. Any delay in or failure to exercise or enforce any Lender Right shall neither constitute a waiver of such Lender Right, nor cause or enable any other party to rely upon or in any way seek to assert as a defense to any obligation owed by the Debtors to any Pre-Petition Secured Party or any DIP Lender.

C. Disposition of Collateral. The Debtors shall not sell, transfer, lease, encumber or otherwise dispose of any portion of the DIP Collateral without an order of this Court and the written consent of the DIP Agent, except for sales of the Debtors' inventory in the ordinary course of their business or as otherwise permitted in the DIP Credit Agreement.

D. Inventory. The Debtors shall not, without the prior written consent of the DIP Agent (and no such consent shall be implied, from any other action, inaction or acquiescence by the DIP Agent or any DIP Lender), (a) enter into any agreement to return any inventory to any of their creditors for application against any pre-petition indebtedness under any applicable provision of Bankruptcy Code section 546, or (b) consent to any creditor exercising any setoff against any of its pre-petition indebtedness based upon any such return pursuant to Bankruptcy Code section 553(b)(1) or otherwise.

E. Reservation of Rights. The terms, conditions and provisions of this Interim Order are in addition to and without prejudice to the rights of the Pre-Petition Secured Parties or the DIP Lenders (except as such rights and remedies are expressly limited by the Interim Order) to pursue any and all rights and remedies under the Bankruptcy Code, the DIP Financing Documents, the Pre-Petition Financing Documents, or any other applicable agreement or law, including, without limitation, rights to seek either or both adequate protection and additional or different adequate protection, to seek relief from the automatic stay, to seek an injunction, to

oppose any request for use of cash collateral or granting of any interest in the DIP Collateral or priority in favor of any other party, to object to any sale of assets, and to object to applications for either or both allowance and payment of compensation of Professionals or other parties seeking compensation or reimbursement from the Estates.

F. Modification of the Automatic Stay. The automatic stay under Bankruptcy Code section 362(a) is hereby modified as necessary to effectuate all of the terms and provisions of this Interim Order and the DIP Financing Documents, including without limitation the application of collections, authorization to make payments, granting of liens, and perfection of liens.

G. Binding Effect.

(1) The provisions of this Interim Order, the DIP Financing Documents, the DIP Superpriority Claim, DIP Liens, First Lien Adequate Protection Liens, First Lien Adequate Protection Claims, and any and all rights, remedies, privileges and benefits in favor of the DIP Agent, the DIP Lenders or the Pre-Petition Secured Parties, provided or acknowledged in this Interim Order, and any actions taken pursuant thereto, shall be effective immediately upon entry of this Interim Order pursuant to Bankruptcy Rules 6004(g) and 7062, shall continue in full force and effect, and shall survive entry of any such other order, including, without limitation, any order which may be entered confirming any plan of reorganization, converting one or more of the Cases to any other chapter under the Bankruptcy Code, or dismissing one or more of the Cases.

(2) In accordance with Bankruptcy Code sections 105 and 349, the DIP Agent's, the DIP Lenders', and the Pre-Petition Secured Parties, respective, liens on and security interests in the DIP Collateral shall continue in full force and effect notwithstanding any order

dismissing one or more of the Cases under Bankruptcy Code section 1112 or otherwise, until the Pre-Petition Obligations and Post-Petition Obligations, as applicable, owed to such parties, respectively, are indefeasibly paid and satisfied in full. This Court shall retain jurisdiction, to the extent permissible under applicable law, notwithstanding such dismissal, for the purposes of enforcing the DIP Superpriority Claim, DIP Liens, First Lien Adequate Protection Liens, and First Lien Adequate Protection Claims of the DIP Agent and the DIP Lenders in the DIP Collateral.

(3) In the event this Court modifies any of the provisions of this Interim Order or the DIP Financing Documents following a Final Hearing; this Interim Order shall remain in full force and effect except as expressly amended or modified at such Final Hearing.

(4) This Interim Order shall be binding upon the Debtors, the Estates, all parties in interest in the Cases and their respective successors and assigns, including any Trustee or other fiduciary appointed in the Cases or any Successor Cases of any Debtors and shall inure to the benefit of the Pre-Petition Secured Parties, the DIP Lenders, the Debtors, and their respective successors and assigns, subject to the rights of any Trustee pursuant to Section VIII above.

H. Marshalling. Subject to the entry of a Final Order, in no event shall the DIP Agent, the DIP Lenders, or the Pre-Petition Secured Parties be subject to the equitable doctrine of “marshalling” or any similar doctrine with respect to the Pre-Petition Collateral or the DIP Collateral.

I. Proofs of Claim. Notwithstanding the entry of an order establishing a bar date in any of these Cases, or the conversion of these Cases to a case under chapter 7 of the Bankruptcy Code and the Pre-Petition Secured Parties shall not be required to file proofs of claim in any of

the Cases or Successor Cases with respect to any of the Pre-Petition Obligations, Adequate Protection Obligations, Adequate Protection Liens, Post-Petition Obligations, DIP Liens, DIP Superpriority Claim, or any other claims or liens granted hereunder or created hereby. The Pre-Petition Agent, for the benefit of the other Pre-Petition Secured Parties is hereby authorized and entitled, in its respective sole and absolute discretion, but in no event is required, to file (and amend and/or supplement, as it sees fit) proofs of claim in each of the Cases on behalf of (x) all of the Pre-Petition Secured Parties in respect of the Pre-Petition Obligations. Any proof of claim so filed shall be deemed to be in addition and not in lieu of any other proof of claim that may be filed by any of the Pre-Petition Secured Parties. Any order entered by the Bankruptcy Court in relation to the establishment of a bar date in any of the Cases will so provide.

J. Waiver of Bankruptcy Rule 6003(b), 6004(a) and 6004(h). The 21-day provision of Bankruptcy Rule 6003(b), the notice requirements of Bankruptcy Rule 6004(a), and the 14 day stay of 6004(h) are hereby waived.

K. Order Controls. Unless this Interim Order specifically provides otherwise, in the event of a conflict between (a) the terms and provisions of the DIP Financing Documents or the Pre-Petition Financing Documents, as applicable, or (b) the terms and provisions of this Interim Order, then in each case the terms and provisions of this Interim Order shall govern.

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

M. Objections Overruled. All objections to the entry of this Interim Order are, to the extent not resolved or withdrawn, hereby overruled.

**XI. Final Hearing and Response Dates.**

The Final Hearing on the Motion pursuant to Bankruptcy Rule 4001(c)(2) is scheduled for \_\_\_\_\_ at \_\_\_\_\_ before this Court. The Debtors shall promptly mail copies of this Interim Order to the Noticed Parties, and to any other party that has filed a request for notices with this Court and to any Committee after the same has been appointed, or Committee counsel, if the same shall have filed a request for notice. Any objections or responses to entry of a final order on the Motion must be filed on or before 4:00 p.m. (prevailing Eastern Standard Time) on \_\_\_\_\_, 2019 and served on the following parties: (i) the Office of the United States Trustee, J. Caleb Boggs Federal Building, 844 North King Street, Suite 2207, Wilmington, Delaware 19801 (Attn: Jane Leamy, Esq.); (ii) counsel for the Debtors, Landis Rath & Cobb LLP, 919 Market Street, Suite 1800, Wilmington, Delaware 19801 (Attn: Adam G. Landis, Esq. ([landis@lrclaw.com](mailto:landis@lrclaw.com)), Kimberly A. Brown, Esq. ([brown@lrclaw.com](mailto:brown@lrclaw.com)) and Matthew R. Pierce, Esq. ([pierce@lrclaw.com](mailto:pierce@lrclaw.com))); (iii) counsel for the DIP Agent and Pre-Petition Agent, Katten Muchin Rosenman LLP, 575 Madison Ave, New York, New York 10022 (Attn: William B Freeman ([bill.freeman@katten.com](mailto:bill.freeman@katten.com)) and Karen B. Dine Esq. ([Karen.dine@katten.com](mailto:Karen.dine@katten.com))) and Young Conaway Stargatt & Taylor, LLP, Rodney Square, 1000 North King Street, Wilmington, Delaware 19801 (Attn: Sean Beach, Esq. ([sbeach@ycst.com](mailto:sbeach@ycst.com)) and Jaime Luton Chapman ([jchapman@ycst.com](mailto:jchapman@ycst.com))); and (iv) counsel to any Committee.

**EXHIBIT 1**

**DIP CREDIT AGREEMENT**

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**SENIOR SECURED SUPER-PRIORITY DEBTOR-IN-POSSESSION  
CREDIT AND GUARANTY AGREEMENT**

**Dated as of November 15, 2019**

**by and among**

**HRI HOLDING CORP.,**  
a Delaware corporation,  
as a Borrower

**HOULIHAN'S RESTAURANTS, INC.,**  
a Virginia corporation,  
as a Borrower

**AND THE OTHER BORROWERS AND GUARANTORS REFERRED TO HEREIN**

**CIT BANK, N.A.,**  
as Administrative Agent,

**and**

**THE OTHER LENDERS PARTY HERETO**

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## SENIOR SECURED SUPER-PRIORITY DEBTOR-IN-POSSESSION CREDIT AND GUARANTY AGREEMENT

This SENIOR SECURED SUPER-PRIORITY DEBTOR-IN-POSSESSION CREDIT AND GUARANTY AGREEMENT is entered into as of November 15, 2019, among (1) HRI HOLDING CORP., a Delaware corporation (“HRI”), HOULIHAN’S RESTAURANTS, INC., a Virginia corporation (“Houlihan’s”), and each other Person party hereto as a “Borrower” as indicated on the signature pages hereto (each of which Persons, together with HRI and Houlihan’s, a “Borrower” and collectively, the “Borrowers”); (2) HDJG CORP., a Delaware corporation (“Holdings”) and the other Guarantors (as hereinafter defined) from time to time party hereto, (3) the Lenders (as hereinafter defined) from time to time party hereto, and (4) CIT BANK, N.A., a national banking association (“CIT”), as Administrative Agent.

### RECITALS

A. On November 14, 2019 (the “Petition Date”), the Borrowers and the Guarantors (collectively, the “Debtors”) filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code, which petition is identified as Bankruptcy Case No. [\_\_\_\_\_] (jointly administered) (collectively, the “Cases”) before the United States Bankruptcy Court for the District of Delaware (together with any other court having jurisdiction over the Cases, the “Bankruptcy Court”). Debtors remain in possession of their assets and are operating their businesses as a debtors-in-possession under Chapter 11 of the Bankruptcy Code.

B. Pursuant to that certain Credit and Guaranty Agreement dated as of December 17, 2015 (as has been amended, supplemented and modified through the date hereof, the “Pre-Petition Credit Agreement”), by and among the Debtors, the financial institutions party thereto as lenders as of the Petition Date (collectively, in such capacity, the “Pre-Petition Lenders”) and CIT, as administrative agent for Pre-Petition Lenders (in such capacity, “Pre-Petition Agent”), Pre-Petition Agent and Pre-Petition Lenders made certain credit facilities and advances of credit available to Borrowers prior to the Petition Date on the terms and conditions set forth therein, which credit facilities and advances of credit and all other Pre-Petition Obligations (as defined below) thereunder are unconditionally guaranteed by the Guarantors and secured by Liens on substantially all the assets of the Debtors.

C. Debtors have requested that during the Cases, the Administrative Agent and the Lenders make advances and other financial accommodations available to Borrowers of up to the Maximum Revolving Advance Amount specified herein on a senior secured, superpriority basis, pursuant to, inter alia, Section 364(c) and (d) of the Bankruptcy Code.

D. The Administrative Agent and the Lenders are willing to provide advances and other financial accommodations to Borrowers on a senior secured, superpriority basis on the terms and subject to the conditions of this Agreement, so long as such post-petition credit obligations are (i) secured by Liens on all of the assets, property and interests, real and personal, tangible and intangible, of the Debtors, whether now owned or hereafter acquired, which Liens are superior to all other Liens pursuant to Sections 364(c) and (d) of the Bankruptcy Code (other than the Senior Liens (as defined in the Interim Order) and the Carve-Out); (ii) given priority over any administrative expenses of the kind specified in the Bankruptcy Code, including

without limitation, under Sections 105, 326, 328, 330, 331, 364(c)(1), 365, 503, 506(c) (upon entry of the Final Order), 507, 546(c), 726, 1113 or 1114 of the Bankruptcy Code, subject, as to priority, only to the Carve-Out, as provided in the Interim Order; (iii) secured by Liens on all of the assets, property and interests, real and personal, tangible and intangible, of each Debtor, whether now owned or hereafter acquired, which Liens are superior to all other Liens (other than Senior Liens and subject to the Carve-Out); and (iv) guaranteed by each Guarantor pursuant to the terms set forth in this Agreement.

IN CONSIDERATION of the foregoing recitals, which are incorporated herein by this reference, the mutual covenants and undertakings herein contained, Debtors (acting for themselves and as debtors-in-possession), Lenders and the Administrative Agent hereby agree as follows:

## ARTICLE 1

### DEFINITIONS AND ACCOUNTING TERMS

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

“Accounts” means all of the Loan Parties’ present and future: (a) accounts (as defined in the UCC); (b) instruments, documents, chattel paper (including electronic chattel paper) (all as defined in the UCC); (c) reserves and credit balances arising in connection with or pursuant to this Agreement; (d) guaranties; (e) other supporting obligations, payment intangibles and letter of credit rights (all as defined in the UCC); (f) property, including notes and deposits, of the Loan Parties’ account debtors securing the obligations owed by such account debtors to the Loan Parties; and (g) all proceeds of any of the foregoing.

“Acquisition”, means, by any Person, the acquisition by such Person, in a single transaction or in a series of related transactions, of (a) all or substantially all of the Property of another Person, (b) all or a portion of a division or operating group of another Person, or (c) all of the Capital Stock of another Person, in each case whether or not involving a merger or consolidation with such other Person and whether for cash, property, services, assumption of Indebtedness, securities or otherwise.

“Additional Titled Agent” has the meaning set forth in Section 11.12.

“Administrative Agent” means CIT in its capacity as administrative agent under any of the Loan Documents, or any successor administrative agent.

“Administrative Agent’s Office” means the Administrative Agent’s address and, as appropriate, account as set forth on Schedule 12.02 or such other address or account as the Administrative Agent may from time to time notify the Borrowers and the Lenders.

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

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

“Agent-Related Persons” means the Administrative Agent, together with its Affiliates, and its Approved Funds, and the officers, directors, employees, agents, advisors, auditors and Controlling Persons and attorneys-in-fact of such Persons, Affiliates and Approved Funds, provided, however, that for the purposes of this Agreement, no Agent-Related Person shall be deemed an Affiliate of the Sponsor, the Borrowers or the Guarantors.

“Agents” means the Administrative Agent.

“Aggregate Payments” has the meaning set forth in Section 10.06.

“Agreement” means this Senior Secured Super-Priority Debtor-In-Possession Credit and Guaranty Agreement, as amended, modified, restated, amended and restated, supplemented and extended from time to time.

“Allocable Amount” has the meaning set forth in Section 13.02(g)(ii).

“Allowed Professional Fees” shall have the meaning given to the term “Allowed Professional Fees” in the Final Order, or, prior to the entry of the Final Order, the Interim Order.

“Applicable Margin” means the following percentages per annum: with respect to Revolving Loans, 7.00% for Base Rate Loans and 8.00 % for LIBOR Loans.

“Approved 363 Sale” shall mean any sale of any Debtor’s assets or business pursuant to Section 363 of the Bankruptcy Code approved by the Administrative Agent and the Lenders, in their sole and absolute discretion, pursuant to appropriate orders of the Bankruptcy Court that are approved by and acceptable to the Administrative Agent and the Lenders, in their sole and absolute discretion.

“Approved 363 Sale Motion” shall mean a motion in form and substance satisfactory to the Administrative Agent and the Lenders, in their sole and absolute discretion (such motion may be part of the Bidding Procedures Motion), seeking approval of an Approved 363 Sale

“Approved 363 Sale Order” shall mean an order in form and substance satisfactory to the Administrative Agent and the Lenders, in their sole and absolute discretion, as the same may be amended, modified, or supplemented from time to time with the express written joinder or consent of the Administrative Agent and the Lenders with respect to an Approved 363 Sale.

“Approved Fund” means (a) any Person (other than a natural person) engaged in making, purchasing, holding, or investing in commercial loans and similar extensions of credit and that is advised, administered, or managed by a Lender, an Affiliate of a Lender (or an entity or an Affiliate of an entity that administers, advises or manages a Lender); (b) with respect to any Lender that is an investment fund, any other investment fund that invests in loans and that is advised, administered or managed by the same investment advisor as such Lender or by an Affiliate of such investment advisor; and (c) any third party which provides “warehouse

financing” to a Person described in the preceding clause (a) or (b) (and any Person described in said clause (a) or (b) shall also be deemed an Approved Fund with respect to such third party providing such warehouse financing).

“Assignment and Assumption” means an Assignment and Assumption Agreement substantially in the form of Exhibit D.

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

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

“Availability Period” means, with respect to the Revolving Commitments, the period from and including the Closing Date to the earliest of (a) the Business Day immediately prior to the Revolving Loan Maturity Date, (b) the date of termination of the Revolving Commitments pursuant to Section 2.06, and (c) the date of termination of the commitment of each Lender to make Loans pursuant to Section 9.02.

“Banking Services” mean each and any of the following banking services provided to any Loan Party by the Administrative Agent or any of the Administrative Agent’s Affiliates: (a) commercial credit cards, purchasing cards or other similar charge cards, (b) stored value cards and (c) treasury management services (including, without limitation, controlled disbursement, automated clearinghouse transactions, return items, overdrafts and interstate depository network services).

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

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

“Base Rate” means for any day a fluctuating rate per annum equal to the highest of: (a) the Federal Funds Rate plus 1/2 of 1%; (b) the rate of interest in effect for such day as publicly announced from time to time by JPMorgan Chase Bank as its “prime rate” in effect for such day; and (c) the most recently available LIBO Base Rate (as adjusted by any minimum LIBO Rate floor) plus 1%. Any change in the “prime rate” announced by JPMorgan Chase Bank shall take effect without notice to the Borrowers at the opening of business on the day specified as the effective date of change in the public announcement or publication of such change. The Base Rate is not necessarily the lowest rate of interest charged by Lenders in connection with extensions of credit. If JPMorgan Chase Bank ceases to announce its “prime rate”, the Administrative Agent may select a reasonably comparable index or source to use as the basis for the Base Rate.

“Base Rate Loan” means a Loan that accrues interest by reference to the Base Rate in accordance with the terms of this Agreement.

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

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

“Bidding Procedures Motion” means a motion in form and substance satisfactory to the Administrative Agent and the Lenders, in their reasonable discretion, seeking approval of procedures for an Approved 363 Sale.

“Bidding Procedures Order” means an order in form and substance satisfactory to the Administrative Agent and the Lenders, in their sole and absolute discretion, as the same may be amended, modified, or supplemented from time to time with the express written joinder or consent of the Administrative Agent and the Lenders establishing procedures for an Approved 363 Sale.

“Borrower Materials” has the meaning set forth in Section 12.02(e).

“Borrower Representative” means Houlihan’s in its capacity as the borrowing agent on behalf of itself and the Borrowers.

“Borrowers” has the meaning specified in the introductory paragraph hereto, together with all permitted successors and assigns of such Person and any other Person joining this Agreement as a “Borrower” pursuant to Section 6.12 hereof or otherwise.

“Borrowing” means a borrowing consisting of simultaneous Loans of the same Type and, in the case of LIBOR Loans, having the same Interest Period made by the Lenders pursuant to Sections 2.01 and 2.02.

“Budget” shall mean the “Approved Budget”, as defined in the Interim Order, or, after the entry of the Final Order, in the Final Order, to be delivered to and approved by Agent and the Lenders on or before the Closing Date and attached hereto as Exhibit G (the “Initial Budget”) setting forth Debtors’ cash flow forecast in reasonable detail satisfactory to the Administrative Agent and the Lenders with line item detail approved by the Administrative Agent and the Lenders on or before the Closing Date, including receipts, and disbursements, as well as projected borrowings hereunder for the period commencing with the week in which the Closing Date shall occur, as such budget shall be updated from time to time in accordance with and subject to approval of the Administrative Agent and the Lenders as set forth in Section 6.02(d) hereof.

“Business Day” means any day other than a Saturday, Sunday or other day on which commercial banks are authorized to close under the Laws of, or are in fact closed in, either New York or in the state where the Administrative Agent’s Office is located or, with respect to a Letter of Credit, the state where the L/C Issuer’s (or the Support Provider’s, as the case may be) office is located and, if such day relates to any LIBOR Loan or any Base Rate Loan bearing interest at a rate based on the LIBO Rate, means any such day meeting the above requirements

on which dealings in Dollar deposits are conducted by and between banks in the London interbank eurodollar market.

“Businesses” means, at any time, a collective reference to the businesses operated by the Borrowers and their Subsidiaries at such time.

“Capital Expenditures” means, with respect to any Person, all expenditures which, in accordance with GAAP, would be required to be capitalized and shown on the balance sheet of such Person, including expenditures in respect of Capital Leases.

“Capital Lease” means, with respect to any Person, any lease of any property (whether real, personal or mixed) by such Person as lessee which would, in accordance with GAAP, be required to be accounted for as a capital lease on the balance sheet of such person. Notwithstanding any changes in GAAP after the date hereof, “Capital Lease” shall not include any lease of the type that the Loan Parties have treated as an operating lease as of the date hereof in accordance with the Loan Parties’ historical accounting practices in accordance with GAAP as of the date hereof.

“Capital Stock” means, with respect to any Person, all of the shares of capital stock of (or other ownership or profit interests in) such Person, all of the warrants, options or other rights for the purchase or acquisition from such Person of shares of capital stock of (or other ownership or profit interests in) such Person, all of the securities convertible into or exchangeable for shares of capital stock of (or other ownership or profit interests in) such Person or warrants, rights or options for the purchase or acquisition from such Person of such shares (or such other interests), and all of the other ownership or profit interest in such Person (including partnership, member or trust interests therein), whether voting or nonvoting, and whether or not such shares, warrants, options, rights or other interests are outstanding on any date of determination.

“Carve-Out” shall have the meaning given to the term “Carve-Out” in the Final Order, or, prior to the entry of the Final Order, the Interim Order.

“Carve-Out Reserve” shall have the meaning set forth in the Interim Order, or, after the entry of the Final Order, in the Final Order.

“Carve-Out Reserve Account” shall have the meaning set forth in the Interim Order, or, after the entry of the Final Order, in the Final Order.

“Cases” shall have the meaning set forth in the recitals hereto.

“Cash Collateral” shall have the meaning set forth in the Interim Order, or, after the entry of the Final Order, in the Final Order.

“Cash Equivalents” means, as of any date of determination, (a) securities issued or directly and fully guaranteed or insured by the United States or any agency or instrumentality thereof (provided that the full faith and credit of the United States is pledged in support thereof) having maturities of not more than twelve months from the date of acquisition, (b) Dollar denominated time deposits and certificates of deposit of (i) any Lender, (ii) any domestic commercial bank of recognized standing having capital and surplus in excess of \$500,000,000 or

(iii) any bank whose short term commercial paper rating from S&P is at least A1 or the equivalent thereof or from Moody's is at least P1 or the equivalent thereof (any such bank being an "Approved Bank"), in each case with maturities of not more than 270 days from the date of acquisition, (c) commercial paper and variable or fixed rate notes issued by any Approved Bank (or by the parent company thereof) or any variable rate notes issued by, or guaranteed by, any domestic corporation rated A1 (or the equivalent thereof) or better by S&P or P1 (or the equivalent thereof) or better by Moody's and maturing within six months of the date of acquisition, (d) repurchase agreements entered into by any Person with a bank or trust company (including any of the Lenders) or recognized securities dealer having capital and surplus in excess of \$500,000,000 for direct obligations issued by or fully guaranteed by the United States in which such Person shall have a perfected first priority security interest (subject to no other Liens) and having, on the date of purchase thereof, a fair market value of at least 100% of the amount of the repurchase obligations and (e) Investments, classified in accordance with GAAP as current assets, in money market mutual funds (as defined in Rule 2(a).7 of the Investment Company Act) registered under the Investment Company Act of 1940, as amended, which are administered by reputable financial institutions having capital of at least \$500,000,000 and the portfolios of which are limited to Investments of the character described in the foregoing clauses (a) through (d).

"Cash Management Order" shall have the meaning set forth in Section 4.01(j) hereof.

"Change in Law" means the occurrence, after the date of this Agreement, of any of the following: (a) the adoption or taking effect of any law, rule, regulation or treaty, (b) any change in any law, rule, regulation or treaty or in the administration, interpretation or application thereof by any Governmental Authority or (c) the making or issuance of any request, guideline or directive (whether or not having the force of law) by any Governmental Authority. For purposes of this Agreement, (i) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, guidelines and directives 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 have been adopted and gone into effect after the date of this Agreement.

"CFC" means a "controlled foreign corporation" as such term is defined in Section 957 of the Internal Revenue Code.

"Change of Control" means, at any time, (i) Sponsor together with its Controlled Investment Affiliates, shall cease to beneficially own directly or indirectly, own of record at least 51.0% (excluding the effect of any dilution from management incentive options) of the Capital Stock of Holdings on a fully diluted basis; (ii) Sponsor, together with its Controlled Investment Affiliates, shall cease to have the power to appoint, remove or replace the majority of the seats on the board of directors (or similar governing body) of Holdings; (iii) Holdings shall cease to beneficially own and control one hundred percent (100%), on a fully diluted basis, of the economic and voting interests in the Capital Stock of any Borrower or any Guarantor or (iv) the current chief restructuring advisor of the Borrowers shall cease to be involved in the day to day operations and management of the business of the Borrower, and a successor acceptable to the Administrative Agent and the Lenders in their sole discretion is not appointed on terms

acceptable to the Administrative Agent and the Lenders in their sole discretion within ten Business Days of such cessation of involvement.

“CIT” has the meaning specified in the introductory paragraph hereto.

“Closing Date” means November 15, 2019.

“Collateral” means, collectively, all real and personal Property of the Loan Parties with respect to which Liens in favor of the Administrative Agent are granted (or were intended to be granted) pursuant to and in accordance with the terms of the Collateral Documents, the Interim Order or the Final Order.

“Collateral Documents” means, collectively, the Security Agreement, each Intellectual Property Security Agreement, the Interim Order, the Final Order and such other security documents as may be executed and delivered by the Loan Parties pursuant to the terms of Section 6.14.

“Commitment” means, as to each Lender, the Revolving Commitment set forth opposite such Lender’s name on Schedule 2.01 or in the Register, as applicable, as the same may be reduced or modified at any time and from time to time pursuant to the terms hereof.

“Committee” shall have the meaning set forth in the Interim Order, or, after the entry of the Final Order, in the Final Order.

“Commodity Exchange Act” means the Commodity Exchange Act (7 U.S.C. § 1 et seq.) and any successor statute, and any rule, regulation, or order promulgated thereunder, in each case as amended from time to time.

“Connection Income Taxes” means Other Connection Taxes that are imposed on or measured by net income (however denominated) or that are franchise Taxes or branch profits Taxes.

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

“Contributing Guarantors” has the meaning set forth in Section 10.06.

“Control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, by contract or otherwise. “Controlling” and “Controlled” have meanings correlative thereto. Without limiting the generality of the foregoing, a Person shall be deemed to be Controlled by another Person if such other Person possesses, directly or indirectly, power to vote 10% or more of the securities having ordinary voting power for the election of directors, managing general partners or the equivalent.

“Controlled Investment Affiliates” means, with respect to the Sponsor, any fund or investment vehicle that is (i) organized by the Sponsor for the purpose of making equity

investments in one or more companies, (ii) controlled by, or is under common control with, the Sponsor and (iii) engaged in the business of making equity investments in the ordinary course of business. For purposes of this definition “control” means the power to direct or cause the direction of management and policies of a person, whether by contract or otherwise.

“Credit Extension” means each of the following: (a) a Borrowing and (b) an L/C Credit Extension.

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

“Debtors” has the meaning specified in the recitals to this Agreement.

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

“Default Excess” means, with respect to any Defaulting Lender, the excess, if any, of such Defaulting Lender’s Pro Rata Share of the aggregate outstanding principal amount of all Revolving Loans (calculated as if all Defaulting Lenders (other than such Defaulting Lender) had funded their respective Pro Rata Shares of all Revolving Loans) over the aggregate outstanding principal amount of all Revolving Loans of such Defaulting Lender.

“Default Rate” means (a) when used with respect to Obligations other than a LIBOR Loan, an interest rate equal to (i) the Base Rate plus (ii) the Applicable Margin applicable to Base Rate Loans plus (iii) 2% per annum; and (b) when used with respect to a LIBOR Loan, an interest rate equal to (i) the LIBO Rate applicable to such LIBOR Loan plus (ii) the Applicable Margin applicable to LIBOR Loans plus (iii) 2% per annum. Interest accruing at the Default Rate shall be immediately payable upon demand.

“Defaulting Lender” means any Lender that has at any time after the Closing Date (a) defaulted in its obligation under this Agreement to make a Revolving Loan required to be made or funded by it hereunder within three (3) Business Days of the date when due (unless such failure is the subject of a good faith dispute), (b) failed to pay over to the Administrative Agent or any Lender any other amount required to be paid by it hereunder within three (3) Business Days of the date when due (unless such failure is the subject of a good faith dispute), (c) notified the Administrative Agent or a Loan Party in writing that it does not intend to satisfy any such obligation or has made a public statement to the effect that it does not intend to comply with its funding obligations under this Agreement or under agreements in which it commits to extend credit generally, (d) failed within three (3) Business Days after the request of the Administrative Agent to confirm that it will comply with the terms of this Agreement relating to its obligations to fund prospective Revolving Loans, or (e) (i) been (or has a parent company that has been) determined by any Governmental Authority having regulatory authority over such Person or its assets to be insolvent, or the assets or management of which has been taken over by any Governmental Authority, or (ii) become (or has a parent company that has become) the subject

of a bankruptcy or insolvency proceeding under any Debtor Relief Laws, unless in the case of any Lender subject to this clause (e), the Borrowers and the Administrative Agent shall each have determined that such Lender intends, and has all approvals required to enable it, to continue to perform its obligations as a Lender hereunder.

“Disposition” or “Dispose” means the sale, transfer, license, lease or other disposition (including any Sale and Leaseback Transaction) of any Property by any Loan Party or any Subsidiary (including the Capital Stock of any Subsidiary), including any sale, assignment, transfer or other disposal, with or without recourse, of any notes or accounts receivable or any rights and claims associated therewith, provided that the term Disposition shall not include liquidations of Cash Equivalents into cash.

“Disqualified Capital Stock” means any Capital Stock which, by its terms (or by the terms of any security or any other Capital Stock into which it is convertible or for which it is exchangeable) or upon the happening of any event or condition, (i) matures or becomes mandatorily redeemable (other than solely for Capital Stock that is not Disqualified Capital Stock) pursuant to a sinking fund obligation or otherwise (except as a result of a customarily defined change of control or asset sale and only so long as any rights of the holders thereof after such change of control or asset sale shall be subject to the prior repayment in full of the Obligations (other than contingent indemnification obligations to the extent no claim giving rise thereto has been asserted) and the termination of all Commitments and Letters of Credit, (ii) becomes redeemable at the option of the holder thereof (other than solely for Capital Stock that is not Disqualified Capital Stock), in whole or in part, (iii) provides for scheduled payments of dividends in cash or (iv) becomes convertible into or exchangeable for indebtedness for borrowed money or any other Disqualified Capital Stock, in whole or in part, in each case on or prior to the date that is one hundred eighty (180) calendar days after the later of the Revolving Loan Maturity Date at the time of issuance.

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

“Domestic Subsidiary” means any Subsidiary that is organized under the laws of any political subdivision of the United States.

“E-System” has the meaning specified in Section 12.04.

“Earn-Out Obligations” means, with respect to any Person, “earn-outs” and similar payment obligations of such Person.

“Environmental Laws” means the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. § 9601, et seq.), the Hazardous Materials Transportation Act (49 U.S.C. § 5101, et seq.), the Resource Conservation and Recovery Act (42 U.S.C. § 6901, et seq.), the Federal Clean Water Act (33 U.S.C. § 1251 et seq.), the Clean Air Act (42 U.S.C. § 7401 et seq.), the Toxic Substances Control Act (15 U.S.C. § 2601 et seq.), the Safe Drinking Water Act (42 U.S.C. § 300f to 300j-26 et seq.), the Oil Pollution Act of 1990 (33 U.S.C. § 2701 et seq.) and the Occupational Safety and Health Act (29 U.S.C. § 651 et seq.), as such laws may be amended or otherwise modified from time to time, and any other federal, state, local, foreign and other applicable statutes, laws, regulations, ordinances, rules, judgments,

orders, decrees, permits, concessions, grants, franchises, licenses, agreements or governmental restrictions and common law relating to pollution, the protection of the environment, natural resources, human health or the release of any Hazardous Materials, indoor and outdoor air emissions, soil, groundwater, wastewater, surface water, stormwater, wetlands, sediment and discharges of wastewater to public treatment systems.

“Environmental Liability” means any liability, contingent or otherwise (including any liability for damages, losses, punitive damages, consequential damages, costs of environmental investigation and remediation, fines, penalties, indemnities or expenses (including all reasonable fees, disbursements and expenses of counsel, experts and consultants)), of the Borrowers or any Subsidiary directly or indirectly resulting from or based upon (a) violation of any Environmental Law, (b) the generation, use, handling, transportation, storage, treatment or disposal of any Hazardous Materials, (c) exposure to any Hazardous Materials, (d) the release or threatened release of any Hazardous Materials into the environment or (e) any contract, agreement or other consensual arrangement pursuant to which liability is assumed or imposed with respect to any of the foregoing.

“ERISA” means the Employee Retirement Income Security Act of 1974, and any successor thereto.

“ERISA Affiliate” means any Person which is (or at any relevant time was or will be) a member of a “controlled group of corporations” with, under “common control” with, or a member of an “affiliated service group” with the Borrower as such terms are defined in Sections 414(b), (c), (m) or (o) of the Internal Revenue Code.

“ERISA Event” means (a) a Reportable Event with respect to a Pension Plan; (b) the failure to meet the minimum funding standard of Section 412 of the Internal Revenue Code with respect to a Pension Plan (whether or not waived in accordance with Section 412(d) of the Internal Revenue Code) or the failure to make a required installment under Section 412(m) of the Internal Revenue Code with respect to a Pension Plan; (c) a withdrawal by a Borrower or any ERISA Affiliate from a Pension Plan subject to Section 4063 of ERISA during a plan year in which it was a substantial employer (as defined in Section 4001(a)(2) of ERISA) or a cessation of operations that is treated as such a withdrawal under Section 4062(e) of ERISA; (d) a complete or partial withdrawal by a Borrower or any ERISA Affiliate from a Multiemployer Plan or notification that a Multiemployer Plan is in reorganization or insolvency pursuant to Section 4241 or 4245 of ERISA; (e) the filing of a notice of intent to terminate, the treatment of a Plan amendment as a termination under Sections 4041 or 4041A of ERISA, or the commencement of proceedings by the PBGC to terminate a Pension Plan or Multiemployer Plan; (f) an event or condition which constitutes grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Pension Plan or Multiemployer Plan; (g) the imposition of any liability under Title IV of ERISA, other than for PBGC premiums due but not delinquent under Section 4007 of ERISA, upon a Borrower or any ERISA Affiliate; (h) receipt from the IRS of notice of the failure of any Pension Plan (or any other Plan intended to be qualified under Section 401(a) of the Internal Revenue Code) to qualify under Section 401(a) of the Internal Revenue Code, or the failure of any trust forming part of any Pension Plan to qualify for exemption from taxation under Section 501(a) of the Internal Revenue Code; (i) the imposition of a Lien pursuant to Section 401(a)(29) or 412(n) of the

Internal Revenue Code or pursuant to ERISA with respect to any Pension Plan; (j) the occurrence of a non-exempt “prohibited transaction” with respect to any Plan within the meaning of Section 406 of ERISA or Section 4975 of the Internal Revenue Code; or (k) the receipt by a Borrower or any of its ERISA Affiliates of notice from any Multiemployer Plan that it is in reorganization or insolvency or that it intends to terminate or has terminated.

“Eurodollar Reserve Percentage” means, for any day during any Interest Period, the reserve percentage (expressed as a decimal, carried out to five decimal places) in effect on such day, whether or not applicable to any Lender, under regulations issued from time to time by the FRB for determining the maximum reserve requirement (including any emergency, supplemental or other marginal reserve requirement) with respect to Eurocurrency funding (currently referred to as “Eurocurrency liabilities”). The LIBO Rate for each outstanding LIBOR Loan shall be adjusted automatically as of the effective date of any change in the Eurodollar Reserve Percentage.

“Event of Default” has the meaning specified in Section 9.01.

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

“Excluded Account” means (a) payroll accounts containing funds to be applied for the pay period next ending, (b) payroll taxes accounts, (c) employee benefit accounts, (d) health savings accounts and worker’s compensation accounts, (e) any deposit account for the sole purpose of holding cash that serves solely as collateral or security under any letter of credit or other obligation not prohibited hereunder, (f) any deposit account used solely to cash collateralize or otherwise satisfy Laws relating to the sale and service of liquor), and (g) any zero-balance account.

“Excluded Subsidiary” means any Subsidiary of Holdings (other than any Loan Party) that is, and continues to be, any of: (i) a Foreign Subsidiary that is a CFC, (ii) any Foreign Subsidiary that is a direct or indirect Subsidiary of a Foreign Subsidiary that is a CFC, (iii) a Domestic Subsidiary that is (x) a direct or indirect Subsidiary of a Foreign Subsidiary that is a CFC or (y) a Subsidiary substantially all of whose assets consist of Capital Stock of one or more Foreign Subsidiaries that are CFCs and conducts no material business other than the ownership of such Capital Stock (a “Foreign Subsidiary Holdco”), (iv) a captive insurance company, (v) a not-for-profit Subsidiary, (vi) a Real Estate Financing Subsidiary, (vii) a Subsidiary to the extent a guarantee therefrom (A) is prohibited by applicable Law (including any requirement to obtain Governmental Approval with respect thereto), rule or regulation, or (B) is prohibited by any Contractual Obligation (including an obligation to obtain third-party consent) existing on the Closing Date (or if such Subsidiary is acquired after the Closing Date, prior to the date such Person was acquired) and such Contractual Obligation is not in contemplation of this exclusion or (C) in the case of any Subsidiary that is not a Wholly-Owned Subsidiary, is prohibited by any Organizational Document or shareholder agreement (including a requirement to obtain third-party consent) existing on the Closing Date (or if such Subsidiary is acquired after the Closing Date, prior to the date such Person was acquired) and such restriction is not in contemplation of this exclusion subject to limits and exclusions to be agreed upon, and (viii) a Subsidiary not referred to above if and for so long as, in the reasonable judgment of the Administrative Agent, the cost of obtaining the Guarantee of such Subsidiary exceeds the practical benefits to the

Secured Parties afforded thereby.

“Excluded Taxes” means any of the following Taxes imposed on or with respect to a Recipient or required to be withheld or deducted from a payment to a Recipient, (a) Taxes imposed on or measured by net income (however denominated), franchise Taxes, and branch profits Taxes, in each case, (i) imposed as a result of such Recipient being organized under the laws of, or having its principal office or, in the case of any Lender, its applicable lending office located in, the jurisdiction imposing such Tax (or any political subdivision thereof) or (ii) that are Other Connection Taxes, (b) in the case of a Lender, U.S. federal withholding Taxes imposed on amounts payable to or for the account of such Lender with respect to an applicable interest in a Loan or Commitment pursuant to a law in effect on the date on which (i) such Lender acquires such interest in the Loan or Commitment (other than pursuant to an assignment request by the Borrower Representative under Section 12.15) or (ii) such Lender changes its lending office, except in each case to the extent that, pursuant to Section 3.01, 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) Taxes attributable to such Recipient’s failure to comply with Section 3.01(f) and (d) any U.S. federal withholding Taxes imposed under FATCA.

“Facilities” means, at any time, any Site Lease or other Real Property owned, leased, managed or operated by any Loan Party or any Subsidiary.

“Fair Share” has the meaning set forth in Section 10.06.

“Fair Share Contribution Amount” has the meaning set forth in Section 10.06.

“FATCA” means Sections 1471 through 1474 of the Internal Revenue 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) and any current or future regulations or official interpretations thereof, any applicable agreement entered into pursuant to Section 1471(b) of the Internal Revenue Code, any applicable intergovernmental agreement with respect to the foregoing and any fiscal or regulatory legislation, official administrative rules or guidance adopted pursuant to any applicable intergovernmental agreement entered into in connection with the implementation of such sections of the Internal Revenue Code.

“FDD” means all of the uniform franchise offering circulars, franchise disclosure documents and similar documents required to be used by Franchise Laws in the offer and sale of Franchises.

“Federal Funds Rate” means, for any day, the rate per annum equal to the weighted average of the rates on overnight federal funds transactions with members of the Federal Reserve System arranged by federal funds brokers on such day, as published by the Federal Reserve Bank on the Business Day next succeeding such day, provided that (a) if such day is not a Business Day, the Federal Funds Rate for such day shall be such rate on such transactions on the next preceding Business Day as so published on the next succeeding Business Day, and (b) if no such rate is so published on such next succeeding Business Day, the Federal Funds Rate for such day shall be the average rate (rounded upward, if necessary, to a whole multiple of 1/100 of 1%)

charged to the Administrative Agent on such day on such transactions as determined by the Administrative Agent, in its sole discretion.

“Final Order” means a final order of the Bankruptcy Court in the Cases authorizing and approving this Agreement and the other Loan Documents under, inter alia, Sections 364(c) and (d) of the Bankruptcy Code on a final basis and entered at or after a final hearing, in form and substance satisfactory to the Administrative Agent and the Lenders, in their sole and absolute discretion, as the same may be amended, modified, or supplemented from time to time with the express written joinder or consent of the Administrative Agent and the Lenders.

“FIRREA” means the Financial Institutions Reform Recovery and Enforcement Act.

“Fiscal Quarter” means a fiscal quarter of any Fiscal Year.

“Fiscal Year” means the fiscal year of the Loan Parties and their Subsidiaries ending on the Sunday closest to September 30 of each calendar year.

“Flood Laws” has the meaning set forth in Section 11.15.

“Foreign Lender” means a Lender that is not a U.S. Person.

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

“Foreign Subsidiary Holdco” has the meaning specified in the definition of Excluded Subsidiary.

“Franchise” means a franchise (including any unit franchises, master franchises, regional developers, area developers, sub-franchises, seller-assisted marketing plans or licenses) pertaining to the establishment and operation of a restaurant under any of the “Houlihan’s Restaurant + Bar,” “Devon/Bristol/Chequers Seafood” or “J.Gilbert’s Wood Fired Steaks” trade names and business systems.

“Franchise Agreement” means an agreement pursuant to which a Franchise is granted to a Franchisee.

“Franchisee” means any Person who owns a Franchise.

“Franchise Laws” means all laws, rules or regulations of the United States Federal Trade Commission and each other Governmental Authority relating to the relationship between franchisor and franchisees or to the offer, sale, termination, non-renewal or transfer of Franchises.

“FRB” means the Board of Governors of the Federal Reserve System of the United States.

“Fronting Exposure” means, at any time there is a Defaulting Lender, with respect to the L/C Issuer (or the Support Provider, as the case may be), such Defaulting Lender’s Pro Rata Share of the outstanding Letter of Credit Liabilities other than Letter of Credit Liabilities as to

which such Defaulting Lender's participation obligation has been reallocated to other Lenders or Cash Collateralized in accordance with the terms hereof.

“Funded Indebtedness” means, as to any Person at a particular time, without duplication, all of the following, whether or not included as indebtedness or liabilities in accordance with GAAP:

- (a) all obligations for borrowed money, whether current or long-term (including the Obligations and any Subordinated Indebtedness) and all obligations of such Person evidenced by bonds, debentures, notes, loan agreements or other similar instruments;
- (b) all purchase money indebtedness;
- (c) the principal portion of all obligations under conditional sale or other title retention agreements relating to Property purchased by such Person (other than customary reservations or retentions of title under agreements with suppliers entered into in the ordinary course of business);
- (d) all obligations in respect of the deferred purchase price of Property or services (other than trade accounts payable in the ordinary course of business);
- (e) Attributable Indebtedness in respect of Capital Leases;
- (f) all preferred stock or other Disqualified Capital Stock providing for mandatory redemptions, sinking fund or like payments prior to the Termination Date;
- (g) Earn-Out Obligations if, and only to the extent, such obligation has not been paid in full in cash when due and payable (but only with respect to the portion of such obligation that remains unpaid); and
- (h) all indebtedness of the types specified in clauses (a) through (g) above secured by (or for which the holder of such Funded Indebtedness has an existing right, contingent or otherwise, to be secured by) any Lien on, or payable out of the proceeds of production from, Property owned or acquired by such Person, whether or not the obligations secured thereby have been assumed.

“Funding Guarantor” has the meaning set forth in Section 10.06.

“GAAP” means generally accepted accounting principles in the United States set forth in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board, consistently applied and as in effect from time to time.

“Governmental Approvals” means any and all governmental licenses, authorizations, registrations, permits, certificates, franchises, qualifications, accreditations, consents and approvals required under any applicable Law and required in order for any Person to carry on its business as now conducted, of each Governmental Authority issued or required under Laws applicable to the business of any Borrower or any of its Subsidiaries or to the transactions

described herein or necessary in the sale, furnishing, or delivery of goods or services under Laws applicable to the business of any Borrower or any of its Subsidiaries.

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

“Guarantee” means, as to any Person, (a) any obligation, contingent or otherwise, of such Person guaranteeing or having the economic effect of guaranteeing any Indebtedness or other obligation payable or performable by another Person (the “primary obligor”) in any manner, whether directly or indirectly, and including any obligation of such Person, direct or indirect, (i) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or other obligation, (ii) to purchase or lease property, securities or services for the purpose of assuring the obligee in respect of such Indebtedness or other obligation of the payment or performance of such Indebtedness or other obligation, (iii) to maintain working capital, equity capital or any other financial statement condition or liquidity or level of income or cash flow of the primary obligor so as to enable the primary obligor to pay such Indebtedness or other obligation, or (iv) entered into for the purpose of assuring in any other manner the obligee in respect of such Indebtedness or other obligation of the payment or performance thereof or to protect such obligee against loss in respect thereof (in whole or in part), or (b) any Lien on any assets of such Person securing any Indebtedness or other obligation of any other Person, whether or not such Indebtedness or other obligation is assumed by such Person. The amount of any Guarantee shall be deemed to be an amount equal to the stated or determinable amount of the related primary obligation, or portion thereof, in respect of which such Guarantee is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof as determined by the guaranteeing Person in good faith. The term “Guarantee” as a verb has a corresponding meaning.

“Guaranteed Obligations” has the meaning set forth in Section 10.01.

“Guarantor” means each of Holdings, and all current and future direct or indirect Subsidiaries of Holdings (other than the Borrowers and any Excluded Subsidiaries), and any other Person joining this Agreement as a “Guarantor” hereunder from time to time.

“Guaranty” means the guaranty made by each Guarantor in favor of the Administrative Agent, the Lenders and the other Secured Parties pursuant to Article 10.

“Hazardous Materials” means all explosive or radioactive substances or wastes and all hazardous or toxic substances, wastes or other pollutants, including petroleum or petroleum distillates, asbestos or asbestos-containing materials, polychlorinated biphenyls, lead-based paint, toxic mold or fungus, radon gas, infectious or medical wastes and all other substances or wastes of any nature regulated pursuant to any Environmental Law.

“Holdings” has the meaning set forth in the preamble to this Agreement.

“Indebtedness” means, as to any Person at a particular time, without duplication, all of the following, whether or not included as indebtedness or liabilities in accordance with GAAP:

- (a) all Funded Indebtedness;
- (b) the Termination Value of any Secured Hedge Agreement;
- (c) Synthetic Leases, Sale and Leaseback Transactions and Securitization Transactions;
- (d) all obligations in respect of Disqualified Capital Stock; and
- (e) all Guarantees with respect to outstanding indebtedness of the types specified in clauses (b), (c) and (d) above of any other Person.

“Indemnified Liabilities” has the meaning set forth in Section 12.05.

“Indemnified Taxes” means (a) Taxes, other than Excluded Taxes, imposed on or with respect to any payment made by or on account of any obligation of any Loan Party under any Loan Document and (b) to the extent not otherwise described in (a), Other Taxes.

“Indemnitees” has the meaning set forth in Section 12.05.

“Information” has the meaning set forth in Section 12.08.

“Intellectual Property Security Agreement” means any intellectual property security agreement, any trademark security agreement, any copyright security agreement, or any patent security agreement, in each case made by the grantors party thereto, in favor of the Administrative Agent, for the benefit of the Secured Parties, in each case, in form and substance reasonably satisfactory to the Administrative Agent, as the same may be amended, restated, modified or supplemented in accordance to the terms thereof and hereof.

“Interest Payment Date” means (a) as to any LIBOR Loan, the last day of each Interest Period applicable to such LIBOR Loan and the Revolving Loan Maturity Date; and (b) as to any Base Rate Loan Loans, the last Business Day of each calendar month and the Revolving Loan Maturity Date.

“Interest Period” means, as to each LIBOR Loan, the period commencing on the date such LIBOR Loan is disbursed or converted to or continued as a LIBOR Loan and ending on the date one (1) month thereafter, provided, that:

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

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

the end of such Interest Period) shall end on the last Business Day of the calendar month at the end of such Interest Period; and

(c) no Interest Period shall extend beyond the Revolving Loan Maturity Date, as applicable.

“Interim Order” means an order of the Bankruptcy Court in the Cases authorizing and approving this Agreement and the other Loan Documents, for an interim period, under, inter alia, Sections 364(c) and (d) of the Bankruptcy Code and entered at or after a hearing, in form and substance satisfactory to the Administrative Agent and the Lenders, in their sole and absolute discretion and attached hereto as Exhibit H.

“Internal Revenue Code” means the Internal Revenue Code of 1986, as amended, and any successor thereto.

“Investment” means, as to any Person, any direct or indirect acquisition or investment by such Person, whether by means of (a) the purchase or other acquisition of any of the Capital Stock of another Person, (b) a loan, advance or capital contribution to, Guarantee or assumption of debt of, or purchase or other acquisition of any other debt or equity participation or interest in, another Person, or (c) an Acquisition. For purposes of covenant compliance, the amount of any Investment shall be the amount actually invested, without adjustment for subsequent increases or decreases in the value of such Investment or any returns of capital.

“Involuntary Disposition” means any loss of, damage to or destruction of, or any condemnation or other taking for public use of, any Property of any Loan Party.

“IP Rights” has the meaning set forth in Section 5.17.

“IRS” means the United States Internal Revenue Service.

“ISP” means, with respect to any standby Letter of Credit, the “International Standby Practices 1998” published by the Institute of International Banking Law & Practice (or such later version thereof as may be in effect at the time of issuance).

“Landlord Agreement” means any agreement between the Administrative Agent and the landlord of Real Property occupied by a Loan Party, as tenant, which agreement shall be in form and substance as is reasonably satisfactory to the Administrative Agent, as amended, supplemented, modified, replaced, substituted for or restated from time to time and all exhibits and schedules attached thereto.

“Laws” means, collectively, all international, foreign, federal, state and local statutes, treaties, rules, guidelines, regulations, ordinances, compacts, codes and administrative or judicial precedents or authorities, including the interpretation or administration thereof by any Governmental Authority charged with the enforcement, interpretation or administration thereof, and all applicable administrative orders, writs, injunctions, decrees, directed duties, requests, licenses, authorizations, permits and other Governmental Approvals of, and agreements with, any Governmental Authority, in each case whether or not having the force of law.

“Lender” means each Person identified as a “Lender” on the signature pages hereto and its successors and assigns.

“Lender Parties” has the meaning specified in Section 12.07(g).

“Lender Securitization” has the meaning specified in Section 12.07(g).

“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 Representative and the Administrative Agent.

“LIBO Base Rate” means,

(1) for any Interest Period with respect to any LIBOR Loan:

(a) the rate per annum equal to the rate determined by the Administrative Agent to be the London Interbank Offered Rate benchmark rate which is calculated and distributed by the ICE Benchmark Administration Data Service (“ICE”) (or any successor thereto) for deposits in Dollars (for delivery on the first day of such Interest Period) with a term equivalent to such Interest Period, determined as of approximately 11:45 a.m. (London time) (or such other time as confirmed by ICE (or any successor thereto)) two (2) Business Days prior to the first day of such Interest Period, or

(b) if the rate referenced in the preceding clause (a) does not appear through such service or such service shall not be available, the rate per annum equal to the rate determined by the Administrative Agent to be the offered rate which is calculated and distributed daily by ICE (or any successor thereto) as an average ICE Benchmark Administration Limited Interest Settlement Rate for deposits in Dollars (for delivery on the first day of such Interest Period) with a term equivalent to such Interest Period, determined as of approximately 11:45 a.m. (London time) two (2) Business Days prior to the first day of such Interest Period, or

(c) if the rates referenced in the preceding clauses (a) and (b) are not available, the rate per annum (rounded upward to the next 1/100th of 1%) determined by the Administrative Agent as the rate of interest at which deposits in Dollars for delivery on the first day of such Interest Period in same day funds in the approximate amount of the LIBOR Loan being made, continued or converted by JPMorgan Chase Bank and with a term equivalent to such Interest Period would be offered by JPMorgan Chase Bank’s London Branch (or such other major bank as is acceptable to the Administrative Agent if JPMorgan Chase Bank is no longer offering to acquire or allow deposits in the London interbank eurodollar market) to major banks in the London interbank eurodollar market at their request at approximately 11:45 a.m. (London time) two (2) Business Days prior to the first day of such Interest Period.

(2) for any day with respect to an interest rate calculation for a Base Rate Loan:

(a) the rate per annum equal to the rate determined by the Administrative Agent to be the offered rate which is calculated and distributed daily by ICE (or any successor thereto) as an average ICE Benchmark Administration Limited Interest Settlement Rate for deposits in Dollars (for delivery on such day) with a term equivalent to three (3) months,

determined as of approximately 11:45 a.m. (London time) two (2) Business Days prior to such day, or

(b) if the rate referenced in the preceding clause (a) does not appear through such service or such service shall not be available, the rate per annum equal to the rate determined by the Administrative Agent to be the offered rate through such other service that displays an average ICE Benchmark Administration Limited Interest Settlement Rate for deposits in Dollars (for delivery on such day) with a term equivalent to three (3) months, determined as of approximately 11:45 a.m. (London time) two (2) Business Days prior to such day, or

(c) if the rates referenced in the preceding clauses (a) and (b) are not available, the rate per annum (rounded upward to the next 1/100th of 1%) determined by the Administrative Agent as the rate of interest at which deposits in Dollars (for delivery on such day in same day funds) with a term equivalent to three months, determined as of approximately 11:00 a.m. (London time) two (2) Business Days prior to such day in the approximate amount of such Base Rate Loan by JPMorgan Chase Bank and with a term equivalent to three (3) months would be offered by JPMorgan Chase Bank's London Branch (or such other major bank as is acceptable to the Administrative Agent if JPMorgan Chase Bank is no longer offering to acquire or allow deposits in the London interbank eurodollar market) to major banks in the London interbank eurodollar market at their request at approximately 11:45 a.m. (London time) two (2) Business Days prior to such day.

“LIBO Rate” means the greater of: (a) 1.00%; and (b) (1) for any Interest Period with respect to any LIBOR Loan, a rate per annum determined by the Administrative Agent to be equal to the quotient obtained by dividing (i) the LIBO Base Rate for such LIBOR Loan for such Interest Period by (ii) one minus the Eurodollar Reserve Percentage for such LIBOR Loan for such Interest Period and (2) for any day with respect to any Base Rate Loan bearing interest at a rate based on the LIBO Rate, a rate per annum determined by the Administrative Agent to be equal to the quotient obtained by dividing (i) the LIBO Base Rate for such Base Rate Loan for such day by (ii) one minus the Eurodollar Reserve Percentage for such Base Rate Loan for such day.

“LIBOR Loan” means any Loan (other than Base Rate Loans bearing interest at a rate based on the LIBO Rate) which accrues interest solely by reference to the LIBO Rate plus the Applicable Margin, in accordance with the terms of this Agreement.

“Lien” means any mortgage, pledge, hypothecation, collateral assignment, deposit arrangement, encumbrance, lien (statutory or other), charge, or preference, priority or other security interest or preferential arrangement of any kind or nature whatsoever (including any conditional sale or other title retention agreement, and any financing lease having substantially the same economic effect as any of the foregoing).

“Loan” means an extension of credit by a Lender to any Borrower under Article 2 in the form of a Revolving Loan.

“Loan Documents” means this Agreement, each Note, each Collateral Document, each Request for Credit Extension, each Issuer Document and each other document, instrument or agreement from time to time executed by any Loan Party pursuant to this Agreement.

“Loan Notice” means a notice of (a) a Borrowing of Revolving Loans, (b) a conversion of Loans from one Type to the other pursuant to Section 2.02(a), or (c) a continuation of LIBOR Loans pursuant to Section 2.02(a), which, if in writing, shall be substantially in the form of Exhibit A.

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

“Material Adverse Effect” means (a) a material adverse change in, or a material adverse effect upon, the operations, business, properties, assets, liabilities (actual or contingent), financial condition of the Loan Parties and their Subsidiaries taken as a whole, but excluding the effect of the filing of the Cases; (b) a material impairment of the ability of the Loan Parties, taken as a whole, to perform their obligations under the Loan Documents; or (c) a material adverse effect upon the rights and remedies of the Administrative Agent and the Lenders under the Loan Documents.

“Maximum Rate” has the meaning set forth in Section 12.10.

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

“Multiemployer Plan” means any multiemployer plan described in Section 3(37) of ERISA or any employee benefit plan of the type described in Section 4001(a)(3) of ERISA, to which Borrower or any ERISA Affiliate incurs or otherwise has, has had, or may have any obligation or liability, contingent or otherwise..

“Net Cash Proceeds” means the aggregate cash and Cash Equivalents proceeds (including insurance proceeds and condemnation awards) received by any Loan Party or any Subsidiary in respect of any Disposition or Involuntary Disposition net of (a) direct third-party costs or expenses incurred in connection therewith (including legal, accounting and investment banking fees, and sales commissions payable to third parties unrelated to Loan Parties), (b) taxes paid or payable as a result thereof (after taking into account any available tax credits or deductions and any tax sharing arrangements), and (c) the amount necessary to retire any Indebtedness secured by a Permitted Lien on the related Property that is senior in priority to the Lien of Administrative Agent and is also required to be discharged in connection with such disposition or issuance; it being understood that “Net Cash Proceeds” shall include any cash or Cash Equivalents received upon the sale or other disposition of any non-cash consideration received by any Borrower or any Subsidiary in any Disposition or Involuntary Disposition.

“Note” or “Notes” means each Revolving Note, individually or collectively, as appropriate.

“Obligations” means all advances to, and debts, liabilities, obligations, covenants and duties of, any Loan Party now or hereinafter arising from time to time under this Agreement and any other Loan Document or otherwise with respect to any Loan (including the obligation to pay principal and interest thereon and all fees and other costs and liabilities with respect thereto),

Reimbursement Obligation or Unreimbursed Amount, whether direct or indirect (including those acquired by assumption), absolute or contingent, due or to become due, now existing or hereafter arising and including interest and fees that accrue after the commencement by or against any Loan Party or any Affiliate thereof of any proceeding under any Debtor Relief Laws naming such Person as the debtor in such proceeding, regardless of whether such interest and fees are allowed claims in such proceeding. The foregoing shall also include any Banking Services Obligations.

“OFAC” means The Office of Foreign Assets Control of the U.S. Department of the Treasury.

“OFAC Sanctions” means the country or list based economic and trade sanctions administered and enforced by OFAC.

“Ordinary Course of Business” shall mean, with respect to any Debtor, the ordinary course of such Debtor’s business, as conducted on the Closing Date and reasonable extensions thereof, and undertaken by such Debtor in good faith and not for the purpose of evading any covenant or restriction in this Agreement or any other Loan Document, and after taking into account any limitations on the conduct of the Debtors’ business resulting from the commencement of the Cases and each Debtor’s status as debtor in possession under chapter 11 of the Bankruptcy Code.

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

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

“Other Taxes” means all present or future stamp, court or documentary, intangible, recording, filing or similar Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Loan Document, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment (other than an assignment made pursuant to Section 12.15).

“Participant” has the meaning set forth in Section 12.07(d).

“Participant Register” has the meaning specified in Section 12.07(d).

“Patriot Act” has the meaning specified in Section 5.28.

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

“Pension Plan” means any Plan, other than a Multiemployer Plan, that is subject to Title IV of ERISA and is sponsored or maintained by any Borrower or any ERISA Affiliate or to which any Borrower or any ERISA Affiliate contributes or has an obligation to contribute, or with respect to which any Borrower or any ERISA Affiliate may have any liability or in the case of a multiple employer or other plan described in Section 4064(a) of ERISA, has made contributions at any time during the immediately preceding six (6) plan years.

“Permitted Liens” means, at any time, Liens in respect of Property of the Loan Parties and their Subsidiaries permitted to exist at such time pursuant to the terms of Section 7.02.

“Permitted Variance” has the meaning specified in Section 6.17(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 specified in the recitals to this Agreement.

“Plan” means any “employee benefit plan” as defined in Section 3(3) of ERISA which is or was sponsored, maintained or contributed to by, or required to be contributed by the Borrowers, any of their Subsidiaries or, with respect to any such plan that is subject to Section 412 of the Code or Title IV of ERISA, any of their respective ERISA Affiliates, and with respect to which any Borrower or any Subsidiary has or may have any liability..

“Pre-Petition Agent” has the meaning specified in the recitals to this Agreement.

“Pre-Petition Collateral” shall mean all “Collateral” as defined in Pre-Petition Credit Agreement in existence as of the Petition Date.

“Pre-Petition Credit Agreement” has the meaning specified in the recitals to this Agreement.

“Pre-Petition Lenders” has the meaning specified in the recitals to this Agreement.

“Pre-Petition Loan Documents” means the “Loan Documents” (as defined in the Pre-Petition Credit Agreement)

“Pre-Petition Obligations” means all Obligations (as defined in the Pre-Petition Credit Agreement).

“Pre-Petition Payment” means a payment (by way of adequate protection or otherwise) of principal or interest or otherwise on account of any pre-petition Indebtedness or trade payables or other pre-petition claims against any Debtor.

“Proceedings” means any actual or threatened civil, equitable or criminal proceeding litigation, action, suit, claim, investigation (governmental or judicial or otherwise), dispute indictment or prosecution, pleading, demand or the imposition of any fine or penalty or similar matter.

“Properly Contested” means, with respect to any obligation of a Loan Party, (a) the obligation is subject to a bona fide dispute regarding amount or the Loan Party’s liability to pay; (b) the obligation is being properly contested in good faith by appropriate proceedings promptly instituted and diligently pursued; (c) appropriate reserves have been established in accordance with GAAP; (d) non-payment could not reasonably be expected to result in a Material Adverse Effect, nor result in forfeiture or sale of any assets of such Loan Party pending resolution of such contest proceedings and the payment of any liabilities resulting therefrom; (e) no Lien (other than a Permitted Lien) is imposed on assets of such Loan Party; and (f) if the obligation results from entry of a judgment or other order, such judgment or order is stayed pending appeal or other judicial review.

“Property” means any interest of any kind in any property or asset, whether real, personal or mixed, or tangible or intangible, including Capital Stock.

“Pro Rata Share” means, with respect to any Lender at any time, with respect to such Lender’s Revolving Commitment and Revolving Letter of Credit Liabilities at any time, a fraction (expressed as a percentage, carried out to the ninth decimal place), the numerator of which is the amount of the Revolving Commitment of such Lender at such time and the denominator of which is the amount of the total Revolving Commitments at such time, provided that if commitments of each Lender to make Revolving Loans have been terminated pursuant to Section 9.02, then the Pro Rata Share of each Lender shall be determined based on the Pro Rata Share of such Lender’s Revolving Exposure. The initial Pro Rata Share of each Lender is set forth opposite the name of such Lender on Schedule 2.01 or in the Assignment and Assumption pursuant to which such Lender becomes a party hereto, as applicable.

“Public Lender” has the meaning set forth in Section 12.02(e).

“R&W Insurance Policy” means that certain Representations and Warranties Insurance Policy (Buyer Version), issued by Aspen Managing Agency Limited (Syndicate ASP 4711 at Lloyd’s), Brit Syndicates Limited (Syndicate BRT 2987 at Lloyd’s), R J Kiln & Co Limited (Syndicate KLN 510 at Lloyd’s), BFP Consortium 9562 (BAR 1955 66.67% and MRE 5151 33.33% at Lloyd’s) managed by Barbican Managing Agency Limited, Renaissance Re Syndicate Management Limited (Syndicate RNR 1458 at Lloyd’s), Mitsui Sumitomo Insurance Underwriting (Syndicate MIT 3210 at Lloyd’s), Chaucer Syndicates Limited (Syndicate CSL 1084 at Lloyd’s) and Novae Syndicates Limited (Syndicate NVA 2007 at Lloyd’s) under Certificate No. AMB01824-01 and Columbia Casualty Company, under Policy No. 415864525, effective as of December 17, 2015.

“Rating Agencies” has the meaning set forth in Section 12.08(b).

“Real Estate Financing Subsidiary” means a Subsidiary of Holdings formed and thereafter maintained solely for the purpose of holding real property acquired by the Loan Parties and their Subsidiaries, which Subsidiary shall conduct no business other than the holding of such real estate and, if applicable, the leasing of such real estate to a Loan Party or a Franchisee.

“Real Estate Indebtedness” means non-recourse Indebtedness incurred by a Real Estate Financing Subsidiary consisting of acquisition financing arrangements or construction loans from unaffiliated third parties, provided that such Indebtedness may only be secured by the Real Property being acquired or developed.

“Real Property” means the real estate listed on Schedule 5.20(a), and any other real estate owned or leased after the Closing Date.

“Recipient” means (a) the Administrative Agent, (b) any Lender, (c) any L/C Issuer and (d) any Support Provider, as applicable.

“Register” has the meaning set forth in Section 12.07(c).

“Registrar” has the meaning set forth in Section 12.07(c).

“Regulation U” and “Regulation X” mean, respectively, Regulations U and X of the Board of Governors of the Federal Reserve System or any successor, as the same may be amended or supplemented from time to time.

“Reorganization Plan” means a plan or plans of reorganization in the Cases.

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

“Representatives” has the meaning set forth in Section 12.08(b).

“Request for Credit Extension” means with respect to a Borrowing, a Loan Notice.

“Required Lenders” means (a) at any time there are two or fewer non-Defaulting Lenders, Lenders holding in the aggregate one hundred percent (100%) of (i) the Revolving Commitments and the outstanding Term Loan(s) or (ii) if the Revolving Commitments have been terminated, the Revolving Exposures and the outstanding Term Loan(s) or (b) at any other time, Lenders holding in the aggregate more than fifty percent (50%) of (i) the Revolving Commitments and the outstanding Term Loan(s) or (ii) if the Revolving Commitments have been terminated, the Revolving Exposures and outstanding Term Loan(s) (for purposes of this definition (x) Lenders that are Affiliates of one another shall be considered as one Lender, and (y) participations of Loans and Commitments by any Lender pursuant to Section 12.07(d) shall not reduce the amount deemed held by such Lender). The Revolving Commitments (or, if the Revolving Commitments have terminated, the Revolving Exposure) held or deemed held by any Defaulting Lender shall be excluded for purposes of making a determination of Required Lenders.

“Responsible Officer” means (a) the chief executive officer, president, chief financial officer or treasurer of a Loan Party and (b) solely for purposes of the delivery of incumbency and other certificates of the type contemplated under Section 4.01(b), the secretary or any assistant secretary of a Loan Party. Any document delivered hereunder that is executed by a Responsible Officer of a Loan Party shall be conclusively presumed to have been authorized by all necessary corporate, partnership and/or other action on the part of such Loan Party and such Responsible Officer shall be conclusively presumed to have acted on behalf of such Loan Party.

“Restricted Payment” means (a) any dividend or other distribution, direct or indirect, on account of any shares (or equivalent) of any class of Capital Stock of any Loan Party or any of its Subsidiaries, now or hereafter outstanding, (b) any redemption, retirement, sinking fund or similar payment, purchase or other acquisition for value, direct or indirect, of any shares (or equivalent) of any class of Capital Stock of any Loan Party or any of its Subsidiaries, now or hereafter outstanding, (c) any payment made to retire, or to obtain the surrender of, any outstanding warrants, options or other rights to acquire shares of any class of Capital Stock of any Loan Party or any of its Subsidiaries, now or hereafter outstanding, (d) any payment from any Loan Party to Holdings not expressly permitted by Section 7.06, and (e) the payment by any Loan Party or any of its Subsidiaries of any management, advisory or consulting fee to Sponsor or an Affiliate of Sponsor including, without limitation, pursuant to any management fee agreements.

“Revolving Availability” means, at any time, an amount equal to (a) the total Revolving Commitments less (b) the total Revolving Exposures at such time.

“Revolving Commitment” means, as to each Lender, its obligation to make Revolving Loans to the Borrowers pursuant to Section 2.01 in an aggregate principal amount at any one time outstanding not to exceed the amount set forth opposite such Lender’s name on Schedule 2.01 or in the Assignment and Assumption pursuant to which such Lender becomes a party hereto, as applicable, as such amount may be adjusted from time to time in accordance with this Agreement. The aggregate amount of the Revolving Commitments of all Revolving Lenders is \$5,000,000.

“Revolving Exposure” means, with respect to any Lender at any time, the outstanding principal amount of such Lender’s Revolving Loans.

“Revolving Lenders” means, as of any date of determination, Lenders having a Revolving Commitment, or after the Revolving Commitments have terminated, Lenders holding any portion of the outstanding Revolving Loan.

“Revolving Loan” has the meaning specified in Section 2.01(a).

“Revolving Loan Maturity Date” means the earlier to occur of: (i) the closing of an Approved 363 Sale; and (ii) January 31, 2020.

“Revolving Note” has the meaning specified in Section 2.11(a).

“S&P” means Standard & Poor’s Ratings Services, a division of The McGraw Hill Companies, Inc. and any successor thereto.

“Sale and Leaseback Transaction” means, with respect to any Loan Party or any Subsidiary, any arrangement, directly or indirectly, with any Person whereby such Loan Party or such Subsidiary shall sell or transfer any real property used or useful in its business, whether now owned or hereafter acquired, and thereafter rent or lease such property or other property that it intends to use for substantially the same purpose or purposes as the property being sold or transferred.

“Sanctioned Entity” means (a) a country or a government of a country, (b) an agency of the government of a country, (c) an organization directly or indirectly controlled by a country or its government, or (d) a Person resident in or determined to be resident in a country, in each case, that is subject to a country sanctions program administered and enforced by OFAC.

“Sanctioned Person” means a Person named on the OFAC-maintained list of “Specially Designated Nationals” (as defined by OFAC).

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

“Secured Parties” means, collectively, the Administrative Agent, an Affiliate of the Administrative Agent who provides Banking Services, all other Agents, and the Lenders.

“Securitization Transaction” means any financing transaction or series of financing transactions (including factoring arrangements) pursuant to which any Borrower or any Subsidiary may sell, convey or otherwise transfer, or grant a security interest in, accounts, payments, receivables, rights to future lease payments or residuals or similar rights to payment to a special purpose subsidiary or affiliate of any Person.

“Security Agreement” means the Security Agreement dated as of the Closing Date executed in favor of the Administrative Agent by each of the Loan Parties, as the same may be amended, modified, extended, restated, replaced or supplemented from time to time.

“Site Lease” means a lease between a Loan Party or its Subsidiary for the premises on which a Store is located.

“Sponsor” means York Capital Management and its Controlled Investment Affiliates.

“Statutory Fees” means fees required to be paid to the U.S. Trustee pursuant to the Interim Order or the Final Order.

“Store” means a restaurant owned and operated by a Loan Party (other than Holdings) as a “Houlihan’s Restaurant + Bar,” “Devon/Bristol/Chequers Seafood” or “J.Gilbert’s Wood Fired Steaks”.

“Subsidiary” of a Person means a corporation, partnership, limited liability company or other business entity of which a majority of the shares of Capital Stock having ordinary voting power for the election of directors or other governing body (other than Capital Stock having such power only by reason of the happening of a contingency) are at the time beneficially owned, or the management of which is otherwise controlled, directly or indirectly, through one or more

intermediaries, or both, by such Person. Unless otherwise specified, all references herein to a “Subsidiary” or to “Subsidiaries” shall refer to a Subsidiary or Subsidiaries of the Loan Parties.

“Superpriority Claim” means an allowed claim against any Debtor or such Debtor’s estate in the Cases which is an administrative expense claim having priority over (a) any and all allowed administrative expenses (other than the Carve-Out) and (b) all unsecured claims now existing or hereafter arising, including any administrative expenses of the kind specified in the Bankruptcy Code, including without limitation Sections 105, 326, 328, 330, 331, 364(c)(1), 365, 503, 506(c) (upon entry of the Final Order), 507, 546, 726, 1113 or 1114 of the Bankruptcy Code.

“Synthetic Lease” means any synthetic lease, tax retention operating lease, off-balance sheet loan or similar off-balance sheet financing arrangement whereby the arrangement is considered borrowed money indebtedness for tax purposes but is classified as an operating lease or does not otherwise appear on a balance sheet under GAAP.

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

“Termination Date” means the date that (a) all Obligations (other than contingent obligations in respect of Banking Services Obligations and contingent indemnification obligations to the extent no claim giving rise thereto has been asserted) have been indefeasibly been paid in full in cash, and (b) no commitments or other obligations of any Lender to provide funds to the Borrowers remain outstanding.

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

“UCC” means the Uniform Commercial Code as in effect in any applicable jurisdiction.

“Unfunded Pension Liability” means the excess of a Pension Plan’s benefit liabilities under Section 4001(a)(16) of ERISA, over the current value of that Pension Plan’s assets, determined in accordance with the assumptions used for funding the Pension Plan pursuant to Sections 412 and 430 of the Internal Revenue Code for the applicable plan year.

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

“U.S. Person” means any Person that is a “United States person” as defined in Section 7701(a)(30) of the Internal Revenue Code.

“U.S. Tax Compliance Certificate” has the meaning assigned to such term in Section 3.01(f)(ii)(B)(3).

“U.S. Trustee” shall have the meaning set forth in the Interim Order, or, after the entry of the Final Order, in the Final Order.

“Wholly Owned Subsidiary” means any Person 100% of whose Capital Stock is at the time owned by a Loan Party directly or indirectly through other Persons 100% of whose Capital Stock is at the time owned, directly or indirectly, by such a Loan Party.

“Winghaven” means Winghaven Restaurant Partners, LLC, a Missouri limited liability company. As of the Closing Date, the Borrowers have a 30.0% equity interest in Winghaven and Winghaven is not a Subsidiary.

“Winghaven Debt” means indebtedness of Winghaven under its credit facility owing to one or more third-party lenders.

“Winghaven Management Agreement” means that certain agreement by and among Winghaven and HRI dated October 31, 2003.

“Withholding Agent” means any Loan Party and the Administrative Agent.

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

(a) The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words “include,” “includes” and “including” shall be deemed to be followed by the phrase “without limitation.” The word “will” shall be construed to have the same meaning and effect as the word “shall.” Unless the context requires otherwise, (i) any definition of or reference to any agreement, instrument or other document (including any Organization Document) shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein or in any other Loan Document), (ii) any reference herein to any Person shall be construed to include such Person’s successors and assigns, (iii) the words “herein,” “hereof” and “hereunder,” and words of similar import when used in any Loan Document, shall be construed to refer to such Loan Document in its entirety and not to any particular provision thereof, (iv) all references in a Loan Document to Articles, Sections, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Exhibits and Schedules to, the Loan Document in which such references appear, (v) any reference to any law shall include all statutory and regulatory provisions consolidating, amending, replacing or interpreting such law and any reference to any law or regulation shall, unless otherwise specified, refer to such law or regulation as amended, modified or supplemented from time to time, and (vi) the words “asset” and “property” shall be construed to have the same meaning and effect and to refer to any and all real and personal property and tangible and intangible assets and properties, including cash, securities, accounts and contract rights.

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

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

### **1.03 Accounting Terms.**

(a) Except as otherwise specifically prescribed herein, all accounting terms not specifically or completely defined herein shall be construed in conformity with, and all financial data (including financial ratios and other financial calculations) required to be submitted pursuant to this Agreement shall be prepared in conformity with GAAP applied on a consistent basis, as in effect from time to time.

(b) If at any time any change in GAAP would affect the computation of any financial ratio or requirement set forth in any Loan Document, and any of the Borrowers, the Administrative Agent or the Required Lenders shall so request, the Administrative Agent, the Lenders and the Borrower Representative on behalf of the Borrowers shall negotiate in good faith to amend such ratio or requirement to preserve the original intent thereof in light of such change in GAAP (subject to the approval of the Required Lenders), provided that, until so amended, (i) such ratio or requirement shall continue to be computed in accordance with GAAP prior to such change therein and (ii) the Borrower Representative shall provide to the Administrative Agent and the Lenders financial statements and other documents required under this Agreement or as reasonably requested hereunder setting forth a reconciliation between calculations of such ratio or requirement made before and after giving effect to such change in GAAP.

(c) All financial statements delivered hereunder shall be prepared without giving effect to any election under Statement of Financial Accounting Standards Accounting Standards Codification No. 825 – Financial Instruments, or any successor thereto (including pursuant to the Accounting Standards Codification) (or any similar accounting principle) permitting a Person to value its financial liabilities at the fair value thereof.

**1.04 Rounding.** Any financial ratios required to be maintained by the Borrowers pursuant to this Agreement shall be calculated by dividing the appropriate component by the other component, carrying the result to one place more than the number of places by which such ratio is expressed herein and rounding the result up or down to the nearest number (with a rounding-up if there is no nearest number).

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

**1.06 Letter of Credit Amounts.** Unless otherwise specified, all references herein to the amount of a Letter of Credit at any time shall be deemed to mean the maximum face amount of such Letter of Credit after giving effect to all increases thereof contemplated by such Letter of Credit or the Issuer Document related thereto, whether or not such maximum face amount is in effect at such time.

## ARTICLE 2

### THE COMMITMENTS AND CREDIT EXTENSIONS

#### 2.01 Loans.

(a) Revolving Loans pursuant to the Budget. Subject to the terms and conditions set forth herein, each Revolving Lender severally (and neither jointly nor jointly and severally) agrees to make loans to the Borrower Representative on behalf of the Borrowers (each such loan, a “Revolving Loan”) in Dollars from time to time on any Business Day during the Availability Period in an aggregate amount not to exceed at any time outstanding the amount of such Revolving Lender’s Revolving Commitment, provided, that after giving effect to any Borrowing of Revolving Loans, (i) the total Revolving Exposure of all Revolving Lenders shall not exceed the total Revolving Commitments of all Revolving Lenders, and (ii) the Revolving Exposure of each Revolving Lender shall not exceed such Revolving Lender’s Revolving Commitment. Within the limits of each Revolving Lender’s Revolving Commitment, and subject to the other terms and conditions hereof, the Borrower Representative on behalf of the Borrowers may borrow under this Section 2.01(a), prepay under Section 2.05, and re-borrow under this Section 2.01(a). The Revolving Loans may be Base Rate Loans or LIBOR Loans, as further provided herein, provided, however, that all Borrowings of Revolving Loans, if any, made on the Closing Date shall be made as Base Rate Loans.

(b) Compliance with the Budget. Notwithstanding any other provision contained herein, Revolving Lenders shall have no obligation to make Revolving Loans except on a weekly basis in accordance with the amounts set forth in the Budget, subject to the Permitted Variance, and provided that any budgeted amount not used in a particular week may be borrowed in the following week.

#### 2.02 Borrowings, Conversions and Continuations of Loans.

(a) Each Borrowing, each conversion of Revolving Loans from one Type to the other, and each continuation of LIBOR Loans shall be made upon the Borrower Representative’s irrevocable notice (and if in writing, in the form of the Loan Notice) to the Administrative Agent, which may be delivered by telephone or e-mail request (or such other means as may be agreed upon by the Administrative Agent in its sole discretion). Each such notice must be received by the Administrative Agent not later than 1.00 p.m. (i) three (3) Business Days prior to the requested date of any Borrowing of, conversion to or continuation of LIBOR Loans or of any conversion of LIBOR Loans to Base Rate Loans, and (ii) three (3) Business Day prior to the requested date of any Borrowing of Base Rate Loans (or any conversion to Base Rate Loans). Each telephonic notice by the Borrower Representative pursuant to this Section 2.02(a) must be confirmed promptly by delivery to the Administrative Agent of a written Loan Notice, appropriately completed and executed by a Responsible Officer of the Borrower Representative. Subject to Section 2.03(d) with respect to Reimbursement Loans, each Borrowing of, conversion to or continuation of LIBOR Loans shall be in a principal amount of \$500,000 or a whole multiple of \$100,000 in excess thereof. Each Borrowing of or conversion to Base Rate Loans shall be in a principal amount of \$100,000 or a whole multiple of \$50,000 in excess thereof. Each Loan Notice pursuant to this Section 2.02(a) (whether

telephonic or written) shall specify (i) whether the Borrower Representative is requesting a Borrowing, a conversion of Revolving Loans from one Type to the other, or a continuation of LIBOR Loans, (ii) the requested date of the Borrowing, conversion or continuation, as the case may be (which shall be a Business Day), (iii) the principal amount of Revolving Loans to be borrowed, converted or continued, (iv) the Type of Revolving Loans to be borrowed or to which existing Revolving Loans are to be converted, and (v) if applicable, the duration of the Interest Period with respect thereto. If the Borrower Representative fails to specify a Type of Revolving Loan in a Loan Notice or if the Borrower Representative fails to give a timely notice requesting a conversion or continuation, then the applicable Revolving Loans shall be made as, or converted to, Base Rate Loans. Any such automatic conversion to Base Rate Loans shall be effective as of the last day of the Interest Period then in effect with respect to the applicable LIBOR Loans. If the Borrower Representative requests a Borrowing of, conversion to, or continuation of LIBOR Loans in any such Loan Notice, but fails to specify an Interest Period, it will be deemed to have specified an Interest Period of one (1) month.

(b) Following receipt of a Loan Notice, the Administrative Agent shall promptly notify each Lender of the amount of its Pro Rata Share of the applicable Revolving Loans, and if no timely notice of a conversion or continuation is provided by the Borrower Representative as required by Section 2.02(a) with respect to any continuation of a LIBOR Borrowing, the Administrative Agent shall notify each Lender of the details of any automatic conversion of such LIBOR Borrowing to Base Rate Loans as described in the preceding subsection. In the case of a Borrowing, each Lender shall make the amount of its Revolving Loan available to the Administrative Agent in immediately available funds at the Administrative Agent's Office not later than 1:00 p.m. on the Business Day specified in the applicable Loan Notice without setoff, defense, counterclaim or claims in recoupment. Upon satisfaction of the conditions set forth in Section 4.02 (and, if such Borrowing is the initial Credit Extension, Section 4.01), the Administrative Agent shall make all funds so received available to the Borrower Representative in like funds as received by the Administrative Agent by wire transfer of such funds, in each case in accordance with instructions provided to (and reasonably acceptable to) the Administrative Agent by the Borrower Representative, provided, that if, on the date of a Borrowing of Revolving Loans, there are Unreimbursed Amounts outstanding, then the proceeds of such Borrowing shall be applied, first, to the payment in full of any such Unreimbursed Amounts, and second, to the Borrower Representative as provided above.

(c) Except as otherwise provided herein, a LIBOR Loan may be continued or converted only on the last day of the Interest Period for such LIBOR Loan. During the existence of an Event of Default, no Revolving Loans may be requested as, converted to or continued as LIBOR Loans without the consent of the Administrative Agent or Required Lenders, and the Administrative Agent or Required Lenders may demand that any or all of the then outstanding LIBOR Loans be converted immediately to Base Rate Loans.

(d) The Administrative Agent shall promptly notify the Borrower Representative and the Lenders of the interest rate applicable to any Interest Period for LIBOR Loans upon determination of such interest rate. The determination of the LIBO Rate by the Administrative Agent shall be conclusive in the absence of manifest error.

(e) After giving effect to all Borrowings, all conversions of Revolving Loans from one Type to the other, and all continuations of Loans as the same Type, there shall not be more than seven (7) Interest Periods in effect with respect to outstanding Loans.

**2.03 [Reserved].**

**2.04 [Reserved].**

**2.05 Prepayments.**

(a) Voluntary Prepayments of Loans.

(i) Revolving Loans. Subject to the limitations set forth in this Section 2.05(a), the Borrowers may, upon notice from the Borrower Representative to the Administrative Agent, at any time or from time to time voluntarily prepay Revolving Loans in whole or in part without premium or penalty, provided that (i) such notice must be received by the Administrative Agent not later than 10:00 a.m. (A) three (3) Business Days prior to any date of prepayment of LIBOR Loans, and (B) three (3) Business Day prior to the date of prepayment of Base Rate Loans; (ii) any such prepayment of LIBOR Loans shall be in a principal amount of \$500,000 or a whole multiple of \$100,000 in excess thereof (or, if less, the entire principal amount thereof then outstanding) and (iii) any such prepayment of Base Rate Loans shall be in a principal amount of \$100,000 or a whole multiple of \$50,000 in excess thereof (or, if less, the entire principal amount thereof then outstanding). Each such notice shall specify the date and amount of such prepayment and the Type(s) of Loans to be prepaid. The Administrative Agent will promptly notify each Lender of its receipt of each such notice, and of the amount of such Lender's Pro Rata Share of such prepayment. If such notice is delivered by the Borrowers, the Borrowers shall make such prepayment and the payment amount specified in such notice shall be due and payable on the date specified therein, unless such notice is made in connection with the prepayment in full of all Loans and the termination of all commitments under this Agreement, in which case no prepayment shall be required hereunder if the condition to such commitment termination is not satisfied as contemplated by Section 2.06. Any prepayment of a LIBOR Loan shall be accompanied by all accrued interest thereon, together with any additional amounts required pursuant to Section 3.05. Notwithstanding the foregoing, the Borrowers may not voluntarily prepay any Loans that are LIBOR Loans unless such Loans are prepaid at the end of the applicable Interest Period or unless the Borrowers pay the amounts required by Section 3.05 hereof.

(ii) Application of Voluntary Prepayments of Revolving Loans. Prepayments of Revolving Loans pursuant to this Section 2.05(a) shall reduce the total Revolving Commitments. Each such prepayment shall be applied to the Revolving Loans of the applicable Lenders in accordance with their respective Pro Rata Shares.

(b) Mandatory Prepayments of Loans.

(i) Total Revolving Exposure. If, for any reason, the total Revolving Exposures at any time exceed the total Revolving Commitments then in effect, the

Borrowers shall promptly (and in any event within one (1) Business Day) prepay the Revolving Loans in an aggregate amount equal to any such excess (each such prepayment to be applied as set forth in clause (iv) below).

(ii) Dispositions and Involuntary Dispositions. The Borrowers shall prepay, within three (3) Business Days after receipt, the Obligations in an aggregate amount equal to 100% of the Net Cash Proceeds of any Disposition or Involuntary Disposition of Collateral (each such prepayment to be applied as set forth in clause (vii) below) excluding the proceeds of any voluntary Disposition described in clause (a) of Section 7.05.

(iii) R&W Insurance Policy. Notwithstanding anything in any assignment of the R&W Insurance Policy or any other Loan Document to the contrary, upon receipt of any proceeds under the R&W Insurance Policy, the Borrowers shall prepay the Obligations in an aggregate amount equal to 100% of such proceeds, net of any taxes paid or payable as a result thereof (after taking into account any available tax credits or deductions and any tax sharing arrangements) (each such prepayment to be applied as set forth in clause (vii) below), such distribution and prepayment to be made within five (5) days after receipt of such proceeds.

(iv) Application of Mandatory Prepayments. All amounts required to be paid pursuant to this Section 2.05(b) shall be applied to the Revolving Loans to the full extent thereof.

(c) Within the parameters of the applications set forth above, prepayments shall be applied first to Base Rate Loans and then to LIBOR Loans in direct order of Interest Period maturities. Prepayments of the Revolving Loans pursuant to this Section 2.05(c) shall not reduce the total Revolving Commitments. All prepayments under this Section 2.05(c) shall be subject to Section 3.05, and otherwise shall be without premium or penalty, and shall be accompanied by a payment of all interest accrued on the principal amount prepaid through the date of prepayment.

(d) Declined Amount. Notwithstanding anything to the contrary contained in this Section 2.05, any Lender may elect not to accept a prepayment of the Loans that is required to be made pursuant to Section 2.05(b)(ii) through (v) by notice to Administrative Agent received one (1) Business Day prior to the date of such prepayment. The amount of any such prepayment which would have been applied to the Loans but for such elections may be retained by Borrowers.

**2.06 Termination or Reduction of Total Revolving Commitments.** The Borrowers may, upon prior written notice from the Borrower Representative to the Administrative Agent, terminate the total Revolving Commitments or from time to time permanently reduce the total Revolving Commitments; provided, however, that (a) any such notice shall be received by the Administrative Agent not later than 11:00 a.m. (i) ten (10) Business Days prior to the date of termination or (ii) three (3) Business Days prior to the date of reduction, (b) any such partial reduction shall be in an aggregate amount of \$1,000,000 or any whole multiple of \$500,000 in excess thereof, (c) after giving effect to any reduction of the total Revolving Commitments, the

total Revolving Commitments shall not be less than the total Revolving Exposures, (d) any termination of the total Revolving Commitments shall be accompanied by a prepayment in full of all Revolving Loans, and (e) the Administrative Agent shall not be required to release its Lien on any Collateral in connection with any termination or reduction. The Administrative Agent will promptly notify the Revolving Lenders of any such notice of termination or reduction of the Revolving Commitments. Any reduction of the total Revolving Commitments shall be applied to the Revolving Commitment of each Lender according to its Pro Rata Share. All fees accrued with respect thereto until the effective date of any termination or reduction of the total Revolving Commitments shall be paid on the effective date of such termination or reduction. Any notice of termination of the total Revolving Commitments delivered by the Borrower Representative pursuant to this Section 2.06 shall be irrevocable.

**2.07 Repayment of Loans.** On the Revolving Loan Maturity Date, the Borrowers shall repay to the Administrative Agent, for the ratable benefit of the Lenders, the aggregate principal amount of all Revolving Loans outstanding on such date.

**2.08 Interest.**

(a) Subject to the provisions of subsection (b) below, (i) each LIBOR Loan shall bear interest on the outstanding principal amount thereof for each Interest Period at a rate per annum equal to the sum of (A) the LIBO Rate for such Interest Period plus (B) the Applicable Margin; and (ii) each Base Rate Loan bear interest on the outstanding principal amount thereof from the applicable borrowing or conversion date at a rate per annum equal to the (A) Base Rate plus (B) the Applicable Margin.

(b) After the occurrence and during the continuation of an Event of Default, the Borrowers shall pay interest on the principal amount of all outstanding Loans and any interest payments thereon not paid when due and any fees and other amounts then due and payable hereunder or under any other Loan Document at a rate per annum equal to the Default Rate to the fullest extent permitted by applicable Laws, commencing upon the occurrence of such Event of Default, notwithstanding when such election is made.

(c) Interest on each Loan shall be due and payable in arrears on each Interest Payment Date applicable thereto and at such other times as may be specified herein. Interest hereunder shall be due and payable in accordance with the terms hereof before and after judgment, and before and after the commencement of any proceeding under any Debtor Relief Law whether or not allowed in such proceeding.

**2.09 Fees.**

(a) Unused Revolving Commitments Fee. The Borrowers shall pay, or cause to be paid, to the Administrative Agent for the account of each Revolving Lender in accordance with its Pro Rata Share, an unused fee equal to the product of (i) one-half of one percent (.50%) per annum times (ii) the average daily amount by which the total Revolving Commitments exceed the total outstanding amount of Revolving Loans. This unused fee shall accrue at all times during the Availability Period, including at any time during which one or more of the conditions in Article 4 is not met, and shall be due and payable monthly in arrears on the last day

of each month, commencing on November 30, 2019, and on the Revolving Loan Maturity Date; provided that no such unused fee shall accrue on the Revolving Commitment of a Defaulting Lender so long as such Lender shall be a Defaulting Lender (not including any portion thereof reallocated to non-Defaulting Lenders pursuant to Section 2.16(d) hereof).

(b) Closing Fee. On the Closing Date, the Borrowers shall pay, or cause to be paid, to Administrative Agent for the for the account of each Revolving Lender in accordance with its Pro Rata Share, a closing fee equal to 5.00% of the total Revolving Commitments on the Closing Date. Such fee shall be fully earned when paid and shall be non-refundable for any reason whatsoever.

(c) Other Fees. The Borrowers shall pay the fees in the amounts and at the times specified herein. Such fees shall be fully earned when paid and shall be non-refundable for any reason whatsoever.

**2.10 Computation of Interest and Fees**. All computations of fees and interest shall be made on the basis of a 360-day year and actual days elapsed, except that interest computed by reference to clause (b) of the definition of Base Rate shall be computed on the basis of a year of 365 days (or 366 days in a leap year). Interest shall accrue on each Loan for the day on which the Loan is made, and shall not accrue on a Loan, or any portion thereof, for the day on which the Loan or such portion is paid.

**2.11 Evidence of Debt**.

(a) The Credit Extensions made by each Lender shall be evidenced by one or more accounts or records maintained by such Lender and by the Administrative Agent in the ordinary course of business. The accounts or records maintained by the Administrative Agent and each Lender with respect to this Agreement shall be conclusive absent manifest error of the amount of the Credit Extensions made by the Lenders to the Borrowers and the interest and payments thereon with respect to this Agreement and the other Loan Documents. Any failure to so record or any error in doing so shall not, however, limit or otherwise affect the obligation of the Borrowers hereunder to pay any amount owing with respect to the Obligations. In the event of any conflict between the accounts and records maintained by any Lender and the accounts and records of the Administrative Agent in respect of such matters, the accounts and records of the Administrative Agent shall control in the absence of manifest error. Upon the request of the Administrative Agent, the Borrowers shall execute and deliver to Administrative Agent a promissory note, which shall evidence each Lender's Loans in addition to such accounts or records. Each such promissory note shall, in the case of Revolving Loans, be substantially in the form of Exhibit B (a "Revolving Note"). Each Lender may attach schedules to its Note and endorse thereon the date, Type (if applicable), amount and maturity of its Loans and payments with respect thereto, but any failure to do so shall not limit or otherwise affect the Borrowers' Obligations hereunder. Notwithstanding any other provision contained herein, in accordance with the Interim Order and the Final Order, no Revolving Notes or other Notes shall be required to evidence Borrowings hereunder.

(b) In the event of any conflict between the accounts and records maintained by the Administrative Agent and the accounts and records of any Lender in respect of such

matters, the accounts and records of the Administrative Agent shall control in the absence of manifest error.

## **2.12 Payments Generally.**

(a) All payments to be made by the Borrowers of principal, interest, fees and other Obligations shall be absolute and unconditional and shall be made without condition or deduction for any counterclaim, defense, recoupment, setoff or rescission. Except as otherwise expressly provided herein, all payments by the Borrowers hereunder shall be made to the Administrative Agent, for the account of the respective Lenders to which such payment is owed, at the Administrative Agent's Office in Dollars and in immediately available funds not later than 12:00 p.m. on the date specified herein. The Administrative Agent will promptly distribute to each Lender its Pro Rata Share (or other applicable share as provided herein) of such payment in like funds as received by wire transfer to such Lender's Lending Office. All payments received by the Administrative Agent after 12:00 p.m. shall be deemed received on the next succeeding Business Day and any applicable interest or fee shall continue to accrue.

(b) Subject to the definition of "Interest Period", if any payment to be made by the Borrowers shall come due on a day other than a Business Day, payment shall be made on the next following Business Day, and such extension of time shall be reflected in computing interest or fees, as the case may be.

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

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

(ii) if any Lender failed to make such payment, such Lender shall forthwith on demand pay to the Administrative Agent the amount thereof, in immediately available funds, together with interest thereon for the period from the date such amount was made available by the Administrative Agent to the Borrowers to the date such amount is recovered by the Administrative Agent (the "Compensation Period") at a rate per annum equal to (i) for the first three (3) days, the Federal Funds Rate and (ii) thereafter, the Base Rate plus the Applicable Margin in respect of Revolving Loans which are Base Rate Loans. If such Lender pays such amount to the Administrative Agent, then such amount shall constitute such Lender's Loan included in the applicable

Borrowing. If such Lender does not pay such amount forthwith upon the Administrative Agent's demand therefor, the Administrative Agent may make a demand therefor upon the Borrowers, and the Borrowers shall pay such amount to the Administrative Agent, together with interest thereon for the Compensation Period at a rate per annum equal to the rate of interest applicable to the applicable Borrowing. Nothing herein shall be deemed to relieve any Lender from its obligation to fulfill its Revolving Commitment or to prejudice any rights which the Administrative Agent or the Borrowers may have against any Lender as a result of any default by such Lender hereunder.

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

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

**2.13 Sharing of Payments.** If, other than as provided elsewhere in this Agreement, in any Assignment and Assumption permitted hereunder or in any participation agreement with a Participant permitted hereunder, any Lender shall obtain on account of the Revolving Loans made by it, any payment (whether voluntary, involuntary, through the exercise of any right of set-off, or otherwise) in excess of its Pro Rata Share (or other share contemplated hereunder) thereof, such Lender shall immediately (a) notify the Administrative Agent of such fact, and (b) purchase from the other Lenders such participations in the Revolving Loans made by them as shall be necessary to cause such purchasing Lender to share the excess payment in respect of such Revolving Loans or such participations, as the case may be, pro rata with each of them, provided, that if all or any portion of such excess payment is thereafter recovered from the purchasing Lender under any of the circumstances described in Section 12.06 (including pursuant to any settlement entered into by the purchasing Lender in its discretion), such purchase shall to that extent be rescinded and each other Lender shall repay to the purchasing Lender the purchase price paid therefor, together with an amount equal to such paying Lender's ratable share (according to the proportion of (i) the amount of such paying Lender's required repayment to (ii) the total amount so recovered from the purchasing Lender) of any interest or other amount paid or payable by the purchasing Lender in respect of the total amount so recovered, without further interest thereon. The Borrowers agree that any Lender so purchasing a participation from another Lender may, to the fullest extent permitted by law, exercise all its rights of payment (including the right of set-off, but subject to Section 12.09) with respect to such participation as fully as if such Lender were the direct creditor of the Borrowers in the amount of such participation. The Administrative Agent will keep records (which shall be conclusive and binding in the absence of manifest error) of participations purchased under this Section 2.13 and will in each case notify the Lenders following any such purchases or repayments. Each Lender that purchases a participation pursuant to this Section shall from and after such purchase have the right to give all notices, requests, demands, directions and other communications under this Agreement with respect to the portion of the Obligations purchased to the same extent as though the purchasing Lender were the original owner of the Obligations purchased.

**2.14** [Reserved].

**2.15** [Reserved].

**2.16** Defaulting Lenders. If any Lender becomes a Defaulting Lender, then the following provisions shall apply for so long as such Lender is a Defaulting Lender:

(a) such Defaulting Lender's Revolving Commitment and outstanding Revolving Loans shall be excluded for purposes of calculating the fee payable to Revolving Lenders in respect of Section 2.09(a), and such Defaulting Lender shall not be entitled to receive any fee pursuant to Section 2.09(a) with respect to such Defaulting Lender's Revolving Commitment or Revolving Loans (in each case not including any fee in connection with any portion of such Defaulting Lenders Revolving Commitment that has been reallocated to non-Defaulting Lenders pursuant to Section 2.16(d) hereof).

(b) the Revolving Commitments and Loans of such Defaulting Lender shall not be included in determining whether all Lenders or the Required Lenders have taken or may take any action hereunder (including any consent to any amendment or waiver pursuant to Section 12.01).

(c) in the event a Defaulting Lender has defaulted on its obligation to fund any Revolving Loan, or purchase any participation pursuant to Section 2.03(d) hereof, until such time as the Default Excess with respect to such Defaulting Lender has been reduced to zero, any prepayments or repayments on account of the Revolving Loans to the extent they would be otherwise be payable to such Defaulting Lender, shall be applied first, to the payment of any amounts owing by such Defaulting Lender to the Administrative Agent hereunder; second, as the Borrowers may request (so long as no Default or Event of Default exists), to the funding of any Revolving Loan in respect of which such Defaulting Lender has failed to fund its portion thereof as required by this Agreement, as determined by the Administrative Agent; third, if so determined by the Administrative Agent and the Borrowers, to be held in a deposit account and released pro rata in order to satisfy such Defaulting Lender's potential future funding obligations with respect to Revolving 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 such Defaulting Lender as a result of such 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 Borrowers as a result of any judgment of a court of competent jurisdiction obtained by the Borrowers against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; and sixth, to such Defaulting Lender or as otherwise directed by a court of competent jurisdiction; provided, that, if (x) such payment is a payment of the principal amount of any Revolving Loans in respect of which such Defaulting Lender has not fully funded its appropriate share and (y) such Revolving Loans were made at a time when the conditions set forth in Section 4.02 were satisfied or waived, such payment shall be applied solely to the pay the Revolving Loans of all non-Defaulting Lenders on a pro rata basis prior to being applied to the payment of any Revolving Loans of such Defaulting Lender. Any payments, prepayments or other amounts paid or payable to a Defaulting Lender that are applied (or held) to pay amounts owed by a Defaulting Lender or

to post Cash Collateral pursuant to this Section 2.16(c) shall be deemed paid to and redirected by such Defaulting Lender, and each Lender irrevocably consents hereto.

(d) The rights and remedies with respect to a Defaulting Lender under this Section 2.16 are in addition to any other rights and remedies which the Borrower or the Administrative Agent, as applicable, may have against such Defaulting Lender.

### ARTICLE 3 TAXES, YIELD PROTECTION AND ILLEGALITY

#### 3.01 Taxes.

(a) Payments Free of Taxes. Any and all payments by or on account of any obligation of any Loan Party under any Loan Document shall be made without deduction or withholding for any Taxes, except as required by applicable law. If any applicable law (as determined in the good faith discretion of an applicable Withholding Agent) requires the deduction or withholding of any Tax from any such payment by a Withholding Agent, then the applicable Withholding Agent shall be entitled to make such deduction or withholding and shall timely pay the full amount deducted or withheld to the relevant Governmental Authority in accordance with applicable law and, if such Tax is an Indemnified Tax, then the sum payable by the applicable Loan Party shall be increased as necessary so that after such deduction or withholding has been made (including such deductions and withholdings applicable to additional sums payable under this Section) the applicable Recipient receives an amount equal to the sum it would have received had no such deduction or withholding been made.

(b) Payment of Other Taxes by the Loan Parties. The Loan Parties shall timely pay to the relevant Governmental Authority in accordance with applicable law, or at the option of the Administrative Agent timely reimburse it for the payment of, any Other Taxes.

(c) Indemnification by the Loan Parties. The Loan Parties shall jointly and severally indemnify each Recipient, within ten (10) days after demand therefor, for the full amount of any Indemnified Taxes (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this Section) payable or paid by such Recipient or required to be withheld or deducted from a payment to such Recipient and any reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified 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 the Borrower Representative by a Lender (with a copy to the Administrative Agent), or by the Administrative Agent on its own behalf or on behalf of a Lender, shall be conclusive absent manifest error.

(d) Indemnification by the Lenders. Each Lender shall severally indemnify the Administrative Agent, within ten (10) days after demand therefor, for (i) any Indemnified Taxes attributable to such Lender (but only to the extent that any Loan Party has not already indemnified the Administrative Agent for such Indemnified Taxes and without limiting the obligation of the Loan Parties to do so), (ii) any Taxes attributable to such Lender's failure to comply with the provisions of Section 12.07(d) 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 Administrative 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 Administrative Agent shall be conclusive absent manifest error. Each Lender hereby authorizes the Administrative 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 Administrative Agent to the Lender from any other source against any amount due to the Administrative Agent under this subsection (d).

(e) Evidence of Payments. As soon as practicable after any payment of Taxes by any Loan Party to a Governmental Authority pursuant to this Section 3.01, such Loan Party shall deliver to the Administrative 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 Administrative 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 Borrower Representative and the Administrative Agent, at the time or times reasonably requested by the Borrower Representative or the Administrative Agent, such properly completed and executed documentation reasonably requested by the Borrower Representative or the Administrative 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 Borrower Representative or the Administrative Agent, shall deliver such other documentation prescribed by applicable law or reasonably requested by the Borrower Representative or the Administrative Agent as will enable the Borrower Representative or the Administrative 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 3.01(f)(ii)(A), (ii)(B) and (ii)(D) 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,

(A) any Lender that is a U.S. Person shall deliver to the Borrower Representative and the Administrative 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 Borrower Representative or the Administrative Agent), executed originals of IRS Form W-9 certifying that such Lender is not subject to U.S. federal backup withholding tax;

(B) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Borrower Representative and the Administrative 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

Borrower Representative or the Administrative 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 IRS Form W-8BEN or IRS Form W-8BEN-E, as applicable, establishing an exemption from, or reduction of, U.S. 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, IRS Form W-8BEN or IRS Form W-8BEN-E, as applicable, establishing an exemption from, or reduction of, U.S. 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 Internal Revenue 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 Internal Revenue Code, a “10 percent shareholder” of a Borrower within the meaning of Section 881(c)(3)(B) of the Internal Revenue Code, or a “controlled foreign corporation” described in Section 881(c)(3)(C) of the Internal Revenue Code (a “U.S. Tax Compliance Certificate”) and (y) executed originals of IRS Form W-8BEN or IRS Form W-8BEN-E, as applicable; or

(4) to the extent a Foreign Lender is not the beneficial owner, executed originals of IRS Form W-8IMY, accompanied by IRS Form W-8ECI, IRS Form W-8BEN or IRS Form W-8BEN-E, as applicable, a U.S. Tax Compliance Certificate substantially in the form of Exhibit F-2 or Exhibit F-3, 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;

(C) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Borrower Representative and the Administrative 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 Borrower Representative or the Administrative Agent), executed originals of any other form prescribed by applicable law as a basis for claiming exemption from or a reduction in U.S. federal withholding Tax, duly completed, together with such

supplementary documentation as may be prescribed by applicable law to permit the Borrower Representative or the Administrative Agent to determine the withholding or deduction required to be made; and

(D) if a payment made to a Lender under any Loan Document would be subject to U.S. federal withholding Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Internal Revenue Code, as applicable), such Lender shall deliver to the Borrower Representative and the Administrative Agent at the time or times prescribed by law and at such time or times reasonably requested by the Borrower Representative or the Administrative Agent such documentation prescribed by applicable law (including as prescribed by Section 1471(b)(3)(C)(i) of the Internal Revenue Code) and such additional documentation reasonably requested by the Borrower Representative or the Administrative Agent as may be necessary for the Borrower Representative and the Administrative Agent to comply with their obligations under FATCA and to determine that such Lender has complied with such Lender's obligations under FATCA or to determine the amount to deduct and withhold from such payment under FATCA, if any. Solely for purposes of this clause (D), "FATCA" shall include any amendments made to FATCA after the date of this Agreement.

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 Borrower Representative and the Administrative Agent in writing of its legal inability to do so.

(g) Treatment of Certain Refunds. If any party determines, in its sole discretion exercised in good faith, that it has received a refund of any Taxes as to which it has been indemnified pursuant to this Section 3.01 (including by the payment of additional amounts pursuant to this Section 3.01), it shall pay to the indemnifying party an amount equal to such refund (but only to the extent of indemnity payments made under this Section with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) of such indemnified party and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund). Such indemnifying party, upon the request of such indemnified party, shall repay to such indemnified party the amount paid over pursuant to this subsection (g) (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) in the event that such indemnified party is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this subsection (g), in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this subsection (g) the payment of which would place the indemnified party in a less favorable net after-Tax position than the indemnified party would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. This subsection shall not be construed to require any indemnified party to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to the indemnifying party or any other Person.

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

**3.02 Illegality**. If any Lender determines that any Law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for any Lender or its applicable Lending Office to make, maintain or fund LIBOR Loans, or to determine or charge interest rates based upon the LIBO Rate, or any Governmental Authority has imposed material restrictions on the authority of such Lender to purchase or sell, or take deposits of Dollars in the London interbank market, then, on notice thereof by such Lender to the Borrowers through the Administrative Agent, any obligation of such Lender to make or continue LIBOR Loans or to convert Base Rate Loans to LIBOR Loans shall be suspended until such Lender notifies the Administrative Agent and the Borrowers that the circumstances giving rise to such determination no longer exist. Upon receipt of such notice, the Borrowers shall, upon demand from such Lender (with a copy to the Administrative Agent), prepay or, if applicable, convert all LIBOR Loans of such Lender to Base Rate Loans, either on the last day of the Interest Period therefor, if such Lender may lawfully continue to maintain such LIBOR Loans to such day, or immediately, if such Lender may not lawfully continue to maintain such LIBOR Loans. Upon any such prepayment or conversion, the Borrowers shall also pay accrued interest on the amount so prepaid or converted. Each Lender agrees to use reasonable efforts consistent with legal and regulatory requirements to designate a different Lending Office if such designation will avoid the need for such notice and will not, in the good faith judgment of such Lender, otherwise be disadvantageous to such Lender or cost any additional amount.

**3.03 Inability to Determine Rate**. If the Administrative Agent determines that for any reason adequate and reasonable means do not exist for determining the LIBO Base Rate for any requested Interest Period with respect to a proposed LIBOR Loan, or that the LIBO Base Rate for any requested Interest Period with respect to a proposed LIBOR Loan does not adequately and fairly reflect the cost to the Lenders of funding such Loan, the Administrative Agent will promptly notify the Borrowers and all Lenders. Thereafter, the obligation of the Lenders to make or maintain LIBOR Loans shall be suspended until the Administrative Agent revokes such notice. Upon receipt of such notice, the Borrowers may revoke any pending request for a Borrowing of, conversion to or continuation of LIBOR Loans or, failing that, will be deemed to have converted such request into a request for a Borrowing of Base Rate Loans in the amount specified therein.

**3.04 Increased Cost and Reduced Return; Capital Adequacy**. (a) If any Change in Law shall:

(i) impose, modify or deem applicable any reserve, special deposit, compulsory loan, insurance charge, liquidity requirement or other similar requirement against assets of, deposits with or for the account of, or credit extended or participated in by, any Lender (except any reserve requirement reflected in the LIBO Rate) or the L/C Issuer or Support Provider;

(ii) subject any Recipient to any Taxes (other than (A) Indemnified Taxes, (B) Taxes described in clauses (b) through (d) of the definition of Excluded Taxes and (C) Connection Income 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, the Support Provider or the L/C Issuer or the London interbank market any other condition, cost or expense (other than Taxes) affecting this Agreement or LIBOR Loans made by such Lender or any Letter of Credit or Support Agreement, or participation therein;

and the result of any of the foregoing shall be to increase the cost to such Lender of making or maintaining any LIBOR Loan (or of maintaining its obligation to make any such Loan), or to increase the cost to such Lender or the Support Provider or L/C Issuer of participating in, issuing or maintaining any Lender Letter of Credit or continuing its obligation under any Support Agreement (or of maintaining its obligation to participate in or to issue any Letter of Credit), or to reduce the amount of any sum received or receivable by such Lender or the L/C Issuer hereunder (whether of principal, interest or any other amount) then, upon request of such Lender, Support Provider, or the L/C Issuer, the Borrowers will pay to such Lender, Support Provider, or L/C Issuer, as the case may be, such additional amount or amounts as will compensate such Lender, Support Provider or the L/C Issuer, as the case may be, for such additional costs incurred or reduction suffered.

(b) Without duplication of amounts payable in subsection (a) above, if any Lender determines that any Change in Law (other than with respect to Taxes) affecting such Lender or any lending office of such Lender or Lender's holding company, if any, 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 its obligations hereunder or under or in respect of any Letter of Credit or Support Agreement, 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 or liquidity adequacy), then from time to time the Borrowers 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) Failure or delay on the part of any Lender, Support Provider or L/C Issuer to demand compensation pursuant to this Section 3.04 shall not constitute a waiver of its right to demand such compensation; provided that Borrowers shall not be required to compensate a Lender, Support Provider or L/C Issuer pursuant to this Section for any reductions in return incurred more than 270 days prior to the date that such Lender, Support Provider or L/C Issuer notifies the Borrower Representative of such law, rule, regulation or guideline giving rise to such reductions and of such Lender's intention to claim compensation therefor.

**3.05 Funding Losses.** Upon demand of any Lender (with a copy to the Administrative Agent) from time to time, the Borrowers shall promptly compensate such Lender for and hold such Lender harmless from any loss, cost or expense incurred by it as a result of:

(a) any continuation, conversion, payment or prepayment of any Loan other than a Base Rate Loan on a day other than the last day of the Interest Period for such Loan (whether voluntary, mandatory, automatic, by reason of acceleration, or otherwise);

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

(c) any assignment of a LIBOR Loan on a day other than the last day of the Interest Period therefor as a result of (i) a request by the Borrowers pursuant to Section 12.15 or (ii) an assignment by any Lender that is a Lender on the Closing Date pursuant to Section 12.07(b) as part of the primary syndication of the Commitments and Loans following the Closing Date;

including any loss or expense arising from the liquidation or reemployment of funds obtained by it to maintain such Loan or from fees payable to terminate the deposits from which such funds were obtained. Lenders shall provide Borrower Representative with a notice (with a copy to the Administrative Agent) setting forth in reasonable detail the basis for Lenders demand, which shall be conclusive absent manifest error. Borrowers shall pay such amount within ten days after receipt of such notice.

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

### **3.06 Matters Applicable to all Requests for Compensation.**

(a) A certificate of the Administrative Agent or any Lender claiming compensation under this Article 3 and setting forth in reasonable detail the additional amount or amounts to be paid to it hereunder shall be conclusive in the absence of manifest error. In determining such amount, the Administrative Agent or such Lender may use any reasonable averaging and attribution methods. The Borrowers shall pay the Administrative Agent or Lender the amount shown as due on any such certificate within ten (10) days of receipt thereof.

(b) Upon any Lender's making a claim for compensation under Section 3.01 or 3.04, the Borrowers may replace such Lender in accordance with Section 12.15.

**3.07 Survival.** All of the Borrowers' obligations under this Article 3 shall survive the Termination Date.

## ARTICLE 4

### CONDITIONS PRECEDENT TO CREDIT EXTENSIONS

**4.01 Conditions of Initial Credit Extension.** The obligation of each Lender to make its initial Credit Extension hereunder is subject to satisfaction of the following conditions precedent:

(a) Loan Documents. Receipt by the Administrative Agent of executed counterparts of this Agreement, the Security Agreement, each Intellectual Property Security Agreement, the Notes (if requested), and the other Loan Documents to be executed as of the Closing Date, each properly executed by a Responsible Officer of the signing Loan Party and each other Person a party thereto.

(b) Resolutions, Etc. Receipt by the Administrative Agent of the following, each dated as of a recent date before the Closing Date and in form and substance satisfactory to the Administrative Agent and its legal counsel, such resolutions or other action, and incumbency certificates evidencing the identity, authority and capacity of each Responsible Officer thereof (A) executing any agreement, certificate or other document required to be delivered hereby (including the Loan Documents) or (B) authorized to act as a Responsible Officer in connection with this Agreement and the other Loan Documents to which such Loan Party is a party, in each case certified by a secretary or assistant secretary or other Responsible Officer of such Loan Party to be true and correct as of the Closing Date.

(c) Pledged Stock; Stock Powers. Receipt by the Administrative Agent of certificates representing the shares of Capital Stock of the Borrowers and their Subsidiaries, together with an undated stock (or analogous) power for each such certificate executed in blank by a duly authorized officer of the pledgor thereof.

(d) Evidence of Insurance. Receipt by the Administrative Agent of reasonable evidence that insurance required to be maintained by Section 5.10 is in full force and effect, including insurance certificates.

(e) Fees. Receipt by the Administrative Agent and the Lenders of the fees required to be paid on or before the Closing Date under this Agreement.

(f) Attorney Costs. The Loan Parties shall have paid all Attorney Costs of the Administrative Agent to the extent invoiced prior to the Closing Date.

(g) Bankruptcy Cases. The Cases shall have been commenced in the Bankruptcy Court and all of the first day orders entered at the time of commencement of the Cases shall be reasonably satisfactory, in form and substance, to the Administrative Agent and no trustee or examiner shall have been appointed with respect to the Debtors, or any of them, or any property of or any estate of any Debtor.

(h) Interim Order. The Interim Order shall have been entered by the Bankruptcy Court on or before the second (2<sup>nd</sup>) Business Day after the Petition Date, which Interim Order (i) shall have been entered upon an application or motion of the Debtors

reasonably satisfactory in form and substance to the Administrative Agent and upon prior notice to such parties required to receive such notice and such other parties as may be reasonably requested by the Administrative Agent; (ii) shall be in full force and effect and shall not have been amended, modified or stayed, or reversed; and, if the Interim Order is the subject of a pending objection, appeal or motion for reconsideration in any respect, neither the Interim Order, nor the making of the Loans, the issuance, extension or renewal of any Letters of Credit, or the performance by the Debtors of any of the Obligations shall be the subject of a presently effective stay, and (iii) shall otherwise satisfy the requirements of the definition of Interim Order set forth herein. The Debtors and the Secured Parties shall be entitled to rely in good faith upon the Interim Order notwithstanding any such objection, appeal or motion for reconsideration.

(i) Budget. The Administrative Agent shall have received and approved the Budget.

(j) Cash Management Order. The Bankruptcy Court shall have entered a customary “cash management order” adopting and implementing cash management arrangements for the Debtors, which shall be in form and substance and on terms and conditions satisfactory to the Administrative Agent in its sole and absolute discretion (any such order, the “Cash Management Order”).

**4.02 Conditions to all Credit Extensions**. The obligation of each Lender to honor any Request for Credit Extension, whether on the Closing Date or at any time thereafter, is subject to the following conditions precedent:

(a) The representations and warranties of each Loan Party contained in Article 5 or any other Loan Document, or which are contained in any document furnished at any time under or in connection herewith or therewith, shall be true and correct in all material respects (provided, that if any representation or warranty is by its terms qualified by concepts of materiality, such representation shall be true and correct in all respects) on and as of such date, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they shall be true and correct as of such earlier date.

(b) No Default or Event of Default shall exist, or would result from such proposed Credit Extension; provided, however, that the Administrative Agent and the Lenders, in their sole and absolute discretion, may continue to make Credit Extensions notwithstanding the existence of a Default or Event of Default and that any Credit Extensions so made shall not be deemed a waiver of any such Default or Event of Default.

(c) The Administrative Agent shall have received a Request for Credit Extension in accordance with the requirements hereof.

(d) The Interim Order shall have been entered by the Bankruptcy Court on or before the twenty-fifth (25th) Business Day after the Petition Date, which Interim Order (i) shall have been entered upon an application or motion of the Debtors reasonably satisfactory in form and substance to the Administrative Agent and upon prior notice to such parties required to receive such notice and such other parties as may be reasonably requested by the Administrative Agent; (ii) shall be in full force and effect and shall not have been amended, modified or stayed,

or reversed; and, if the Interim Order is the subject of a pending objection, appeal or motion for reconsideration in any respect, neither the Interim Order, nor the making of the Loans or the performance by the Debtors of any of the Obligations shall be the subject of a presently effective stay, and (iii) shall otherwise satisfy the requirements of the definition of Interim Order set forth herein. Until the date the Final Order shall have been entered by the Bankruptcy court, the Debtors and the Secured Parties shall be entitled to rely in good faith upon the Interim Order notwithstanding any such objection, appeal or motion for reconsideration.

Each Request for Credit Extension submitted by the Borrower Representative shall be deemed to be a representation and warranty by the Loan Parties that the conditions specified in Section 4.02 have been satisfied on and as of the date of the applicable Credit Extension.

## ARTICLE 5

### REPRESENTATIONS AND WARRANTIES

The Loan Parties hereby represent and warrant to the Administrative Agent and the Lenders as follows:

**5.01 Existence, Qualification and Power; Organization Documents.** Each Loan Party and each Subsidiary (a) is a corporation, partnership or limited liability company duly organized or formed, validly existing and in good standing under the Laws of the jurisdiction of its incorporation or organization, (b) has all requisite power and authority and all requisite Permits to (i) own its assets and carry on its business and (ii) subject to entry by the Bankruptcy Court of the Interim Order and the Final Order, as applicable, execute, deliver and perform its obligations under the Loan Documents to which it is a party, except where the failure to have such Permits, either singularly or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect, and (c) is duly qualified and is licensed and in good standing under the Laws of each jurisdiction where its ownership, lease or operation of properties or the conduct of its business requires such qualification or license, except to the extent that the failure to do so would not reasonably be expected to result in a Material Adverse Effect; and, further, the Organization Documents of each Loan Party and good standing certificates delivered to the Administrative Agent prior to the initial Credit Extension provided by each Lender under the Pre-Petition Credit Agreement are unchanged in any material respects so as to have a Material Adverse Effect.

**5.02 Authorization; No Contravention.** Subject to entry by the Bankruptcy Court of the Interim Order and the Final Order, as applicable, the execution, delivery and performance by each Loan Party of each Loan Document to which such Person is party, have been duly authorized by all necessary corporate or other organizational action, and do not (a) contravene the terms of any Loan Party's Organization Documents; (b) conflict with or result in any breach or contravention of, or the creation of any Lien under, (i) any Contractual Obligation to which any Loan Party is a party or (ii) any order, injunction, writ or decree of any Governmental Authority or any arbitral award to which any Loan Party or the Property of any Loan Party is subject; (c) violate any applicable Law (including Regulation U or Regulation X issued by the FRB); or (d) result in a limitation on any licenses, permits or other Governmental Approvals applicable to the business, operations or properties of any Loan Party except, with respect to

clauses (b)(i), (c) and (d) such conflict, violation or limitation could not reasonably be expected to result in a Material Adverse Effect.

**5.03 Governmental Authorization; Other Consents.** No approval, consent, exemption, authorization, or other action by, or notice to, or filing with, any Governmental Authority or any other Person is necessary or required in connection with the execution, delivery or performance by, or enforcement against, any Loan Party of this Agreement or any other Loan Document, other than (i) those that have already been obtained and are in full force and effect and (ii) filings to perfect the Liens created by the Collateral Documents.

**5.04 Binding Effect.** Subject to entry by the Bankruptcy Court of the Interim Order and the Final Order, as applicable, each Loan Document has been duly executed and delivered by each Loan Party that is party thereto. Subject to entry by the Bankruptcy Court of the Interim Order and the Final Order, as applicable, each Loan Document constitutes a legal, valid and binding obligation of each Loan Party that is party thereto, enforceable against each such Loan Party in accordance with its terms, except as enforceability may be limited by applicable Debtor Relief Laws or by equitable principles relating to enforceability.

**5.05 Budget; No Material Adverse Effect.**

(a) The Budget was prepared in good faith by a Responsible Officer of the Borrowers and based upon assumptions which were reasonable in light of the conditions existing at the time of delivery thereof and reflect the Borrowers' reasonable estimate of their future financial performance for such period (it being understood (for purposes of this representation and warranty only and any determination of the truth and correctness hereof on any date such representation and warranty is made or deemed to be made by any Debtor, and not for any other purpose (including without limitation any purpose under Sections 6.02(e), 6.02(f) and 6.17 hereof or any purpose under any other provision hereof restricting any Debtor's actions to those taken in accordance with the Budget subject to the Permitted Variance) under this Agreement or any other Loan Document) that projections by their nature are inherently uncertain and the results reflected therein may not actually be achieved and actual results may differ and differences may be material).

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

**5.06 Litigation.** Other than the Cases, there are no Proceedings pending or, to the knowledge of the Loan Parties, threatened or contemplated, at law, in equity, in arbitration or before any Governmental Authority, by or against any Loan Party or any of its Subsidiaries or against any of their properties or revenues that (a) purport to affect or pertain to this Agreement or any other Loan Document or (b) if determined adversely, would reasonably be expected to have a Material Adverse Effect.

**5.07 No Default.** No Default or Event of Default has occurred and is continuing.

**5.08 Ownership of Property; Liens.** Each of the Loan Parties and its Subsidiaries has good record and marketable title in fee simple to, or valid leasehold interests in, all Real Property

necessary or used in the ordinary conduct of its business. No Property of the Loan Parties and their Subsidiaries is subject to any Liens, other than Permitted Liens.

**5.09 Environmental Compliance.** Except as would not reasonably be expected to have a Material Adverse Effect:

(a) Each of the Facilities and all operations at the Facilities are in compliance with all applicable Environmental Laws, and there is no violation of any Environmental Law with respect to the Facilities or the Businesses, and there are no conditions relating to the Facilities or the Businesses that could give rise to liability under any applicable Environmental Laws.

(b) None of the Facilities contains, or, to the knowledge of any Loan Party, has previously contained, any Hazardous Materials at, on or under the Facilities in amounts or concentrations that constitute or constituted a violation of, or could give rise to liability under, Environmental Laws.

(c) Neither any Loan Party nor any Subsidiary has received any written or verbal notice of, or inquiry from any Governmental Authority regarding, any violation, alleged violation, non-compliance, liability or potential liability arising under Environmental Laws with regard to any of the Facilities or the Businesses, nor does any Responsible Officer of any Loan Party have knowledge or reason to believe that any such notice will be received or is being threatened.

(d) Hazardous Materials have not been transported or disposed of from the Facilities, or generated, treated, stored or disposed of at, on or under any of the Facilities or any other location, in each case by or on behalf of any Loan Party or any Subsidiary in violation of, or in a manner that would be reasonably likely to give rise to liability under, any applicable Environmental Law.

(e) No judicial proceeding or governmental or administrative action is pending or, to the knowledge of the Responsible Officers of the Loan Parties, threatened, under any Environmental Law to which any Loan Party or any Subsidiary is or will be named as a party, nor are there any consent decrees or other decrees, consent orders, administrative orders or other orders, or other administrative or judicial requirements outstanding under any Environmental Law with respect to any Loan Party, any Subsidiary, the Facilities or the Businesses.

(f) There has been no release of Hazardous Materials at or from the Facilities, or arising from or related to the operations (including disposal) of any Loan Party or any Subsidiary in connection with the Facilities or otherwise in connection with the Businesses, in violation of or in amounts or in a manner that could give rise to liability under Environmental Laws.

**5.10 Insurance.** The Properties of the Loan Parties and their Subsidiaries are insured with financially sound and reputable insurance companies (none of which are Affiliates of the Loan Parties), in such amounts, with such deductibles and covering such risks as are customarily carried by similarly sized companies engaged in similar businesses and owning similar properties

in localities where the applicable Loan Party or the applicable Subsidiary operates. The insurance coverage of the Loan Parties complies with the requirements of Section 6.07.

**5.11 Taxes.** The Loan Parties and their respective Subsidiaries have filed all federal and state income tax returns and other material tax returns and reports required to be filed, and have paid all federal and state income taxes and other material taxes, assessments, fees and other governmental charges in the nature of a tax levied or imposed upon them or their properties, income or assets otherwise due and payable, except those which are being Properly Contested. There is no material proposed tax assessment against any Loan Party or Subsidiary. No Loan Party nor any Subsidiary thereof is party to any tax sharing agreement, other than any tax sharing agreement the parties to which solely consist of one or more Loan Parties and their Subsidiaries.

**5.12 ERISA Compliance.**

(a) Except as would not reasonably be expected to result in a Material Adverse Effect, (i) each Plan is in compliance in all material respects with the applicable provisions of ERISA, the Internal Revenue Code, the Consolidated Omnibus Budget Reconciliation Act of 1985 (“COBRA”) and the regulations and published interpretations thereunder, and other federal or state Laws; (ii) each Plan that is intended to qualify under Section 401(a) of the Internal Revenue Code has received a favorable determination letter (or in the case of a volume submitter or prototype plan is the subject of a favorable opinion letter) from the IRS or an application for such letter is currently being processed by the IRS with respect thereto and, to the best knowledge of the Loan Parties, nothing has occurred which would prevent, or cause the loss of, such qualification; and (iii) each Loan Party and each ERISA Affiliate has made all required contributions to each Plan subject to Sections 412 and 430 of the Internal Revenue Code, and no application for a funding waiver or an extension of any amortization period pursuant to Section 412 or 430 of the Internal Revenue Code has been made with respect to any Plan.

(b) There are no pending or, to the knowledge of the Loan Parties, threatened claims, actions or lawsuits, or action by any Governmental Authority, with respect to any Plan that would reasonably be expected to result in a Material Adverse Effect. There has been no prohibited transaction or violation of the fiduciary responsibility rules with respect to any Plan that would reasonably be expected to result in a Material Adverse Effect.

(c) Except as would not reasonably be expected to result in a Material Adverse Effect, (i) no ERISA Event has occurred or is reasonably expected to occur; (ii) no Pension Plan has any Unfunded Pension Liability and no other Plan provides for post-termination welfare benefits other than as required by COBRA; (iii) no Loan Party or any ERISA Affiliate has incurred, or reasonably expects to incur, any liability under Title IV of ERISA with respect to any Pension Plan (other than premiums due and not delinquent under Section 4007 of ERISA); (iv) no Loan Party or any ERISA Affiliate has incurred, or reasonably expects to incur, any liability (and no event has occurred which, with the giving of notice under Section 4219 of ERISA, would result in such liability) under Sections 4201 or 4243 of ERISA with respect to a Multiemployer Plan; and (v) no Loan Party or any ERISA Affiliate has engaged in a transaction that could reasonably be expected to be subject to Section 4069 or 4212(c) of ERISA.

**5.13 Subsidiaries.** Set forth on Schedule 5.13 is a complete and accurate list of the name and jurisdiction of organization of each Loan Party and each Subsidiary as of the Closing Date, together with (a) the number of shares of each class of Capital Stock of any Loan Party outstanding as of the Closing Date and (b) the number and percentage of outstanding shares of each class owned (directly or indirectly) by any Loan Party or any Subsidiary thereof as of the Closing Date. None of the shares of Capital Stock of any Subsidiary of Holdings is subject to any outstanding options, warrants, rights of conversion or purchase and all other similar rights with respect thereto. The outstanding Capital Stock of each Loan Party and each Subsidiary is validly issued, and, in the case of any Loan Party that is a corporation, fully paid and non-assessable. No Subsidiary of Holdings has outstanding any shares of Disqualified Capital Stock.

**5.14 Margin Regulations; Investment Company Act, Use of Proceeds.**

(a) No Loan Party is engaged, nor will it engage, principally or as one of its important activities, in the business of purchasing or carrying margin stock (within the meaning of Regulation U issued by the FRB), or extending credit for the purpose of purchasing or carrying margin stock. No proceeds of any Borrowing shall be used for the purpose of purchasing or carrying margin stock or to extend credit to others for the purpose of purchasing or carrying margin stock.

(b) None of the Loan Parties, any Person Controlling any Loan Party or any Subsidiary thereof is or is required to be registered as an “investment company” under the Investment Company Act of 1940.

(c) No proceeds of any Borrowing will be used in violation of Section 6.11.

**5.15 Disclosure.**

(a) No report, financial statement, certificate or other information furnished in writing by or on behalf of any Loan Party to the Administrative Agent or any Lender in connection with the transactions contemplated hereby and the negotiation of this Agreement or delivered hereunder (as modified or supplemented by other information so furnished and taken as a whole) 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, when taken as a whole, not materially misleading, provided that, with respect to any projected financial information, the Loan Parties represent that such information was prepared in good faith based upon assumptions believed to be reasonable at the time and at the time made available to Administrative Agent and the Lenders. Notwithstanding the foregoing, Administrative Agent and Lenders acknowledge that the pro forma financial statements, projected financial information, other economic forecasts or other forward-looking statements and information of a general industry nature delivered by the Loan Parties hereunder are not factual representations and that the actual financial results of the Loan Parties may materially differ from the pro forma financial statements, projected financial information, other economic forecasts or other forward-looking statements submitted from time to time.

(b) As of the Closing Date, the information included in the Beneficial Ownership Certification is true and correct in all respects.

**5.16 Compliance with Laws.** Each of the Loan Parties and each Subsidiary is in compliance with the requirements of all Laws applicable to it, its properties or the Facilities (including all Franchise Laws), except in such instances in which (a) such Law is being Properly Contested, or (b) the failure to comply therewith where noncompliance individually or in the aggregate could not reasonably be expected to result in a Material Adverse Effect. Without limiting the generality of the foregoing:

(i) neither any Loan Party nor any Subsidiary thereof is in receipt of any written notice of any violation of any Law applicable to it or any of its property, which notice, individually or in the aggregate could reasonably be expected to result in a Material Adverse Effect;

(ii) neither any Loan Party nor any Subsidiary or any Affiliate thereof is in violation of nor will violate any of the country or list based economic and trade sanctions administered and enforced by OFAC that are described or referenced at <http://ustreas.gov/offices/enforcement/ofac/> or as otherwise published from time to time;

(iii) (x) each Loan Party has filed FDD, to the extent required by all applicable Franchise Laws, in connection with offers or sales of its Franchises and (y) each Franchise Agreement complies, and the offer and sale of the applicable Franchise complied in all material respects, at the time such offer and sale was made, with Franchise Laws;

(iv) each Store and each Franchise has in effect, as of the Closing Date, all liquor licenses necessary under applicable Law to serve alcoholic beverages at such Store.

**5.17 Intellectual Property; Licenses, Etc.** The Loan Parties own, or possess the legal right to use, all of the trademarks, service marks, trade names, copyrights, patents, patent rights, franchises, licenses and other intellectual property rights (collectively, "IP Rights") that are necessary for the operation of their respective businesses. Set forth on Schedule 5.17 is a list of all IP Rights registered or pending registration with the United States Copyright Office or the United States Patent and Trademark Office and owned by any Loan Party, or that any Loan Party has the right to use, as of the Closing Date. No claim has been asserted and is pending by any Person challenging or questioning the use of any IP Rights or the validity or effectiveness of any IP Rights, nor does any Loan Party know of any such claim, and, to the knowledge of the Responsible Officers of the Loan Parties, the use of any IP Rights by any Loan Party or any Subsidiary or the granting of a right or a license in respect of any IP Rights from any Loan Party or any Subsidiary does not infringe on the rights of any Person. As of the Closing Date, none of the IP Rights owned by any of the Loan Parties is subject to any licensing agreement or similar arrangement except as set forth on Schedule 5.17.

**5.18 Broker's Fees.** Neither any Loan Party nor any Subsidiary has any obligation to any Person in respect of any finder's, broker's, investment banking or other similar fee in connection with the transactions contemplated under the Loan Documents other than fees payable to the Administrative Agent or the Lenders in connection herewith.

**5.19 Labor Matters.** There are no collective bargaining agreements or Multiemployer Plans covering the employees of any Loan Party or any Subsidiary as of the Closing Date, and neither any Loan Party nor any Subsidiary has suffered any strikes, walkouts, work stoppages or similar material labor dispute within the last five (5) years.

**5.20 Business Locations.** As of the Closing Date, neither Holdings nor any Subsidiary of Holdings owns a fee interest in any real property. Except as could not reasonably be expected to have a Material Adverse Effect, (i) each Site Lease is in full force and effect and a Loan Party is the sole owner of the entire leasehold interest thereunder, and such Loan Party's interest in such Site Lease has not been assigned, transferred, subleased, mortgaged, hypothecated or otherwise encumbered and (ii) except as disclosed on Schedule 5.20(a) no event has occurred and no condition exists that, with the giving of notice or the lapse of time or both, would constitute a material default by any party under any Site Lease. As of the Closing Date, (i) Schedule 5.20(a) lists each Site Lease in effect and the current scheduled termination date thereof, Schedule 5.20(b) is a list of all locations (other than those listed on Schedule 5.20(a)) where any tangible personal property of any Loan Party with a value in excess of \$200,000 is located as of the Closing Date. Set forth on Schedule 5.20(c) is the state of organization, chief executive office, tax payer identification number and organizational identification number of each Loan Party as of the Closing Date.

**5.21 Perfection of Security Interests in the Collateral.** The Collateral Documents, together with the Interim Order or, after the entry of the Final Order, the Final Order, create valid security interests in, and Liens on, the Collateral purported to be covered thereby, which security interests and Liens are currently perfected security interests and Liens (except to the extent provided in the Security Agreement or to the extent perfection is deferred pursuant to Schedule 6.18), prior to all other Liens other than Permitted Liens as of the Closing Date. The exact legal name of each Loan Party is as set forth on the signature pages hereto as of the Closing Date (or copy hereof).

**5.22 Superpriority Claims and Collateral Security.** The Debtors hereby represent, warrant and covenant that, upon the entry by the Bankruptcy Court of the Interim Order or the Final Order, as applicable:

(a) for all Obligations now existing or hereafter arising and for diminution in value of any Pre-Petition Collateral used by the Debtors pursuant to the Interim Order, this Agreement or otherwise, the Administrative Agent, for the benefit of itself and the other Secured Parties, is granted an allowed superpriority administrative claim in the Debtors' estates pursuant to Section 364(c)(1) of the Bankruptcy Code, having priority in right of payment over any and all other obligations, liabilities and indebtedness of any of the Debtors, whether now in existence or hereafter incurred by any of the Debtors, and over any and all administrative expenses or priority claims of the kind specified in, or ordered pursuant to the Bankruptcy Code, including without limitation, inter alia, Sections 105, 326, 328, 330, 331, 503(b), 506(c) (upon entry of the Final Order), 507, 364(c)(1), 546(c), 726 or 1114 of the Bankruptcy Code, subject as to priority only to the Carve-Out; and

(b) (i) to secure the prompt payment and performance of any and all Obligations of the Debtors to the Secured Parties of whatever kind, nature or description,

absolute or contingent, now existing or hereafter arising, the Administrative Agent, for the benefit of itself and the other Secured Parties, shall have and is hereby granted, effective as of the Petition Date, valid and perfected first priority (subject to the Senior Liens (as defined in the Interim Order) and the Carve-Out), security interests and liens in and upon all pre- and post-petition property of the Debtors, whether existing on the Petition Date or thereafter acquired (1) pursuant to Section 364(c) (2), that, on or as of the Petition Date is not subject to valid, perfected and non-avoidable liens (collectively, the “Unencumbered Property”), (2) pursuant to Section 364(c) and (d) of the Bankruptcy Code, all of the Pre-Petition Collateral, and (3) pursuant to Section 364(c) and (d) of the Bankruptcy Code, all of the Collateral (as defined in this Agreement), (ii) such security interests and Liens shall be senior in all respects to interests of other parties arising out of security interests or Liens, if any, in such assets and property existing immediately prior to the Petition Date and (iii) the Liens securing the Obligations shall not be subject to Section 551 of the Bankruptcy Code.

**5.23 No Filings Required.** The Liens securing the Obligations shall be deemed valid and perfected and duly recorded by entry of the Interim Order. The Administrative Agent shall not be required to file any financing statements, mortgages, notices of Lien or similar instruments in any jurisdiction or filing office or to cause any account control agreements to be entered into by any otherwise applicable parties with respect to any deposit account or securities account or to take any other action in order to validate or perfect the Lien granted by or pursuant to the Interim Order, the Final Order, this Agreement or any Loan Document.

**5.24 Franchise Agreements.** Schedule 5.24 contains a true, correct and complete list of all Franchise Agreements in effect as of the Closing Date, including the parties thereto, the applicable restaurant address and the current termination date.

**5.25 Accounts.** Schedule 5.25 sets forth a complete accurate list as of the Closing Date of all deposit accounts and all securities accounts maintained by each Loan Party, together with a description thereof and such Schedule correctly identifies the name and address of each depository or broker dealer where the account is maintained, the name in which the account is held, the purpose of the account, and the complete account number thereof.

**5.26 Holding Company Status.** Holdings is not engaged in any trade or business in violation of Section 7.15.

**5.27 Grants, Rights and Remedies.** The Lien and administrative priority granted by or pursuant to the Interim Order, the Final Order, this Agreement or any Loan Document are independently granted. The Interim Order, the Final Order, this Agreement and the other Loan Documents supplement each other, and the grants, priorities, rights and remedies of the Administrative Agent and Lenders hereunder and thereunder are cumulative.

**5.28 Patriot Act.** Each Loan Party and its Subsidiaries are in compliance with the (i) Trading with the Enemy Act, and each of the foreign assets control regulations of the United States Treasury Department (31 CFR, Subtitle B, Chapter V) and any other enabling legislation or executive order relating thereto, and (ii) Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT Act of 2001) (the “Patriot Act”). No part of the proceeds of the Loans will be used, directly or indirectly, for

any payments to any governmental official or employee, political party, official of a political party, candidate for political office, or anyone else acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage, in violation of the United States Foreign Corrupt Practices Act of 1977, as amended.

**5.29 OFAC.** Neither any Loan Party nor any Subsidiary or any Affiliate thereof is in violation of any of the OFAC Sanctions. No Loan Party, Subsidiary thereof or, to the knowledge of such Loan Party or any such Subsidiaries, any director, officer, employee, agent, Affiliate or representative thereof (a) is a Sanctioned Person or a Sanctioned Entity, (b) has its assets located in a Sanctioned Entity, (c) derives revenues from investments in, or transactions with a Sanctioned Person or a Sanctioned Entity or (d) is owned or controlled by a Sanctioned Entity or a Sanctioned Person

## ARTICLE 6

### AFFIRMATIVE COVENANTS

On the Closing Date and at all times thereafter until and including the Termination Date, the Loan Parties shall and shall cause each Subsidiary thereof to:

**6.01 Financial Statements.** Deliver to the Administrative Agent for the benefit of each Lender, as soon as available, but in any event within thirty (30) days after the end calendar month of the Loan Parties and their Subsidiaries, consolidated balance sheets of the Loan Parties and their Subsidiaries as at the end of such month, and the related consolidated statements of income or operations, retained earnings, shareholders' equity and cash flows for such month, setting forth in each case in comparative form the figures as of the end of and for the corresponding month of the previous Fiscal Year and to any budget provided pursuant to Section 6.02(c), all in reasonable detail and certified by a Responsible Officer of the Borrower Representative as fairly presenting in all material respects the financial condition, results of operations, shareholders' equity and cash flows of the Loan Parties and their Subsidiaries in accordance with GAAP, subject only to normal year-end audit adjustments and the absence of footnotes.

**6.02 Certificates; Other Information.** Deliver to the Administrative Agent for the benefit of each Lender, in form and detail satisfactory to the Administrative Agent:

(a) **Liquor Licenses.** Promptly upon the occurrence thereof, written notice thereof, if (x) five (5) or more Stores owned by the Loan Parties or any Subsidiary thereof suffer the loss of a liquor license for five (5) days or more in any 12-month period or (y) Stores accounting for \$1,000,000 or more in Consolidated EBITDA in any 12-month period suffer the loss of a liquor license for five (5) days or more.

(b) **Franchises.** Promptly upon the occurrence thereof, written notice of (i) any failure to maintain any liquor license required to lawfully operate any Franchise, which failure is not cured within five (5) days of the occurrence thereof, (ii) any payment default by a Franchisee under a Franchise Agreement, which failure is not cured within five (5) days of the

occurrence thereof and (iii) any other material default by a Franchisee under a Franchise Agreement, which failure is not cured within five (5) days of the occurrence thereof.

(c) Additional Information. Promptly (and in any event within three (3) Business Days after a request therefor), such additional information regarding the business, financial or corporate affairs of any Loan Party or any Subsidiary, or compliance with the terms of the Loan Documents, as the Administrative Agent or any Lender through the Administrative Agent may from time to time reasonably request (including as required under the Patriot Act).

(d) Budget. Furnish the Administrative Agent and the Lenders, no less frequently than every other week commencing on the Closing Date, a proposed updated Budget for the time period commencing on the Closing Date and ending on the Revolving Loan Maturity Date, which shall be in substantially the same form and detail of the Initial Budget, and accompanied by a certificate signed by a Responsible Officer of the Borrowers to the effect that such Budget has been prepared in good faith based upon assumptions which the Borrowers believe to be reasonable at the time made and in light of the conditions existing at the time of delivery thereof and that such officer has no reason to question the reasonableness of any material assumptions on which such projections were prepared (it being understood and agreed that the Borrowers may (but are not required to) furnish one or more proposed updated Budgets more frequently than every other week; provided that, such proposed Budget shall become the "Budget" or "Approved Budget" as defined and for all purposes hereunder and under the Interim Order and (upon entry of the Final Order) the Final Order upon written approval thereof by the Administrative Agent and the Lenders, in their sole and absolute discretion, following a reasonable opportunity to review and comment thereon.

(e) Variances from Budget. Deliver to the Administrative Agent on or before Wednesday of each week, a comparison of actual receipts and disbursements and actual Revolving Loans outstanding hereunder to projected receipts and disbursements and projected Revolving Loans outstanding hereunder of the prior week in a form substantially similar to that attached as Exhibit C hereto. In addition, Debtors shall, and shall cause their Chief Restructuring Officer to attend calls no less than once a week to discuss the Borrowers' businesses and the status of the Cases with the Administrative Agent, the Lenders and the Administrative Agent's advisors.

(f) Other Bankruptcy Documents. Deliver to the Administrative Agent: (i) substantially contemporaneous with the filing thereof, copies of all pleadings, motions, applications, financial information and other papers and documents filed by the Debtors in the Cases, with copies of such papers and documents also provided to or served on the Administrative Agent's counsel; (ii) substantially contemporaneous with the receipt and/or execution thereof, copies of all letters of intent, expressions of interest, and offers to purchase with respect to any of the Collateral; (iii) substantially contemporaneously with delivery thereof to the Committee or any other official or unofficial committee in the Cases, copies of all material written reports and all term sheets for a Reorganization Plan or any sale under Section 363 of the Bankruptcy Code given by the Debtors to the Committee or any other official or unofficial committee in the Cases, with copies of such reports and term sheets also provided to or served on the Administrative Agent's counsel; and (iv) projections, operating plans and other financial

information and information, reports or statements regarding the Debtors, their business and the Collateral as the Administrative Agent may from time to time reasonably request.

**6.03 Notices.**

(a) Promptly (and in any event within three (3) Business Days) notify the Administrative Agent and each Lender in writing of the occurrence of any Default or Event of Default.

(b) Promptly (and in any event within three (3) Business Days) notify the Administrative Agent and each Lender in writing of any matter that has resulted or could reasonably be expected to result in a Material Adverse Effect.

(c) Promptly (and in any event within three (3) Business Days) notify the Administrative Agent and each Lender in writing of the occurrence of any ERISA Event.

(d) Promptly (and in any event within three (3) Business Days) notify the Administrative Agent and each Lender in writing of any material change in accounting policies or financial reporting practices by any Loan Party or any Subsidiary.

(e) Promptly (and in any event within three (3) Business Days), notify the Administrative Agent and each Lender, in writing, of the threat or institution of, or any material development in, any Proceeding against or affecting any Loan Party, which could reasonably be expected to have a Material Adverse Effect.

(f) Promptly (and in any event within three (3) Business Days of such event), notify the Administrative Agent in writing, of any loss, damage or destruction to the Collateral in the amount of \$75,000 or more individually, whether or not covered by insurance.

Each notice pursuant to this Section 6.03 shall be accompanied by a statement of a Responsible Officer of the Borrower Representative setting forth details of the occurrence referred to therein and stating what action the Borrowers have taken and propose to take with respect thereto.

**6.04 Payment of Taxes.**

(a) Pay and discharge as the same shall become due and payable, all federal and state income taxes and other material tax liabilities, assessments and governmental charges or levies in the nature of a tax upon it or its properties or assets, unless the same are being Properly Contested.

(b) Timely file or cause to be timely filed all federal and state income tax returns and other material tax returns required by applicable law.

**6.05 Preservation of Existence.**

(a) Preserve, renew and maintain in full force and effect its legal existence under the Laws of the jurisdiction of its organization except in a transaction permitted by Section 7.04 or Section 7.05.

(b) Preserve, renew and maintain in full force and effect its good standing and qualification to do business under the Laws of the jurisdiction of its organization and in any other jurisdiction where failure to so maintain good standing or qualification would have or would constitute a Material Adverse Effect.

(c) Preserve, renew and maintain all Governmental Approvals as are necessary for the conduct of its business as currently conducted and herein contemplated.

(d) Preserve, register and renew whenever applicable all of its material registered patents, copyrights, trademarks, trade names and service marks.

**6.06 Maintenance of Properties.** Maintain, preserve and protect all of its property necessary in the operation of its business in good working order and condition, ordinary wear and tear excepted.

**6.07 Maintenance of Insurance.** Maintain or cause to be maintained, with financially sound and reputable insurers rated not less than A-, Class VII by Best's, commercial general liability insurance, product liability insurance, business interruption insurance, and all risk property insurance, in each case with respect to liabilities, losses or damage in respect of the assets, properties and businesses of each Loan Party as may customarily be carried or maintained under similar circumstances by Persons of established reputation engaged in similar businesses, in each case in such amounts (after giving effect to any self-insurance in respect of (a) workers compensation insurance and (b) liability for insurance deductibles), with such deductibles, covering such risks, and in amounts and otherwise on such terms and conditions as shall be customary for such Persons (including perils of flood, quake and/or windstorm, as applicable) and reasonably acceptable to the Administrative Agent. Each such policy of insurance shall (i) name Administrative Agent, on behalf of each Lender as an additional insured by endorsement thereunder as its interests may appear, (ii) in the case of each property insurance policy, contain a lender's loss payable clause or endorsement, satisfactory in form and substance to Administrative Agent, that names Administrative Agent, on behalf of Lenders, as the lender's loss payee thereunder and (iii) provide for at least thirty (30) days' (or ten (10) days' in the case of cancellation due to non-payment of premiums) prior written notice to Administrative Agent of any modification or cancellation of such policy. Such lender's loss payable endorsements shall specify that the proceeds of such insurance shall be payable to the Administrative Agent as its interests may appear and further specify that the Administrative Agent shall be paid regardless of any act or omission by Debtor or any of their Affiliates. The Administrative Agent and Secured Parties have no responsibility for premiums, warranties or representations to underwriters. The Loan Parties or their insurance broker shall provide a certificate of insurance upon each policy renewal or replacement. In the event Borrowers fail within five (5) Business Days after Administrative Agent's request to provide Administrative Agent with evidence of the insurance coverage required by this Agreement, Administrative Agent may purchase insurance at Borrowers' expense to protect the Administrative Agent's interests in the Collateral. This insurance may, but need not, protect Borrowers' interests. The coverage purchased by

Administrative Agent may, but need not, pay any claim made by any Borrower or any claim that is made against any Borrower in connection with the Collateral. Borrowers may later cancel any insurance purchased by Administrative Agent, but only after providing Administrative Agent with evidence that Borrowers have obtained insurance as required by this Agreement. If Administrative Agent purchases insurance for the Collateral, to the fullest extent provided by law, Borrowers will be responsible for the costs of that insurance, including interest and other charges imposed by Administrative Agent in connection with the placement of the insurance, until the effective date of the cancellation or expiration of the insurance. The costs of the insurance may be added to the Obligations. The costs of the insurance may be more than the cost of insurance Borrowers are able to obtain on their own.

Borrowers will (i) use commercially reasonable efforts to obtain payment or reimbursement from any Directors and Officers Liability Insurance maintained by the Borrowers, (ii) provide copies of such policies to the Lenders upon request, (iii) provide written updates to the Lenders regarding their efforts to collect on such policy or policies and (iv) cause all collections on such policy or policies to be paid directly to the Borrowers.

**6.08 Compliance with Laws.** Comply with the requirements of all Laws and Governmental Approvals applicable to it (including Environmental Laws and Franchise Laws) and all orders, writs, injunctions and decrees applicable to it or to its business or Property, except in such instances in which such requirement of Law or order, writ, injunction or decree is being Properly Contested and except in each case, where the failure to comply would not reasonable be expected to have a Material Adverse Effect.

**6.09 Books and Records.**

(a) Maintain proper books of record and account, in which full, true and correct entries shall be made of all financial transactions and matters involving the assets and business of such Loan Party or such Subsidiary, as the case may be, in each case in accordance with GAAP.

(b) Maintain such books of record and account in material conformity with all applicable requirements of any Governmental Authority having regulatory jurisdiction over such Loan Party or such Subsidiary, as the case may be.

**6.10 Inspection Rights.** Permit representatives and independent contractors of the Administrative Agent (or Garrison Middle Market Funding II LP and representatives thereof) to visit and inspect any of its properties, to examine its corporate, financial and operating records, and conduct audits and make copies thereof or abstracts therefrom, and to discuss its affairs, finances and accounts with its directors, officers, and independent public accountants, all at the expense of the Borrowers and at such reasonable times during normal business hours and as often as may be reasonably desired, upon reasonable advance notice to the Loan Parties. A representative of each Lender shall have the right to accompany the Administrative Agent in connection with all such inspections, audits and examinations, at such Lender's sole cost and expense unless an Event of Default shall have occurred and be continuing.

**6.11 Use of Proceeds.**

(a) Use proceeds of the Revolving Loans: (i) to pay fees and expenses payable under this Agreement or any of the other Loan Documents to the Secured Parties, (ii) to provide for their working capital needs in accordance with the Budget subject to the Permitted Variance, (iii) to fund the Carve-Out strictly in accordance with the Budget subject to the Permitted Variance, and (iv) to pay for Allowed Professional Fees and Statutory Fees allocated to the Debtors during the Cases in accordance with the Budget subject to the Permitted Variance; in each case, to the extent such use of proceeds is not otherwise prohibited under the terms of this Agreement and is otherwise consistent with the terms of the Interim Order and the Final Order, as applicable.

(b) Notwithstanding the foregoing, in no event shall the proceeds of the Credit Extensions be used in contravention of any Law or of any Loan Document.

**6.12 Additional Subsidiaries.** (a) Borrowers shall cause each Domestic Subsidiary (other than a Foreign Subsidiary Holdco, CFC or a Subsidiary of a Controlled Foreign Subsidiary) hereafter formed or acquired to execute and deliver to the Administrative Agent, within 30 days (or such longer period as the Agent shall agree in its sole discretion) of the formation or acquisition thereof, a joinder to the Loan Documents, in form and substance acceptable to the Agent, pursuant to which such Subsidiary shall become a Borrower or a Guarantor, as the Administrative Agent shall elect. Borrowers shall deliver to the Administrative Agent (i) appropriate Lien searches indicating the Administrative Agent's first priority Lien (subject to Permitted Liens) on such Subsidiary's personal property, (ii) a favorable written opinion of counsel reasonably satisfactory to the Agent, (iii) original stock certificates or other certificates evidencing equity ownership in such Domestic Subsidiary, accompanied by stock or other appropriate transfer powers duly executed in blank, with regard to the Capital Stock of such Domestic Subsidiary, (iv) certified copies of the Organization Documents of such Domestic Subsidiary, along with appropriate resolutions and an incumbency certificate of such Domestic Subsidiary and (v) such other agreements, instruments, approvals or other documents as the Administrative Agent may reasonably request with respect thereto.

(b) With respect to each first-tier Foreign Subsidiary that is a CFC and any Foreign Subsidiary Holdco, Borrowers shall within thirty (30) days (or such longer period as the Administrative Agent shall agree in its sole discretion) of the formation or acquisition thereof, take all actions reasonably requested by the Administrative Agent to grant to the Administrative Agent a perfected Lien on no more than 65% of each class of the Capital Stock of such Subsidiary entitled to vote (within the meaning of Treasury Regulation Section 1.956-2(c)(2)) and 100% of each class of the Capital Stock of such Subsidiary not entitled to vote (within the meaning of Treasury Regulation Section 1.956-2(c)(2)) of such CFC. For the avoidance of doubt, no CFC or Foreign Subsidiary Holdco shall be required to pledge any of the Capital Stock of their respective Subsidiaries.

**6.13 ERISA Compliance.** Do, and cause each of its ERISA Affiliates to, except to the extent such failure would not reasonably be expected to result in a Material Adverse Effect, do each of the following: (a) maintain each Plan in compliance with the applicable provisions of ERISA, the Internal Revenue Code and other federal or state Law; (b) cause each Plan that is qualified under Section 401(a) of the Internal Revenue Code to maintain such qualification; and

(c) make all required contributions to any Plan subject to Section 412, Section 430 or Section 431 of the Internal Revenue Code.

**6.14 Cash Management; Control Agreements.** The Borrowers shall, and shall cause each Subsidiary to, maintain with CIT each of their primary operating and deposit accounts and each securities account (other than Excluded Accounts), provided that (i) local deposit accounts maintained with respect to any Store may remain at and continue to be maintained with another financial institution, but amounts credited thereto (other than amounts reasonably expected to be applied towards expenditures in accordance with the Budget within the immediately following five (5) Business Day period) shall be required to be transferred to one or more deposit accounts maintained with CIT in accordance with the Cash Management Order and the Borrowers' customary practices.

**6.15 Covenant with Respect to Environmental Matters.** In respect of all environmental matters:

(a) comply in all material respects with the requirements of all federal, state, and local Environmental Laws applicable to the Loan Parties or their Property; notify the Administrative Agent promptly in the event of any spill, release or disposal of Hazardous Material on, or hazardous waste pollution or contamination affecting, the Facilities in material violation of applicable Environmental Laws of which a Loan Party has actual knowledge; forward to the Administrative Agent promptly any written notices relating to such matters received from any Governmental Authority; and pay when due any fine or assessment against the Facilities arising under Environmental Laws, provided, that the Loan Parties shall not be required to pay any such fine or assessment so long as the validity thereof shall be Properly Contested; and provided further that, in any event, payment of any such fine or assessment shall be made before any of their Property shall be subjected to a Lien or be seized or sold in satisfaction thereof;

(b) promptly notify the Administrative Agent upon becoming aware of any fact or change in circumstances that would be expected to cause any of the representations and warranties contained in Section 5.09 to cease to be true in all material respects (without duplication of any materiality qualifier therein) for any time before the Termination Date;

(c) not become involved, and will not knowingly permit any tenant of the Facilities to become involved, in any operations at the Facilities generating, storing, disposing, or handling Hazardous Materials in material violation of applicable Environmental Laws or any other activity that could reasonably be expected to lead to the imposition on any Lender or the Administrative Agent of any liability, or the imposition on the Loan Parties or the Facilities of any material liability or any lien under any Environmental Laws;

(d) promptly contain or remove any Hazardous Materials found on the Facilities in violation of any applicable Environmental Law, to the extent required by and in compliance with applicable Environmental Laws and at the Borrowers' expense; and the Borrowers agree that the Administrative Agent has the right, at its sole option but at the Borrowers' expense, to have an environmental engineer or other representative review the work being done; and

(e) indemnify, protect, defend and hold harmless each Indemnitee from and against and all liabilities, obligations, losses, damages (including, consequential damages), penalties, actions, judgments, suits, claims, costs, expenses and disbursements of any kind or nature whatsoever (including, the reasonable fees and disbursements of counsel for and consultants of such Indemnitees in connection with any investigative, administrative or judicial proceeding, whether or not such Indemnitees shall be designated a party thereto), which may be imposed on, incurred by, or asserted against such Indemnitees (whether direct, indirect, or consequential) now or hereafter arising as a result of any claim for environmental cleanup costs, any resulting damage to the environment and any other environmental claims against any Loan Party, any Lender, the Administrative Agent, any other Indemnitee or the Facilities. The provisions of this Section 6.15(e) shall continue in effect and shall survive the Termination Date.

**6.16 Site Leases.** The Borrowers shall, and shall cause each Subsidiary to, perform and carry out in all material respects the material terms and provisions of Site Leases, except in each case as would not reasonably be expected to result in a Material Adverse Effect.

**6.17 Budget Compliance.**

(a) Disbursements Covenant. Commencing with the weekly period ending November 24, 2019, reflected in the Initial Budget delivered as of the Closing Date, cause Debtors' (i) "Operating Disbursements" or "Other Chapter 11 Related Cash Flows" (as such terms are described in the applicable Budget), (A) on an individual basis to be not more than 105% and (B) on an aggregate basis to be not more than 110% (provided, however, that, in each of clauses (A) and (B), in the Administrative Agent's sole and absolute discretion and without court order, approval of, or notice to, any other Persons, the Administrative Agent may increase such percentage up to 107% (in the case of clause (A)) and up to 115% (in the case of clause (B)) of forecasted Operating Disbursements or Other Chapter 11 Related Cash Flows set forth in the Budget for the applicable period (the "Permitted Variance") or (ii) "Chapter 11 Professional Costs" (as such term is described in the applicable Budget) to be more than the forecasted Chapter 11 Professional Costs set forth in the Budget for the applicable period, in each case, such covenant to be tested on a rolling four-week period, commencing with the four-week period ending on December 15, 2019.

(b) Minimum Receipt Covenant. Commencing with the weekly period ending November 24, 2019, reflected in the Initial Budget delivered as of the Closing Date, cause Debtors' receipts, (i) on an individual basis to be at least 95% and (ii) on an aggregate basis to be at least 90% (provided, however, that, in each of clauses (i) and (ii), in the Administrative Agent's sole and absolute discretion and without court order, approval of, or notice to, any other Persons, the Administrative Agent may decrease such percentage down to 93% (in the case of clause (i)) and down to 85% of the forecasted receipts as set forth in the Budget for the applicable period, such covenant to be tested on a rolling four-week basis; provided that for the initial three weekly tests such covenant shall be tested against the Budget as follows: (i) for the second week based on two weeks forecast and two weeks actual; and (ii) for the third week based on three weeks forecast and three weeks actual, in each case, on a cumulative basis.

**6.18 Bankruptcy Schedules and Covenants.**

(a) File with the Bankruptcy Court and deliver to the Administrative Agent, all Schedules of the Debtors within the time periods required by the Bankruptcy Code as may be extended by express written consent of the Administrative Agent and subject to approval by the Bankruptcy Court.

(b) Serve all:

(i) secured creditors, all judgment creditors (if any) actually known to the Debtors, the twenty (20) largest unsecured creditors, the federal and state taxing authorities, any and all Governmental Authorities holding a claim, any of the Debtors' unions, and any other party claiming an interest in the Collateral in accordance with the Federal Rules of Bankruptcy Procedure a copy of the Motion and Interim Order as approved by the Bankruptcy Court in accordance with the Federal Rules of Bankruptcy Procedure; and

(ii) all parties from whom the Debtors have received or that the Debtors believe they may have received goods from within twenty (20) days of the filing of the Cases, a copy of the Interim Order and notice of the hearing on entry of the proposed Final Order in accordance with the Federal Rules of Bankruptcy Procedure.

**6.19 [Reserved].**

**6.20 [Reserved].**

**6.21 Patriot Act; OFAC.** (a) Comply with the Patriot Act, (b) use no part of the proceeds of the Loans, directly or indirectly, for any payments to any governmental official or employee, political party, official of a political party, candidate for political office, or anyone else acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage, in violation of the United States Foreign Corrupt Practices Act of 1977, as amended, and (c) comply with the OFAC Sanctions.

## ARTICLE 7

### NEGATIVE COVENANTS

On the Closing Date and at all times thereafter until and including the Termination Date, no Loan Party shall, nor shall it permit any Subsidiary to, directly or indirectly:

**7.01 Indebtedness.** Create, incur, assume or suffer to exist any Indebtedness, except:

(a) Indebtedness under the Loan Documents;

(b) Indebtedness of the Loan Parties and their Subsidiaries existing on the Closing Date and set forth in Schedule 7.01 and refinancings and extensions of any such Indebtedness if the representations, warranties, covenants, events of default and other material terms and conditions thereof are not materially less favorable to the obligor thereon or to the Lenders than the Indebtedness being refinanced or extended, and the average life to maturity thereof is greater than or equal to that of the Indebtedness being refinanced or extended, provided, such Indebtedness permitted under the immediately preceding clause shall not (i)

include Indebtedness of an obligor that was not an obligor with respect to the Indebtedness being extended, renewed or refinanced or (ii) exceed in a principal amount the Indebtedness being renewed, extended or refinanced;

(c) purchase money Indebtedness (including obligations in respect of Capital Leases but excluding Synthetic Leases) hereafter incurred by the Loan Parties or any of their Subsidiaries to finance the purchase of fixed assets, provided that (i) such Indebtedness when incurred shall not exceed the purchase price of the asset(s) financed, (ii) no such Indebtedness shall be refinanced for a principal amount in excess of the principal balance outstanding thereon at the time of such refinancing and (iii) the total amount of all such Indebtedness at any time outstanding shall not exceed the lesser of (A) \$75,000 and (B) an amount permitted by the Interim Order or Final Order, as applicable, or the Bankruptcy Court;

(d) intercompany Indebtedness permitted under Section 7.03(f);

(e) Guarantees with respect to Indebtedness permitted under this Section 7.01;

(f) endorsement of items for deposit or collection of commercial paper received in the ordinary course of business;

(g) indebtedness incurred in the ordinary course of business under (i) appeal bonds or similar instruments and (ii) surety bonds, payment bonds, performance bonds, bid bonds, completion guarantees and similar obligations, workers' compensation claims, health, disability or other employee benefits, and bankers acceptances issued for the account of any Loan Party or its Subsidiaries;

(h) unsecured Earn-out Obligations of the Borrower and its Subsidiaries owing to sellers existing as of the Petition Date, not to exceed the amount permitted by the Interim Order or the Final Order, as applicable, or the Bankruptcy Court;

(i) Guarantees by the Loan Parties or their Subsidiaries of the Winghaven Debt to the extent in existence as of the Petition Date and permitted by the Interim Order or the Final Order, as applicable, or the Bankruptcy Court;

(j) Real Estate Indebtedness of any Real Estate Financing Subsidiary that was in existence prior to and as of the Petition Date;

(k) Indebtedness incurred in the ordinary course of business in an aggregate amount not exceeding \$100,000 at any time outstanding in connection with cash pooling, netting and cash management arrangements consisting of overdrafts or similar arrangements, provided that any such Indebtedness does not consist of Funded Indebtedness and is owed solely to the financial institutions providing such arrangements;

(l) to the extent constituting Indebtedness, judgments entered against any Loan Party or any Subsidiary of a Loan Party to the extent not constituting an Event of Default;

(m) Indebtedness deemed to exist as a result of the characterization of a Sale and Leaseback Transaction as a loan from the purchaser or landlord thereunder to a Loan Party

secured solely by Liens on the property that is the subject of such transaction to the extent in existence prior to and as of the Petition Date; and

(n) other unsecured Indebtedness that was in existence prior to and as of the Petition Date.

**7.02 Liens.** Create, incur, assume or suffer to exist any Lien upon any of its Property, whether now owned or hereafter acquired, other than the following:

(a) Liens pursuant to any Loan Document;

(b) Liens existing on the Closing Date and listed on Schedule 7.02;

(c) Liens (other than Liens imposed under ERISA) for taxes, assessments or governmental charges or levies not yet due or which are being Properly Contested;

(d) statutory Liens of landlords and Liens of carriers, warehousemen, mechanics, materialmen and suppliers and other Liens imposed by law or pursuant to customary reservations or retentions of title arising in the Ordinary Course of Business, provided that such Liens secure only amounts not yet due and payable or, if due and payable, (i) are unfiled and no other action has been taken to enforce the same or (ii) are being Properly Contested;

(e) segregated cash pledges or deposits in the Ordinary Course of Business in connection with workers' compensation, unemployment insurance and other social security legislation, other than any Lien imposed by ERISA;

(f) cash deposits to secure the performance of bids, trade contracts, licenses and leases, statutory obligations, surety bonds (other than bonds related to judgments or litigation), performance bonds and other obligations of a like nature (other than Indebtedness) incurred in the Ordinary Course of Business;

(g) easements, rights-of-way, restrictions and other similar encumbrances affecting Real Property which, in the aggregate, are not substantial in amount, and which do not in any case materially detract from the value or marketability of the property subject thereto or materially interfere with the ordinary conduct of the business of the applicable Person;

(h) Liens securing Indebtedness permitted under Section 7.01(c), provided that (i) such Liens do not at any time encumber any Property other than the Property financed by such Indebtedness, (ii) the Indebtedness secured thereby does not exceed the cost or fair market value, whichever is lower, of the Property being acquired on the date of acquisition and (iii) such Liens (unless such Lien is a refinancing a pre-existing Lien) attached to such Property concurrently with or within thirty (30) days after the acquisition thereof;

(i) leases, non-exclusive licenses, sublicenses or subleases granted to others not interfering in any material respect with the business of any Loan Party or any Subsidiary thereof and not adverse to the interests of the Administrative Agent or the Lenders in any material respect;

(j) any interest of title of a lessor under, and Liens arising from precautionary UCC financing statements (or equivalent filings, registrations or agreements in foreign jurisdictions) solely evidencing such lessor's interest under, leases permitted by this Agreement;

(k) normal and customary rights of setoff upon deposits of cash in favor of banks or other depository institutions holding such deposits;

(l) Liens of a collection bank arising under Section 4-210 of the UCC on items in the course of collection;

(m) Liens in favor of the Administrative Agent, L/C Issuer or Support Provider on cash collateral securing the obligations of a Defaulting Lender to fund risk participations hereunder;

(n) Liens in favor of an insurer on the unearned portion of insurance premiums securing Indebtedness incurred by any Loan Party;

(o) Liens consisting of judgment, appeal bonds, judicial attachment liens or other similar Liens arising in connection with court proceedings, provided that the enforcement of such Liens is effectively stayed and all such Liens secure judgments the existence of which do not constitute an Event of Default under Section 9.01(h);

(p) Liens on amounts deposited to secure the Loan Parties' and their Subsidiaries' obligations in connection with the making or entering into of leases or subleases in the ordinary course of business and not in connection with Indebtedness for Borrowed Money to the extent in existence prior to and as of the Petition Date; and

(q) Liens on the property that is the subject of the Indebtedness permitted under Section 7.01(m).

**7.03 Investments.** Make any Investments, except:

(a) cash or Cash Equivalents;

(b) accounts receivable created, acquired or made and trade credit extended in the Ordinary Course of Business and payable or dischargeable in accordance with customary trade terms;

(c) Investments consisting of stock, obligations, securities or other property received in settlement of accounts receivable (created in the Ordinary Course of Business) from bankrupt obligors;

(d) Investments existing as of the Closing Date and set forth in Schedule 7.03;

(e) Guarantees permitted by Section 7.01;

(f) intercompany Investments made in accordance with the Budget and are permitted or required by the Interim Order, the Final Order, the Cash Management Order, or the

Winghaven Management Agreement, as applicable, by (i) any Loan Party in any other wholly owned Loan Party (excluding Holdings) and (ii) Subsidiaries that are not Loan Parties in any Loan Party or in other Subsidiaries that are not Loan Parties; and

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

**7.04 Fundamental Changes.** Unless otherwise approved in writing by the Administrative Agent in its sole discretion, merge, dissolve, liquidate, consolidate with or into another Person.

**7.05 Dispositions.** Make any Disposition other than:

(a) sales of inventory in the Ordinary Course of Business of the Loan Parties and their Subsidiaries;

(b) any Involuntary Disposition by any Loan Party or any Subsidiary thereof; and

(c) any other Disposition expressly permitted by this Agreement, the Interim Order or the Final Order; provided that the Debtors may consummate any and all Approved 363 Sales provided that all net cash proceeds therefrom are remitted directly from escrow to the Administrative Agent for application to the Obligations in accordance with Section 2.05(b)(ii).

Notwithstanding the foregoing, nothing in this Section 7.05 shall directly or indirectly permit any Disposition that would result in a Change of Control.

**7.06 Restricted Payments.** Directly or indirectly declare or make any Restricted Payment or incur any obligation to do so, except to the extent expressly provided for in the Budget.

**7.07 Change in Nature of Business.** Engage to any material extent in any business materially different from the business conducted by the Loan Parties and their Subsidiaries on the Closing Date and businesses reasonably related or incidental thereto, each of which shall be located in the U.S. or Canada.

**7.08 Transactions with Affiliates and Insiders.** Enter into or permit to exist any transaction or series of transactions with any officer, director or Affiliate of such Person other than (a) transactions between the Loan Parties, (b) intercompany transactions expressly permitted by Section 7.01, 7.03, 7.04, 7.05 or 7.06 and (c) compensation and reimbursement of expenses of officers, employees and directors to the extent set forth in the Budget.

**7.09 [Reserved].**

**7.10 Use of Proceeds.** Use the proceeds of any Credit Extension, whether directly or indirectly, and whether immediately, incidentally or ultimately, to purchase or carry margin stock (within the meaning of Regulation U of the FRB) or to extend credit to others for the

purpose of purchasing or carrying margin stock or to refund Indebtedness originally incurred for such purpose.

**7.11 [Reserved].**

**7.12 Organization Documents; Fiscal Year; Legal Name, State of Formation and Form of Entity.**

(a) Amend, modify or change its Organization Documents in a manner which is adverse to the interests of the Administrative Agent or the Lenders.

(b) Change its Fiscal Year.

(c) Change its name or its state of formation or form of organization without providing thirty (30) days prior written notice to the Administrative Agent, provided that nothing herein shall permit any Loan Party to change its state of formation in a state or jurisdiction outside the United States.

(d) Make any significant change in accounting treatment or reporting practices, except as required by GAAP.

**7.13 Ownership of Subsidiaries.** Notwithstanding any other provisions of this Agreement to the contrary, (i) permit any Person (other than any Borrower or any Wholly Owned Subsidiary) to own any Capital Stock of any Subsidiary, except to qualify directors where required by applicable law or to satisfy other requirements of applicable law with respect to the ownership of Capital Stock of Foreign Subsidiaries to the extent issued prior to and in effect as of the Petition Date, (ii) permit any Subsidiary to issue or have outstanding any shares of Disqualified Capital Stock, or (iii) create, incur, assume or suffer to exist any Lien on any Capital Stock of any Subsidiary other than pursuant to the Loan Documents.

**7.14 Bankruptcy Matters.**

(a) Directly or indirectly, seek, consent or suffer to exist: (i) any modification, stay, vacation or amendment to the Interim Order or Final Order, unless the Administrative Agent has consented to such modification, stay, vacation or amendment in writing; (ii) entry of any order that could adversely affect the Administrative Agent's liens on the Collateral or its recovery in the bankruptcy Cases that is not, in form and substance, satisfactory to the Administrative Agent in its reasonable discretion; (iii) an allowed priority claim for any administrative expense or unsecured claim (now existing or hereafter arising of any kind or nature whatsoever, including any administrative expenses of the kind specified in the Bankruptcy Code, including without limitation Sections 105, 326, 328, 330, 331, 364(c)(1), 365, 503, 506(c), 507, 546, 726, 1113 or 1114 of the Bankruptcy Code) equal or superior to the Superpriority Claim of the Secured Parties in respect of the Obligations, except for the Carve-Out; or (iv) any Lien on any Collateral, having a priority equal or superior to the Lien in favor of the Administrative Agent in respect of the Obligations (subject to the Senior Liens (as defined in the Interim Order) and the Carve-Out);

(b) Prior to the date on which the Obligations have been indefeasibly paid in full in cash and Lenders' commitment to make any Credit Extensions has been terminated, the Debtors shall not pay any administrative expense claims not provided for in the Budget, subject to the Permitted Variances other than with respect to the Carve-Out which shall not be subject to a Permitted Variance; provided however that Debtors may pay administrative expense claims with respect to (i) any Obligations due and payable hereunder and (ii) Statutory Fees;

(c) Make any material expenditure except of the type and for the purposes provided for in the Budget; and

(d) Amend, modify or supplement Approved 363 Sale Order any final order of the Bankruptcy Court relating to or any agreement providing for an Approved 363 Sale without the prior written consent of the Administrative Agent.

**7.15 Limitations on Holdings.** Permit Holdings, directly or indirectly, to (a) incur, directly or indirectly, any Indebtedness or any other obligation or liability whatsoever other than under the Loan Documents, (b) create or suffer to exist any Lien upon any property or assets now owned or hereafter acquired by Holdings other than the Liens created under the Loan Documents to which it is a party, (c) engage in any business or activity or own any assets (including, without limitation, cash and Cash Equivalents) other than (i) holding 100% of the Capital Stock of the Borrowers and (ii) performing its obligations and activities incidental thereto and (iii) performing its obligations under the Loan Documents, (d) consolidate with or merge with or into, or convey, transfer or lease all or substantially all its assets to, any Person, or (e) fail to hold itself out to the public as a legal entity separate and distinct from all other Persons.

## ARTICLE 8

**[INTENTIONALLY OMITTED]**

## ARTICLE 9

### EVENTS OF DEFAULT AND REMEDIES

**9.01 Events of Default.** Any of the following shall constitute an "Event of Default":

(a) Non-Payment. Any Borrower or any other Loan Party fails to pay when and as required to be paid pursuant to this Agreement or any other Loan Document, (i) any amount of principal of any Loan or (ii) any interest on any Loan or any commitment fee, utilization fee or other fee due hereunder, or (iii) any other amount payable hereunder or under any other Loan Document; or

(b) Specific Covenants. Any Loan Party fails to perform or observe any term, covenant or agreement contained in any of (i) Sections 6.01, 6.02(a), or 6.02(b) and such failure continues for three (3) Business Days after the earlier of (x) a Responsible Officer of any Loan Party becoming aware of such failure or (y) notice thereof to any Loan Party by the

Administrative Agent or any Lender or (ii) Sections 6.02(d), 6.02(e), 6.02(f), 6.03(a), 6.05(a), 6.17, 6.18 or Article 7; or

(c) Other Defaults. (i) An event of default has occurred under any other Loan Document, or (ii) any Loan Party fails to perform, observe or comply with any other covenant or agreement (not specified in subsection (a) or (b) above) contained in any Loan Document and such failure continues for ten (10) calendar days after the earlier of (x) a Responsible Officer of any Loan Party becoming aware of such failure or (y) notice thereof to any Loan Party by the Administrative Agent or any Lender; or

(d) Representations and Warranties. Any representation, warranty, certification or statement of fact made or deemed made by or on behalf of any Borrower or any other Loan Party herein, in any other Loan Document, or in any document delivered in connection herewith or therewith shall be incorrect or misleading in any material respect when made or deemed made (except to the extent already qualified by knowledge, materiality or Material Adverse Effect, in which case it shall be true and correct in all respects and shall not be incorrect or misleading in any respect); or

(e) Bankruptcy Defaults.

(i) the Bankruptcy Court shall enter any order, that has not been consented to by the Administrative Agent (i) revoking, reversing, staying, vacating, rescinding, modifying, supplementing or amending (x) the Interim Order, the Final Order, the Cash Management Order, a Bidding Procedures Order, an Approved 363 Sale Order, this Agreement, the Pre-Petition Loan Documents or any Loan Document, or (y) any other “first day” orders to the extent such revocation, reversal, stay, vacation, rescission, modification, supplement or amendment is materially adverse to the interests of Secured Parties, or (ii) permitting any administrative expense or any claim (now existing or hereafter arising, of any kind or nature whatsoever) to have administrative priority as to any Debtor equal or superior to the priority of the Administrative Agent and Lenders in respect of the Obligations, or there shall arise any such Superpriority Claim, or (iii) to grant or permit the grant of a Lien on the Collateral superior to, or pari passu with, the Liens of the Administrative Agent on the Pre-Petition Collateral or the Collateral (other than the Senior Liens (as defined in the Interim Order), and the Carve-Out);

(ii) the Bankruptcy Court shall enter any order (i) appointing a Chapter 11 trustee under Section 1104 of the Bankruptcy Code in the Cases, (ii) appointing an examiner with enlarged powers relating to the operation of the business (powers beyond those set forth in Section 1106(a)(3) and (4) of the Bankruptcy Code) under Section 1106(b) of the Bankruptcy Code in the Cases, (iii) appointing a fiduciary or representative of the estate with decision-making or other management authority over some or all of any Debtor’s senior management other than the Debtors’ Chief Restructuring Officer, (iv) substantively consolidating the estate of any Debtor with the estate of any other Person, (v) dismissing the Cases or converting the Cases to Chapter 7 cases; or (vi) approving a sale of substantially all of the assets of the Borrowers and/or of the Debtors which order does not provide that upon consummation of such sale, all of the

Obligations shall be indefeasibly paid and satisfied in full and which shall otherwise be reasonable satisfactory to the Administrative Agent, and in connection with such sale order, Secured Parties shall not have received a release (on terms and conditions and in form and substance satisfactory to the Administrative Agent in its sole discretion) of Secured Parties in full from all claims of the Debtors and their estates on or before the entry of such sale order;

(iii) this Agreement, any of the Loan Documents, the Interim Order or the Final Order for any reason ceases to be in full force and effect or is declared to be null and void by a court of competent jurisdiction, or any of the Debtors shall seek to, or shall support (in any such case by way of any motion or other pleading filed with the Bankruptcy Court or any other writing to another party-in-interest executed by or on behalf of such Debtor) any other Person's motion to, disallow in whole or in part the Secured Parties' claim in respect of the Obligations or to challenge the validity and enforceability of the Liens in favor of any Secured Party;

(iv) any Debtor files a motion with the Bankruptcy Court asserting that the Secured Parties do not have a right to, or supports a motion filed with the Bankruptcy Court that asserts the Secured Parties do not have the right to, credit bid for any assets of the Debtors in connection with any sale pursuant to Section 363(k) of the Bankruptcy Code;

(v) the Bankruptcy Court shall enter any order granting relief from the automatic stay to any creditor holding or asserting a Lien, reclamation claim or other rights on the assets of any Debtor in excess of \$75,000;

(vi) any application for any of the orders described in clauses (a), (b), (c), (d) or (e) above shall be made and, if made by a Person other than a Debtor, such application is not being diligently contested by such Debtor in good faith;

(vii) except (i) as permitted by the Interim Order or Final Order and set forth in the Budget, or (ii) as otherwise agreed to by the Administrative Agent in writing, and approved by all necessary Bankruptcy Court orders/approvals, any Debtor shall make any Pre-Petition Payment (including, without limitation, related to any reclamation claims) following the Closing Date;

(viii) any Debtor shall be unable to pay its post-petition debts as they become due, shall fail to comply with any order of the Bankruptcy Court in any material respect, or shall fail to make, as and when such payments become due or otherwise;

(ix) the period covered by the Budget shall expire without the Budget being updated pursuant to Section 6.02(d) prior to such expiration;

(x) any Debtor shall file a motion in the Cases (i) to use Cash Collateral under Section 363(c) of the Bankruptcy Code without the Administrative Agent's prior written consent except to the extent expressly permitted in the Interim Order or, once entered, the Final Order, (ii) to sell a material portion of the assets of any Debtor without the Administrative Agent's prior written consent, (iii) to recover from any

portions of the Collateral any costs or expenses of preserving or disposing of such Collateral under Section 506(c) of the Bankruptcy Code, or to cut off rights in the Collateral under Section 552(b) of the Bankruptcy Code, (iv) to obtain additional financing under Sections 364(c) or (d) of the Bankruptcy Code not otherwise permitted under this Agreement, unless such motion and additional financing shall provide that upon initial closing and consummation of such financing, that upon consummation of such sale, all of the Obligations shall be indefeasibly paid and satisfied in full and Secured Parties receive a release (on terms and conditions and in form and substance satisfactory to the Administrative Agent in its sole discretion) of Secured Parties in full from all claims of the Debtors and their estates, or (v) to take any other action or actions adverse to Secured Parties or their rights and remedies hereunder or under any of the Other Documents or Secured Parties interest in any of the Collateral;

(xi) (i) a Reorganization Plan is filed in the Cases by one or more of the Debtors which does not contain provisions for termination of the Administrative Agent's and Lenders' commitment to make Credit Extensions hereunder and the occurrence of the Termination Date and the release of the Secured Parties (on terms and conditions and in form and substance satisfactory to the Administrative Agent) in full from all claims of the Debtors and their estates, in each case, on or before, and the continuation of the Liens and security interests granted to the Administrative Agent until, the effective date of such Reorganization Plan, or (ii) an order shall be entered by the Bankruptcy Court confirming a Reorganization Plan in the Cases which does not contain provisions for termination of the Administrative Agent's and Lenders' commitment to make Credit Extensions hereunder and the occurrence of the Termination Date and the release of the Secured Parties (on terms and conditions and in form and substance satisfactory to the Administrative Agent) in full from all claims of the Debtors and their estates on or before, and the continuation of the Liens and security interests granted to the Administrative Agent until, the effective date of such Reorganization Plan upon entry thereof;

(xii) the expiration or termination of the "exclusive period" of the Debtors under Section 1121 of the Bankruptcy Code for the filing of a plan of reorganization;

(xiii) (A) any Debtor engages in or supports any challenge to the validity, perfection, priority, extent or enforceability of the credit facility provided hereunder or the Pre-Petition Loan Documents or the liens on or security interest in the assets of the Debtors securing the Obligations or (B) any Debtor engages in or supports any investigation or asserts any claims or causes of action (or directly or indirectly support assertion of the same) against Secured Parties; *provided, however*, that it shall not constitute an Event of Default if any Debtor provides information with respect to the Pre-Petition Credit Agreement and the Pre-Petition Loan Documents to (x) the Committee and (y) with prior written notice to the Administrative Agent and the Lenders of any requirement to do so, any other party in interest;

(xiv) the termination or rejection of any contract of any Debtor which would reasonably be expected to result in a Material Adverse Effect;

(xv) the failure to file the Bidding Procedures Motion on or before the second day following the Petition Date;

(xvi) the Bidding Procedures Order is not entered by the Bankruptcy Court on or before December 5, 2019;

(xvii) The failure to file the Approved 363 Sale Motion on or before the second day following the Petition Date;

(xviii) the Approved 363 Sale Order is not entered by the Bankruptcy Court on or before December 20, 2019;

(xix) An Approved 363 Sale with all material terms acceptable to the Administrative Agent and the Lenders does not close on or before December 31, 2019;

(xx) any Case is converted to a case under Chapter 7 of the Bankruptcy Code;

(xxi) any Case is dismissed;

(xxii) the Final Order is not entered, following an application or motion of the Debtors reasonably satisfactory, in form and substance, to Administrative Agent and upon prior notice to such parties required to receive such notice and such other parties as may be reasonably requested by Administrative Agent, immediately following the expiration of the Interim Order, and in any case, not later than the twenty-fifth day following the Petition Date;

(xxiii) a breach of the terms or provisions of the Interim Order, the Final Order or the Budget;

(xxiv) solely upon entry of the Final Order, any Person shall be permitted to surcharge the Collateral or the Pre-Petition Collateral under Section 506(c) of the Bankruptcy Code, or any costs or expenses whatsoever shall be imposed against the Collateral or the Pre-Petition Collateral, other than the Carve-Out; or

(xxv) solely upon entry of the Final Order, the Administrative Agent shall be made subject to any equitable remedy of marshalling or any similar doctrine with respect to the Collateral and the Prepetition Collateral.

(f) Judgments. There is entered against any Loan Party or any of its Subsidiaries (i) one or more final judgments or orders for the payment of money (including a disgorgement order issued by a Governmental Authority) in an aggregate amount exceeding \$75,000 (to the extent not covered by independent third-party insurance as to which the insurer has not disclaimed its obligation to cover), or (ii) one or more non-monetary final judgments that have, or could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect and, in either case, (A) enforcement proceedings are commenced by any creditor upon such judgment or order, or (B) there is a period of ten (10) consecutive days during which a

stay of enforcement of such judgment, by reason of a pending appeal or otherwise, is not in effect; or

(g) ERISA. (i) An ERISA Event occurs which has resulted or could reasonably be expected to result in liability of any Loan Party in an aggregate amount in excess of \$75,000 or (ii) any Loan Party or any ERISA Affiliate fails to pay when due, after the expiration of any applicable grace period, any installment payment with respect to its withdrawal liability under Section 4201 of ERISA under a Multiemployer Plan that has resulted or could reasonably be expected to result in liability of any Loan Party in an aggregate amount in excess of \$75,000; or

(h) Invalidation of Loan Documents. Any Loan Document, at any time after its execution and delivery and for any reason other than as expressly permitted hereunder or satisfaction in full of all the Obligations, ceases to be in full force and effect or ceases to give the Administrative Agent, for the benefit of the Lenders, a valid and perfected Lien in any Collateral purported to be covered by the Loan Documents with the priority required by the relevant Loan Document (other than to the extent a result of the action or inaction of the Administrative Agent or the Lenders, or any of their affiliates, officers, employees, agents, attorneys or representatives); or any Loan Party or any other Affiliate of a Loan Party contests in any manner the validity or enforceability of any Loan Document; or any Loan Party denies that it has any or further liability or obligation under any Loan Document, or purports to revoke, terminate or rescind any Loan Document; or

(i) Change of Control. There occurs any Change of Control.

**9.02 Remedies upon Event of Default.** Upon the occurrence and during the continuance of any Event of Default, the Administrative Agent may, and upon the direction of the Required Lenders shall, take any or all of the following actions:

(a) declare the commitment of each Lender to make Loans to be terminated, whereupon such commitments and obligation shall be terminated;

(b) declare the unpaid principal amount of all outstanding Loans, all interest accrued and unpaid thereon, and all other amounts owing or payable hereunder or under any other Loan Document to be immediately due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived by the Loan Parties;

(c) [Reserved];

(d) the Administrative Agent shall be entitled to immediately terminate the Debtors' right to use Cash Collateral, without further application to or order of the Bankruptcy Court; provided, however, that the Debtors shall have the right to use Cash Collateral to pay their weekly ordinary course payroll included in the Budget through and including the date immediately following the date on which such Event of Default occurs;

(e) the Debtors shall be bound by all post-default restrictions, prohibitions, and other terms as provided in the Interim Order, this Agreement and the other Loan Documents;

(f) the Administrative Agent shall be entitled to charge the default rate of interest under this Agreement; and

(g) subject only to the notice requirement set forth in the Interim Order, the Administrative Agent shall be entitled to take any other act or exercise any other right or remedy as provided in the Interim Order, this Agreement, the other Loan Documents or applicable law, including, without limitation, setting off any Obligations with Collateral or proceeds in the possession of any Secured Party, and enforcing any and all rights and remedies with respect to the Collateral.

### **9.03 Other Rights and Remedies.**

(a) Without further notice, application or order of the Bankruptcy Court, upon the occurrence and during the continuance of an Event of Default, and after providing five (5) Business Days' prior written notice thereof (which five (5) Business Day period only applies to the Collateral enforcement remedies described below) to counsel for the Debtors, counsel for any Committee and the U.S. Trustee, the Administrative Agent for the benefit of itself and the Lenders shall be entitled to take any action and exercise all rights and remedies provided to them by the Interim Order, this Agreement, the other Loan Documents or applicable law, unless otherwise ordered by the Bankruptcy Court, as the Administrative Agent may deem appropriate in its sole discretion to, among other things, proceed against and realize upon the Collateral or any other assets or properties of the Debtors' Estates upon which the Administrative Agent, for the benefit of itself and the Lenders has been or may hereafter be granted liens or security interests to obtain the full and indefeasible payment of all the Obligations. During such five (5) Business Day period, either or both the Debtors and the Committee shall be entitled to seek an emergency hearing with the Bankruptcy Court.

(b) Additionally, upon the occurrence and during the continuance of an Event of Default and the exercise by the Administrative Agent of its rights and remedies under the Interim Order, this Agreement or the other Loan Documents, provided that the Debtors and the Agent agree upon a mutually acceptable wind down budget, the Debtors shall cooperate with the Administrative Agent in the exercise of rights and remedies and assist the Administrative Agent in effecting any sale or other disposition of the Collateral required by the Administrative Agent, including any sale of Collateral pursuant to Section 363 of the Bankruptcy Code or assumption and assignment of Collateral consisting of contracts and leases pursuant to Section 365 of the Bankruptcy Code, in each case, upon such terms that are acceptable to the Administrative Agent.

(c) A Default or an Event of Default shall be deemed to exist at all times during the period commencing on the date that such Default or Event of Default occurs to the date on which such Default or Event of Default is waived in writing pursuant to this Agreement or, in the case of a Default, is cured within any period of cure expressly provided for in this Agreement or in a manner reasonably satisfactory to the Administrative Agent, if such Default or Event of Default is capable of being cured.

**9.04 Application of Funds.** Upon the occurrence and during the continuance of an Event of Default, any amounts received by the Secured Parties on account of the Obligations

shall be turned over to the Administrative Agent (other than amounts received by such Secured Parties in accordance with this Section 9.04) and be applied by the Administrative Agent in the following order:

(a) First, to payment of that portion of the Obligations constituting fees, indemnities, expenses, protective advances and other amounts (including Attorney Costs and amounts payable under Article 3) payable or reimbursable to the Administrative Agent in its capacity as such;

(b) Second, to payment of that portion of the Obligations constituting fees payable to the Lenders, ratably among them in proportion to the fees payable to them;

(c) Third, to payment of that portion of the Obligations constituting accrued and unpaid interest on the Loans and Unreimbursed Amounts, ratably among the Secured Parties in proportion to the respective amounts described in this clause (c) held by them;

(d) Fourth, to payment of that portion of the Obligations constituting unpaid principal of the Loans and Unreimbursed Amounts, payments of amounts due in respect of any Banking Services Obligations between any Loan Party or any Subsidiary and any Lender or any Affiliate of a Lender, ratably among the Secured Parties in proportion to the respective amounts described in this clause (d) held by them;

(e) Fifth, to the payment of any other unpaid Obligations and to Cash Collateralize any other contingent Obligations which are not yet due and payable but with respect to which a claim has been or may reasonably be expected to be asserted by the applicable Secured Party in an amount estimated by Administrative Agent to be the amount of related costs, expenses and indemnification Obligations that may become due and payable; and

(f) Last, the balance, if any, after all of the Obligations have been indefeasibly paid in full, to the Pre-Petition Agent for the benefit of the Pre-Petition Lenders, or as otherwise required by Law.

In connection with any distribution of payments and collections pursuant to this Section 9.04, the Administrative Agent may in its discretion assume that no amounts are due to any provider of Banking Services or are due on account of clause (e) unless such applicable Secured Party has notified the Administrative Agent of the amount of any such liability owed to it prior to such distribution.

## ARTICLE 10

### GUARANTY

**10.01 The Guaranty.** Each Guarantor hereby guarantees to each Secured Party and the Administrative Agent as hereinafter provided, as primary obligor and not as surety, the prompt payment and performance of the Obligations in full when due (whether at stated maturity, as a mandatory prepayment, by acceleration or otherwise) strictly in accordance with the terms thereof. Each Guarantor hereby further agrees that if any of the Obligations are not paid in full

when due (whether at stated maturity, as a mandatory prepayment, by acceleration or otherwise), each Guarantor will promptly pay the same, without any demand or notice whatsoever, and that in the case of any extension of time of payment or renewal of any of the Obligations, the same will be promptly paid in full when due (whether at extended maturity, as a mandatory prepayment, by acceleration or otherwise) in accordance with the terms of such extension or renewal (collectively, the “Guaranteed Obligations”).

Subject to Section 10.06 and the last sentence of this Section 10.01 below, the Guarantors hereby jointly and severally agree, in furtherance of the foregoing and not in limitation of any other right which the Administrative Agent or any Secured Party may have at law or in equity against any Guarantor by virtue hereof, that upon the failure of any Guaranteed Obligations to be paid when and as the same shall become due, whether at stated maturity, by required prepayment, declaration, acceleration, demand or otherwise (including amounts that would become due but for the operation of the automatic stay under Section 362(a) of the Bankruptcy Code), the Guarantors will, upon demand pay, or cause to be paid, in cash, to the Administrative Agent for the ratable benefit of Secured Parties, an amount equal to the sum of the unpaid principal amount of all Guaranteed Obligations then due as aforesaid, accrued and unpaid interest on such Guaranteed Obligations (including interest which, but for any Borrower’s becoming the subject of a case under the Bankruptcy Code, would have accrued on such Guaranteed Obligations, whether or not a claim is allowed against any Borrower for such interest in the related bankruptcy case) and all other Guaranteed Obligations then owed to the Secured Parties as aforesaid.

Notwithstanding any provision to the contrary contained herein or in any other of the Loan Documents, the Guaranteed Obligations of each Guarantor under this Agreement and the other Loan Documents shall be limited to an aggregate amount equal to the largest amount that would not render such obligations subject to avoidance under the Debtor Relief Laws.

**10.02 Obligations Unconditional.** The Guaranteed Obligations of each Guarantor under Section 10.01 are joint and several and absolute and unconditional, irrespective of the value, genuineness, validity, regularity or enforceability of any of the Loan Documents or any other agreement or instrument referred to therein, or any substitution, release, impairment or exchange of any other guarantee of or security for any of the Obligations, and, to the fullest extent permitted by applicable law, irrespective of any other circumstance whatsoever which might otherwise constitute a legal or equitable discharge or defense of a surety or guarantor (other than indefeasible performance and payment in full of the Obligations), it being the intent of this Section 10.02 that the obligations of each Guarantor hereunder shall be absolute and unconditional under any and all circumstances (other than indefeasible performance and payment in full of the Obligations). Each Guarantor agrees that such Guarantor shall have no right of subrogation, indemnity, reimbursement or contribution against the Borrowers or any other Guarantor for amounts paid under this Article 10 until the Termination Date. Without limiting the generality of the foregoing, it is agreed that, to the fullest extent permitted by law, the occurrence of any one or more of the following shall not alter or impair the liability of any Guarantor hereunder, which shall remain joint and several and absolute and unconditional as described above:

- (a) at any time or from time to time, without notice to any Guarantor, the time for any performance of or compliance with any of the Obligations shall be extended, or such performance or compliance shall be waived;
- (b) any of the acts mentioned in any of the provisions of any of the Loan Documents or any other agreement or instrument referred to in the Loan Documents shall be done or omitted;
- (c) the maturity of any of the Obligations shall be accelerated, or any of the Obligations shall be modified, supplemented or amended in any respect, or any right under any of the Loan Documents or any other agreement or instrument referred to in the Loan Documents shall be waived or any other guarantee of any of the Obligations or any security therefor shall be released, impaired or exchanged in whole or in part or otherwise dealt with;
- (d) any Lien granted to, or in favor of, the Administrative Agent or any Secured Party or Secured Parties as security for any of the Obligations shall fail to attach or be perfected;
- (e) any of the Obligations shall be determined to be void or voidable (including for the benefit of any creditor of any Guarantor) or shall be subordinated to the claims of any Person (including any creditor of any Guarantor); or
- (f) any other action or inaction shall occur that might constitute a surety defense.

**10.03 Reinstatement.** The Guaranteed Obligations of any Guarantor under this Article 10 shall be automatically reinstated if and to the extent that for any reason any payment by or on behalf of any Person in respect of the Obligations is rescinded or must be otherwise restored by any holder of any of the Obligations, whether as a result of any proceedings in bankruptcy or reorganization or otherwise, and each Guarantor agrees that it will indemnify the Administrative Agent and each Secured Party on demand for all reasonable, documented out-of-pocket costs and expenses (including fees and expenses of counsel, subject to Section 12.04) incurred by the Administrative Agent or such Secured Party in connection with such rescission or restoration, including any such reasonable, documented out-of-pocket costs and expenses incurred in defending against any claim alleging that such payment constituted a preference, fraudulent transfer or similar payment under any bankruptcy, insolvency or similar law. This Section 10.03 shall survive any termination of this Agreement.

**10.04 Waivers.**

(a) Each Guarantor hereby waives, to the fullest extent permitted by Law, for the benefit of the Administrative Agent and each Secured Party: (i) any right to require the Administrative Agent or any Secured Party, as a condition of payment or performance by such Guarantor, to (A) proceed against any Borrower, any other guarantor (including any other Guarantor) of the Guaranteed Obligations or any other Person, (B) proceed against or exhaust any security held from any Borrower, any such other guarantor or any other Person, (C) proceed against or have resort to any balance of any deposit account or credit on the books of the Administrative Agent and Secured Parties in favor of any Borrower or any other Person, or

(D) pursue any other remedy in the power of the Administrative Agent and the Secured Parties whatsoever; (ii) any defense arising by reason of the incapacity, lack of authority or any disability or other defense of any Borrower or any other Guarantor including any defense based on or arising out of the lack of validity or the unenforceability of the Guaranteed Obligations or any agreement or instrument relating thereto or by reason of the cessation of the liability of any Borrower or any other Guarantor from any cause other than payment in full of the Guaranteed Obligations; (iii) any defense based upon any statute or rule of law which provides that the obligation of a surety must be neither larger in amount nor in other respects more burdensome than that of the principal or any law, rule, regulation, or order of any jurisdiction affecting any term of the Guaranteed Obligations; (iv) any defense based upon the Administrative Agent's or any Secured Party's errors or omissions in the administration of the Guaranteed Obligations, except behavior which amounts to bad faith; (v) (A) any principles or provisions of law, statutory or otherwise, which are or might be in conflict with the terms hereof and any legal or equitable discharge of such Guarantor's obligations hereunder, (B) the benefit of any statute of limitations affecting such Guarantor's liability hereunder or the enforcement hereof, (C) any rights to set offs, recoupments and counterclaims, and (D) promptness, diligence and any requirement that the Administrative Agent and the Secured Parties protect, secure, perfect or insure any security interest or lien or any property subject thereto; (vi) notices, demands, presentments, protests, notices of protest, notices of dishonor and notices of any action or inaction, including acceptance hereof, notices of default under any Loan Document, any Secured Hedge Agreement or any agreement or instrument related thereto, notices of any renewal, extension or modification of the Guaranteed Obligations or any agreement related thereto, notices of any extension of credit to any Borrower and notices of any of the matters referred to in Section 10.02 and any right to consent to any thereof; and (vii) any defenses or benefits that may be derived from or afforded by law which limit the liability of or exonerate guarantors or sureties, or which may conflict with the terms hereof. Each Guarantor agrees that such Guarantor shall have no right of recourse to security for the Obligations, except through the exercise of rights of subrogation to the extent permitted by Section 10.02; provided, however, Guarantor agrees that such rights shall be automatically (and without any further action) irrevocably waived and released if such security is acquired by a Person as a result of the exercise of the remedies under the Loan Documents.

**10.05 Remedies.** Each Guarantor agrees that, to the fullest extent permitted by law, as between such Guarantor, on the one hand, and the Administrative Agent and the Secured Parties, on the other hand, the Obligations may be declared to be forthwith due and payable as provided in Section 9.02 (and shall be deemed to have become automatically due and payable in the circumstances provided in Section 9.02) for purposes of Section 10.01 notwithstanding any stay, injunction or other prohibition preventing such declaration (or preventing the Obligations from becoming automatically due and payable) as against any other Person and that, in the event of such declaration (or the Obligations being deemed to have become automatically due and payable), the Obligations (whether or not due and payable by any other Person) shall forthwith become due and payable by each Guarantor for purposes of Section 10.01. Each Guarantor acknowledges and agrees that its Guaranteed Obligations hereunder are secured in accordance with the terms of the Collateral Documents and that the Secured Parties may exercise their remedies thereunder in accordance with the terms thereof.

**10.06 Contribution by Guarantors.** All Guarantors desire to allocate among themselves (collectively, the "Contributing Guarantors"), in a fair and equitable manner, their

respective obligations arising under this Guaranty. Accordingly, in the event any payment or distribution is made on any date by a Guarantor (a "Funding Guarantor") under this Guaranty such that its Aggregate Payments exceeds its Fair Share as of such date, such Funding Guarantor shall be entitled to a contribution from each of the other Contributing Guarantors in an amount sufficient to cause each Contributing Guarantor's Aggregate Payments to equal its Fair Share as of such date. "Fair Share" means, with respect to a Contributing Guarantor as of any date of determination, an amount equal to (a) the ratio of (i) the Fair Share Contribution Amount with respect to such Contributing Guarantor to (ii) the aggregate of the Fair Share Contribution Amounts with respect to all Contributing Guarantors multiplied by (b) the aggregate amount paid or distributed on or before such date by all Funding Guarantors under this Guaranty in respect of the obligations Guaranteed. "Fair Share Contribution Amount" means, with respect to a Contributing Guarantor as of any date of determination, the maximum aggregate amount of the obligations of such Contributing Guarantor under this Guaranty that would not render its obligations hereunder or thereunder subject to avoidance as a fraudulent transfer or conveyance under Section 548 of the Bankruptcy Code or any comparable applicable provisions of state law, provided, solely for purposes of calculating the "Fair Share Contribution Amount" with respect to any Contributing Guarantor for purposes of this Section 10.06, any assets or liabilities of such Contributing Guarantor arising by virtue of any rights to subrogation, reimbursement or indemnification or any rights to or obligations of contribution hereunder shall not be considered as assets or liabilities of such Contributing Guarantor. "Aggregate Payments" means, with respect to a Contributing Guarantor as of any date of determination, an amount equal to (1) the aggregate amount of all payments and distributions made on or before such date by such Contributing Guarantor in respect of this Guaranty (including in respect of this Section 10.06), minus (2) the aggregate amount of all payments received on or before such date by such Contributing Guarantor from the other Contributing Guarantors as contributions under this Section 10.06. The amounts payable as contributions hereunder shall be determined as of the date on which the related payment or distribution is made by the applicable Funding Guarantor. The allocation among Contributing Guarantors of their obligations as set forth in this Section 10.06 shall not be construed in any way to limit the liability of any Contributing Guarantor hereunder. Each Guarantor is a third party beneficiary to the contribution agreement set forth in this Section 10.06 and a right to receive any Fair Share Contribution Amount shall be deemed an asset of the Guarantor entitled to such amount.

**10.07 Guarantee of Payment; Continuing Guarantee.** The guarantee in this Article 10 is an absolute and unconditional guaranty of payment and not of collection, is a continuing and irrevocable guarantee, and shall apply to all Obligations whenever arising.

**10.08 Subordination of Other Obligations.** Any Indebtedness of any Borrower or any Guarantor or any Subsidiary now or hereafter owing to any Loan Party (the "Obligee") is hereby subordinated in right of payment to the Obligations (and any Lien now or hereafter securing such Indebtedness is hereby subordinated in priority to the Liens of Administrative Agent now or hereafter securing any of the Obligations), and any such Indebtedness collected or received by the Obligee after an Event of Default has occurred and is continuing shall be held in trust for the Administrative Agent for its benefit and the benefit of the Secured Parties and shall forthwith be paid over to Administrative Agent for its benefit and the benefit of the Secured Parties to be credited and applied against the Obligations but without affecting, impairing or limiting in any

manner the liability of the Obligee under any other provision hereof. No Obligee shall exercise any remedy with respect to such Indebtedness prior to the Termination Date.

## ARTICLE 11

### THE ADMINISTRATIVE AGENT

#### **11.01 Appointment and Authorization of Administrative Agent.**

(a) Each Lender hereby irrevocably appoints, designates and authorizes the Administrative Agent to take such action on its behalf under the provisions of this Agreement and each other Loan Document and to exercise such powers and perform such duties as are expressly delegated to it by the terms of this Agreement or any other Loan Document, together with such powers as are reasonably incidental thereto. Notwithstanding any provision to the contrary contained elsewhere herein or in any other Loan Document, the Administrative Agent shall not have any duties or responsibilities, except those expressly set forth herein, nor shall the Administrative Agent have or be deemed to have any fiduciary relationship with any Lender or participant, and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Agreement or any other Loan Document or otherwise exist against the Administrative Agent. Without limiting the generality of the foregoing sentence, the use of the term "agent" herein and in the other Loan Documents with reference to the Administrative 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 merely as a matter of market custom, and is intended to create or reflect only an administrative relationship between independent contracting parties.

(b) [Reserved].

**11.02 Delegation of Duties.** The Administrative Agent may execute any of its duties under this Agreement or any other Loan Document by or through its, or its Affiliates', agents, employees or attorneys-in-fact and shall be entitled to obtain and rely upon the advice of counsel and other consultants or experts concerning all matters pertaining to such duties. The Administrative Agent shall not be responsible for the negligence or misconduct of any agent or attorney-in-fact that it selects in the absence of the Administrative Agent's gross negligence or willful misconduct (as finally determined in a non-appealable decision of a court of competent jurisdiction).

**11.03 Liability of Administrative Agent.** No Agent-Related Person shall be liable for any action taken or omitted to be taken by any of them under or in connection with this Agreement or any other Loan Document or the transactions contemplated hereby, and each Loan Party and Lender hereby waives and agrees not to assert any right, claim or cause of action based thereon, except to the extent of liabilities resulting primarily from its own gross negligence or willful misconduct in connection with its duties expressly set forth herein, as finally determined in a non-appealable decision of a court of competent jurisdiction. Without limiting the foregoing, no Agent-Related Person shall be: (i) responsible or have any obligation to any other Lender for the due execution, validity, genuineness, effectiveness, sufficiency, or enforceability of, or for any recital, statement, warranty or representation in, this Agreement, any other Loan

Document or any related agreement, document or order; (ii) required or have any obligation to ascertain, monitor or enforce or to make any inquiry concerning the performance or observance by any Loan Party and any Lender of any of the terms, conditions, covenants, or agreements of this Agreement or any of the other Loan Documents; (iii) responsible for or have any duty to ascertain or monitor or to inquire into whether a condition set forth in any Loan Document is satisfied, or waived, including any condition set forth in Article 4 hereof; (iv) responsible or have any obligation to any other Lender for the state or condition of any properties of the Loan Parties constituting Collateral for the Obligations or any information contained in the books or records of the Loan Parties; (v) responsible or have any obligation to any other Lender for the validity, enforceability, collectability, effectiveness or genuineness of this Agreement or any other Loan Document or any other certificate, document or instrument furnished in connection therewith; (vi) liable with respect to or arising out of any assignment or participation of the Obligations, or disclosure of any information, to any Lender or such Lender's representatives, Approved Funds or Affiliates; or (vii) responsible or have any obligation to any other Lender to assure that the Collateral exists or is owned by the Loan Parties or is cared for, protected, or insured or has been encumbered, or that the Liens granted to the Administrative Agent therein have been properly or sufficiently or lawfully created, perfected (or continue to be perfected), protected, or enforced or are entitled to any particular priority, or to exercise at all or in any particular manner or under any duty of care, disclosure, or fidelity, or to continue exercising, any of the rights, authorities, and powers granted or available to the Administrative Agent pursuant to any of the Loan Documents. In addition to and not in limitation of the foregoing, it is understood and agreed that in respect of the Collateral, or any act, omission, or event related thereto, the Administrative Agent may act in any manner it may deem appropriate, in its sole discretion, given the Administrative Agent's own interest in the Collateral in its capacity as one of the Lenders and that the Administrative Agent shall have no other duty or liability whatsoever to any Secured Party as to any of the foregoing, including, without limitation, the preparation, form or filing of any Uniform Commercial Code financing statement, amendment or continuation or of any other type of document related to the creation, perfection, continuation or priority of any Lien as to any property of the Loan Parties.

**11.04 Reliance by Administrative Agent.** (a) The Administrative Agent shall be entitled to rely, and shall be fully protected in relying, upon any writing, communication, signature, resolution, representation, notice, consent, certificate, affidavit, letter, telegram, facsimile, telex or telephone message, electronic mail message, statement or other document or conversation believed by it to be genuine and correct and to have been signed, sent or made by the proper Person or Persons, and upon advice and statements of legal counsel (including counsel to any Loan Party), independent accountants and other experts selected by the Administrative Agent. The Administrative Agent shall be fully justified in failing or refusing to take any action under any Loan Document unless it shall first receive such advice or concurrence of the Required Lenders as it deems appropriate and, if it so requests, it shall first be indemnified to its satisfaction by the Secured Parties against any and all liability and expense which may be incurred by it by reason of taking or continuing to take any such action. The Administrative Agent shall in all cases be fully protected in acting, or in refraining from acting, under this Agreement or any other Loan Document in accordance with a request or consent of the Required Lenders (or such greater number of Lenders as may be expressly required hereby in any instance) and such request and any action taken or failure to act pursuant thereto shall be binding upon all the Lenders. Notwithstanding the foregoing, the Administrative Agent shall not be

required to take, or to omit to take, any action that is, in the opinion of the Administrative Agent or its counsel, contrary to any Loan Document or applicable Requirement of Law.

(b) For purposes of determining compliance with the conditions specified in Article 4, each Lender that has signed this Agreement (or an addendum or joinder to this Agreement) shall be deemed to have consented to, approved or accepted or to be satisfied with, each document or other matter required hereunder to be consented to or approved by or acceptable or satisfactory to a Lender unless the Administrative Agent shall have received notice from such Lender prior to the proposed Closing Date specifying its objection thereto.

**11.05 Notice of Default.** The Administrative Agent shall not be deemed to have knowledge or notice of the occurrence of any Default and/or Event of Default, unless the Administrative Agent shall have received written notice from a Lender or any Borrower referring to this Agreement, describing such Default or Event of Default and stating that such notice is a “notice of default.” The Administrative Agent will notify the Lenders of its receipt of any such notice. The Administrative Agent shall take such action with respect to such Default and/or Event of Default as may be directed by the Required Lenders in accordance with Article 9, provided, that unless and until the Administrative Agent has received any such direction in accordance with Section 11.04, the Administrative Agent may (but shall not be obligated to) take any action, or refrain from taking any action, with respect to such Default and/or Event of Default as it shall deem advisable or in the best interest of the Lenders.

**11.06 Credit Decision; Disclosure of Information by Administrative Agent.** Each Lender acknowledges that no Agent-Related Person has made any representation or warranty to it, and that no act by any Agent-Related Person hereafter taken, including any consent to and acceptance of any assignment or review of the affairs of any Loan Party or any Affiliate thereof, shall be deemed to constitute any representation or warranty by any Agent-Related Person to any Lender as to any matter, including whether Agent-Related Persons have disclosed material information in their possession. Each Lender represents to the Administrative Agent that it has, independently and without reliance upon any Agent-Related Person and based on such documents and information as it has deemed appropriate, made its own appraisal of and investigation into the business, prospects, operations, property, financial and other condition and creditworthiness of the Loan Parties and their respective Subsidiaries, and all applicable bank or other regulatory Laws relating to the transactions contemplated hereby, and made its own decision to enter into this Agreement and to extend credit to the Borrowers and the other Loan Parties hereunder. Each Lender also represents that it will, independently and without reliance upon any Agent-Related Person and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit analysis, appraisals and decisions in taking or not taking action under this Agreement and the other Loan Documents, and to make such investigations as it deems necessary to inform itself as to the business, prospects, operations, property, financial and other condition and creditworthiness of the Borrowers and the other Loan Parties. Except for notices, reports and other documents expressly required to be furnished to the Lenders by the Administrative Agent herein, no Agent-Related Person shall have any duty or responsibility to provide any Lender with any credit or other information concerning the business, prospects, operations, property, financial and other condition or creditworthiness of any of the Loan Parties or any of their respective Affiliates which may come into the possession of any Agent-Related Person.

**11.07 Indemnification of Administrative Agent.** The Lenders shall indemnify upon demand each Agent-Related Person (to the extent not reimbursed by or on behalf of any Loan Party and without limiting the obligation of any Loan Party to do so), pro rata, and hold harmless each Agent-Related Person from and against any and all Indemnified Liabilities incurred by it; provided, however, that no Lender shall be liable for the payment to any Agent-Related Person of any portion of such Indemnified Liabilities to the extent determined in a final, non-appealable judgment by a court of competent jurisdiction to have resulted primarily from such Agent-Related Person's own gross negligence or willful misconduct; provided, further, that no action taken in furtherance of the directions of the Required Lenders shall be deemed to constitute gross negligence or willful misconduct for purposes of this Section 11.07. Without limitation of the foregoing, each Lender shall reimburse each Agent-Related Person upon demand for its ratable share of any costs or out-of-pocket expenses (including Attorney Costs) incurred by any Agent-Related Person in connection with the preparation, execution, delivery, administration, modification, amendment or enforcement (whether through negotiations, legal proceedings or otherwise) of, or legal advice in respect of rights or responsibilities under, this Agreement, any other Loan Document, or any document contemplated by or referred to herein. The obligations of the Lenders hereunder shall not diminish the obligations of the Borrowers to indemnify and reimburse the Agent-Related Parties for such amounts. The Administrative Agent may in its discretion first seek payment from the Lenders hereunder before seeking payment from the Borrowers for such amounts or may seek payments first from the Borrowers. In any event, any amounts received from Borrowers as reimbursement for amounts already reimbursed by Lenders shall be paid to Lenders in accordance with the terms hereof. The undertaking in this Section 11.07 shall survive the Termination Date and the resignation of the Administrative Agent.

**11.08 Administrative Agent in its Individual Capacity.** Administrative Agent and its Affiliates may make loans to, issue letters of credit for the account of, accept deposits from, acquire equity interests in and generally engage in any kind of banking, trust, financial advisory, underwriting or other business with each of the Loan Parties and their respective Affiliates as though Administrative Agent were not the Administrative Agent hereunder and without notice to or consent of any Secured Party. The Secured Parties acknowledge that, pursuant to such activities, Administrative Agent or its Affiliates may receive information regarding any Loan Party or its Affiliates (including information that may be subject to confidentiality obligations in favor of such Loan Party or such Affiliate) and acknowledge that the Administrative Agent shall be under no obligation to provide such information to them. With respect to its Loans, Administrative Agent and/or its Affiliates (as applicable) shall have the same rights and powers under this Agreement as any other Secured Party and may exercise such rights and powers as though it were not the Administrative Agent, and the terms "Lender" and "Lenders" include the Administrative Agent and/or its Affiliates (as applicable) in its individual capacity.

**11.09 Successor Administrative Agent.** The Administrative Agent may resign as the Administrative Agent upon ten (10) days' notice to the Lenders (or without any such notice if in connection with the consummation of the purchase of certain of the Obligations pursuant an intercreditor arrangement). If the Administrative Agent resigns under this Agreement, the Required Lenders shall appoint from among the Lenders (or the Affiliates thereof) a successor administrative agent for the Lenders, which successor administrative agent shall (unless an Event of Default has occurred and is continuing) be subject to the approval of the Borrower

Representative (which approval shall not be unreasonably withheld or delayed). If no successor administrative agent is appointed prior to the effective date of the resignation of the Administrative Agent, the Administrative Agent may appoint, after consulting with the Lenders, a successor administrative agent from among the Lenders (or the Affiliates thereof). Upon the acceptance of its appointment as successor administrative agent hereunder, the Person acting as such successor administrative agent shall succeed to all the rights, powers and duties of the retiring Administrative Agent and the term "Administrative Agent" shall mean such successor administrative agent, and the retiring Administrative Agent's appointment, powers and duties in such capacities shall be terminated without any other further act or deed on its behalf. The fees payable by Borrowers to a successor Administrative Agent shall be the same as those payable to its predecessor unless otherwise agreed between Borrowers and such successor. After any retiring Administrative Agent's resignation hereunder as the Administrative Agent, the provisions of this Article 11 and Sections 12.04 and 12.05 shall inure to its benefit as to any actions taken or omitted to be taken by it while it was the Administrative Agent under this Agreement or while it was actively engaged in transferring its rights and obligations as Administrative Agent to the successor administrative agent. If no successor administrative agent has accepted appointment as the Administrative Agent by the date ten (10) days following a retiring Administrative Agent's notice of resignation, the retiring Administrative Agent's resignation shall nevertheless thereupon become effective and the Required Lenders shall perform all of the duties of the Administrative Agent hereunder until such time, if any, as the Required Lenders appoint a successor administrative agent as provided for above. No Person may be removed from its capacity as Administrative Agent.

**11.10 Administrative Agent May File Proofs of Claim.** In case of the pendency of any receivership, insolvency, liquidation, bankruptcy, reorganization, arrangement, adjustment, composition or other judicial proceeding relative to any Loan Party, the Administrative Agent (irrespective of whether the principal of any Loan shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Administrative Agent shall have made any demand on the Loan Parties) shall be entitled and empowered, by intervention in such proceeding or otherwise:

(a) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans and all other Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Secured Parties and the Administrative Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of the Secured Parties and the Administrative Agent and their respective agents and counsel and all other amounts due the Secured Parties and the Administrative Agent under Sections 2.09 and 12.04) 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 Secured Party to make such payments to the Administrative Agent and, in the event that the Administrative Agent shall consent to the making of such payments directly to the Secured Parties, to pay to the Administrative Agent any

amount due for the reasonable compensation, expenses, disbursements and advances of the Administrative Agent and its agents and counsel, and any other amounts due the Administrative Agent under Sections 2.09 and 12.04.

**11.11 Collateral and Guaranty Matters.** The Secured Parties irrevocably authorize the Administrative Agent, at its option and in its discretion, to release any Guarantor and any Lien on any Collateral granted to or held by the Administrative Agent under any Loan Document (i) upon the Termination Date, (ii) that is transferred or to be transferred as part of or in connection with any Disposition permitted hereunder or under any other Loan Document, or (iii) as approved in accordance with Section 12.01, and to execute in connection with such events such payoff letters and related documentation in form and substance reasonably satisfactory to Administrative Agent as shall in Administrative Agent's reasonable discretion be deemed advisable. In connection with any such release, each Lender hereby directs the Administrative Agent, and the Administrative Agent agrees that it shall, upon the reasonable request of the Borrower Representative (and except in the case where the Termination Date has actually occurred, so long as no Default or Event of Default then exists), to (i) promptly execute and deliver or file such documents and perform other actions reasonably requested to release the guaranties and the Liens and (ii) deliver to the Loan Parties any portion of such Collateral so released in the possession of the Administrative Agent or as otherwise required under any Loan Documents, subordination agreement, intercreditor agreement or applicable Law, in each case without recourse, representation or warranty. Upon request by the Administrative Agent at any time, the Required Lenders will confirm in writing the Administrative Agent's authority to release or subordinate its interest in particular types or items of Property, pursuant to this Section 11.11.

The Secured Parties hereby irrevocably authorize Administrative Agent (at the request of the Required Lenders), to credit bid all or any portion of the Obligations (including, 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, including under Section 363, 1123 or 1129 of the Bankruptcy Code, 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) Administrative 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 Capital Stock or debt instruments of the acquisition vehicle or vehicles that are used to consummate such purchase). In connection with any such bid Administrative Agent shall be authorized (i) 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 Administrative Agent with respect to such acquisition vehicle or vehicles, including any disposition of the assets or Capital Stock 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 clauses (a) through (h) of Section 12.01 of this Agreement (provided that, in any event, the consent of each Lender shall be required for any amendment that would treat or attempts to treat a Lender or a class of Lenders in a manner different than all other Lenders), and (iii) 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 Capital Stock 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.

**11.12 Other Agents; Arrangers and Managers.** None of the Lenders or other Persons identified on the facing page or signature pages of this Agreement as a “syndication agent,” “documentation agent,” “co-agent,” “book manager,” “lead manager,” “arranger,” “lead arranger” or “co-arranger” (each, an “Additional Titled Agent”) shall have any right, power, obligation, liability, responsibility or duty under this Agreement other than, in the case of such Lenders, those applicable to all Lenders as such. Without limiting the foregoing, no Additional Titled Agent shall have or be deemed to have any fiduciary relationship with any Lender. Each Lender acknowledges that it has not relied, and will not rely, on any Additional Titled Agent in deciding to enter into this Agreement or in taking or not taking action hereunder. At any time that any Lender serving as an Additional Titled Agent shall have transferred to any other Person (other than any Affiliates) all of its interests in the Loans, such Lender shall be deemed to have concurrently resigned as such Additional Titled Agent.

**11.13 Additional Secured Parties.** The benefit of the provisions of the Loan Documents directly relating to the Collateral or any Lien granted thereunder shall extend to and be available to any Secured Party that is not a Lender as long as, by accepting such benefits, such Secured Party agrees, as among the Administrative Agent and all other Secured Parties, that such Secured Party is bound by (and, if requested by the Administrative Agent, shall confirm such agreement in a writing in form and substance acceptable to the Administrative Agent) this Article 11, Section 2.13 (Sharing of Payments), Section 12.08 (Confidentiality) and Section 12.09 (Setoff) as each may be in effect from time to time, and the decisions and actions of the Administrative Agent and the Required Lenders (or, where expressly required by the terms of this Agreement, a greater proportion of the Lenders) to the same extent a Lender is bound, provided, however, that, notwithstanding the foregoing, (a) such Secured Party shall be bound by Section 11.07 (Indemnification of Administrative Agent) only to the extent of liabilities, costs and expenses with respect to or otherwise relating to the Collateral held for the benefit of such Secured Party, in which case the obligations of such Secured Party thereunder shall not be limited by any concept of ratability or similar concept, (b) except as set forth specifically herein as to such Secured Party (rather than the Secured Parties generally), each of the Administrative Agent and the Lenders shall be entitled to act at its sole discretion, without regard to the interest of such Secured Party, regardless of whether any Obligation to such Secured Party thereafter remains outstanding, is deprived of the benefit of the Collateral, becomes unsecured or is otherwise affected or put in jeopardy thereby, and without any duty or liability to such Secured Party or any such Obligation and (c) except as set forth specifically herein as to such Secured

Party (rather than the Secured Parties generally), such Secured Party shall not have any right to be notified of, consent to, direct, require or be heard with respect to, any action taken or omitted in respect of the Collateral or under any Loan Document.

**11.14 Exclusive Right to Enforce Rights and Remedies.** Notwithstanding anything to the contrary contained herein or in any other Loan Document, the authority to enforce rights and remedies hereunder and under the other Loan Documents against the Loan Parties or any of them or in respect of the Collateral are hereby granted to, and shall be vested exclusively in, and all actions and Proceedings in connection with any such enforcement shall be instituted and maintained exclusively by, Administrative Agent (or its agents or designees) in accordance with the Loan Documents for the benefit of the applicable Secured Parties; provided that the foregoing shall not prohibit (i) the Administrative Agent from exercising on its own behalf the rights and remedies that inure to its benefit (solely in its capacity as Administrative Agent) hereunder and under the other Loan Documents, (ii) any Lender or Participant from exercising setoff rights in accordance with Section 12.09, (iv) any Lender from filing proofs of claim or appearing and filing pleadings on its own behalf during the pendency of a Proceeding relative to any Loan Party under the Bankruptcy Code or any other Debtor Relief Law or (v) any Lender or other Secured Party from exercising any express right or remedy of such Lender under the Loan Documents where the Administrative Agent does not have the power and authority under the Loan Documents to act on behalf of such Lender or other Secured Party; and provided, further, that if at any time there is no Person acting as the Administrative Agent hereunder and under the other Loan Documents, then (A) the Required Lenders shall have the rights otherwise ascribed to the Administrative Agent pursuant to Section 9.02 and (B) in addition to the matters set forth in Section 11.04 and Section 12.09, any Lender may, with the consent of the Required Lenders, enforce any rights and remedies available to it and as authorized by the Required Lenders.

**11.15 Flood Laws.** Administrative Agent has adopted internal policies and procedures that address requirements placed on federally regulated lenders under the National Flood Insurance Reform Act of 1994 and related legislation (the "Flood Laws"). Administrative Agent may post an E-System (or otherwise distribute to each Lender in the syndicate) documents that it receives in connection with the Flood Laws. However, Administrative Agent reminds each Lender and Participant in the facility that, pursuant to the Flood Laws, each federally regulated Lender (whether acting as a Lender or Participant in the credit facility) is responsible for assuring its own compliance with the flood insurance requirements, and Administrative Agent disclaims any liability in connection with the failure of any such Lender or Participant to comply with flood insurance requirements.

**11.16 Banking Services Obligations.** Except as otherwise expressly set forth herein, no party that provides Banking Services that obtains the benefit of the provisions of Section 9.04, the Guaranty or any Collateral by virtue of the provisions hereof or any Loan Document shall have any right to notice of any action or to consent to, direct or object to any action hereunder or under any other Loan Document or otherwise in respect of the Collateral (including the release or impairment of any Collateral) (or to notice of or to consent to any amendment, waiver or modification of the provisions hereof or of the Guaranty or any Loan Document) other than in its capacity as a Lender and, in such case, only to the extent expressly provided in the Loan Documents. Notwithstanding any other provision of this Article 11 to the contrary, the Administrative Agent shall not be required to verify the payment of, or that other satisfactory

arrangements have been made with respect to, Obligations arising in connection with the Banking Services Obligations except to the extent expressly provided herein and unless the Administrative Agent has received a written designation notice, in form proscribed by the Administrative Agent, of such Obligations, together with such supporting documentation as the Administrative Agent may request, from the party providing Banking Services, (other than in the case where Administrative Agent or its Affiliates is such provider). Administrative Agent shall not be required to verify the payment of, or that other satisfactory arrangements have been made with respect to, Obligations arising in connection with Banking Services Obligations in the case of a Termination Date.

## ARTICLE 12

### MISCELLANEOUS

**12.01 Amendments, Etc.** No amendment or waiver of any provision of any Loan Document (other than the Landlord Agreements, the Deposit Account Control Agreements, the Issuer Documents, agreements hereafter executed solely in respect of the Banking Services Obligations and Schedule 6.18), and no consent to any departure by any Borrower or any other Loan Party therefrom, shall be effective unless in writing executed by (1) in the case of any amendment, consent or waiver to cure any ambiguity, omission, defect or inconsistency or granting a new Lien for the benefit of the Secured Parties or extending any existing Lien over additional property or adding additional Subsidiaries of Holdings or other pledgors as parties thereto, the Administrative Agent and the applicable Borrower or Loan Party, and (2) in the case of any other amendment, consent or waiver, the Required Lenders (or the Administrative Agent with the consent of the Required Lenders) and the applicable Borrower or the applicable Loan Party, as the case may be, and acknowledged by the Administrative Agent, provided, that no such amendment, waiver or consent shall:

(a) extend the expiry or increase the amount of the Commitment of any Lender (or reinstate any Commitment terminated pursuant to Section 9.02) without the written consent of such Lender (it being understood and agreed that a waiver or amendment of any condition precedent set forth in Section 4.02 or of any Default or Event of Default shall not be considered an extension or increase in Commitments of any Lender);

(b) postpone any date fixed by this Agreement or any other Loan Document for any payment of principal (excluding mandatory prepayments), Unreimbursed Amounts, interest, fees or other amounts due to the Lenders (or any of them) hereunder or under any other Loan Document without the written consent of each Lender directly affected thereby;

(c) reduce or forgive the principal of, or the rate of interest specified herein on, any Loan or Unreimbursed Amounts, or any fees or other amounts payable hereunder or under any other Loan Document without the written consent of each Lender directly affected thereby, provided, that only the consent of the Required Lenders shall be necessary to amend the definition of "Default Rate" or to waive any obligation of the Borrowers to pay interest at the Default Rate;

(d) change Section 2.13 or Section 9.04 or the definition of “Pro Rata Share” in a manner that would alter the sharing or application of payments required thereby without the written consent of each Lender;

(e) change any provision of this Section 12.01 or the definition of “Required Lenders” or any other provision of any Loan Document specifying the number or percentage of Lenders required to amend, waive or otherwise modify any rights thereunder or make any determination or grant any consent thereunder without the written consent of each Lender;

(f) release all or substantially all of the Collateral, consensually subordinate the Liens of Administrative Agent on the Collateral or consensually subordinate the Obligations to other indebtedness or liabilities (except in accordance with financing to one or more Loan Parties, pursuant to Section 364 of the Bankruptcy Code or any similar proceeding under any Debtor Relief Law) without the written consent of each Lender; or

(g) unless otherwise permitted under this Agreement on the date hereof, release any Borrower; or release all or substantially all of the Guarantors from their obligations under the Loan Documents (or otherwise limit such Guarantors’ liability) without the written consent of each Lender directly affected thereby;

and, provided further, that (i) no amendment, waiver or consent shall, unless in writing and executed by the Administrative Agent in addition to the Lenders required above, affect the rights or duties of the Administrative Agent under this Agreement or any other Loan Document (ii) agreements hereafter executed solely in respect of the Banking Services Obligations, the Landlord Agreements, the Deposit Account Control Agreements and the Issuer Documents may be amended, or rights or privileges thereunder waived, in a writing executed only by the required parties thereto. Notwithstanding anything to the contrary herein, no Defaulting Lender shall have any right to approve or disapprove any amendment, waiver or consent hereunder, except that (i) the Revolving Commitment of such Lender may not be increased without the consent of such Defaulting Lender and (ii) any waiver, amendment or modification requiring the consent of each affected Lender which affects such Defaulting Lender more adversely than other affected Lenders shall require the consent of such Defaulting Lender.

Each waiver or consent under any Loan Document shall be effective only in the specific instance and for the specific purpose for which it was given.

## **12.02 Notices and Other Communications; Facsimile Copies.**

(a) General. Unless otherwise expressly provided herein, all notices and other communications provided for hereunder shall be in writing (which includes messages sent by electronic mail or other electronic transmission). All such written notices shall be mailed, faxed or delivered to the applicable address, facsimile number or (subject to subsection (c) below) electronic mail address, and all notices and other communications expressly permitted hereunder to be given by telephone shall be made to the applicable telephone number, as follows:

(i) if to the Borrower Representative or the Loan Parties, to the Borrower Representative, at the address, facsimile number, electronic mail address or telephone number specified for the Borrower Representative on Schedule 12.02 or to

such other address, facsimile number, electronic mail address or telephone number as shall be designated by such party in a notice to the Administrative Agent;

(ii) if to the Administrative Agent, to the address, facsimile number, electronic mail address or telephone number specified for such Person on Schedule 12.02 or to such other address, facsimile number, electronic mail address or telephone number as shall be designated by such party in a notice to the Borrower Representative and Administrative Agent; and

(iii) if to any other Lender, to the address, facsimile number, electronic mail address or telephone number specified in its Administrative Questionnaire or to such other address, facsimile number, electronic mail address or telephone number as shall be designated by such party in a notice to the Borrower Representative and the Administrative Agent.

All such notices and other communications shall be deemed to be delivered or made upon the earlier to occur of (i) actual receipt by the relevant party hereto and (ii) (A) if delivered by hand or by courier, when received by the relevant party hereto; (B) if delivered by mail, four (4) Business Days after deposit in the mails, postage prepaid; (C) if delivered by facsimile, when sent and receipt has been confirmed by telephone; and (D) if delivered by electronic mail (which form of delivery is subject to the provisions of subsection (c) below), when delivered, provided, however, that notices and other communications to the Administrative Agent pursuant to Article 2 shall not be effective until actually received by such Person. In no event shall a voicemail message be effective as a notice, communication or confirmation hereunder.

(b) Effectiveness of Facsimile Documents and Signatures. Loan Documents may be transmitted and/or executed by facsimile or by electronic mail. The effectiveness of any such documents and signatures shall, subject to applicable Law, have the same force and effect as manually signed originals and shall be binding on all Loan Parties, the Administrative Agent and the Lenders. The Administrative Agent may also require that any such documents and signatures be confirmed by a manually signed original thereof, provided, that the failure to request or deliver the same shall not limit the effectiveness of any facsimile document or signature.

(c) Limited Use of Electronic Mail. Electronic mail and internet and intranet websites may be used only to distribute routine communications, such as financial statements and other information as provided in Section 6.01 and Section 6.02, and to deliver any other notices and other communications and to distribute Loan Documents for execution by the parties thereto, and may not be used for any other purpose without the consent of the Administrative Agent.

(d) Reliance by Administrative Agent and Lenders. The Administrative Agent and the Lenders shall be entitled to rely and act upon, and shall not incur any liability for relying upon, any notices (including telephonic Loan Notices) purportedly delivered by or on behalf of any Loan Party or the Borrower Representative even if (i) such notices were not made in a manner specified herein, were incomplete or were not preceded or followed by any other form of notice specified herein, or (ii) the terms thereof, as understood by the recipient, varied

from any confirmation thereof. The Borrowers shall indemnify each Agent-Related Person and each Lender from all losses, costs, expenses and liabilities resulting from the reliance by such Person on each notice purportedly delivered by or on behalf of any Loan Party or Borrower Representative. All telephonic notices to and other communications with the Administrative Agent may be recorded by the Administrative Agent, and each of the parties hereto hereby consents to such recording.

(e) Public Materials. Borrowers hereby acknowledges that (i) the Administrative Agent will make available to the Lenders materials and/or information provided by or on behalf of Loan Parties hereunder (collectively, "Borrower Materials") by posting the Borrower Materials on any E-System and (ii) certain of the Lenders (each, a "Public Lender") may have personnel who do not wish to receive material non-public information with respect to Holdings or its Subsidiaries, or the respective securities of any of the foregoing, and who may be engaged in investment and other market-related activities with respect to such Persons' securities. Borrowers hereby agree that so long as a Loan Party is the issuer of any outstanding debt or equity securities that are registered or issued pursuant to a Rule 144A private offering or is actively contemplating issuing any such securities it will, if requested by the Administrative Agent, use commercially reasonable efforts to identify that portion of the Borrower Materials that may be distributed to the Public Lenders and that (w) all such Borrower Materials shall be clearly and conspicuously marked "PUBLIC" which, at a minimum, shall mean that the word "PUBLIC" shall appear prominently on the first page thereof; (x) by marking Borrower Materials "PUBLIC," the Loan Parties shall be deemed to have authorized the Administrative Agent and the Lenders to treat such Borrower Materials as not containing any material non-public information (although it may be sensitive and proprietary) with respect to any Loan Party or its securities for purposes of United States Federal and state securities laws (provided, however, that to the extent such Borrower Materials constitute Information, they shall be treated as set forth in Section 12.08); (y) all Borrower Materials marked "PUBLIC" are permitted to be made available through a portion of any E-System designated "Public Side Information"; and (z) the Administrative Agent shall treat any Borrower Materials that are not marked "PUBLIC" as being suitable only for posting on a portion of any E-System not designated "Public Side Information." Notwithstanding the foregoing, Borrowers shall be under no obligation to mark the Borrower Materials "PUBLIC."

**12.03 No Waiver; Cumulative Remedies**. No failure by any Lender or the Administrative Agent to exercise, and no delay by any such Person in exercising, any right, remedy, power or privilege hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges herein provided are cumulative and not exclusive of any rights, remedies, powers and privileges provided by law.

**12.04 Attorney Costs, Expenses**. Any action taken by any Loan Party under or with respect to any Loan Document, even if required under any Loan Document or at the request of any Secured Party, shall be at the expense of such Loan Party, and no Secured Party shall be required under any Loan Document to reimburse any Loan Party therefor except as expressly provided therein. The Borrowers agree (a) to pay or reimburse the Administrative Agent for all reasonable and documented out-of-pocket costs and expenses incurred in connection with the

development, preparation, negotiation and execution of this Agreement and the other Loan Documents, the Interim Order, the Final Order and any amendment, waiver, consent or other modification of the provisions hereof and thereof (whether or not the transactions contemplated hereby or thereby are consummated) and the Cases, and the consummation, syndication and administration of the transactions contemplated hereby and thereby, including all reasonable and documented out-of-pocket Attorney Costs and reasonable and documented out-of-pocket costs and expenses in connection with the use of IntraLinks, SyndTrak or other similar information transmission systems in connection with this Agreement (each being an “E-System”), and (b) to pay or reimburse the Administrative Agent and each Lender for all documented out-of-pocket costs and expenses incurred in connection with the enforcement, attempted enforcement, or preservation of any rights following the occurrence and during the continuance of a Default or an Event of Default or the exercise of remedies under this Agreement or the other Loan Documents (including all such documented costs and expenses incurred during any “workout” or restructuring in respect of the Obligations and during any legal proceeding, including any proceeding under any Debtor Relief Law) or under the Interim Order or Final Order or otherwise related to the Cases, including all Attorney Costs. The foregoing costs and expenses shall include all due diligence, search, filing, recording, title insurance and appraisal charges and fees and taxes related thereto, and other out-of-pocket expenses (including travel, courier, reproduction, printing and delivery expenses) incurred by the Administrative Agent and the cost of independent public accountants, consultants and other outside experts retained by the Administrative Agent or any Lender. All amounts due under this Section 12.04 shall be deemed part of the Obligations when incurred and shall be payable within five (5) Business Days after demand therefor. The agreements in this Section 12.04 shall survive the Termination Date.

**12.05 Indemnification by the Loan Parties.** The Loan Parties agree jointly and severally to indemnify and hold harmless each Agent-Related Person, each Lender, each Secured Party and the respective Affiliates of all such Persons, and the directors, officers, employees, counsel, trustees, advisors, agents, financing sources, managed funds, controlling persons, attorneys-in-fact, and members of all of the foregoing Persons (collectively, the “Indemnitees”) from and against any and all liabilities, obligations, losses, damages, penalties, claims, demands, actions, judgments, suits, costs, expenses and disbursements (including Attorney Costs incurred by each Indemnatee and other costs of investigation or defense, including those incurred upon any appeal), of any kind or nature whatsoever which may at any time be imposed on, incurred by or asserted against any such Indemnatee in any way relating to or arising out of or in connection with (a) the Interim Order, the Final Order, the Cases or the execution, delivery, enforcement, performance, syndication or administration of any Loan Document or any other agreement, letter or instrument delivered in connection with the transactions contemplated thereby or the consummation of the transactions contemplated thereby, (b) any Commitment or Loan or the use or proposed use of the proceeds therefrom, (c) any actual or alleged presence or release of Hazardous Materials on or from any property currently or formerly owned or operated by any Borrower, any Subsidiary or any other Loan Party, or any Environmental Liability related in any way to any Borrower, any Subsidiary or any other Loan Party, or (d) any actual or prospective claim, litigation, investigation or Proceeding relating to any of the foregoing, whether based on contract, tort or any other theory (including any investigation of, preparation for, or defense of any pending or threatened claim, investigation, litigation or proceeding), whether brought by a third party or by any Loan Party, and regardless of whether any Indemnatee is a party thereto (all the foregoing, collectively, the “Indemnified Liabilities”), provided, that such indemnity shall

not, as to any Indemnitee, be available to the extent that such liabilities, obligations, losses, damages, penalties, claims, demands, actions, judgments, suits, costs, expenses or disbursements are determined by a court of competent jurisdiction by final and non-appealable judgment to have resulted primarily from the gross negligence, bad faith or willful misconduct of such Indemnitee (or such Indemnitee's officers, directors, employees or agents). No Indemnitee shall be liable for any damages arising from the use by others of any information or other materials obtained through the internet or any E-System in connection with this Agreement, **nor shall any Indemnitee have any liability for any punitive, special, indirect or consequential damages relating to this Agreement or any other Loan Document or arising out of its activities in connection herewith or therewith (whether arising or occurring before or after the Closing Date)**. All amounts due under this Section 12.05 shall be payable within ten (10) Business Days after demand therefor. The agreements in this Section 12.05 shall survive the resignation of the Administrative Agent, the replacement of any Lender and the Termination Date. To the extent that the indemnification set forth in this Section 12.05 may be unenforceable, each Loan Party shall contribute the maximum portion which it is permitted to pay and satisfy under applicable Law to the payment and satisfaction of all such indemnified liabilities incurred by the Indemnitees or any of them. Without limiting the generality of any provision of this Section 12.05, to the fullest extent permitted by law, each Loan Party hereby waives all rights for contribution or any other rights of recovery with respect to liabilities, losses, damages, costs and expenses arising under or relating to Environmental Laws that it might have by statute or otherwise against any Indemnitee, except to the extent that such items are determined by a final and non-appealable decision of a court of competent jurisdiction to have resulted primarily from the gross negligence or willful misconduct of such Indemnitee. No Loan Party shall, without the prior written consent of each applicable Indemnitee, effect any settlement of any pending or threatened proceedings in respect of which indemnity could have been sought hereunder by such Indemnitee unless such settlement (i) includes an unconditional release of such Indemnitee in form and substance reasonably satisfactory to such Indemnitee from all liability or claims that are the subject matter of such proceedings and (ii) does not include any statement as to or any admission of fault, culpability, wrong doing or a failure to act by or on behalf of any Indemnitee. This Section 12.05 shall not apply with respect to Taxes other than any Taxes that represent liabilities, obligations, losses, damages, penalties, claims, demands, actions, judgments, suits, costs, expenses and disbursements arising from any non-Tax related Indemnified Liability.

**12.06 Payments Set Aside.** To the extent that any payment by or on behalf of any Loan Party is made to the Administrative Agent or any Lender, or the Administrative Agent or any Lender exercises its right of set-off, and such payment or the proceeds of such set-off or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by the Administrative Agent or such Lender in its discretion) to be repaid or turned-over to a trustee, receiver or any other party, in connection with any proceeding under any Debtor Relief Law or otherwise, then (a) to the extent of such recovery, the obligation or part thereof originally intended to be satisfied (along with any Lien previously terminated with respect to such obligation) shall be revived and continued in full force and effect as if such payment had not been made or such set-off had not occurred, the Termination Date had not occurred and such termination had not occurred, and (b) each Lender severally agrees to pay to the Administrative Agent upon demand its applicable share of any amount so recovered from or repaid by the Administrative Agent, plus interest thereon from the date of such demand to the date such payment is made at a rate per annum equal to the Federal

Funds Rate from time to time in effect. The provisions of this Section 12.06 shall survive any termination of this Agreement.

### **12.07 Successors and Assigns.**

(a) Successors and Assigns Generally. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, the Indemnitees and to the extent provided in Section 11.13 each other Secured Party, provided that (x) neither any Borrower nor any other Loan Party may assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the Administrative Agent and each Lender and (y) no Lender may assign or otherwise transfer any of its rights or obligations hereunder except (i) to an assignee in accordance with the provisions of subsection (b) of this Section 12.07, (ii) by way of participation in accordance with the provisions of subsection (d) of this Section 12.07 or (iii) by way of pledge or assignment of a security interest subject to the restrictions of subsection (f) of this Section 12.07 (and any other attempted assignment or transfer by any party hereto shall be null and void). Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants to the extent provided in subsection (d) of this Section 12.07, the Indemnitees and to the extent provided in Section 11.13 each other Secured Party) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) Assignments by Lenders. Any Lender may at any time assign to one or more assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitment and the Loans at the time owing to it), provided that any such assignment shall be subject to the following conditions:

(i) Minimum Amounts.

(A) in the case of an assignment of the entire remaining amount of the assigning Lender's Commitment and the Loans at the time owing to it or in the case of an assignment to a Lender, an Affiliate of a Lender or an Approved Fund of a Lender, no minimum amount need be assigned; and

(B) in any case not described in subsection (b)(i)(A) of this Section 12.07, the aggregate amount of the Commitment (which for this purpose includes Loans outstanding thereunder) or, if the applicable Commitment is not then in effect, the principal outstanding balance of the 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 Administrative Agent or, if "Trade Date" is specified in the Assignment and Assumption, as of the Trade Date) shall not be less than \$1,000,000, unless the Administrative Agent consents (each such consent not to be unreasonably withheld, conditioned or delayed).

(ii) Proportionate Amounts. Each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations

under this Agreement with respect to the Loan or the Commitment assigned, except that this clause (ii) shall not prohibit any Lender from assigning all or a portion of its rights and obligations among separate tranches or facilities on a non-*pro rata* basis.

(iii) Required Consents. No consent shall be required for any assignment except to the extent required by subsection (b)(i)(B) of this Section 12.07 and, in addition:

(A) the consent of the Borrower Representative shall not be required; and

(B) the consent of the Administrative Agent shall be required for assignments in respect of any Revolving Exposure if such assignment is to a Person that is not a Lender with a Revolving Commitment or an Approved Fund or Affiliate with respect to such assigning Lender, provided that Administrative Agent's consent, shall be required if the proposed assignee Lender is a Defaulting Lender.

(iv) Assignment and Assumption. The parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Assumption, together with a processing and recordation fee of \$3,500 (unless waived by the Administrative Agent at its sole option), and the assignee, if it is not a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire.

(v) No Assignment to certain Persons. No such assignment may be made to any Sponsor, any Loan Party, or any Defaulting Lender or any of their respective Affiliates or Subsidiaries. No such assignment shall be made to a natural person.

Subject to acceptance and recording thereof by the Administrative Agent pursuant to subsection (c) of this Section 12.07, from and after the effective date specified in each Assignment and Assumption, the assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto) but shall continue to be entitled to the benefits of Sections 3.01, 3.04, 3.05, 12.04 and 12.05 with respect to facts and circumstances occurring prior to the effective date of such assignment. Upon request of the assignee Lender made itself or through the Administrative Agent, the Borrowers (at their expense) shall execute and deliver a Note to the assignee Lender. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this subsection shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with subsection (d) of this Section 12.07.

For purposes of determining compliance with Sections 12.07(b)(v) through 12.07(b)(vi) above, the Administrative Agent and assigning Lender may rely upon the representations and warranties of the proposed assignee Lender; it being agreed that neither the Administrative Agent nor any assigning Lender shall have any duty of inquiry to determine such compliance.

(c) Register. The Administrative Agent, acting solely for this purpose as a non-fiduciary agent of the Borrowers (the "Registrar"), shall maintain at the Administrative Agent's Office a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Commitments of, the principal amounts (and stated interest) of the Loans owing to, and the Letter of Credit Liabilities held by, each Lender pursuant to the terms hereof from time to time (the "Register"). No assignment or transfer of a Loan or a Commitment (other than a pledgee described in subsection (f) below) shall be effective unless and until registered in the Register. The entries in the Register shall be conclusive, and the Borrowers, the Administrative Agent and the Lenders shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary, provided that, failure to make any such recordation, or any error in such recordation, shall not affect any Lender's Commitments or any Borrower's or other Loan Party's Obligations in respect of any Loan or Letter of Credit. The Register shall be available for inspection by any Borrower and any Lender, at any reasonable time and from time to time upon reasonable prior notice. Each Borrower hereby designates the entity serving as the Administrative Agent to serve as such Borrower's non-fiduciary agent solely for purposes of maintaining the Register as provided in this Section 12.07, and each Borrower hereby agrees that the entity serving as Registrar and its Affiliates, and their respective officers, directors, employees and agents shall constitute Indemnitees under Section 12.05. At the written request of the registered Lender, the Registrar shall note a collateral assignment of a Loan on the Register as described in subsection (f) below and, provided that the Registrar has received the name and address of such collateral assignee, the Registrar (i) shall not permit any further transfers of the Loan on the Register absent receipt of written consent to such transfers from such collateral assignee and (ii) shall record the transfer of the Loan on the Register to such collateral assignee (or such collateral assignee's designee, nominee or assignee) upon written request by such collateral assignee and compliance with the other provisions of this Agreement governing collateral assignments.

(d) Participations. Any Lender may at any time, without the consent of, or notice to, the Borrower Representative, any Loan Party or the Administrative Agent sell participations to any Person (other than a natural person or any Loan Party, Sponsor, any holder (or agent for such holder) of any Subordinated Indebtedness or Intercreditor Agreement Indebtedness or any of its Affiliates or Subsidiaries) (each, a "Participant") in all or a portion of such Lender's rights and/or obligations under this Agreement, provided that (i) such Lender's obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (iii) each Borrower, each other Loan Party, the Administrative Agent and the Lenders and the L/C Issuer shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement.

Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and 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 first proviso of Section 12.01 (clauses (a) through (g)) that affects such Participant. Subject to subsection (e) of this Section, each Borrower and each other Loan Party agrees that each Participant shall be entitled to the benefits of Sections 3.01, 3.04 and 3.05 to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to subsection (b) of this Section. To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 12.09 as though it were a Lender, provided such Participant agrees to be subject to Section 2.13 as though it were a Lender.

Each Lender that sells a participation shall acting solely for this purpose as a non-fiduciary agent of the Borrowers, maintain a register on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each Participant's interest in the Loans or other obligations under 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 or other Obligations under any Loan Document) to any Person except to the extent that such disclosure is necessary to establish that such Commitment, Loan or other Obligation is in registered form under Treasury Regulation Section 5f.103-1(c). 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 Administrative Agent (in its capacity as Administrative Agent) shall have no responsibility for maintaining a Participant Register.

(e) Limitations upon Participant Rights. A Participant shall not be entitled to receive any greater payment under Section 3.01 or 3.04 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 subject to replacement pursuant to Section 12.15 in the event it exercises such rights and except to the extent such entitlement to receive a greater payment results from a Change in Law that occurs after the Participant acquired the applicable participation. In addition to the foregoing limitation, a Participant that would be a Foreign Lender if it were a Lender shall not be entitled to the benefits of Section 3.01 unless such Participant agrees to comply with Section 3.01 as though it were a Lender by providing any required documentation to the Lender granting such participation.

(f) Certain Pledges. Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank and any pledge to a trustee as security for the benefit of the noteholders and other security holders or creditors of a Lender, provided that no such pledge or assignment shall release such Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto until the provisions of this Section regarding assignment are satisfied with respect to such pledge or assignment.

(g) Lender Securitization. In addition to any other assignment permitted pursuant to this Section, the Loan Parties hereby agree that (i) the Lenders, their Affiliates and Approved Funds (the “Lender Parties”) may sell or securitize the Loans (a “Lender Securitization”) through the pledge of the Loans as collateral security for loans to a Lender Party or the assignment or issuance of direct or indirect interests in the Loans (such as, for instance, collateralized loan obligations), and (ii) such Lender Securitization may be rated by a Rating Agency, provided that the consent of the Borrower Representative (such consent not to be unreasonably withheld, conditioned or delayed) to the assignment or issuance of direct or indirect interests in the Loans shall be required unless an Event of Default has occurred and is continuing at the time of such assignment or issuance, or such assignment or issuance is to a Lender Party or a Person Controlled by a Lender Party (provided, further, that such consent shall be deemed given if Administrative Agent has not received an objection to any such consent or issuance in writing within five (5) Business Days after the Borrower Representative’s receipt of notice of such proposed assignment or issuance). The Loan Parties shall reasonably cooperate with the Lender Parties to effect the Lender Securitization, including providing such information as may be reasonably requested by the Lenders or Rating Agencies in connection with the rating of the Loans or the Lender Securitization, provided that (i) no costs incurred by the Lender Parties in connection with such Lender Securitization shall be reimbursable by the Loan Parties and (ii) the Loan Parties shall not be required to enter into any amendment or additional documentation that adversely affects the rights or the obligations, of Borrowers under the Loan Documents or changes or affects in a manner adverse to the Borrowers the financial terms of the Loans, in each case, as determined by the Borrower Representative in its sole discretion.

(h) Consent to Disclosure; Cooperation of Loan Parties. Subject to the provisions of Section 12.08, each Loan Party authorizes each Lender to disclose to any prospective participant or assignee of a Commitment or Loan, any and all information in such Lender’s possession concerning the Loan Parties and their financial affairs which has been delivered to such Lender by or on behalf of the Loan Parties pursuant to this Agreement, or which has been delivered to such Lender by or on behalf of the Loan Parties in connection with such Lender’s credit evaluation of the Loan Parties prior to entering into this Agreement. If necessary, each Loan Party agrees to execute any documents (including new Revolving Notes) reasonably required to effectuate and acknowledge each assignment of a Commitment or Loan to an assignee in accordance with Section 12.07.

### **12.08 Confidentiality**

(a) Each Loan Party acknowledges that (i) from time to time financial advisory, investment banking and other services may be offered or provided to it (in connection with this Agreement or otherwise) by each Lender or by one or more affiliates of such Lender and (ii) information delivered to each Lender by the Loan Parties may be provided to each such affiliate, it being understood that any such affiliate receiving such information shall be bound by the provisions of Section 12.08(b) as if it were a Lender under this Agreement.

(b) Each of the Administrative Agent and each Lender severally (and not jointly) agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (i) to its Affiliates and Approved Funds and to its and its Affiliates’ and Approved Funds’ respective partners, directors, officers, employees, agents,

consultants, counsel, accountants, advisors, controlling persons, managed funds, financing sources, actual and prospective investors, and other representatives (collectively, the “Representatives”) (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), or to Rating Agencies, (ii) to the extent requested or required by any regulatory authority purporting to have jurisdiction over it (including any self-regulatory authority, such as the National Association of Insurance Commissioners), including, without limitation, any regulatory filings, (iii) to the extent required by applicable Laws or by any subpoena or similar judicial or legal process, (iv) to any other party to the Loan Documents, (v) in connection with the exercise of any remedies hereunder or under any other Loan Document or any action or Proceeding relating to this Agreement or any other Loan Document or the enforcement of rights hereunder or thereunder, (vi) to (A) any actual or prospective assignee of a Lender, assignee or successor of Administrative Agent, or pledgee of or Participant in any of its rights or obligations under this Agreement, or (B) any actual or prospective counterparty to any swap or derivative transaction or Banking Services transactions relating to any Borrower or any other Loan Party and its obligations, provided that such parties agree to be bound by confidentiality provisions substantially similar to those hereunder, and to the Representatives of the foregoing parties in clauses (A) and (B), (vii) with the consent of the Borrower Representative, (viii) to the extent such Information (A) becomes publicly available other than as a result of a breach of this Section or (B) becomes available to the Administrative Agent, any Lender, or any of their respective Representatives on a non-confidential basis from a source other than the Loan Parties or (ix) for purposes of establishing a due diligence defense. The terms of this provision shall supersede and replace any previous agreement regarding the confidentiality of the Information and shall terminate upon the termination of the Commitments and the payment of the Obligations.

For purposes of this Section, (i) “Information” means, all information received from any Loan Party or any of its Subsidiaries relating to any Loan Party or any of its Subsidiaries or any of their respective businesses, other than any such information that is available to or in the possession of the Administrative Agent, any other Secured Party or their Representatives on a non-confidential basis prior to disclosure by any Loan Party or any of its Subsidiaries and (ii) “Rating Agencies” means Moody’s, S&P, Fitch Ratings Ltd., or any other nationally recognized rating agency or service. Any Person required to maintain the confidentiality of Information as provided in this Section shall be considered to have complied with its obligation to do so 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 Administrative Agent and each other Secured Party may disclose without limitation of any kind, any information with respect to the “tax treatment” and “tax structure” (in each case, within the meaning of Treasury Regulation Section 1.6011-4) of the transactions contemplated hereby and all materials of any kind (including opinions or other tax analyses) that are provided to the Administrative Agent or such other Secured Party relating to such tax treatment and tax structure, provided that with respect to any document or similar item that in either case contains information concerning the tax treatment or tax structure of the transaction as well as other information, this sentence shall only apply to such portions of the document or similar item that relate to the tax treatment or tax structure of the Loans and transactions contemplated hereby.

(c) No Borrower or Affiliate thereof will issue any press releases or other public disclosure using the name of the Administrative Agent or its Affiliates or any other Lender or its Affiliates or referring to this Agreement or the other Loan Documents without at least three (3) Business Days' prior notice to Administrative Agent or such Lender and without the prior written consent of Administrative Agent or such Lender unless (and only to the extent that) such Borrower or Affiliate is required to do so under law and then, in any event, such Borrower or Affiliate will consult with such Lender before issuing such press release or other public disclosure. The Borrowers hereby consent to the publication by any Secured Party of a tombstone or similar advertising material relating to the financing transactions contemplated by this Agreement (such material may, without limitation, include a description of the Loan Parties and the use of any identifying trademark or other marks of a Loan Party). Each Secured Party reserves the right to provide to industry trade organizations information necessary and customary for inclusion in league table measurements.

**12.09 Set-off.** In addition to any rights and remedies of the Lenders provided by law, upon the occurrence and during the continuance of any Event of Default, each Lender and any Affiliate of a Lender is authorized at any time and from time to time, with the prior written consent of the Administrative Agent, but without prior notice to the Borrowers or any other Loan Party (any such notice being waived by the Borrowers on their own behalf and on behalf of each Loan Party), 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 by, and other indebtedness at any time owing by, such Lender or such Affiliate to or for the credit or the account of the respective Loan Parties against any and all Obligations owing to such Lender hereunder or under any other Loan Document, now or hereafter existing, irrespective of whether or not the Administrative Agent or such Lender shall have made demand under this Agreement or any other Loan Document and although such Obligations may be contingent or unmatured or denominated in a currency different from that of the applicable deposit or indebtedness. Each Lender agrees promptly to notify the Borrowers and the Administrative Agent after any such set-off and application made by such Lender, provided that the failure to give such notice shall not affect the validity of such set-off and application. Any Lender exercising a right to set-off shall purchase for cash (and the other Lenders shall sell) interests in each of such other Lender's Pro Rata Share of the Obligations as would be necessary to cause all Lenders to share the amount so set-off with each other Lender in accordance with their respective Pro Rata Share of the Obligations.

**12.10 Interest Rate Limitation.** Notwithstanding anything to the contrary contained in any Loan Document, the interest paid or agreed to be paid under the Loan Documents shall not exceed the maximum rate of non-usurious interest permitted by applicable Law (the "Maximum Rate"). If the Administrative Agent or any Lender shall receive interest in an amount that exceeds the Maximum Rate, the excess interest shall be applied to the principal of the Loans or, if it exceeds such unpaid principal, refunded to the Borrowers. In determining whether the interest contracted for, charged, or received by the Administrative Agent or a Lender exceeds the Maximum Rate, such Person may, to the extent permitted by applicable Law, (a) characterize any payment that is not principal as an expense, fee, or premium rather than interest, (b) exclude voluntary prepayments and the effects thereof, and (c) amortize, prorate, allocate, and spread in equal or unequal parts the total amount of interest throughout the contemplated term of the Obligations hereunder.

**12.11 Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

**12.12 Integration.** This Agreement, together with the other Loan Documents, comprises the complete and integrated agreement of the parties on the subject matter hereof and thereof and supersedes all prior agreements, written or oral, on such subject matter, including the Commitment Letter (other than in respect of any terms that expressly survive the termination or expiration thereof following the delivery of this Agreement), provided that any provisions relating to the payment of Fees shall survive the effectiveness of this Agreement and the initial Credit Extensions hereunder and shall continue to be in full force and effect after the Closing Date in accordance with their terms. In the event of any conflict between the provisions of this Agreement and those of any other Loan Document, the provisions of this Agreement shall control, provided that the inclusion of supplemental rights or remedies in favor of the Administrative Agent or the Lenders in any other Loan Document shall not be deemed a conflict with this Agreement. Each Loan Document was drafted with the joint participation of the respective parties thereto and shall be construed neither against nor in favor of any party, but rather in accordance with the fair meaning thereof.

**12.13 Survival of Representations and Warranties.** All representations and warranties made hereunder and in any other Loan Document or other document delivered pursuant hereto or thereto or in connection herewith or therewith shall survive the execution and delivery hereof and thereof. Such representations and warranties have been or will be relied upon by the Administrative Agent and each Lender, regardless of any investigation made by the Administrative Agent or any Lender or on their behalf and notwithstanding that the Administrative Agent or any Lender may have had notice or knowledge of any Default at the time of any Credit Extension, and shall continue in full force and effect as long as any Loan or any other Obligation hereunder shall remain unpaid or unsatisfied.

**12.14 Severability.** If any provision of this Agreement or any other Loan Document is held to be illegal, invalid or unenforceable, (a) the legality, validity and enforceability of the remaining provisions of this Agreement and the other Loan Documents shall not be affected or impaired thereby and (b) the parties shall endeavor in good faith negotiations to replace the illegal, invalid or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the illegal, invalid or unenforceable provisions. The invalidity of a provision in a particular jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

**12.15 Replacement of Lenders.** If (i) any Lender requests compensation under Section 3.04, (ii) the Borrowers are required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.01, unless such Lender has waived its right to such additional amount, (iii) a Lender (a “Non-Consenting Lender”) does not consent to a proposed change, waiver, discharge or termination with respect to any Loan Document that has been approved by the Required Lenders as provided in Section 12.01 but requires unanimous consent of all Lenders or all Lenders directly affected thereby (as applicable), (iv) it is, and continues to be, unlawful for any Lender to fund or maintain LIBOR Loans, as provided in Section 3.02, or (v) any Lender is a Defaulting Lender, then

Administrative Agent or the Borrower Representative may, at its sole option, expense and effort, and upon notice to such Lender and, in the case of an election made by the Borrower Representative, the Administrative Agent, require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in, and consents required by, Section 12.07), all of its interests, rights and obligations under this Agreement and the related Loan Documents to an assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment), provided that:

(a) the Borrowers shall have paid to the Administrative Agent the assignment fee specified in Section 12.07(b), if any;

(b) such Lender shall have received payment of an amount equal to the outstanding principal of its Loans and Unreimbursed Amounts, accrued interest thereon, accrued fees and all other amounts payable to it hereunder and under the other Loan Documents (including any amounts under Section 3.05) from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrowers (in the case of all other amounts);

(c) in the case of any such assignment resulting from a claim for compensation under Section 3.04 or payments required to be made pursuant to Section 3.01, such assignment will result in a reduction in such compensation or payments thereafter;

(d) such assignment does not conflict with applicable Laws; and

(e) in the case of any such assignment resulting from a Non-Consenting Lender's failure to consent to a proposed change, waiver, discharge or termination with respect to any Loan Document, the applicable replacement Lender consents to the proposed change, waiver, discharge or termination, provided that the failure by such Non-Consenting Lender to execute and deliver an Assignment and Assumption shall not impair the validity of the removal of such Non-Consenting Lender and the mandatory assignment of such Non-Consenting Lender's Commitments and outstanding Loans pursuant to this Section 12.15 shall nevertheless be effective without the execution by such Non-Consenting Lender of an Assignment and Assumption.

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

#### **12.16 Governing Law.**

(a) THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HERETO AND THERETO SHALL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE STATE OF NEW YORK WITHOUT REGARD TO ANY CONFLICT OF LAWS PRINCIPLES THEREOF THAT WOULD CALL FOR THE APPLICATION OF THE LAWS OF ANY OTHER JURISDICTION.

(b) ALL DIRECT ACTIONS OR PROCEEDINGS BY AND BETWEEN ANY DEBTORS ON THE ONE HAND AND ANY SECURED PARTY ON THE OTHER

HAND, IN ANY WAY, MANNER OR RESPECT, ARISING OUT OF OR FROM, RELATED TO OR IN CONNECTION WITH THIS AGREEMENT, THE OTHER LOAN DOCUMENTS OR THE COLLATERAL (COLLECTIVELY, "SPECIFIED ACTIONS" AND EACH A "SPECIFIED ACTION"), SHALL BE LITIGATED IN THE BANKRUPTCY COURT, EXCEPT THAT IF (I) A SPECIFIED ACTION IS DISMISSED, (II) THE BANKRUPTCY COURT ABSTAINS FROM HEARING A SPECIFIED ACTION OR (III) THE BANKRUPTCY COURT REFUSES TO EXERCISE JURISDICTION OVER A SPECIFIED ACTION, THEN SUCH AFFECTED SPECIFIED ACTION SHALL BE LITIGATED IN COURTS HAVING SITUS WITHIN THE BOROUGH OF MANHATTAN, COUNTY OF NEW YORK, STATE OF NEW YORK. EACH OF THE DEBTORS, AGENT, AND LENDERS HEREBY CONSENTS AND SUBMITS TO THE JURISDICTION OF (X) THE BANKRUPTCY COURT AND (Y) ANY LOCAL, STATE OR FEDERAL COURTS LOCATED WITHIN THE BOROUGH OF MANHATTAN, COUNTY OF NEW YORK, STATE OF NEW YORK. EACH OF THE DEBTORS HEREBY WAIVES ANY RIGHT IT MAY HAVE TO TRANSFER OR CHANGE THE VENUE OF ANY LITIGATION BROUGHT AGAINST ANY DEBTOR BY ANY SECURED PARTY IN ACCORDANCE WITH THIS SECTION.

**12.17 Waiver of Right to Trial by Jury.** EACH PARTY TO THIS AGREEMENT HEREBY EXPRESSLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION ARISING UNDER ANY LOAN DOCUMENT OR IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF THE PARTIES HERETO OR ANY OF THEM WITH RESPECT TO ANY LOAN DOCUMENT, OR THE TRANSACTIONS RELATED THERETO, IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER FOUNDED IN CONTRACT OR TORT OR OTHERWISE; AND EACH PARTY HEREBY AGREES AND CONSENTS THAT ANY SUCH CLAIM, DEMAND, ACTION OR CAUSE OF ACTION SHALL BE DECIDED BY COURT TRIAL WITHOUT A JURY, AND THAT ANY PARTY TO THIS AGREEMENT MAY FILE AN ORIGINAL COUNTERPART OR A COPY OF THIS SECTION WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF THE SIGNATORIES HERETO TO THE WAIVER OF THEIR RIGHT TO TRIAL BY JURY.

**12.18 USA Patriot Act Notice.** Each Lender and the Administrative Agent (for itself and not on behalf of any Lender) hereby notifies the Loan Parties that pursuant to the requirements of the Patriot Act, it is required to obtain, verify and record information that identifies the Loan Parties, which information includes the name and address of the Loan Parties and other information that will allow such Lender or the Administrative Agent, as applicable, to identify the Loan Parties in accordance with the Patriot Act.

**12.19 Nonliability of Lenders.** The relationship between the Loan Parties on the one hand and the Lenders and the Administrative Agent on the other hand shall be solely that of borrower or guarantor, as applicable, and lender. Neither the Administrative Agent nor any Lender or other Secured Party has any fiduciary relationship with or duty to any Loan Party arising out of or in connection with this Agreement or any of the other Loan Documents, and the relationship between the Loan Parties, on the one hand, and the Administrative Agent and the Lenders and other Secured Parties, on the other hand, in connection herewith or therewith is

solely that of debtor and creditor. Neither the Administrative Agent nor any Lender or any other Secured Party undertakes any responsibility to any Loan Party to review or inform any Loan Party of any matter in connection with any phase of any Loan Party's business or operations. The Loan Parties agree that neither the Administrative Agent nor any Lender or other Secured Party shall have liability to any Loan Party (whether sounding in tort, contract or otherwise) for losses suffered by any Loan Party in connection with, arising out of, or in any way related to the transactions contemplated and the relationship established by the Loan Documents, or any act, omission or event occurring in connection therewith, unless it is determined in a final non-appealable judgment by a court of competent jurisdiction that such losses resulted from the gross negligence, bad faith or willful misconduct of the party from which recovery is sought. **NO SECURED PARTY SHALL BE LIABLE FOR ANY DAMAGES ARISING FROM THE USE BY OTHERS OF ANY INFORMATION OR OTHER MATERIALS OBTAINED THROUGH INTRALINKS OR OTHER SIMILAR INFORMATION TRANSMISSION SYSTEMS IN CONNECTION WITH THIS AGREEMENT, NOR SHALL ANY SECURED PARTY HAVE ANY LIABILITY WITH RESPECT TO, AND THE BORROWER REPRESENTATIVE ON BEHALF OF ITSELF AND EACH OTHER LOAN PARTY, HEREBY WAIVES, RELEASES AND AGREES NOT TO SUE FOR ANY SPECIAL, PUNITIVE, INDIRECT OR CONSEQUENTIAL DAMAGES RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR ARISING OUT OF ITS ACTIVITIES IN CONNECTION HERewith OR THEREWITH (WHETHER BEFORE OR AFTER THE CLOSING DATE).** The Loan Parties acknowledge that they have been advised by counsel in the negotiation, execution and delivery of this Agreement and the other Loan Documents to which it is a party. No joint venture is created hereby or by the other Loan Documents or otherwise exists by virtue of the transactions contemplated hereby among the Agents, Lenders or among the Loan Parties and the Lenders and the Agents. The Loan Parties further acknowledge that each Lender or one or more of its affiliates may be a financial and securities firm and that such Lender or such affiliates may from time to time effect transactions, for its own or its affiliates' account or the account of customers, and hold positions in loans, securities or options on loans or securities of a Loan Party and its affiliates and of other companies that may be the subject of the transactions contemplated by this Agreement. The Loan Parties further acknowledge and agree that (a) no fiduciary, advisory or agency relationship between a Loan Party and the Secured Parties (or any of them) is intended to be or has been created in respect of any of the transactions contemplated by this Agreement, irrespective of whether any Secured Party or its affiliates has advised or is advising any Loan Party on other matters, (b) the Secured Parties, on the one hand, and the Loan Parties, on the other hand, have an arms-length business relationship that does not directly or indirectly give rise to, nor does any Loan Party rely on, any fiduciary duty on any Secured Party's part, (c) each Loan Party is capable of evaluating and understanding, and each Loan Party understands and accepts, the terms, risks and conditions of the transactions contemplated by this Agreement and the other Loan Documents, (d) the Secured Parties have not provided any legal, accounting, regulatory or tax advice with respect to the transactions and each Loan Party has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate and it is not relying on CIT for such advice, (e) the Loan Parties have been advised that the Secured Parties and their respective affiliates are or may be engaged in a broad range of transactions that may involve interests that differ from any Loan Party's interests and that the Secured Parties and their respective affiliates have no obligation to disclose such interests and transactions to any

Loan Party by virtue of any fiduciary, advisory or agency relationship, (f) the Loan Parties will not assert and waive, to the fullest extent not prohibited by law, any claims any Loan Party may have against any Secured Party or its affiliates for breach of fiduciary duty or alleged breach of fiduciary duty, and agree that the Secured Parties and their respective affiliates shall have no liability (whether direct or indirect) to any Loan Party in respect of such a fiduciary duty claim or to any Person asserting a fiduciary duty claim on behalf of or in right of any Loan Party, including a Loan Party's stockholders, employees or creditors, and (g) should the Secured Parties or their respective affiliates have any other business with any Loan Party or any Loan Party's affiliates, nothing herein shall limit or otherwise diminish such Loan Party's or such Loan Party's affiliates' obligations thereunder or with respect thereto.

### ARTICLE 13

#### APPOINTMENT OF THE BORROWER REPRESENTATIVE; JOINT AND SEVERAL LIABILITY OF THE BORROWERS; SUBORDINATION

**13.01 Borrower Representative.** Each Borrower hereby irrevocably appoints the Borrower Representative, as the agent for such Borrower on its behalf, to (i) request Loans from the Lenders, (ii) request L/C issuer to issue Letters of Credit and Support Providers to issue Support Agreements, (iii) to give and receive notices under the Loan Documents and (iv) take all other action which the Borrower Representative or the Borrowers are permitted or required to take under this Agreement.

#### **13.02 Joint and Several Liability of Borrowers.**

(a) Joint and Several Liability. Each Borrower hereby agrees that such Borrower is jointly and severally liable for, and hereby absolutely and unconditionally guarantees to the Administrative Agent and other Secured Parties and their respective successors and assigns, the full and prompt payment (whether at stated maturity, by acceleration or otherwise) and performance of, all Obligations owed or hereafter owing to the Administrative Agent and other Secured Parties by each other Borrower. Each Borrower agrees that its guaranty obligation hereunder is a continuing guaranty of payment and performance and not of collection, that its obligations under this Section 13.02 shall not be discharged until payment and performance, in full, of the Obligations has occurred, and that its obligations under this Section 13.02 shall be absolute, unconditional and irrevocable, irrespective of, and unaffected by, (i) the genuineness, validity, regularity, enforceability or any future amendment of, or change in, any Obligation or any agreement, document or instrument to which any Borrower is or may become a party; (ii) the absence of any action to enforce any Obligation or the waiver or consent by the Administrative Agent or any other Secured Party with respect to any of the provisions governing any Obligation; (iii) the insolvency of any Borrower or Subsidiary; and (iv) any other action or circumstances that might otherwise constitute a legal or equitable discharge or defense of a surety or guarantor. Each Borrower shall be regarded, and shall be in the same position, as principal debtor with respect to the Obligations guaranteed hereunder.

(b) Waivers by Borrowers. Each Borrower expressly waives all rights it may have now or in the future under any statute, or at common law, or at law or in equity, or

otherwise, to compel the Administrative Agent or other Secured Parties to marshal assets or to proceed in respect of the Obligations guaranteed hereunder against any other Borrower or Subsidiary, any other party or against any security for the payment and performance of the Obligations before proceeding against, or as a condition to proceeding against, such Borrower. Each Borrower consents and agrees that the Administrative Agent or the other Secured Parties may, at any time and from time to time, without notice or demand, whether before or after an actual or purported termination, repudiation or revocation of this Agreement by any Borrower, and without affecting the enforceability or continuing effectiveness hereof as to such Borrower: (i) with the consent of the other Borrowers, supplement, restate, modify, amend, increase, decrease, extent, renew or otherwise change the time for payment or the terms of this Agreement or any part thereof, including any increase or decrease of the rate(s) of interest thereon; (ii) with the consent of the other Borrowers, supplement, restate, modify, amend, increase, decrease, or enter into or give any agreement with respect to, this Agreement or any part thereof, or any of the Security Documents; (iii) waive, approve or consent to any action, condition, covenant, default, remedy, right, representation or term of this Agreement or any other Loan Document; (iv) accept partial payments; (v) release, reconvey, terminate, waive, abandon, fail to perfect, subordinate, exchange, substitute, transfer or enforce any security or guarantees, and apply any security and direct the order or manner of sale thereof as the Agents or Lenders in their sole and absolute discretion may determine; (vi) release any Person from any personal liability with respect to this Agreement or any part thereof; (vii) settle, release on terms satisfactory to the Required Lenders or by operation of applicable Laws or otherwise liquidate or enforce any security or guaranty in any manner, consent to the transfer of any security and bid and purchase at any sale; or (viii) consent to the merger, change or any other restructuring or termination of the corporate or partnership existence of any Borrower or any other Person, and correspondingly restructure the obligations evidenced hereby, and any such merger, change, restructuring or termination shall not affect the liability of any Borrower or the continuing effectiveness hereof, or the enforceability hereof with respect to all or any part of the obligations evidenced hereby. It is agreed among each Borrower, the Administrative Agent and Lenders that the foregoing consents and waivers are of the essence of the transaction contemplated by this Agreement and the other Loan Documents and that, but for the provisions of this Section 13.02 and such waivers, the Administrative Agent and Lenders would decline to enter into this Agreement.

(c) Benefit of Guaranty. Each Borrower agrees that the provisions of this Section 13.02 are for the benefit of the Administrative Agent and the other Secured Parties and their respective successors, transferees, endorsees and assigns, and nothing herein contained shall impair, as between any other Borrower and the Administrative Agent or the other Secured Parties, the obligations of such other Borrower under the Loan Documents.

(d) Waiver of Subrogation, Etc. Notwithstanding anything to the contrary in this Agreement or in any other Loan Document, and except as set forth in Section 13.02(g), each Borrower hereby expressly and irrevocably waives any and all rights at law or in equity to subrogation, reimbursement, exoneration, contribution, indemnification or set off and any and all defenses available to a surety, guarantor or accommodation co-obligor, including, without limitation, any defense based upon any statute or rule of law that provides that the obligation of a surety must be neither larger in amount nor in other respects more burdensome than that of the principal, and any defense of the statute of limitations in any action hereunder or in any action for the collection or performance of any obligations hereby guaranteed. Each Borrower

acknowledges and agrees that this waiver is intended to benefit the Administrative Agent and Lenders and other Secured Parties and shall not limit or otherwise affect such Borrower's liability hereunder or the enforceability of this Section 13.02, and that the Administrative Agent, the Lenders and the other Secured Parties and their respective successors and assigns are intended third party beneficiaries of the waivers and agreements set forth in this Section 13.02(d).

(e) Election of Remedies. If the Administrative Agent or any other Secured Party may, under applicable law, proceed to realize its benefits under any of the Loan Documents, the Administrative Agent or any other Secured Party may, at its sole option, determine which of its remedies or rights it may pursue without affecting any of its rights and remedies under this Section 13.02. If, in the exercise of any of its rights and remedies, the Administrative Agent or any other Secured Party shall forfeit any of its rights or remedies, including its right to enter a deficiency judgment against any Borrower or any other Person, whether because of any applicable laws pertaining to "election of remedies" or the like, each Borrower hereby consents to such action by the Administrative Agent or such other Secured Party and waives any claim based upon such action, even if such action by the Administrative Agent or such other Secured Party shall result in a full or partial loss of any rights of subrogation that each Borrower might otherwise have had but for such action by the Administrative Agent or such other Secured Party. Any election of remedies that results in the denial or impairment of the right of the Administrative Agent or any other Secured Party to seek a deficiency judgment against any Borrower shall not impair any other Borrower's obligation to pay the full amount of the Obligations.

(f) Limitation. Notwithstanding any provision herein contained to the contrary, each Borrower's liability under this Section 13.02 (which liability is in any event in addition to amounts for which such Borrower is primarily liable under Article 2) shall be limited to an amount not to exceed as of any date of determination the greater of:

(i) the net amount of all Loans advanced to any other Borrower under this Agreement and then re-loaned or otherwise transferred to, or for the benefit of, such Borrower; and

(ii) the amount that could be claimed by the Administrative Agent and the other Secured Parties from such Borrower under this Section 13.02 without rendering such claim voidable or avoidable under Section 548 of the Bankruptcy Code or under any applicable state Uniform Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act or similar statute or common law after taking into account, among other things, such Borrower's right of contribution and indemnification from each other Borrower under Section 13.02(g).

(g) Contribution with Respect to Guaranty Obligations.

(i) To the extent that any Borrower shall make a payment under this Section 13.02 of all or any of the Obligations (other than Obligations related to Loans and other extensions of credit made directly or indirectly to that Borrower, or on such Borrower's behalf, in which case such Borrower shall be primarily liable) (a "Guarantor

Payment”) that, taking into account all other Guarantor Payments then previously or concurrently made by any other Borrower, exceeds the amount that such Borrower would otherwise have paid if each Borrower had paid the aggregate Obligations satisfied by such Guarantor Payment in the same proportion that such Borrower’s Allocable Amount (as determined immediately prior to such Guarantor Payment) bore to the aggregate Allocable Amounts of each of the Borrowers as determined immediately prior to the making of such Guarantor Payment, then, following indefeasible payment in full in cash of the Obligations and termination of the Commitments, such Borrower shall be entitled to receive contribution and indemnification payments from, and be reimbursed by, each other Borrower for the amount of such excess, pro rata based upon their respective Allocable Amounts in effect immediately prior to such Guarantor Payment.

(ii) As of any date of determination, the “Allocable Amount” of any Borrower shall be equal to the maximum amount of the claim that could then be recovered from such Borrower under this Section 13.02 without rendering such claim voidable or avoidable under Section 548 of the Bankruptcy Code or under any applicable state Uniform Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act or similar statute or common law.

(iii) This Section 13.02(g) is intended only to define the relative rights of Borrowers and nothing set forth in this Section 13.02(g) is intended to or shall impair the obligations of Borrowers, jointly and severally, to pay any amounts as and when the same shall become due and payable in accordance with the terms of this Agreement, including Section 13.02(a). Nothing contained in this Section 13.02(g) shall limit the liability of any Borrower to pay the Loans made directly or indirectly to that Borrower, or on such Borrower’s behalf, and accrued interest, fees and expenses with respect thereto for which such Borrower shall be primarily liable.

(iv) The parties hereto acknowledge that the rights of contribution and indemnification hereunder shall constitute assets of the Borrower to which such contribution and indemnification is owing.

(v) The rights of the indemnifying Borrowers against other Borrowers under this Section 13.02(g) shall be exercisable on or after the Termination Date, but shall in all respects be subordinate to any Obligations owing to any Secured Party.

(h) Liability Cumulative. The liability of Borrowers under this Section 13.02 is in addition to and shall be cumulative with all liabilities of each Borrower to the Administrative Agent and Lenders under this Agreement and the other Loan Documents to which such Borrower is a party or in respect of any Obligations or obligation of the other Borrower, without any limitation as to amount, unless the instrument or agreement evidencing or creating such other liability specifically provides to the contrary.

(i) Stay of Acceleration. If acceleration of the time for payment of any amount payable by the Borrowers under this Agreement is stayed upon the insolvency, bankruptcy or reorganization of any of the Borrowers, all such amounts otherwise subject to acceleration under the terms of this Agreement shall nonetheless be payable jointly and severally

by the Borrower hereunder forthwith on demand by the Administrative Agent made at the request of the Required Lenders.

(j) Benefit to Borrowers. All of the Borrowers and their Subsidiaries are engaged in related businesses and integrated to such an extent that the financial strength and flexibility of each such Person has a direct impact on the success of each other Person. Each Borrower and each Subsidiary will derive substantial direct and indirect benefit from the extension of credit hereunder.

**13.03 Subordination to Payment of Obligations.** Each Loan Party hereby subordinates any Indebtedness of any Loan Party or any Subsidiary thereof to such Loan Party to the full and indefeasible payment in full in cash of the Obligations (and any Lien now or hereafter securing such Indebtedness is hereby subordinated in priority to the Liens of Administrative Agent now or hereafter securing any of the Obligations) and any such Indebtedness collected or received by such Loan Party after an Event of Default has occurred and is continuing shall be held in trust for the Administrative Agent for its benefit and the benefit of the Secured Parties to be credited and applied against the Obligations, but without affecting, impairing or limiting in any manner the liability of such Loan Party under any other provision hereof. No Loan Party shall exercise any remedy with respect to such Indebtedness prior to Termination Date.

**13.04 Exclusive Remedy For Any Alleged Post-Petition Claim.** Notwithstanding anything to the contrary provided for herein, if any Debtor asserts that it has any adverse claims against any Secured Party with respect to this Agreement and the transactions contemplated hereby, each Debtor agrees that its sole and exclusive remedy for any and all such adverse claims will be an action for monetary damages (a "Damage Lawsuit"). Any such Damage Lawsuit, regardless of the procedural form in which it is alleged (e.g., by complaint, counterclaim, cross-claim, third-party claim, or otherwise) will be severed from any enforcement by Secured Parties of their legal, equitable, and contractual rights (including collection of the Obligations and foreclosure or other enforcement against the Collateral) pursuant to the Loan Documents, and the Damage Lawsuit (including any and all adverse claims alleged against the Secured Parties) cannot be asserted by any Debtor as a defense, setoff, recoupment, or grounds for delay, stay, or injunction against any enforcement by any Secured Party of their legal, equitable, and contractual rights under the Final Order, the Loan Documents, and otherwise.

**13.05 Prohibition on Surcharge.** Subject to entry of the Final Order, no Person will be permitted to surcharge the Collateral under Section 506(c) of the Bankruptcy Code, nor shall any costs or expenses whatsoever be imposed against the Collateral, except for the Carve-Out. The prohibition on surcharging or priming of the Liens of the Administrative Agent on the Collateral will survive the termination of this Agreement and the dismissal of the Cases, such that no Person will be permitted to obtain a Lien or rights (through any means, at law or in equity) which in any case is equal or senior to the Liens of the Administrative Agent on the Collateral. Upon the termination of this Agreement and the dismissal of the Cases, the Bankruptcy Court will retain jurisdiction over the Collateral for the limited purpose of enforcing this section.

**13.06 Marshalling Obligations.** The Administrative Agent shall not be subject to any equitable remedy of marshalling.

**13.07 No Discharge; Survival of Claims.** Each Debtor agrees that (i) the Obligations shall not be discharged by the entry of an order confirming a Reorganization Plan (and each Debtor, pursuant to Section 1141(d)(4) of the Bankruptcy Code, hereby waives any such discharge), (ii) the Superpriority Claim granted to the Secured Parties pursuant to the Interim Order or the Final Order, as applicable, and the Liens granted to the Administrative Agent, for the benefit of the Secured Parties pursuant to the Interim Order or the Final Order, as applicable, this Agreement and the other Loan Documents, shall not be affected in any manner by the entry of an order confirming a Reorganization Plan, (iii) the Debtors shall not propose or support any Reorganization Plan that is not conditioned upon the occurrence of the Termination Date and the release of the Administrative Agent and Lenders in full from all claims of the Debtors and their estate, in each case, on or before the effective date of such Reorganization Plan, and (iv) no Reorganization Plan shall be confirmed if it does not satisfy the foregoing requirements.

**13.08 Disavowal and Waiver of Any Subsequent Relief Based on Changed Circumstances.** The Debtors and the Secured Parties know and understand that there are rights and remedies provided under the Bankruptcy Code, the Federal Rules of Civil Procedure, and the Bankruptcy Rules, pursuant to which parties otherwise bound by a previously entered order can attempt to obtain relief from such an order by alleging circumstances that may warrant a change or modification in the order, or circumstances such as fraud, mistake, inadvertence, excusable neglect, newly discovered evidence, or similar matters that may justify vacating the order entirely, or otherwise changing or modifying it (collectively, "Changed Circumstances"). Rights and remedies based on Changed Circumstances include, but are not limited to, modification of a plan of reorganization after confirmation of the plan and before its substantial consummation, pursuant to Section 1127(b) of the Bankruptcy Code, relief from a final order or judgment pursuant to Rule 60(b) of the Federal Rules of Civil Procedure and Bankruptcy Rule 9024, and the commencement and prosecution of a serial Chapter 11 case by a debtor which is in default of obligations under a stipulation or plan of reorganization confirmed in an earlier case. With full knowledge and understanding of what are, or may be, its present or future rights and remedies based on allegations of Changed Circumstances, each Debtor: (i) expressly disavows that there are any matters which constitute any kind of Changed Circumstances as of the date of entry of the Interim Order and (ii) expressly disavows that it is aware of any matters whatsoever that it is assuming, contemplating, or expecting in proceeding with the Final Order and the transactions contemplated by this Agreement and having the Final Order entered that would serve as a basis to allege such Changed Circumstances. Each Debtor understands and agrees that the Secured Parties are not willing to bear any of the risks involved in the Debtors' business enterprises and the Secured Parties are not willing to modify any of the rights if such risks cause actual or alleged Changed Circumstances; and each Debtor expressly assumes all risks of any and all such matters, and the consequences that the Secured Parties will enforce their legal, equitable, and contractual rights if the Secured Parties are not paid and dealt with strictly in accordance with the terms and conditions of the Interim Order, the Final Order, this Agreement and the other Loan Documents. Without limiting the foregoing in any way, the Debtors' use of any Cash Collateral that is included in the Collateral will be governed exclusively by the terms and conditions of this Agreement, the Interim Order or the Final Order, as applicable, and, until the Termination Date either before or after a termination of this Agreement, no Debtor will seek authority from the Bankruptcy Court to otherwise use any Cash Collateral that is included in the Collateral for any purpose whatsoever.

**13.09 Interim Order and Final Order Control.** In the event of any conflict between the terms of the Interim Order or the Final Order, as applicable, and this Agreement or any other Loan Document, the terms of the Interim Order or the Final Order, as applicable, shall control.

*Signature Pages Follow*

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

**HDJG CORP.**,  
a Delaware corporation, as Holdings

By: \_\_\_\_\_  
Name: Michael Archer  
Title: Chief Executive Officer

**HRI HOLDING CORP.**,  
a Delaware corporation, as a Borrower

By: \_\_\_\_\_  
Name: Michael Archer  
Title: Chief Executive Officer

**HOULIHAN'S RESTAURANTS, INC.**,  
a Virginia corporation, as a Borrower

By: \_\_\_\_\_  
Name: Michael Archer  
Title: Chief Executive Officer

**RED STEER, INC.**,  
a Missouri corporation, as a Borrower

By: \_\_\_\_\_  
Name: Michael Archer  
Title: Chief Executive Officer

**SAM WILSON'S/KANSAS, INC.**,  
a Kansas corporation, as a Borrower

By: \_\_\_\_\_  
Name: Michael Archer  
Title: Chief Executive Officer

**DARRYL'S OF ST. LOUIS COUNTY, INC.,**  
a Missouri corporation, as a Borrower

By: \_\_\_\_\_  
Name: Michael Archer  
Title: Chief Executive Officer

**DARRYL'S OF OVERLAND PARK, INC.,**  
a Kansas corporation, as a Borrower

By: \_\_\_\_\_  
Name: Michael Archer  
Title: Chief Executive Officer

**HOULIHAN'S OF CHESTERFIELD, INC.,**  
a Delaware corporation, as a Borrower

By: \_\_\_\_\_  
Name: Michael Archer  
Title: Chief Executive Officer

**HOULIHAN'S OF OHIO, INC.,**  
a Delaware corporation, as a Borrower

By: \_\_\_\_\_  
Name: Michael Archer  
Title: Chief Executive Officer

**HRI O'FALLON, INC.,**  
a Delaware corporation, as a Borrower

By: \_\_\_\_\_  
Name: Michael Archer  
Title: Chief Executive Officer

**ALGONQUIN HOULIHAN'S RESTAURANT, L.L.C.**  
a Delaware limited liability company, as a  
Borrower

By: \_\_\_\_\_  
Name: Michael Archer  
Title: Chief Executive Officer

**GENEVA HOULIHAN'S RESTAURANT, L.L.C.**  
a Delaware limited liability company, as a  
Borrower

By: \_\_\_\_\_  
Name: Michael Archer  
Title: Chief Executive Officer

**HANLEY STATION HOULIHAN'S RESTAURANT,  
LLC**, a Delaware limited liability company, as  
a Borrower

By: \_\_\_\_\_  
Name: Michael Archer  
Title: Chief Executive Officer

**HOULIHAN'S TEXAS HOLDINGS, INC.,**  
a Delaware corporation, as a Borrower

By: \_\_\_\_\_  
Name: Michael Archer  
Title: Chief Executive Officer

**HOULIHAN'S RESTAURANTS OF TEXAS, INC.,**  
a Texas corporation, as a Borrower

By: \_\_\_\_\_  
Name: Michael Archer  
Title: Chief Executive Officer

**JGIL MILL OP LLC,**  
a New Jersey limited liability company, as a  
Guarantor

By: \_\_\_\_\_  
Name: Michael Archer  
Title: Chief Executive Officer

**JGIL MILLBURN LLC,**  
a New Jersey limited liability company, as a  
Guarantor

By: \_\_\_\_\_  
Name: Michael Archer  
Title: Chief Executive Officer

**JGIL, LLC,**  
a Virginia limited liability company, as a  
Guarantor

By: \_\_\_\_\_  
Name: Michael Archer  
Title: Chief Executive Officer

**JGIL OMAHA, LLC,**  
a Virginia limited liability company, as a  
Guarantor

By: \_\_\_\_\_  
Name: Michael Archer  
Title: Chief Executive Officer

ADMINISTRATIVE AGENT:

**CIT BANK, N.A.**, as Administrative Agent

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

LENDER(S):

**CIT BANK, N.A.**, as a Lender

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**GARRISON FUNDING 2018-1 LP, as a Lender**

By: Garrison Middle Market II GP LLC, its  
Collateral Manager

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

**GARRISON FUNDING 2018-2 LTD., as a Lender**

By: Garrison Capital Inc., its Collateral Manager

By: Garrison Capital Advisers LLC, its Investment  
Adviser

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

**GARRISON MML CLO 2019-1 LP, as a Lender**

By: Garrison Middle Market Funding II Manager  
LLC, its Collateral Manager

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

**GARRISON MIDDLE MARKET FUNDING CO-  
INVEST LLC, as a Lender**

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

Schedule A

**BORROWERS**

Red Steer, Inc., a Missouri corporation  
Sam Wilson's/Kansas, Inc., a Kansas corporation  
Darryl's of St. Louis County, Inc., a Missouri corporation  
Darryl's of Overland Park, Inc., a Kansas corporation  
Houlihan's of Chesterfield, Inc., a Delaware corporation  
Houlihan's of Ohio, Inc., a Delaware corporation  
HRI O'Fallon, Inc., a Delaware corporation  
Algonquin Houlihan's Restaurant, L.L.C., a Delaware limited liability company  
Geneva Houlihan's Restaurant, L.L.C., a Delaware limited liability company  
Hanley Station Houlihan's Restaurant, LLC, a Delaware limited liability company  
Houlihan's Texas Holdings, Inc., a Delaware corporation  
Houlihan's Restaurants of Texas, Inc., a Texas corporation

Schedule 2.01**COMMITMENTS AND PRO RATA SHARES**

<b><u>Lender</u></b>	<b><u>Revolving Commitment</u></b>	<b><u>Pro Rata Share</u></b>
CIT Bank, N.A.	\$2,422,866.68	48.4573335855966%
Garrison Funding 2018-1 LP	\$412,102.42	8.2420484648681%
Garrison Funding 2018-2 LTD.	\$700,574.12	14.011482368460%
Garrison MML CLO 2019-1 LP	\$329,681.94	6.5936387494647%
Garrison Middle Market Funding Co-Invest LLC	\$1,134,774.84	22.6954968322246%
<b>Total</b>	<b>\$5,000,000</b>	<b>100%</b>

Schedule 12.02

**CERTAIN ADDRESSES FOR NOTICES**

Administrative Agent, the L/C Issuer or the Support Provider:

CIT Bank, N.A.  
11 West 42nd Street  
New York, NY 10036  
Attention: Michael Aliberto  
Senior Vice President  
Telephone: (212) 771-9471  
Facsimile: (212) 421-4813  
Email: Michael.aliberto@cit.com

with a copy (that will not constitute notice) to:

Katten Muchin Rosenman  
515 South Flower Street, Suite 1000  
Los Angeles, CA 90071  
Attention: William B. Freeman, Esq.  
Tel: (213) 443-9007  
Facsimile: (213) 947-1151  
Email: bill.freeman@katten.com

with a copy (that will not constitute notice) to:

Landis Rath & Cobb LLP  
919 Market Street, Suite 1800  
Wilmington, DE 19801  
Attention: Adam G. Landis, Esq.  
Tel: (302) 467-4400  
Facsimile: (302) 467-4450  
Email: landis@lrclaw.com

Account for payments:

Bank Name: JPMorgan Chase  
ABA #: 021-000-021  
Acct Name: CIT Bank, N.A.  
Account #: 754292720  
Reference: HRI Holding Corp.

Borrower Representative or the Loan Parties:

Houlihan's Restaurants, Inc.  
8700 State Line Rd, Suite 100  
Leawood, KS 66206  
Attention: Mike Archer, CEO  
Telephone: (913) 901-2523  
Facsimile: (913) 901-2650  
Email: [marcher@houlihans.com](mailto:marcher@houlihans.com)

**EXHIBIT 2**  
**APPROVED BUDGET**

**Project Walt - Preliminary DIP Budget**

(\$ in 000s)

Week #	Est. 1	Est. 2	Est. 3	Est. 4	Est. 5	Est. 6	Est. 7	7 Week Total
Week Ending	11/13 to 11/17/19	11/24/19	12/1/19	12/8/19	12/15/19	12/22/19	12/29/19	11/13-12/29
<b>OPERATING CASH FLOW</b>								
<b>Total Cash Receipts from Operations</b>	<b>\$813</b>	<b>\$3,695</b>	<b>\$3,866</b>	<b>\$4,151</b>	<b>\$4,495</b>	<b>\$4,642</b>	<b>\$4,225</b>	<b>\$25,888</b>
<b>Operating Disbursements</b>								
Food / Beverage Costs	\$869	\$1,016	\$996	\$1,073	\$1,167	\$1,218	\$1,138	\$7,477
Controllables	160	464	473	471	471	471	471	2,982
Occupancy	-	-	1,173	-	-	-	-	1,173
Emergency Capex	16	75	68	59	56	56	55	385
Payroll and Payroll Taxes	707	1,814	1,071	1,427	1,094	1,523	1,113	8,749
Sales Tax	3	709	249	85	44	615	218	1,923
Other Disbursements	107	125	148	135	104	96	98	814
<b>Cash Disbursements from Operations</b>	<b>\$1,862</b>	<b>\$4,205</b>	<b>\$4,178</b>	<b>\$3,250</b>	<b>\$2,936</b>	<b>\$3,979</b>	<b>\$3,093</b>	<b>\$23,502</b>
<b>Net Operating Cash Flow</b>	<b>(\$1,048)</b>	<b>(\$509)</b>	<b>(\$312)</b>	<b>\$902</b>	<b>\$1,559</b>	<b>\$663</b>	<b>\$1,132</b>	<b>\$2,386</b>
<b>NON-OPERATING CASH FLOWS</b>								
<b>Chapter 11 Professional Costs</b>								
Accrued Chapter 11 Professional Fees	\$384	\$384	\$307	\$307	\$307	\$307	\$307	\$2,305
US Trustee Fees	-	-	-	-	-	-	277	277
<b>Total Chapter 11 Professional Costs</b>	<b>\$384</b>	<b>\$384</b>	<b>\$307</b>	<b>\$307</b>	<b>\$307</b>	<b>\$307</b>	<b>\$584</b>	<b>\$2,582</b>
<b>Other Chapter 11 Related Cash Flows</b>								
DIP Lender Fees	\$250	\$-	\$10	\$-	\$-	\$-	\$24	\$284
Other Chapter 11 Related Cash Flows	660	451	146	594	594	130	3,173	5,747
<b>Total Chapter 11 Related Cash Flows</b>	<b>\$910</b>	<b>\$451</b>	<b>\$156</b>	<b>\$594</b>	<b>\$594</b>	<b>\$130</b>	<b>\$3,196</b>	<b>\$6,031</b>
<b>Total Net Cash Flow before Financing</b>	<b>(\$2,343)</b>	<b>(\$1,344)</b>	<b>(\$775)</b>	<b>\$1</b>	<b>\$658</b>	<b>\$226</b>	<b>(\$2,648)</b>	<b>(\$6,227)</b>
<b>LIQUIDITY</b>								
Beginning Cash Balance	\$2,621	\$1,000	\$1,000	\$1,000	\$1,001	\$1,658	\$1,884	\$2,621
Total Net Cash Flow before Financing	(2,343)	(1,344)	(775)	1	658	226	(2,648)	(6,227)
DIP Facility Draw / (Repayment)	722	1,344	775	-	-	-	764	3,606
<b>Ending Cash Balance</b>	<b>\$1,000</b>	<b>\$1,000</b>	<b>\$1,000</b>	<b>\$1,001</b>	<b>\$1,658</b>	<b>\$1,884</b>	<b>\$0</b>	<b>\$-</b>
<b>DIP Facility Balance</b>								
Beginning Balance	\$-	\$722	\$2,067	\$2,841	\$2,841	\$2,841	\$2,841	\$-
Draw / (Repayment)	722	1,344	775	-	-	-	764	3,606
<b>Ending Balance</b>	<b>\$722</b>	<b>\$2,067</b>	<b>\$2,841</b>	<b>\$2,841</b>	<b>\$2,841</b>	<b>\$2,841</b>	<b>\$3,606</b>	<b>\$3,606</b>
Availability	\$4,278	\$2,933	\$2,159	\$2,159	\$2,159	\$2,159	\$1,394	\$1,394
<b>Liquidity</b>	<b>\$5,278</b>	<b>\$3,933</b>	<b>\$3,159</b>	<b>\$3,159</b>	<b>\$3,817</b>	<b>\$4,043</b>	<b>\$1,394</b>	<b>\$1,394</b>